

2011 Minnesota Statutes

122A.40 EMPLOYMENT; CONTRACTS; TERMINATION.

Subdivision 1. **Teacher defined.**

A principal, supervisor, and classroom teacher and any other professional employee required to hold a license from the state department shall be deemed to be a "teacher" within the meaning of this section. A superintendent is a "teacher" only for purposes of subdivisions 3 and 19.

Subd. 2. **Nonprovisional license defined.**

For purposes of this section, "nonprovisional license" means an entrance, continuing, or life license.

Subd. 3. **Hiring, dismissing.**

School boards must hire or dismiss teachers at duly called meetings. Where a husband and wife, brother and sister, or two brothers or sisters, constitute a quorum, no contract employing a teacher shall be made or authorized except upon the unanimous vote of the full board. A teacher related by blood or marriage, within the fourth degree, computed by the civil law, to a board member shall not be employed except by a unanimous vote of the full board. The initial employment of the teacher in the district must be by written contract, signed by the teacher and by the chair and clerk. All subsequent employment of the teacher in the district must be by written contract, signed by the teacher and by the chair and clerk, except where there is a master agreement covering the employment of the teacher. Contracts for teaching or supervision of teaching can be made only with qualified teachers. A teacher shall not be required to reside within the employing district as a condition to teaching employment or continued teaching employment.

Subd. 4. **Employment in supervisory positions.**

Notwithstanding other law, a teacher, as defined in [section 179A.03](#), does not have a right to employment in a district as an assistant superintendent, as a principal defined in [section 179A.03](#), as a confidential or supervisory employee defined in [section 179A.03](#), or in a position that is a promotion from the position currently held, based on seniority, seniority date, or order of employment by the district. This provision shall not alter the reinstatement rights of an individual who is placed on leave from an assistant superintendent, principal or assistant principal, or supervisory or confidential employee position pursuant to this chapter.

Subd. 5. **Probationary period.**

(a) The first three consecutive years of a teacher's first teaching experience in Minnesota in a single district is deemed to be a probationary period of employment, and, the probationary period in each district in which the teacher is thereafter employed shall be one year. The school board must adopt a plan for written evaluation of teachers during the probationary period that is consistent with subdivision 8. Evaluation must occur at

least three times periodically throughout each school year for a teacher performing services during that school year; the first evaluation must occur within the first 90 days of teaching service. Days devoted to parent-teacher conferences, teachers' workshops, and other staff development opportunities and days on which a teacher is absent from school must not be included in determining the number of school days on which a teacher performs services. Except as otherwise provided in paragraph (b), during the probationary period any annual contract with any teacher may or may not be renewed as the school board shall see fit. However, the board must give any such teacher whose contract it declines to renew for the following school year written notice to that effect before June 1. If the teacher requests reasons for any nonrenewal of a teaching contract, the board must give the teacher its reason in writing, including a statement that appropriate supervision was furnished describing the nature and the extent of such supervision furnished the teacher during the employment by the board, within ten days after receiving such request. The school board may, after a hearing held upon due notice, discharge a teacher during the probationary period for cause, effective immediately, under [section 122A.44](#).

(b) A board must discharge a probationary teacher, effective immediately, upon receipt of notice under [section 122A.20, subdivision 1](#), paragraph (b), that the teacher's license has been revoked due to a conviction for child abuse or sexual abuse.

(c) A probationary teacher whose first three years of consecutive employment are interrupted for active military service and who promptly resumes teaching consistent with federal reemployment timelines for uniformed service personnel under United States Code, title 38, section 4312(e), is considered to have a consecutive teaching experience for purposes of paragraph (a).

(d) A probationary teacher must complete at least 120 days of teaching service each year during the probationary period. Days devoted to parent-teacher conferences, teachers' workshops, and other staff development opportunities and days on which a teacher is absent from school do not count as days of teaching service under this paragraph.

[See Note.]

Subd. 6. Mentoring for probationary teachers.

A school board and an exclusive representative of the teachers in the district must develop a probationary teacher peer review process through joint agreement that is consistent with subdivision 8. The process may include having trained observers serve as mentors or coaches or having teachers participate in professional learning communities.

[See Note.]

Subd. 7. Termination of contract after probationary period.

(a) A teacher who has completed a probationary period in any district, and who has not been discharged or advised of a refusal to renew the teacher's contract under subdivision 5, shall elect to have a continuing contract with such district where contract

terms and conditions, including salary and salary increases, are established based either on the length of the school calendar or an extended school calendar under [section 120A.415](#). Thereafter, the teacher's contract must remain in full force and effect, except as modified by mutual consent of the board and the teacher, until terminated by a majority roll call vote of the full membership of the board prior to April 1 upon one of the grounds specified in subdivision 9 or July 1 upon one of the grounds specified in subdivision 10 or 11, or until the teacher is discharged pursuant to subdivision 13, or by the written resignation of the teacher submitted prior to April 1. If an agreement as to the terms and conditions of employment for the succeeding school year has not been adopted pursuant to the provisions of [section 179A.01](#) to [section 179A.25](#) prior to March 1, the teacher's right of resignation is extended to the 30th calendar day following the adoption of said contract in compliance with [section 179A.20, subdivision 5](#). Such written resignation by the teacher is effective as of June 30 if submitted prior to that date and the teachers' right of resignation for the school year then beginning shall cease on July 15. Before a teacher's contract is terminated by the board, the board must notify the teacher in writing and state its ground for the proposed termination in reasonable detail together with a statement that the teacher may make a written request for a hearing before the board within 14 days after receipt of such notification. If the grounds are those specified in subdivision 9 or 13, the notice must also state a teacher may request arbitration under subdivision 15. Within 14 days after receipt of this notification the teacher may make a written request for a hearing before the board or an arbitrator and it shall be granted upon reasonable notice to the teacher of the date set for hearing, before final action is taken. If no hearing is requested within such period, it shall be deemed acquiescence by the teacher to the board's action. Such termination shall take effect at the close of the school year in which the contract is terminated in the manner aforesaid. Such contract may be terminated at any time by mutual consent of the board and the teacher and this section does not affect the powers of a board to suspend, discharge, or demote a teacher under and pursuant to other provisions of law.

(b) A teacher electing to have a continuing contract based on the extended school calendar under [section 120A.415](#) must participate in staff development training under subdivision 7a and shall receive an increased base salary.

Subd. 7a. Additional staff development and salary.

(a) A teacher electing to have a continuing contract based on the extended school calendar under [section 120A.415](#) must participate in a total number of staff development days where the total number of such days equals the difference between the total number of days of student instruction and 240 days. Staff development includes peer mentoring, peer gathering, continuing education, professional development, or other training. A school board may schedule such days throughout the calendar year. Staff development programs provided during such days shall enable teachers to achieve the staff development outcomes under [section 122A.60, subdivision 3](#).

(b) A public employer and the exclusive representative of the teachers must include terms in the collective bargaining agreement for all teachers who participate in additional staff development days under paragraph (a) that increase base salaries.

Subd. 8. Development, evaluation, and peer coaching for continuing contract teachers.

(a) To improve student learning and success, a school board and an exclusive representative of the teachers in the district, consistent with paragraph (b), may develop a teacher evaluation and peer review process for probationary and continuing contract teachers through joint agreement. If a school board and the exclusive representative of the teachers do not agree to an annual teacher evaluation and peer review process, then the school board and the exclusive representative of the teachers must implement the plan for evaluation and review under paragraph (c). The process must include having trained observers serve as peer coaches or having teachers participate in professional learning communities, consistent with paragraph (b).

(b) To develop, improve, and support qualified teachers and effective teaching practices and improve student learning and success, the annual evaluation process for teachers:

(1) must, for probationary teachers, provide for all evaluations required under subdivision 5;

(2) must establish a three-year professional review cycle for each teacher that includes an individual growth and development plan, a peer review process, the opportunity to participate in a professional learning community under paragraph (a), and at least one summative evaluation performed by a qualified and trained evaluator such as a school administrator. For the years when a tenured teacher is not evaluated by a qualified and trained evaluator, the teacher must be evaluated by a peer review;

(3) must be based on professional teaching standards established in rule;

(4) must coordinate staff development activities under [section 122A.60](#) and [section 122A.61](#)

with this evaluation process and teachers' evaluation outcomes;

(5) may provide time during the school day and school year for peer coaching and teacher collaboration;

(6) may include mentoring and induction programs;

(7) must include an option for teachers to develop and present a portfolio demonstrating evidence of reflection and professional growth, consistent with [section 122A.18, subdivision 4](#), paragraph (b), and include teachers' own performance assessment based on student work samples and examples of teachers' work, which may include video among other activities for the summative evaluation;

(8) must use an agreed upon teacher value-added assessment model for the grade levels and subject areas for which value-added data are available and establish state or

local measures of student growth for the grade levels and subject areas for which value-added data are not available as a basis for 35 percent of teacher evaluation results;

(9) must use longitudinal data on student engagement and connection, and other student outcome measures explicitly aligned with the elements of curriculum for which teachers are responsible;

(10) must require qualified and trained evaluators such as school administrators to perform summative evaluations;

(11) must give teachers not meeting professional teaching standards under clauses (3) through (10) support to improve through a teacher improvement process that includes established goals and timelines; and

(12) must discipline a teacher for not making adequate progress in the teacher improvement process under clause (11) that may include a last chance warning, termination, discharge, nonrenewal, transfer to a different position, a leave of absence, or other discipline a school administrator determines is appropriate.

Data on individual teachers generated under this subdivision are personnel data under [section 13.43](#).

(c) The department, in consultation with parents who may represent parent organizations and teacher and administrator representatives appointed by their respective organizations, representing the Board of Teaching, the Minnesota Association of School Administrators, the Minnesota School Boards Association, the Minnesota Elementary and Secondary Principals Associations, Education Minnesota, and representatives of the Minnesota Assessment Group, the Minnesota Business Partnership, the Minnesota Chamber of Commerce, and Minnesota postsecondary institutions with research expertise in teacher evaluation, must create and publish a teacher evaluation process that complies with the requirements in paragraph (b) and applies to all teachers under this section and [section 122A.41](#) for whom no agreement exists under paragraph (a) for an annual teacher evaluation and peer review process. The teacher evaluation process created under this subdivision does not create additional due process rights for probationary teachers under subdivision 5.

[See Note.]

Subd. 9. Grounds for termination.

A continuing contract may be terminated, effective at the close of the school year, upon any of the following grounds:

(1) inefficiency in teaching or in the management of a school, consistent with subdivision 8, paragraph (b);

(2) neglect of duty, or persistent violation of school laws, rules, regulations, or directives;

(3) conduct unbecoming a teacher which materially impairs the teacher's educational effectiveness; or

(4) other good and sufficient grounds rendering the teacher unfit to perform the teacher's duties.

A contract must not be terminated upon one of the grounds specified in clause (1), (2), (3), or (4), unless the teacher fails to correct the deficiency after being given written notice of the specific items of complaint and reasonable time within which to remedy them.

[See Note.]

Subd. 10. Negotiated unrequested leave of absence.

The school board and the exclusive bargaining representative of the teachers may negotiate a plan providing for unrequested leave of absence without pay or fringe benefits for as many teachers as may be necessary because of discontinuance of position, lack of pupils, financial limitations, or merger of classes caused by consolidation of districts. Failing to successfully negotiate such a plan, the provisions of subdivision 11 shall apply. The negotiated plan must not include provisions which would result in the exercise of seniority by a teacher holding a provisional license, other than a vocational education license, contrary to the provisions of subdivision 11, clause (c), or the reinstatement of a teacher holding a provisional license, other than a vocational education license, contrary to the provisions of subdivision 11, clause (e). The provisions of section [179A.16](#) do not apply for the purposes of this subdivision.

Subd. 11. Unrequested leave of absence.

The board may place on unrequested leave of absence, without pay or fringe benefits, as many teachers as may be necessary because of discontinuance of position, lack of pupils, financial limitations, or merger of classes caused by consolidation of districts. The unrequested leave is effective at the close of the school year. In placing teachers on unrequested leave, the board is governed by the following provisions:

(a) The board may place probationary teachers on unrequested leave first in the inverse order of their employment. A teacher who has acquired continuing contract rights must not be placed on unrequested leave of absence while probationary teachers are retained in positions for which the teacher who has acquired continuing contract rights is licensed;

(b) Teachers who have acquired continuing contract rights shall be placed on unrequested leave of absence in fields in which they are licensed in the inverse order in which they were employed by the school district. In the case of equal seniority, the order in which teachers who have acquired continuing contract rights shall be placed on unrequested leave of absence in fields in which they are licensed is negotiable;

(c) Notwithstanding the provisions of clause (b), a teacher is not entitled to exercise any seniority when that exercise results in that teacher being retained by the district in a field for which the teacher holds only a provisional license, as defined by the board of teaching, unless that exercise of seniority results in the placement on unrequested leave of absence of another teacher who also holds a provisional license in the same field. The provisions of this clause do not apply to vocational education licenses;

(d) Notwithstanding clauses (a), (b) and (c), if the placing of a probationary teacher on unrequested leave before a teacher who has acquired continuing rights, the placing of a teacher who has acquired continuing contract rights on unrequested leave before another teacher who has acquired continuing contract rights but who has greater seniority, or the restriction imposed by the provisions of clause (c) would place the district in violation of its affirmative action program, the district may retain the probationary teacher, the teacher with less seniority, or the provisionally licensed teacher;

(e) Teachers placed on unrequested leave of absence must be reinstated to the positions from which they have been given leaves of absence or, if not available, to other available positions in the school district in fields in which they are licensed. Reinstatement must be in the inverse order of placement on leave of absence. A teacher must not be reinstated to a position in a field in which the teacher holds only a provisional license, other than a vocational education license, while another teacher who holds a nonprovisional license in the same field remains on unrequested leave. The order of reinstatement of teachers who have equal seniority and who are placed on unrequested leave in the same school year is negotiable;

(f) Appointment of a new teacher must not be made while there is available, on unrequested leave, a teacher who is properly licensed to fill such vacancy, unless the teacher fails to advise the school board within 30 days of the date of notification that a position is available to that teacher who may return to employment and assume the duties of the position to which appointed on a future date determined by the board;

(g) A teacher placed on unrequested leave of absence may engage in teaching or any other occupation during the period of this leave;

(h) The unrequested leave of absence must not impair the continuing contract rights of a teacher or result in a loss of credit for previous years of service;

(i) The unrequested leave of absence of a teacher who is placed on unrequested leave of absence and who is not reinstated shall continue for a period of five years, after which the right to reinstatement shall terminate. The teacher's right to reinstatement shall also terminate if the teacher fails to file with the board by April 1 of any year a written statement requesting reinstatement;

(j) The same provisions applicable to terminations of probationary or continuing contracts in subdivisions 5 and 7 must apply to placement on unrequested leave of absence;

(k) Nothing in this subdivision shall be construed to impair the rights of teachers placed on unrequested leave of absence to receive unemployment benefits if otherwise eligible.

Subd. 12. Suspension and leave of absence for health reasons.

Affliction with active tuberculosis or other communicable disease, mental illness, drug or alcoholic addiction, or other serious incapacity shall be grounds for temporary suspension and leave of absence while the teacher is suffering from such disability. Unless the teacher consents, such action must be taken only upon evidence that suspension is required from a physician who has examined the teacher. The physician must be competent in the field involved and must be selected by the teacher from a list of three provided by the school board, and the examination must be at the expense of the school district. A copy of the report of the physician shall be furnished the teacher upon request. If the teacher fails to submit to the examination within the prescribed time, the board may discharge the teacher, effective immediately. In the event of mental illness, if the teacher submits to such an examination and the examining physician's or psychiatrist's statement is unacceptable to the teacher or the board, a panel of three physicians or psychiatrists must be selected to examine the teacher at the board's expense. The board and the teacher shall each select a member of this panel, and these two members shall select a third member. The panel must examine the teacher and submit a statement of its findings and conclusions to the board. Upon receipt and consideration of the statement from the panel the board may suspend the teacher. The board must notify the teacher in writing of such suspension and the reasons therefor. During the leave of absence, the district must pay the teacher sick leave benefits up to the amount of unused accumulated sick leave, and after it is exhausted, the district may in its discretion pay additional benefits. The teacher must be reinstated to the teacher's position upon evidence from such a physician of sufficient recovery to be capable of resuming performance of duties in a proper manner. In the event that the teacher does not qualify for reinstatement within 12 months after the date of suspension, the continuing disability may be a ground for discharge under subdivision 13.

Subd. 13. Immediate discharge.

(a) Except as otherwise provided in paragraph (b), a board may discharge a continuing-contract teacher, effective immediately, upon any of the following grounds:

(1) immoral conduct, insubordination, or conviction of a felony;

(2) conduct unbecoming a teacher which requires the immediate removal of the teacher from classroom or other duties;

(3) failure without justifiable cause to teach without first securing the written release of the school board;

(4) gross inefficiency which the teacher has failed to correct after reasonable written notice;

(5) willful neglect of duty; or

(6) continuing physical or mental disability subsequent to a 12 months leave of absence and inability to qualify for reinstatement in accordance with subdivision 12.

For purposes of this paragraph, conduct unbecoming a teacher includes an unfair discriminatory practice described in [section 363A.13](#).

Prior to discharging a teacher under this paragraph, the board must notify the teacher in writing and state its ground for the proposed discharge in reasonable detail. Within ten days after receipt of this notification the teacher may make a written request for a hearing before the board and it shall be granted before final action is taken. The board may, however, suspend a teacher with pay pending the conclusion of such hearing and determination of the issues raised in the hearing after charges have been filed which constitute ground for discharge.

(b) A board must discharge a continuing-contract teacher, effective immediately, upon receipt of notice under [section 122A.20, subdivision 1](#), paragraph (b), that the teacher's license has been revoked due to a conviction for child abuse or sexual abuse.

Subd. 14. Hearing procedures.

Any hearing held pursuant to this section must be held upon appropriate and timely notice to the teacher, and any hearing held pursuant to subdivision 9 or 13 must be private or public at the discretion of the teacher. A hearing held pursuant to subdivision 11 must be public and may be consolidated by the school board. At the hearing, the board and the teacher may each be represented by counsel at each party's own expense, and such counsel may examine and cross-examine witnesses and present arguments. The board must first present evidence to sustain the grounds for termination or discharge and then receive evidence presented by the teacher. Each party may then present rebuttal evidence. Dismissal of the teacher must be based upon substantial and competent evidence in the record. All witnesses shall be sworn upon oath administered by the presiding officer of the board. The clerk of the board shall issue subpoenas for witnesses or the production of records pertinent to the grounds upon the request of either the board or the teacher. The board must employ a court reporter to record the proceedings at the hearing, and either party may obtain a transcript of the hearing at its own expense.

Subd. 15. Hearing and determination by arbitrator.

A teacher whose termination is proposed under subdivision 7 on grounds specified in subdivision 9, or whose discharge is proposed under subdivision 13, may elect a hearing before an arbitrator instead of the school board. The hearing is governed by this subdivision.

(a) The teacher must make a written request for a hearing before an arbitrator within 14 days after receiving notification of proposed termination on grounds specified in subdivision 9 or within ten days of receiving notification of proposed discharge under subdivision 13. If a request for a hearing does not specify that the hearing be before an arbitrator, it is considered to be a request for a hearing before the school board.

(b) If the teacher and the school board are unable to mutually agree on an arbitrator, the board must request from the bureau of mediation services a list of five persons to serve as an arbitrator. If the matter to be heard is a proposed termination on grounds specified in subdivision 9, arbitrators on the list must be available to hear the matter and make a decision within a time frame that will allow the board to comply with all statutory timelines relating to termination. If the teacher and the board are unable to mutually agree on an arbitrator from the list provided, the parties shall alternately strike names from the list until the name of one arbitrator remains. The person remaining after the striking procedure must be the arbitrator. If the parties are unable to agree on who shall strike the first name, the question must be decided by a flip of a coin. The teacher and the school board must share equally the costs and fees of the arbitrator.

(c) The arbitrator shall determine, by a preponderance of the evidence, whether the grounds for termination or discharge specified in subdivision 9 or 13 exist to support the proposed termination or discharge. A lesser penalty than termination or discharge may be imposed by the arbitrator only to the extent that either party proposes such lesser penalty in the proceeding. In making the determination, the arbitration proceeding is governed by [section 572B.15](#) to [section 572B.28](#) and by the collective bargaining agreement applicable to the teacher.

(d) An arbitration hearing conducted under this subdivision is a meeting for preliminary consideration of allegations or charges within the meaning of [section 13D.05, subdivision 3](#), paragraph (a), and must be closed, unless the teacher requests it to be open.

(e) The arbitrator's award is final and binding on the parties, subject to [section 572B.18](#) to [section 572B.28](#).

Subd. 16. Decision.

After the hearing, the board must issue a written decision and order. If the board orders termination of a continuing contract or discharge of a teacher, its decision must include findings of fact based upon competent evidence in the record and must be served on the teacher, accompanied by an order of termination or discharge, prior to April 1 in the case of a contract termination for grounds specified in subdivision 9, prior to July 1 for grounds specified in subdivision 10 or 11, or within ten days after conclusion of the hearing in the case of a discharge. If the decision of the board or of a reviewing court is favorable to the teacher, the proceedings must be dismissed and the decision entered in the board minutes, and all references to such proceedings must be excluded from the teacher's record file.

Subd. 17. Judicial review.

The pendency of judicial proceedings must not be ground for postponement of the effective date of the board's order, but if judicial review eventuates in reinstatement of the teacher, the board must pay the teacher all compensation withheld as a result of the termination or dismissal order.

Subd. 18. Exception.

This section does not apply to any district in a city of the first class.

Subd. 19. Records relating to individual teacher; access; expungement.

All evaluations and files generated within a school district relating to each individual teacher must be available to each individual teacher upon written request. Effective January 1, 1976, all evaluations and files, wherever generated, relating to each individual teacher must be available to each individual teacher upon written request. The teacher shall have the right to reproduce any of the contents of the files at the teacher's expense and to submit for inclusion in the file written information in response to any material contained therein.

A district may destroy the files as provided by law and must expunge from the teacher's file any material found to be false or inaccurate through the grievance procedure required pursuant to [section 179A.20, subdivision 4](#). The grievance procedure promulgated by the director of the bureau of mediation services, pursuant to [section 179A.04, subdivision 3](#), clause (h), applies to those principals and supervisory employees not included in an appropriate unit as defined in [section 179A.03](#). Expungement proceedings must be commenced within the time period provided in the collective bargaining agreement for the commencement of a grievance. If no time period is provided in the bargaining agreement, the expungement proceedings must commence within 15 days after the teacher has knowledge of the inclusion in the teacher's file of the material the teacher seeks to have expunged.

History:

Ex1959 c 71 art 6 s 12; 1963 c 450 s 1; 1967 c 890 s 1; 1969 c 781 s 1; 1971 c 253 s 1; 1971 c 743 s 1; 1973 c 128 s 1; 1974 c 458 s 1-4; 1975 c 151 s 1; 1975 c 177 s 1; 1975 c 432 s 70; 1976 c 222 s 17,208; 1977 c 447 art 7 s 21-23; 1978 c 632 s 1,2; 1978 c 706 s 38,39; 1978 c 764 s 75,76; 1979 c 40 s 2; 1979 c 139 s 1; 1980 c 509 s 35; 1980 c 609 art 6 s 24,25; 1982 c 424 s 33; 1983 c 314 art 7 s 29-31; 1984 c 462 s 27; 1984 c 463 art 7 s 13; 1984 c 525 s 1; 1Sp1985 c 12 art 7 s 22; 1986 c 444; 1988 c 718 art 7 s 35; 1989 c 152 s 1; 1990 c 562 art 8 s 29; 1991 c 130 s 26; 1991 c 196 s 1,2; 1991 c 265 art 9 s 45-48; 1992 c 499 art 8 s 13; 1993 c 224 art 12 s 22,23; 1994 c 488 s 8; 1Sp1995 c 3 art 8 s 6; 1Sp1997 c 4 art 7 s 8; 1998 c 397 art 8 s 17-33,101; art 11 s 3; 1999 c 107 s 66; 1999 c 201 s 2,3; 1999 c 241 art 9 s 13-15; 2000 c 343 s 4; 1Sp2001 c 6 art 2 s 10,11; 2005 c 36 s 1; 1Sp2005 c 5 art 10 s 1; 2009 c 96 art 2 s 21,22; 2010 c 264 art 2 s 2,9; 1Sp2011 c 11 art 2 s 12-15

NOTE: The amendment to subdivision 5 by Laws 2011, First Special Session chapter 11, article 2, section 12, applies to all collective bargaining agreements ratified after July 1, 2013. Laws 2011, First Special Session chapter 11, article 2, section 12, the effective date.

NOTE: The amendments to subdivisions 6 and 8 by Laws 2011, First Special Session chapter 11, article 2, sections 13 and 14, are effective July 21, 2011, and apply beginning with the 2014-2015 school year and later. Laws 2011, First Special Session chapter 11, article 2, sections 13 and 14, the effective dates.

NOTE: The amendment to subdivision 9 by Laws 2011, First Special Session chapter 11, article 2, section 15, applies to all collective bargaining agreements ratified after July 1, 2014. Laws 2011, First Special Session chapter 11, article 2, section 15, the effective date.

2011 Minnesota Statutes

123B.143 SUPERINTENDENT.

Subdivision 1. **Contract; duties.**

All districts maintaining a classified secondary school must employ a superintendent who shall be an ex officio nonvoting member of the school board. The authority for selection and employment of a superintendent must be vested in the board in all cases. An individual employed by a board as a superintendent shall have an initial employment contract for a period of time no longer than three years from the date of employment. Any subsequent employment contract must not exceed a period of three years. A board, at its discretion, may or may not renew an employment contract. A board must not, by action or inaction, extend the duration of an existing employment contract. Beginning 365 days prior to the expiration date of an existing employment contract, a board may negotiate and enter into a subsequent employment contract to take effect upon the expiration of the existing contract. A subsequent contract must be contingent upon the employee completing the terms of an existing contract. If a contract between a board and a superintendent is terminated prior to the date specified in the contract, the board may not enter into another superintendent contract with that same individual that has a term that extends beyond the date specified in the terminated contract. A board may terminate a superintendent during the term of an employment contract for any of the grounds specified in [section 122A.40, subdivision 9](#) or 13. A superintendent shall not rely upon an employment contract with a board to assert any other continuing contract rights in the position of superintendent under [section 122A.40](#). Notwithstanding the provisions of [section 122A.40, subdivision 10](#) or 11, [section 123A.32](#), [section 123A.75](#), or any other law to the contrary, no individual shall have a right to employment as a superintendent based on order of employment in any district. If two or more districts enter into an agreement for the purchase or sharing of the services of a superintendent, the contracting districts have the absolute right to select one of the individuals employed to serve as superintendent in one of the contracting districts and no individual has a right to employment as the superintendent to provide all or part of the services based on order of employment in a contracting district. The superintendent of a district shall perform the following:

- (1) visit and supervise the schools in the district, report and make recommendations about their condition when advisable or on request by the board;
- (2) recommend to the board employment and dismissal of teachers;
- (3) annually evaluate each school principal assigned responsibility for supervising a school building within the district, consistent with [section 123B.147, subdivision 3](#), paragraph (b);
- (4) superintend school grading practices and examinations for promotions;
- (5) make reports required by the commissioner; and

(6) perform other duties prescribed by the board.

[See Note.]

Subd. 2. Disclose past buyouts or contract is void.

(a) For the purposes of paragraph (b), a "buyout agreement" is any agreement under which a person employed as a superintendent left the position before the term of the contract was over and received a sum of money, something else of value, or the right to something of value for some purpose other than performing the services of a superintendent.

(b) Before a person may enter into a superintendent's contract with a board, the candidate shall disclose in writing the existence and terms of any previous buyout agreement, including amounts and the purpose for the payments, relating to a superintendent's contract with another board. A disclosure made under this paragraph is public data.

(c) The superintendent's contract of a person who fails to make a timely disclosure under paragraph (b) is void.

History:

Ex 1959 c 71 art 4 s 16; 1969 c 9 s 27; 1971 c 144 s 1; 1973 c 492 s 7; 1974 c 37 s 1; 1975 c 162 s 25; 1975 c 432 s 16; 1978 c 706 s 13-15; 1978 c 764 s 31,32; 1979 c 334 art 6 s 8; 1981 c 175 s 1; 1983 c 314 art 7 s 18; 1986 c 444; 1987 c 398 art 8 s 8; 1990 c 562 art 8 s 21,22; 1991 c 265 art 9 s 34,35; 1993 c 224 art 9 s 22; art 12 s 15; 1Sp1995 c 3 art 9 s 19; art 16 s 13; 1998 c 397 art 6 s 55-61,124; art 11 s 3; 1998 c 398 art 6 s 16; 2000 c 489 art 6 s 8; 1Sp2001 c 6 art 1 s 5; 2007 c 146 art 2 s 16; 2009 c 96 art 2 s 34; 1Sp2011 c 11 art 2 s 21

NOTE: The amendment to subdivision 1 by Laws 2011, First Special Session chapter 11, article 2, section 21, is effective for the 2013-2014 school year and later. Laws 2011, First Special Session chapter 11, article 2, section 21, the effective date.

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122A.60 STAFF DEVELOPMENT PROGRAM.

Subdivision 1. **Staff development committee.**

A school board must use the revenue authorized in [section 122A.61](#) for in-service education for programs under [section 120B.22, subdivision 2](#), or for staff development plans under this section. The board must establish an advisory staff development committee to develop the plan, assist site professional development teams in developing a site plan consistent with the goals of the plan, and evaluate staff development efforts at the site level. A majority of the advisory committee and the site professional development team must be teachers representing various grade levels, subject areas, and special education. The advisory committee must also include nonteaching staff, parents, and administrators.

Subd. 1a. **Effective staff development activities.**

(a) Staff development activities must:

(1) focus on the school classroom and research-based strategies that improve student learning;

(2) provide opportunities for teachers to practice and improve their instructional skills over time;

(3) provide opportunities for teachers to use student data as part of their daily work to increase student achievement;

(4) enhance teacher content knowledge and instructional skills;

(5) align with state and local academic standards;

(6) provide opportunities to build professional relationships, foster collaboration among principals and staff who provide instruction, and provide opportunities for teacher-to-teacher mentoring; and

(7) align with the plan of the district or site for an alternative teacher professional pay system.

Staff development activities may include curriculum development and curriculum training programs, and activities that provide teachers and other members of site-based teams training to enhance team performance. The school district also may implement other staff development activities required by law and activities associated with professional teacher compensation models.

(b) Release time provided for teachers to supervise students on field trips and school activities, or independent tasks not associated with enhancing the teacher's knowledge and instructional skills, such as preparing report cards, calculating grades, or organizing

classroom materials, may not be counted as staff development time that is financed with staff development reserved revenue under [section 122A.61](#).

Subd. 2. Contents of plan.

The plan must include the staff development outcomes under subdivision 3, the means to achieve the outcomes, and procedures for evaluating progress at each school site toward meeting education outcomes, consistent with relicensure requirements under [section 122A.18](#), subdivision 4. The plan also must:

- (1) support stable and productive professional communities achieved through ongoing and schoolwide progress and growth in teaching practice;
- (2) emphasize coaching, professional learning communities, classroom action research, and other job-embedded models;
- (3) maintain a strong subject matter focus premised on students' learning goals;
- (4) ensure specialized preparation and learning about issues related to teaching students with special needs and limited English proficiency; and
- (5) reinforce national and state standards of effective teaching practice.

Subd. 3. Staff development outcomes.

The advisory staff development committee must adopt a staff development plan for improving student achievement. The plan must be consistent with education outcomes that the school board determines. The plan must include ongoing staff development activities that contribute toward continuous improvement in achievement of the following goals:

- (1) improve student achievement of state and local education standards in all areas of the curriculum by using best practices methods;
- (2) effectively meet the needs of a diverse student population, including at-risk children, children with disabilities, and gifted children, within the regular classroom and other settings;
- (3) provide an inclusive curriculum for a racially, ethnically, and culturally diverse student population that is consistent with the state education diversity rule and the district's education diversity plan;
- (4) improve staff collaboration and develop mentoring and peer coaching programs for teachers new to the school or district;
- (5) effectively teach and model violence prevention policy and curriculum that address early intervention alternatives, issues of harassment, and teach nonviolent alternatives for conflict resolution; and
- (6) provide teachers and other members of site-based management teams with appropriate management and financial management skills.

Subd. 4. Staff development report.

(a) By October 15 of each year, the district and site staff development committees shall write and submit a report of staff development activities and expenditures for the previous year, in the form and manner determined by the commissioner. The report, signed by the district superintendent and staff development chair, must include assessment and evaluation data indicating progress toward district and site staff development goals based on teaching and learning outcomes, including the percentage of teachers and other staff involved in instruction who participate in effective staff development activities under subdivision 3.

(b) The report must break down expenditures for:

(1) curriculum development and curriculum training programs; and

(2) staff development training models, workshops, and conferences, and the cost of releasing teachers or providing substitute teachers for staff development purposes.

The report also must indicate whether the expenditures were incurred at the district level or the school site level, and whether the school site expenditures were made possible by grants to school sites that demonstrate exemplary use of allocated staff development revenue. These expenditures must be reported using the uniform financial and accounting and reporting standards.

(c) The commissioner shall report the staff development progress and expenditure data to the house of representatives and senate committees having jurisdiction over education by February 15 each year.

History:

1Sp1985 c 12 art 8 s 23,61; 1987 c 398 art 8 s 27,28; 1Sp1987 c 4 art 1 s 3; 1988 c 486 s 73,74; 1990 c 562 art 4 s 8; 1991 c 265 art 7 s 30-32; 1992 c 499 art 1 s 19; 1992 c 571 art 10 s 4,5; 1993 c 224 art 7 s 24; 1994 c 647 art 7 s 10,11; 1Sp1995 c 3 art 8 s 9; 1996 c 412 art 9 s 11; 1998 c 397 art 8 s 95,96,101; art 11 s 3; 1998 c 398 art 5 s 13; 1999 c 241 art 5 s 3; 1999 c 241 art 9 s 17; 1Sp2005 c 5 art 2 s 44-46; 2009 c 96 art 2 s 28; 2010 c 382 s 23

2011 Minnesota Statutes

123B.147 PRINCIPALS.

Subdivision 1. **Supervision of school building.**

Each public school building, as defined by [section 120A.05, subdivisions 9, 11, and 13](#), in an independent district may be under the supervision of a principal who is assigned to that responsibility by the board of education in that district upon the recommendation of the superintendent of schools of that district. If pupils in kindergarten through grade 12 attend school in one building, one principal may supervise the building.

Subd. 2. **Valid license required.**

Each principal assigned the responsibility for the supervision of a school building shall hold a valid license in the assigned position of supervision and administration as established by the rules of the commissioner of education.

Subd. 3. **Duties; evaluation.**

(a) The principal shall provide administrative, supervisory, and instructional leadership services, under the supervision of the superintendent of schools of the district and according to the policies, rules, and regulations of the school board, for the planning, management, operation, and evaluation of the education program of the building or buildings to which the principal is assigned.

(b) To enhance a principal's leadership skills and support and improve teaching practices, school performance, and student achievement, a district must develop and implement a performance-based system for annually evaluating school principals assigned to supervise a school building within the district. The evaluation must be designed to improve teaching and learning by supporting the principal in shaping the school's professional environment and developing teacher quality, performance, and effectiveness. The annual evaluation must:

(1) support and improve a principal's instructional leadership, organizational management, and professional development, and strengthen the principal's capacity in the areas of instruction, supervision, evaluation, and teacher development;

(2) include formative and summative evaluations;

(3) be consistent with a principal's job description, a district's long-term plans and goals, and the principal's own professional multiyear growth plans and goals, all of which must support the principal's leadership behaviors and practices, rigorous curriculum, school performance, and high-quality instruction;

(4) include on-the-job observations and previous evaluations;

(5) allow surveys to help identify a principal's effectiveness, leadership skills and processes, and strengths and weaknesses in exercising leadership in pursuit of school success;

(6) use longitudinal data on student academic growth as an evaluation component and incorporate district achievement goals and targets;

(7) be linked to professional development that emphasizes improved teaching and learning, curriculum and instruction, student learning, and a collaborative professional culture; and

(8) for principals not meeting standards of professional practice or other criteria under this subdivision, implement a plan to improve the principal's performance and specify the procedure and consequence if the principal's performance is not improved.

The provisions of this paragraph are intended to provide districts with sufficient flexibility to accommodate district needs and goals related to developing, supporting, and evaluating principals.

[See Note.]

History:

Ex 1959 c 71 art 4 s 16; 1969 c 9 s 27; 1971 c 144 s 1; 1973 c 492 s 7; 1974 c 37 s 1; 1975 c 162 s 25; 1975 c 432 s 16; 1978 c 706 s 13-15; 1978 c 764 s 31,32; 1979 c 334 art 6 s 8; 1981 c 175 s 1; 1983 c 314 art 7 s 18; 1986 c 444; 1987 c 398 art 8 s 8; 1990 c 562 art 8 s 21,22; 1991 c 265 art 9 s 34,35; 1993 c 224 art 9 s 22; art 12 s 15; 1Sp1995 c 3 art 9 s 19; art 16 s 13; 1998 c 397 art 6 s 55-61,124; art 11 s 3; 1998 c 398 art 5 s 55; art 6 s 16; 2003 c 130 s 12; 1Sp2011 c 11 art 2 s 22

NOTE: The amendment to subdivision 3 by Laws 2011, First Special Session chapter 11, article 2, section 22, is effective for the 2013-2014 school year and later. Laws 2011, First Special Session chapter 11, article 2, section 22, the effective date.

2011 Minnesota Statutes

122A.41 TEACHER TENURE ACT: CITIES OF THE FIRST CLASS: DEFINITIONS.

Subdivision 1. **Words, terms, and phrases.**

Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of the following subdivisions in this section shall be defined as follows:

(a) **Teachers.** The term "teacher" includes every person regularly employed, as a principal, or to give instruction in a classroom, or to superintend or supervise classroom instruction, or as placement teacher and visiting teacher. Persons regularly employed as counselors and school librarians shall be covered by these sections as teachers if licensed as teachers or as school librarians.

(b) **School board.** The term "school board" includes a majority in membership of any and all boards or official bodies having the care, management, or control over public schools.

(c) **Demote.** The word "demote" means to reduce the compensation a person actually receives in the new position.

(d) **Nonprovisional license.** For purposes of this section, "nonprovisional license" shall mean an entrance, continuing, or life license.

Subd. 2. **Probationary period; discharge or demotion.**

(a) All teachers in the public schools in cities of the first class during the first three years of consecutive employment shall be deemed to be in a probationary period of employment during which period any annual contract with any teacher may, or may not, be renewed as the school board, after consulting with the peer review committee charged with evaluating the probationary teachers under subdivision 3, shall see fit. The school site management team or the school board if there is no school site management team, shall adopt a plan for a written evaluation of teachers during the probationary period according to subdivisions 3 and 5. Evaluation by the peer review committee charged with evaluating probationary teachers under subdivision 3 shall occur at least three times periodically throughout each school year for a teacher performing services during that school year; the first evaluation must occur within the first 90 days of teaching service. Days devoted to parent-teacher conferences, teachers' workshops, and other staff development opportunities and days on which a teacher is absent from school shall not be included in determining the number of school days on which a teacher performs services. The school board may, during such probationary period, discharge or demote a teacher for any of the causes as specified in this code. A written statement of the cause of such discharge or demotion shall be given to the teacher by the school board at least 30 days before such removal or demotion shall become effective, and the teacher so notified shall have no right of appeal therefrom.

(b) A probationary teacher whose first three years of consecutive employment are interrupted for active military service and who promptly resumes teaching consistent with federal reemployment timelines for uniformed service personnel under United States Code, title 38, section 4312(e), is considered to have a consecutive teaching experience for purposes of paragraph (a).

(c) A probationary teacher must complete at least 120 days of teaching service each year during the probationary period. Days devoted to parent-teacher conferences, teachers' workshops, and other staff development opportunities and days on which a teacher is absent from school do not count as days of teaching service under this paragraph.

[See Note.]

Subd. 3. Mentoring for probationary teachers.

A board and an exclusive representative of the teachers in the district must develop a probationary teacher peer review process through joint agreement that is consistent with subdivision 5. The process may include having trained observers serve as mentors or coaches or having teachers participate in professional learning communities.

[See Note.]

Subd. 4. Period of service after probationary period; discharge or demotion.

(a) After the completion of such probationary period, without discharge, such teachers as are thereupon reemployed shall continue in service and hold their respective position during good behavior and efficient and competent service and must not be discharged or demoted except for cause after a hearing. The terms and conditions of a teacher's employment contract, including salary and salary increases, must be based either on the length of the school year or an extended school calendar under [section 120A.415](#).

(b) A probationary teacher is deemed to have been reemployed for the ensuing school year, unless the school board in charge of such school gave such teacher notice in writing before July 1 of the termination of such employment.

(c) A teacher electing to have an employment contract based on the extended school calendar under [section 120A.415](#) must participate in staff development training under subdivision 4a and shall receive an increased base salary.

Subd. 4a. Additional staff development and salary.

(a) A teacher electing to have a continuing contract based on the extended school calendar under [section 120A.415](#) must participate in a total number of staff development days where the total number of such days equals the difference between the total number of days of student instruction and 240 days. Staff development includes peer mentoring, peer gathering, continuing education, professional development, or other training. A school board may schedule such days throughout the calendar year. Staff development programs provided during such days shall enable teachers to achieve the staff development outcomes under [section 122A.60, subdivision 3](#).

(b) A public employer and the exclusive representative of the teachers must include terms in the collective bargaining agreement for all teachers who participate in additional staff development days under paragraph (a) that increase base salaries.

Subd. 5. Development, evaluation, and peer coaching for continuing contract teachers.

(a) To improve student learning and success, a school board and an exclusive representative of the teachers in the district, consistent with paragraph (b), may develop an annual teacher evaluation and peer review process for probationary and nonprobationary teachers through joint agreement. If a school board and the exclusive representative of the teachers in the district do not agree to an annual teacher evaluation and peer review process, then the school board and the exclusive representative of the teachers must implement the plan for evaluation and review developed under paragraph (c). The process must include having trained observers serve as peer coaches or having teachers participate in professional learning communities, consistent with paragraph (b).

(b) To develop, improve, and support qualified teachers and effective teaching practices and improve student learning and success, the annual evaluation process for teachers:

(1) must, for probationary teachers, provide for all evaluations required under subdivision 5;

(2) must establish a three-year professional review cycle for each teacher that includes an individual growth and development plan, a peer review process, the opportunity to participate in a professional learning community under paragraph (a), and at least one summative evaluation performed by a qualified and trained evaluator such as a school administrator;

(3) must be based on professional teaching standards established in rule;

(4) must coordinate staff development activities under [section 122A.60](#) and [section 122A.61](#)

with this evaluation process and teachers' evaluation outcomes;

(5) may provide time during the school day and school year for peer coaching and teacher collaboration;

(6) may include mentoring and induction programs;

(7) must include an option for teachers to develop and present a portfolio demonstrating evidence of reflection and professional growth, consistent with [section 122A.18, subdivision 4](#), paragraph (b), and include teachers' own performance assessment based on student work samples and examples of teachers' work, which may include video among other activities for the summative evaluation;

(8) must use an agreed upon teacher value-added assessment model for the grade levels and subject areas for which value-added data are available and establish state or

local measures of student growth for the grade levels and subject areas for which value-added data are not available as a basis for 35 percent of teacher evaluation results;

(9) must use longitudinal data on student engagement and connection and other student outcome measures explicitly aligned with the elements of curriculum for which teachers are responsible;

(10) must require qualified and trained evaluators such as school administrators to perform summative evaluations;

(11) must give teachers not meeting professional teaching standards under clauses (3) through (10) support to improve through a teacher improvement process that includes established goals and timelines; and

(12) must discipline a teacher for not making adequate progress in the teacher improvement process under clause (11) that may include a last chance warning, termination, discharge, nonrenewal, transfer to a different position, a leave of absence, or other discipline a school administrator determines is appropriate.

Data on individual teachers generated under this subdivision are personnel data under [section 13.43](#).

(c) The department, in consultation with parents who may represent parent organizations and teacher and administrator representatives appointed by their respective organizations, representing the Board of Teaching, the Minnesota Association of School Administrators, the Minnesota School Boards Association, the Minnesota Elementary and Secondary Principals Associations, Education Minnesota, and representatives of the Minnesota Assessment Group, the Minnesota Business Partnership, the Minnesota Chamber of Commerce, and Minnesota postsecondary institutions with research expertise in teacher evaluation, must create and publish a teacher evaluation process that complies with the requirements in paragraph (b) and applies to all teachers under this section and [section 122A.41](#) for whom no agreement exists under paragraph (a) for an annual teacher evaluation and peer review process. The teacher evaluation process created under this subdivision does not create additional due process rights for probationary teachers under subdivision 5.

[See Note.]

Subd. 5a. Probationary period for principals hired internally.

A board and the exclusive representative of the school principals in the district may negotiate a plan for a probationary period of up to two school years for licensed teachers employed by the board who are subsequently employed by the board as a licensed school principal or assistant principal and an additional probationary period of up to two years for licensed assistant principals employed by the board who are subsequently employed by the board as a licensed school principal.

Subd. 6. Grounds for discharge or demotion.

(a) Except as otherwise provided in paragraph (b), causes for the discharge or demotion of a teacher either during or after the probationary period must be:

(1) immoral character, conduct unbecoming a teacher, or insubordination;

(2) failure without justifiable cause to teach without first securing the written release of the school board having the care, management, or control of the school in which the teacher is employed;

(3) inefficiency in teaching or in the management of a school, consistent with subdivision 5, paragraph (b);

(4) affliction with active tuberculosis or other communicable disease must be considered as cause for removal or suspension while the teacher is suffering from such disability; or

(5) discontinuance of position or lack of pupils.

For purposes of this paragraph, conduct unbecoming a teacher includes an unfair discriminatory practice described in [section 363A.13](#).

(b) A probationary or continuing-contract teacher must be discharged immediately upon receipt of notice under [section 122A.20, subdivision 1](#), paragraph (b), that the teacher's license has been revoked due to a conviction for child abuse or sexual abuse.

[See Note.]

Subd. 7. Hearing of charges against teacher.

The charges against a teacher must be in writing and signed by the person making the same and then filed with the secretary or clerk of the school board having charge of the school in which the teacher is employed. Before the school board discharges or demotes a teacher, the board must notify the teacher in writing and state in reasonable detail its grounds for the proposed discharge or demotion, together with a statement that the teacher may request in writing within ten days after receiving the notice a hearing before the board. The board may have the notice served personally or may send it by certified mail addressed to the teacher at the teacher's last known post office address. The teacher, under subdivision 13, also may elect a hearing before an arbitrator instead of the school board. Within ten days after receiving the notice the teacher may request in writing a hearing before the board or an arbitrator and it shall be granted. The teacher must be given reasonable notice of the time and place of the hearing before final action is taken. A teacher who fails to request a hearing within ten days is considered to acquiesce in the board's action. If the charge is made by a person not connected with the school system the charge may be disregarded by the school board. If the grounds are those specified in subdivision 6, clause (1), (2), (3), or (4), the notice must also state a teacher may request arbitration under subdivision 13. At the hearing, the school board or arbitrator shall hear all evidence that may be adduced in support of the charges and for the teacher's defense to

the charges. Either party has the right to have a written record of the hearing at the expense of the board and to have witnesses subpoenaed and all witnesses so subpoenaed must be examined under oath. Any member of the school board conducting such a hearing has authority to issue subpoenas and to administer oaths to witnesses.

Subd. 8. Counsel; examination of witnesses.

Each party appearing before the school board has the right to be represented by counsel, and such counsel may examine and cross-examine witnesses and present arguments.

Subd. 9. Hearings.

All hearings before the school board must be private or may be public at the decision of the teacher against whom such charges have been filed.

Subd. 10. Decision, when rendered.

The hearing must be concluded and a decision in writing, stating the grounds on which it is based, rendered within 25 days after giving of such notice. Where the hearing is before a school board the teacher may be discharged or demoted upon the affirmative vote of a majority of the members of the board. If the charges, or any of such, are found to be true, the board conducting the hearing must discharge, demote, or suspend the teacher, as seems to be for the best interest of the school. A teacher must not be discharged for either of the causes specified in subdivision 6, clause (3), except during the school year, and then only upon charges filed at least four months before the close of the school sessions of such school year.

Subd. 11. Charges expunged from records.

In all cases where the final decision is in favor of the teacher the charge or charges must be physically expunged from the records.

Subd. 12. Suspension pending hearing; salary.

After charges are filed against a teacher, the school board may suspend the teacher from regular duty. If the teacher is suspended or removed after the final decision, the board may in its discretion determine the teacher's salary or compensation as of the time of filing the charges. If the final decision is favorable to the teacher, the board must not abate the teacher's salary or compensation.

Subd. 13. Hearing and determination by arbitrator.

A teacher against whom charges have been filed alleging any cause for discharge or demotion specified in subdivision 6, clause (1), (2), (3), or (4), may elect a hearing before an arbitrator instead of the school board. The hearing is governed by this subdivision.

(a) The teacher must make a written request for a hearing before an arbitrator within ten days after receiving a written notice of the filing of charges required by subdivision 7. Failure to request a hearing before an arbitrator during this period is considered acquiescence to the board's action.

(b) If the teacher and the school board are unable to mutually agree on an arbitrator, the board must request from the Bureau of Mediation Services a list of five persons to serve as an arbitrator. If the teacher and the school board are unable to mutually agree on an arbitrator from the list provided, the parties shall alternately strike names from the list until the name of one arbitrator remains. The person remaining after the striking procedure must be the arbitrator. If the parties are unable to agree on who shall strike the first name, the question must be decided by a flip of a coin. The teacher and the board must share equally the costs and fees of the arbitrator.

(c) The arbitrator shall determine, by a preponderance of the evidence, whether the causes specified in subdivision 6, clause (1), (2), (3), or (4), exist to support the proposed discharge or demotion. A lesser penalty than discharge or demotion may be imposed by the arbitrator only to the extent that either party proposes such lesser penalty in the proceeding. In making the determination, the arbitration proceeding is governed by [section 572B.15](#) to [section 572B.28](#) and by the collective bargaining agreement applicable to the teacher.

(d) An arbitration hearing conducted under this subdivision is a meeting for preliminary consideration of allegations or charges within the meaning of [section 13D.05, subdivision 3](#), paragraph (a), and must be closed, unless the teacher requests it to be open.

(e) The arbitrator's decision is final and binding on the parties, subject to [section 572B.18](#) to [section 572B.28](#).

Subd. 14. Services terminated by discontinuance or lack of pupils; preference given.

(a) A teacher whose services are terminated on account of discontinuance of position or lack of pupils must receive first consideration for other positions in the district for which that teacher is qualified. In the event it becomes necessary to discontinue one or more positions, in making such discontinuance, teachers must be discontinued in any department in the inverse order in which they were employed, unless a board and the exclusive representative of teachers in the district negotiate a plan providing otherwise.

(b) Notwithstanding the provisions of clause (a), a teacher is not entitled to exercise any seniority when that exercise results in that teacher being retained by the district in a field for which the teacher holds only a provisional license, as defined by the Board of Teaching, unless that exercise of seniority results in the termination of services, on account of discontinuance of position or lack of pupils, of another teacher who also holds a provisional license in the same field. The provisions of this clause do not apply to vocational education licenses.

(c) Notwithstanding the provisions of clause (a), a teacher must not be reinstated to a position in a field in which the teacher holds only a provisional license, other than a vocational education license, while another teacher who holds a nonprovisional license in the same field is available for reinstatement.

Subd. 15. Records relating to individual teacher; access; expungement.

All evaluations and files generated within a district relating to each individual teacher must be available to each individual teacher upon the teacher's written request. Effective January 1, 1976, all evaluations and files, wherever generated, relating to each individual teacher must be available to each individual teacher upon the teacher's written request. The teacher has the right to reproduce any of the contents of the files at the teacher's expense and to submit for inclusion in the file written information in response to any material contained therein.

A district may destroy the files as provided by law and must expunge from the teacher's file any material found to be false or substantially inaccurate through the grievance procedure required pursuant to [section 179A.20, subdivision 4](#). The grievance procedure promulgated by the director of the Bureau of Mediation Services, pursuant to [section 179A.04, subdivision 3](#), clause (h), applies to those principals and supervisory employees not included in an appropriate unit as defined in [section 179A.03](#). Expungement proceedings must be commenced within the time period provided in the collective bargaining agreement for the commencement of a grievance. If no time period is provided in the bargaining agreement, the expungement proceedings must commence within 15 days after the teacher has knowledge of the inclusion in the teacher's file of the material the teacher seeks to have expunged.

History:

*Ex*1959 c 71 art 6 s 17; 1961 c 720 s 1; 1971 c 667 s 1; 1975 c 177 s 2; 1976 c 222 s 19,208; 1977 c 447 art 7 s 24; 1978 c 632 s 3; 1978 c 674 s 60; 1979 c 139 s 2; 1983 c 314 art 7 s 32,33; 1984 c 462 s 27; 1984 c 463 art 7 s 14; 1986 c 444; 1988 c 718 art 7 s 36; 1989 c 152 s 2; 1991 c 196 s 3,4; 1991 c 265 art 9 s 52-55; 1992 c 499 art 8 s 14; 1993 c 224 art 12 s 24,25; 1998 c 397 art 8 s 42-54,101; art 11 s 3; 1999 c 201 s 4; 1999 c 241 art 9 s 16; 1Sp2001 c 6 art 2 s 12-16; 1Sp2003 c 9 art 12 s 3; 2005 c 36 s 2; 1Sp2005 c 5 art 2 s 37,38; art 10 s 2; 2009 c 96 art 2 s 23,24; 2010 c 264 art 2 s 3,9; 1Sp2011 c 11 art 2 s 16-20

NOTE: The amendment to subdivision 2 by Laws 2011, First Special Session chapter 11, article 2, section 17, applies to all collective bargaining agreements ratified after July 1, 2013. Laws 2011, First Special Session chapter 11, article 2, section 17, the effective date.

NOTE: The amendments to subdivisions 3 and 5 by Laws 2011, First Special Session chapter 11, article 2, sections 18 and 19, are effective July 21, 2011, and apply beginning with the 2014-2015 school year and later. Laws 2011, First Special Session chapter 11, article 2, sections 18 and 19, the effective dates.

NOTE: The amendment to subdivision 6 by Laws 2011, First Special Session chapter 11, article 2, section 20, applies to all collective bargaining agreements ratified after July 1, 2014. Laws 2011, First Special Session chapter 11, article 2, section 20, the effective date.