

SUBJECT: Good cause for termination of a public school teacher's employment contract

COMMITTEE: Public Education — committee substitute recommended

VOTE: 8 ayes — Grusendorf, Branch, Dawson, Dutton, Eissler, Griggs, Hochberg, Madden

0 nays

1 absent — Oliveira

WITNESSES: For — Juan Cruz, Texas Association of School Boards, Texas Association of School Administrators, and Council of School Attorneys

Against — Brock Gregg, Association of Texas Professional Educators; Lonnie Hollingsworth, Texas Classroom Teachers Association; Kevin Lungwitz, Texas State Teachers Association; Ted Melina Raab, Texas Federation of Teachers; Josephine Mendoza

BACKGROUND: Education Code, sec. 21.251 sets forth three conditions under which a teacher may request a due process hearing before an independent hearing examiner:

- if a teacher employed under a continuing contract is terminated;
- if a teacher employed under a term or probationary contract is discharged before the end of the contract period; or
- if a teacher under any contract arrangement is suspended without pay.

A teacher on probationary status may not request a due process hearing if he or she is terminated at the end of the contract. A teacher on a term contract may not request a due process hearing because of non-renewal at the end of the contract.

Under Education Code, sec. 21.257, a hearing examiner must conduct a hearing and make a written recommendation no later than 45 days after the teacher requests a hearing. The report must include findings of fact and conclusions of law and may include a proposal for granting relief such as reinstatement, back pay, or employment benefits. The hearing examiner must

send a copy of his or her recommendation to each party, the president of the school board, and the commissioner of education.

DIGEST: CSHB 1254 would amend Education Code, sec. 21.57 to require a hearing examiner to consider any recorded school board policy when making a determination of good cause for termination of a teacher's employment contract.

This bill would take effect September 1, 2003, and would apply only to hearings that began on or after that date.

SUPPORTERS SAY: CSHB 1254 would return local control to school districts, showing support for and trust in the judgment of school boards. Many school boards go to great lengths to adopt employment policies that include a complete list of reasons for good cause termination of a teacher contract. Without specific direction to take local board policy into consideration, many independent hearing examiners submit findings that directly contradict school board policy.

This bill would protect teachers by ensuring consistent application of board policy. The fairest way to ensure that all teachers are treated the same is to allow good cause for contract termination to be determined by local board policy. Currently, hearing examiners have overly broad authority on findings of fact, and when the board accepts the recommendation of an independent hearing examiner, it can change the findings of fact, but not if the hearing examiner's decision is against board policy. When a school board adopts a fair, consistent employment policy and it is contradicted by a hearing examiner's report, it leads to confusion for districts and for teachers.

CSHB 1254 would save school districts money. Confusion and discrepancies in the termination process can lead to costly litigation. Districts should be spending scarce resources on educating students and not on fighting poorly performing teachers in the courtroom. Requiring hearing examiners to take board policy into account could prevent unnecessary litigation before it even started.

OPPONENTS SAY: CSHB 1254 would take independence away from the independent hearing examiner. Hearing examiners are meant to provide neutrality and stability in a

process that often can become overly political or emotional. By allowing school districts to be the sole arbiters of good cause for termination, the bill essentially would make it legal for “the butcher to put his thumb on the scale.” Districts already have broad authority to decide what is good cause to terminate a teacher. They do not need more.

CSHB 1254 would cause more, not less litigation. Because it is the teacher’s choice whether to request a hearing or not, when he or she does request outside review, a good reason likely exists why a neutral party is needed to independently examine the findings of fact. This bill would make it harder for teachers to defend themselves in the termination process and would require more of them to hire lawyers, rather than being able to count on the hearing examiner to provide a neutral interpretation of good cause.

NOTES:

The committee substitute differs from the bill as introduced by deleting a provision that would have allowed a school board to reject or change a hearing examiner’s finding of fact that good cause did not exist for the termination of a teacher’s contract if that finding was contrary to any board policy consistent with Education Code, Ch. 21 concerning good cause.

Two other bills dealing with public school teacher contracts are set on the general state calendar this week:

- CSHB 1112 by Crownover, set for Monday, April 28, would allow an unsatisfactorily rated teacher to be returned to probationary contract status without the teacher’s written consent; and
- CSHB 1113 by Crownover, set for Tuesday, April 29, would allow a teacher to be returned to probationary contract status without the school board taking action in an open meeting.

CSHB 558 by Grusendorf, which would allow school districts to hire returning teachers under probationary contracts after a two-year lapse in service, was passed by the House on April 10, 2003, and has been referred to the Senate Education Committee.