

CHAPTER 104

EDUCATION - PUBLIC SCHOOLS

HOUSE BILL 98-1090

BY REPRESENTATIVES Dean, Allen, Bacon, Dyer, Reeser, Tool, S. Williams, and T. Williams;
also SENATORS Arnold, B. Alexander, and Matsunaka.

AN ACT

CONCERNING TEACHER DISMISSAL.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 22-63-302 (2), (3), (4) (a), (5), (6) (a), (7) (a), (7) (d), (7) (e), (8), (9), and (10), Colorado Revised Statutes, are amended to read:

22-63-302. Procedure for dismissal - judicial review. (2) The chief administrative officer of the employing school district may recommend that the board dismiss a teacher based upon one or more of the grounds stated in section 22-63-301. If such a recommendation is made to the board, ~~such teacher,~~ THE CHIEF ADMINISTRATIVE OFFICER, within ~~seven~~ THREE days after the board meeting at which the recommendation is made, shall ~~be given~~ MAIL a written notice of intent to dismiss TO THE TEACHER. The notice of intent to dismiss shall include a copy of the reasons for dismissal, a copy of this article, and all exhibits which the chief administrative officer intends to submit in support of his OR HER prima facie case against the teacher including a list of witnesses to be called by the chief administrative officer, addresses and telephone numbers of the witnesses, and all pertinent documentation in the possession of the chief administrative officer relative to the circumstances surrounding the charges. Additional witnesses and exhibits in support of the chief administrative officer's prima facie case may ~~not be added at a later date except on a showing of good cause~~ BE ADDED AS PROVIDED IN SUBSECTION (6) OF THIS SECTION. The notice and copy of the charges shall be sent by certified mail to said teacher at his OR HER address last known to the secretary of the board. The notice shall advise the teacher of his OR HER rights and the procedures under this section.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(3) If a teacher objects to the grounds given for the dismissal, ~~such~~ THE teacher may file with the chief administrative officer a written notice of objection and a request for a hearing. Such written notice shall be ~~made~~ FILED within ~~seven~~ FIVE WORKING days ~~of the~~ AFTER receipt by the teacher of the notice of dismissal. If the teacher fails to file the written notice within said time, such failure shall be deemed to be a waiver of ~~his~~ THE right to a hearing and the dismissal shall be final; except that the board of education may grant a hearing upon a determination that the failure to file written notice for a hearing was due to good cause. If the teacher files a written notice of objection, ~~such~~ THE teacher shall continue to receive regular compensation from the time ~~such teacher is suspended until a decision is rendered by~~ the board RECEIVED THE DISMISSAL RECOMMENDATION FROM THE CHIEF ADMINISTRATIVE OFFICER PURSUANT TO SUBSECTION (2) OF THIS SECTION UNTIL THE BOARD ACTS ON THE HEARING OFFICER'S RECOMMENDATION pursuant to subsection (9) of this section, but in no event beyond ~~one hundred twenty~~ ONE HUNDRED days.

(4) (a) If THE TEACHER REQUESTS a hearing, ~~is requested by the teacher,~~ it shall be conducted before an impartial hearing officer selected jointly by the teacher and the chief administrative officer. The hearing officer shall be selected no later than five WORKING days following the receipt by the chief administrative officer of the teacher's written notice of objection. If the teacher and the chief administrative officer fail to agree on the selection of a hearing officer, they shall request ~~the chief judge of the judicial district in which the school district is located to select a list of three hearing officers. The list of hearing officers shall be given to the teacher and the chief administrative officer within five days of the request by the parties. Each party may strike one name from the list and shall notify the chief judge of the name to be stricken no later than three days following receipt of the list. The person whose name is not struck shall be the hearing officer; except that, if more than one name remains on the list because the parties struck the same name or because one or both parties failed to strike a name within the prescribed time period, the chief judge may choose the hearing officer from the remaining names.~~ ASSIGNMENT OF AN ADMINISTRATIVE LAW JUDGE BY THE DEPARTMENT OF PERSONNEL TO ACT AS THE HEARING OFFICER.

(5)(a) Within ~~five~~ THREE WORKING days ~~of his~~ AFTER selection, the hearing officer SHALL SET THE DATE OF THE PREHEARING CONFERENCE AND THE DATE OF THE HEARING, WHICH SHALL COMMENCE WITHIN THE FOLLOWING THIRTY DAYS. THE HEARING OFFICER shall give the teacher and the chief administrative officer ~~at least fourteen days'~~ written notice of the ~~date~~ DATES FOR THE PREHEARING CONFERENCE AND for the hearing including the time and the place therefor. ~~but in no event shall such hearing commence more than thirty days after the selection of the hearing officer.~~

(b) ONE OF THE PURPOSES OF THE PREHEARING CONFERENCE SHALL BE TO LIMIT, TO THE EXTENT POSSIBLE, THE AMOUNT OF EVIDENCE TO BE PRESENTED AT THE HEARING.

(c) THE PARTIES AND THEIR COUNSEL SHALL BE REQUIRED TO ATTEND THE PREHEARING CONFERENCE WITH THE HEARING OFFICER.

(6) (a) Within ten days ~~of the~~ AFTER selection of the hearing officer, the teacher shall provide to the chief administrative officer a ~~list~~ COPY of all exhibits to be

presented at the hearing and A LIST OF all witnesses to be called, including the addresses and telephone numbers of the witnesses. WITHIN SEVEN DAYS AFTER THE TEACHER SUBMITS HIS OR HER EXHIBITS AND WITNESS LIST, THE CHIEF ADMINISTRATIVE OFFICER AND THE TEACHER MAY SUPPLEMENT THEIR EXHIBITS AND WITNESS LISTS. AFTER COMPLETION OF THE SEVEN-DAY PERIOD, additional witnesses and exhibits may not be added ~~at a later date~~ except upon a showing of good cause.

(7) (a) Hearings held pursuant to this section shall be open to the public unless either the teacher or the chief administrative officer requests a private hearing before the hearing officer, but no findings of fact or recommendations shall be adopted by the hearing officer in any private hearing. The procedures for the conduct of the hearing shall be informal, and rules of evidence shall not be strictly applied except as necessitated in the opinion of the hearing officer; EXCEPT THAT THE HEARING OFFICER SHALL COMPLY WITH THE COLORADO RULES OF EVIDENCE IN EXCLUDING HEARSAY TESTIMONY.

(d) An audiotaped record shall be made of the hearing, and, if the teacher files an action for review pursuant to the provisions of subsection (10) of this section, the teacher and the school district shall share equally in the cost of transcribing the record; EXCEPT THAT, IF A PARTY IS AWARDED ATTORNEY FEES AND COSTS PURSUANT TO PARAGRAPH (e) OF SUBSECTION (10) OF THIS SECTION, THAT PARTY SHALL BE REIMBURSED FOR THAT PARTY'S SHARE OF THE TRANSCRIPT COSTS BY THE PARTY AGAINST WHOM ATTORNEY FEES AND COSTS WERE AWARDED.

(e) Any hearing held pursuant to the provisions of this section shall be completed within ~~ten~~ SIX WORKING days ~~of its~~ AFTER commencement, ~~unless the parties otherwise agree~~ UNLESS EXTENDED BY THE HEARING OFFICER ON A SHOWING OF GOOD CAUSE, and neither party shall have more than ~~five~~ THREE days to present its case in chief. NEITHER PARTY MAY PRESENT MORE THAN TEN WITNESSES AT THE HEARING, EXCEPT UPON A SHOWING OF GOOD CAUSE.

(8) The chief administrative officer shall have the burden of proving that ~~his~~ THE recommendation for the dismissal of the teacher was for the reasons given in the notice of dismissal and that the dismissal was made in accordance with the provisions of this article. Where unsatisfactory performance is a ground for dismissal, the chief administrative officer shall establish that the teacher had been evaluated pursuant to the written system to evaluate certificated personnel adopted by the school district pursuant to section 22-9-106. The hearing officer shall review the evidence and testimony and make written findings of fact thereon. The hearing officer shall make ONLY one of the two following recommendations: The teacher be dismissed or the teacher be retained. A RECOMMENDATION TO RETAIN A TEACHER SHALL NOT INCLUDE ANY CONDITIONS ON RETENTION. The findings of fact and the recommendation shall be ~~adopted~~ ISSUED by the hearing officer ~~in open session~~ not later than twenty days after the conclusion of the hearing and shall be forwarded to said teacher and to the board.

(9) The board shall review the hearing officer's findings of fact and recommendation, and it shall enter its written order within twenty days after the date of the hearing officer's findings and recommendation. The board shall take one of the three following actions: The teacher be dismissed; the teacher be retained; or the teacher be placed on a one-year probation; but, if the board dismisses the teacher over

the hearing officer's recommendation of retention, the board shall make a conclusion, giving its reasons therefor, which must be supported by the ~~record~~ HEARING OFFICER'S FINDINGS OF FACT, and such ~~finding~~ CONCLUSION AND REASONS shall be included in its written order. The secretary of the board shall cause a copy of said order to be given immediately to the teacher and a copy to be entered into the teacher's local file.

(10) (a) If the board dismisses the teacher pursuant to the provisions of subsection (9) of this section, the teacher may file an action for review in the court of appeals in accordance with the provisions of this subsection (10), in which action the board shall be made the party defendant. Such action for review shall be heard in an expedited manner and shall be given precedence over all other civil cases, except cases arising under the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., and cases arising under the "Colorado Employment Security Act", articles 70 to 82 of title 8, C.R.S.

(b) An action for review shall be commenced by the service of a copy of the petition upon the board of the school district and filing the same with the court of appeals within twenty days after the written order of dismissal made by the board. The petition shall state the grounds upon which the review is sought. After the filing of the action for review in the court of appeals, such action shall be conducted in the manner prescribed by rule 3.1 of the Colorado appellate rules.

(c) The action for review shall be based upon the record before the hearing officer. ~~If the decision of the board to dismiss the teacher was in accordance with the recommendation of the hearing officer, The court of appeals shall review such record to determine whether the action of the board was arbitrary or capricious or was legally impermissible. If the decision of the board to dismiss the teacher was made over the hearing officer's recommendation of retention, the court of appeals shall either affirm the decision of the board or affirm the recommendation of the hearing officer, based upon the court's review of the record as a whole and the court's own judgment as to whether the board's decision or the hearing officer's recommendation has more support in the record as a whole.~~

(d) In the action for review, if the court of appeals finds ~~any~~ A SUBSTANTIAL irregularity or error made during the hearing before the hearing officer, the court ~~shall~~ MAY remand the case for further hearing.

(e) UPON REQUEST OF THE TEACHER, IF THE TEACHER IS ORDERED REINSTATED BY THE COURT OF APPEALS, OR UPON REQUEST OF THE BOARD, IF THE BOARD'S DECISION TO DISMISS THE TEACHER IS AFFIRMED BY THE COURT OF APPEALS, THE COURT OF APPEALS SHALL DETERMINE WHETHER THE NONPREVAILING PARTY'S APPEAL OR DEFENSE ON APPEAL LACKED SUBSTANTIAL JUSTIFICATION. IF THE COURT OF APPEALS DETERMINES THAT THE NONPREVAILING PARTY'S APPEAL OR DEFENSE ON APPEAL LACKED SUBSTANTIAL JUSTIFICATION, THE COURT OF APPEALS SHALL DETERMINE THE AMOUNT OF AND ENTER A JUDGMENT AGAINST THE NONPREVAILING PARTY FOR REASONABLE ATTORNEY FEES AND COSTS INCURRED ON APPEAL TO THE COURT OF APPEALS. ANY JUDGMENT ENTERED PURSUANT TO THIS PARAGRAPH (e) MAY BE SUBJECT TO STAY AS PROVIDED IN RULE 41.1 OF THE COLORADO APPELLATE RULES.

~~(e)~~ (f) Further appeal to the supreme court from a determination of the court of

appeals may be made only upon a writ of certiorari issued in the discretion of the supreme court. UPON REQUEST OF THE TEACHER, IF THE TEACHER IS ORDERED REINSTATED BY THE SUPREME COURT, OR UPON MOTION OF THE BOARD, IF THE BOARD'S DECISION TO DISMISS IS AFFIRMED BY THE SUPREME COURT, THE SUPREME COURT SHALL DETERMINE WHETHER THE NONPREVAILING PARTY'S APPEAL OR DEFENSE ON APPEAL TO THE SUPREME COURT LACKED SUBSTANTIAL JUSTIFICATION. IF THE SUPREME COURT DETERMINES THAT THE NONPREVAILING PARTY'S APPEAL OR DEFENSE ON APPEAL TO THE SUPREME COURT LACKED SUBSTANTIAL JUSTIFICATION, THE COURT SHALL DETERMINE THE AMOUNT OF AND ENTER A JUDGMENT AGAINST THE NONPREVAILING PARTY FOR REASONABLE ATTORNEY FEES AND COSTS INCURRED ON APPEAL TO THE SUPREME COURT. ANY JUDGMENT ENTERED PURSUANT TO THIS PARAGRAPH (f) MAY BE SUBJECT TO STAY AS PROVIDED IN RULE 41.1 OF THE COLORADO APPELLATE RULES.

SECTION 2. Effective date - applicability. This act shall take effect July 1, 1998, and shall apply to recommendations for dismissal made on or after said date.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 17, 1998