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SCSBA

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Human Resources 101 for Board Members

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I. Contract Levels and Rights of Teachers

◆ Induction Contract Teachers

- Minimal due process rights of a pre-termination hearing with notice of concerns, sharing of evidence regarding the concerns, and an opportunity to tell his/her side of the story.

◆ Annual Contract Teachers

- **S.C. Code Ann. § 59-26-40**

...Teachers working under a one-year annual contract who are not recommended for reemployment at the end of the year, within fifteen days after receipt of notice of the recommendation, may request an informal hearing before the district superintendent. The superintendent shall schedule the hearing not sooner than seven and not later than thirty working days after he receives a request from the teacher for a hearing. At the hearing the evidence must be reviewed by the superintendent. The teacher may provide information, testimony, or witnesses that the teacher considers necessary. The decision by the superintendent must be given in writing within twenty days of the hearing. The teacher may appeal the superintendent's decision to the school district board of trustees.

...The board of trustees shall review all the materials presented at the earlier hearing, and after examining these materials, the board may or may not grant the request for a board hearing of the matter.

◆ Continuing Contract Teachers

- South Carolina Employment and Dismissal Act provisions apply.
- **S.C. Code Ann. § 59-25-430.** Dismissal of teachers; grounds; opportunity for hearing; suspension pending resolution of charges.

Any teacher may be dismissed at any time who shall fail, or who may be incompetent, to give instruction in accordance with the directions of the superintendent, or who shall otherwise manifest an evident unfitness for teaching; provided, however, that notice and an opportunity shall be afforded for a hearing prior to any dismissal. Evident unfitness for teaching is manifested by conduct such as, but not limited to, the following: persistent neglect of duty, willful violation of rules and regulations of district board of trustees, drunkenness, conviction of a violation of the law of this State or the United States, gross immorality, dishonesty, illegal use, sale or possession of drugs or narcotics....

- **S.C. Code Ann. § 59-25-440.** Written notice to teacher of possible dismissal;

school administrator required to make reasonable effort to assist teacher in corrective measures; reasonable time for improvement required.

Whenever a superior, principal, where applicable, or supervisor charged with the supervision of a teacher finds it necessary to admonish a teacher for a reason that he believes may lead to, or be cited as a reason for, dismissal or cause the teacher not to be reemployed he shall: (1) bring the matter in writing to the attention of the teacher involved and make a reasonable effort to assist the teacher to correct whatever appears to be the cause of potential dismissal or failure to be reemployed and, (2) except as provided in Section 59-25-450, allow reasonable time for improvement.

II. Teacher Evaluations

- **State Board of Education Regulation 43-205.1**

...teachers who are being recommended for formal evaluation the following school year must be notified in writing on or before the date the school district issues the written offer of employment or reemployment. The written notification must include the reason(s) that a formal evaluation is recommended, as well as a description of the formal evaluation process.* Continuing contract teachers who are new to the district must be advised at the time of their hiring if they are to receive a formal evaluation.

III. Teacher Misconduct Issues

◆ Administrative leave with pay

◆ Report to law enforcement, as appropriate

- **S.C. Code Ann. § 59-24-60.** Requirement of school officials to contact law enforcement authorities when criminal conduct occurs.

In addition to other provisions required by law or by regulation of the State Board of Education, school administrators must contact law enforcement authorities immediately upon notice that a person is engaging or has engaged in activities on school property or at a school sanctioned or sponsored activity which may result or results in injury or serious threat of injury to the person or to another person or his property as defined in local board policy.

◆ Report to Department of Education, as appropriate

- **State Board of Education Regulation 43-58.1.** Reporting of Terminations of Certain School District Employees. A district superintendent, on behalf of the local board of education, shall report to the Chair of the State Board of

Education and the State Superintendent of Education, the name and certificate number of any certified educator who is dismissed, resigns, or is otherwise separated from employment with that district based on allegations of misconduct including, but not limited to, misconduct involving drugs, sexual misconduct, the commission of a crime, immorality, moral turpitude, or dishonesty, that is reasonably believed by the district superintendent to constitute grounds for revocation or suspension of the certificate issued to the educator by the State Board. This report is required notwithstanding any termination agreement to the contrary that the district board of trustees or superintendent may enter into with the educator....

Revisions to the South Carolina Employment and Dismissal of Teachers Act

This year, the Legislature passed extensive revisions to the Employment and Dismissal of Teachers Act (“Act”) set forth in South Carolina Code of Laws Sections 59-25-410, *et seq.* Summarized below are key revisions.

Annual Teacher Employment Notification Deadline Extended

Section 59-25-410 of the Act was amended to provide that school boards annually **before** May 1 shall decide and notify a teacher in writing about his/her re-employment for the ensuing year, *i.e.*, to issue employment contracts to teachers. It further provides that notice of a superintendent’s recommendation not to renew an employment contract must be given in writing to the employee **before** May 1. Specifically, Section 59-25-410(A), as amended, provides:

The boards of trustees of the several school districts annually before May first shall decide and notify, in writing, a teacher, as defined in Section 59-1-130, whom the district employs concerning his reemployment for the ensuing year. If the superintendent fails to notify a teacher who has been employed by a school district for a majority of the current school year of his status for the ensuing year, the teacher is considered to be reemployed for the ensuing year and the board shall issue a contract to him as though the board had reemployed him in the usual manner. Notice of the superintendent’s recommendation not to renew an employment contract must be given in writing before May first.

Section 59-25-420 was amended to require a teacher issued a contract for a subsequent school year to notify the district of his/her acceptance of the contract **before** May 11.

In light of these revisions, school districts should consider revising board policies that reflect the dates on which contracts are offered and must be returned, as well as the dates on which certified employees must be notified of non-renewal recommendations.

Dismissal Hearing Scheduling and Procedures Revised

School boards now have up to 45 days to hold a hearing requested by a Continuing Contract teacher regarding the non-renewal or termination of his/her employment. This is a noticeable change to the statute, which for years has required boards to hold hearings within 15 days unless the time period was waived by the employee.

Specifically, S.C. Code Ann. § 59-25-470, as amended, provides:

- (A) Within fifteen days after receipt of notice of suspension or dismissal, a teacher may serve upon the chairman of the board or the superintendent a written request for a hearing before the board, or its designee.

- (B) If the teacher fails to make such a request, or after a hearing as provided in this article, the board shall take action and shall enter an order as it considers lawful and appropriate.
- (C) The hearing must be held by the board, or its designee, within forty-five days after the request is served. A notice of the time and place of the hearing must be given the teacher not less than five days before the date of the hearing.
- (D) The teacher may be present with counsel at the hearing, and may cross-examine witnesses, may offer evidence and witnesses, and present defenses to the charges. The board, or its designee, shall order the appearance of any witness requested by the teacher, subject to the limitations of Section 59-25-460. The superintendent shall initiate the introduction of evidence in substantiation of the charges.

Dismissal Process Revised

The Act permits school boards to adopt a policy to delegate the evidentiary hearing for a Continuing Contract teacher's recommendation for non-renewal or termination to a specific hearing officer or officers, instead of the board holding the evidentiary hearing itself. If a board chooses to delegate the responsibility for holding the evidentiary hearing to a hearing officer, the board must: (1) adopt such a policy; (2) communicate the policy to all affected employees within 15 days; (3) designate a specific attorney or attorneys licensed to practice law in South Carolina and certified by the South Carolina Supreme Court as a mediator or arbitrator to serve as the hearing officer(s) for the school year; and (4) allow the designated hearing officer(s) to hear all evidentiary hearings in the district for the school year. If the board designates more than one attorney to serve as hearing officer, the parties must mutually agree to use one of the hearing officers, or the board must randomly select one of the designees.

In the event the board designates a hearing officer to hold the evidentiary hearing, the hearing officer will issue a written report and recommendation containing findings of facts and conclusions of law to the board, superintendent, and teacher within 15 days after the hearing concludes. The superintendent and the teacher may submit a written response to the report and recommendation to the board within 10 days after the date on which the report and recommendation is issued, after which the board shall issue a decision affirming or withdrawing the notice of suspension or dismissal within 30 days. In the interim, the board may conduct a hearing on the order to consider any written responses from the superintendent and teacher. The amended statute makes clear that the board retains final decision making authority regarding the teacher dismissal or suspension recommendation based on its consideration of the record, the report and recommendation, and any written submissions by the superintendent and teacher.

Additionally, a new provision in the statute provides that the superintendent or his/her designee may meet with the teacher before issuing any notice of dismissal to discuss alternative resolutions. It further provides that the parties attending this meeting must have the option of having a representative present. While in many cases superintendents or their designees have met with an employee prior to a non-renewal or termination recommendation being made, the statute now references that option but also requires that the district permit an employee be given the option to have a representative present.

Specifically, S.C. Code Ann. § 59-25-460, as amended, provides:

- (A) A teacher may not be dismissed unless written notice specifying the cause of dismissal first is given to the teacher by the superintendent and the teacher is given an opportunity for an evidentiary hearing. The superintendent or his designee may meet with the teacher before issuing a notice of dismissal to discuss alternative resolutions. The parties attending this meeting must have the option of having a representative present. This written notice must include the fact that a hearing before the board or its designee is available to the teacher upon request if the request is made in writing within fifteen days as provided in Section 59-25-470. Any such hearing must be public unless the teacher requests in writing that it be private. A board that chooses to delegate the evidentiary hearing to one or more designees, as provided in this section, shall indicate in board policy that it engages in this practice. The hearing process becomes effective when the board adopts the policy, and must be communicated to all affected employees within fifteen days. A subsequent change only may be made pursuant to the board policy revision process.
- (B)
 - (1) If the board chooses to delegate the evidentiary hearing to a designee, the designee must be:
 - (a) an attorney licensed to practice law in this State;
 - (b) certified by the South Carolina Supreme Court as a mediator or arbitrator; and
 - (c) designated by the board to hear all evidentiary hearings in the district for the school year, except when:
 - (i) both parties consent to use an alternate hearing officer; or
 - (ii) the district uses more than one designee, in which case the parties may by mutual consent select one of these designees for their hearing or, if they fail to reach such an agreement, the board randomly shall select one of its designees for the hearing.
 - (2) If the designee holds the evidentiary hearing, he shall issue a written report and recommendation containing findings of facts and conclusions of law to the board, superintendent, and teacher within fifteen days after the hearing concludes. The superintendent and the teacher may submit a written response to this report and recommendation to the board within ten days after the date on which the report and recommendation are issued, after which the board shall issue a decision affirming or withdrawing the notice of suspension or dismissal within thirty days. In the interim, the board may conduct a hearing on the order to consider any written responses from the superintendent and teacher, but this hearing may not operate to extend the thirty-day limit in which the board shall issue its decision affirming or withdrawing the notice of suspension or dismissal. The board retains final decision-making authority regarding the teacher dismissal or suspension recommendation based on its consideration of the record, the report and recommendation, and any written submission of the superintendent and teacher.

- (C) If the board holds the evidentiary hearing, the board shall issue its decision within the thirty days after the hearing. This decision must be in writing and must include findings of facts and conclusions of law.
- (D) The board shall determine if the evidence shows good and just cause for the notice of suspension or dismissal, and accordingly shall render a decision to affirm or withdraw the notice of suspension or dismissal.
- (E) The District Board of Trustees as provided in subsection (C), or its designee, as provided in subsection (B), may issue subpoenas requiring the attendance of witnesses at the hearing and, at the request of the teacher against whom a charge is made, shall issue these subpoenas, but it may limit the number of these witnesses to ten. Testimony at a hearing must be taken under oath. A member of the board, or its designee, may administer oaths to witnesses. The board, or its designee, shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all testimony.
- (F) If the board's decision is favorable to the teacher, the board shall pay the cost of the reporter's attendance and services at the hearing. If the decision is unfavorable to the teacher, one-half of the cost of the reporter's attendance and services must be borne by the teacher. A party desiring a transcript of the hearing must pay for the costs of obtaining the transcript.

Appeals Language Revised

Regarding appeals of school board decisions to the court of common pleas, S.C. Code Ann. § 59-25-480 was minimally amended to remove some archaic language.

Deposition Language Revised

Regarding taking depositions in teacher dismissal cases, S.C. Code Ann. § 59-25-490 was also minimally amended to remove some archaic language. Specifically, S.C. Code Ann. § 59-25-490, as amended, provides:

A party to a proceeding conducted pursuant to this chapter may depose a witness within or without the State and either by commission or de bene esse. The deposition must be taken pursuant and subject to the same provisions, conditions, and restrictions that apply to taking of similar depositions in actions brought in the court of common pleas. The same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification of them and matters of practice relating to them apply.