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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
54th Legislature, 1st Session, 2019

Bill Number	<u>HB47/aHEC/aHF1</u>	Sponsor	<u>Roybal Caballero</u>
Tracking Number	<u>.211913.1</u>	Committee Referrals	<u>HLVMC/HEC; SEC/SJC</u>
Short Title	<u>School Employee & Assistants Probation Time</u>		
Analyst	<u>Force</u>	Original Date	<u>1/22/19</u>
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BILL SUMMARY

Synopsis of House Floor Amendment 1

House Floor Amendment 1 to HB47 as amended by the House Education Committee (HB47/aHEC/aHF1) clarifies that local school boards and governing authorities may terminate licensed school employees, except for licensed educational assistants, for any reason before the employees have accepted a third consecutive annual employment contract, but may not terminate licensed school employees who have accepted such a contract. Licensed educational assistants may be terminated for any reason deemed sufficient by the school board or governing authority prior to the completion of their first year of employment.

Synopsis of House Education Committee Amendment

The House Education Committee Amendment to HB47 (HB47/aHEC) would clarify that local school boards and governing authorities may terminate for any reason an employee with less than three years of consecutive service, or a licensed school employee, except for licensed educational assistants, who have not accepted an employment contract for a third consecutive year of service.

Licensed school employees with more than two consecutive years of service, or unlicensed school employees, or licensed educational assistants who have been employed for more than one year, and receive notice of termination would be permitted to request the board indicate what reason lead to the termination, and may also request a chance to speak to the board about the decision.

Finally, local school boards or governing authorities would not be permitted to terminate, without a showing of just cause, school employees who have been employed for three consecutive years, licensed school employees who have accepted a contract for a third consecutive year of service, or nonlicensed school employees and licensed educational assistants who have been employed for more than one year.

Synopsis of Original Bill

House Bill 47 (HB47) proposes to amend the School Personnel Act to address termination decisions and employment probation periods for educational assistants. Current law allows a local school board to terminate any employee for any reason with less than three years of service. HB47 retains current law with regard to licensed school employees other than licensed educational assistants, but nonlicensed school employees and licensed educational assistants may only be terminated when they have less than one year of service. Finally, a nonlicensed school employee or a licensed educational assistant with one or more years of service may only be terminated for just cause.

FISCAL IMPACT

HB47/aHEC/aHF1 does not contain an appropriation.

The Fiscal Impact Report (FIR) from the Legislative Finance Committee (LFC) indicates, in FY18, public schools employed approximately 5,006 instructional, library, and media assistants and 7,430 non-certified personnel. The average salary for these school personnel was \$37.5 thousand, bringing the total salary cost statewide to \$465.8 million. It is unclear how many of these employees would be terminated within their first year; however, it is likely that vacated positions would be filled eventually, resulting in minimal fiscal impacts. If 1 percent of these employees were terminated, the fiscal impact would be \$4.7 million in cost savings.

SUBSTANTIVE ISSUES

Probationary periods, while usually of advantage to employers, may be less so for potential employees. Probationary periods are time spans during which an employee may be terminated without cause, and that frequently pay lower salaries. While many probationary periods allow for the possibility of permanent employment once completed, some do not. Shortening the length of this period for nonlicensed school employees – custodial workers, cafeteria workers and the like – and licensed educational assistants would give these employees, who often are among the lower paid school employees, greater job security.

This issue relates to a 2014 decision from the New Mexico Court of Appeals, *Weiss v. Board of Education of Santa Fe Public Schools*, No. 32,844 (*Weiss*). That case dealt with a teacher – Weiss – employed by the school district for the 2008-2011 school years, who received a notice of termination two weeks prior to the end of her third year contract. Section 22-10A-24 NMSA 1978 indicates a “local school board or governing authority of a state agency may terminate an employee with *fewer than three years of consecutive service* for any reason.” (Emphasis added.) Conversely, “[a] local school board or governing authority of a state agency may not terminate an employee who has been employed by a school district or state agency for three consecutive years without just cause,” affording those employees heightened protection from termination. Weiss sued for a hearing to contest her termination, which was denied, leading her to bring action in the district court, which held she was employed for three consecutive years as a certified school employee and therefore entitled to heightened protection from termination, including the hearing.

Upon appeal, the Court of Appeals noted, “New Mexico law provides heightened substantive and procedural rights to teachers who have been employed with a school district for three consecutive years if the school board elects not to renew the teacher's contract for a subsequent year. Because Weiss received her notice of termination at the end of her third year of teaching, the single question

at issue was whether she was entitled to the heightened protections from termination afforded by the School Personnel Act for employees who have been employed for at least three consecutive years, despite the fact that she had not actually completed all three years when she received the notice of termination. The Court of Appeals held that she was entitled to those protections, and affirmed the lower court's decision.

The Court of Appeals noted it must determine how to measure “three consecutive years,” either from the time she received notice of termination, or the last day of her contract. Because “terminate” for a certified employee means “the act of not reemploying an employee for the ensuing school year,” termination of a certified employee can only occur at the end of a school year, not when notice of termination is received. Therefore, a certified school employee who receives a notice of termination during her third year will necessarily finish her third year of service, entitling her to heightened protections if a school board were to deny her a fourth year of employment. If a school board wishes to end a certified employee's employment prior to the end of their contracted employment period, it should follow separate statutory “discharge” proceedings, also within the School Personnel Act.

Therefore, acceptance of the offer between the school board and the employee creates a binding contract, requiring just cause for termination, lasting until the end of the contractual period. In the case of a certified employee in her third year of employment, when the end of the third-year contract occurs, the employee moves out of the three-year probationary period, after which just cause is required for termination. Thus, upon offer and acceptance of the third yearlong contract at the end of the second year, a certified school employee enjoys heightened protection from termination, which may only occur at the end of her third year, prior to a fourth year of employment.

When the *Weiss* decision is read with HB47/aHEC/aHF1, the practical effect is to reduce the probationary period for licensed educational assistants and nonlicensed school employees to one year, and limit the probationary period for other licensed employees, such as teachers, to two years. Once the educational assistant accepts the offered contract for a one-year period, they can only be fired for just cause during that period. The *Weiss* decision affects only licensed educational assistants under HB47/aHEC/aHF1; nonlicensed school employees are not entitled to an employment contract. Yet, in another provision of the bill, nonlicensed employees do have rights to hearings, appeals, and arbitrations, as do licensed educational assistants who have been employed for more than a year, and other licensed school employees who have been employed for more than two years.

HB47/aHEC/aHF1, in Subsection D of Section 1 of the bill, notes that licensed employees who have completed their respective probationary periods – one year for nonlicensed employees or licensed educational assistants and two years for other licensed school employees – may only be fired for just cause. All those employees who have completed their probationary period have a right to a hearing under the bill's proposed language.

TECHNICAL ISSUES

The bill cleans up language with regard to who may terminate employees. Current law refers to a “local superintendent” or an “administrator,” which is an undefined term. HB47/aHEC/aHF1 would amend statute to refer to a “local superintendent” or a “state agency” administrator. “State agency” is defined in the School Personnel Act as “any state institution or state agency providing an educational program requiring the employment of certified school instructors,” which would

include charter schools, thus bringing charter school administrators into the provisions of the bill. “Administrator,” however, remains undefined in the School Personnel Act and the general provisions of the Public School Code; although the code’s general provisions include charter school *head administrators* (emphasis added) in the definition of “school administrator.” The sponsor may wish to amend the bill to include a new definition for “state agency administrator” in the School Personnel Act, to clearly include charter school head administrators in the bill.

Section 1, Subsection A of the HB47/aHEC/aHF1 notes, “A local school board or governing authority of a state agency may terminate a licensed school employee, excluding licensed educational assistants who have not been offered and accepted the third consecutive contract for any reason it deems sufficient. A local school board or governing authority of a state agency may terminate a nonlicensed school employee or a licensed educational assistant with less than one year of employment for any reason it deems sufficient.” It appears a comma is needed between “excluding licensed educational assistants” and “who have not been offered.” The lack of a comma makes the pertinent language internally conflicting with the following sentence, so that licensed educational assistants who have not accepted a third contract may be terminated for any reason, while the second sentence indicates licensed educational assistants may be terminated for any reason when they have less than one year of employment. On the other hand, if the comma is inserted, it is clear that licensed school employees who have not accepted a third contract can be terminated without just cause, except for licensed educational assistants, who can only be terminated without just cause prior to their completion of a first year of employment.

SOURCES OF INFORMATION

- LESC Files
- Legislative Finance Committee (LFC)
- Public Education Department (PED)

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