CHAPTER 25

Teachers

ARTICLE 1

General Provisions

**SECTION 59‑25‑10.** Employment of teachers related to board members or serving as board members.

No person who is a member of the board of trustees or a member of the immediate family of a member of the board of trustees of any school district shall be employed by the board as a teacher without the written approval of the board of trustees of the district and, when applicable, of the board of education of the county, or unless a majority of the parents or guardians of the children attending the school for which such teacher is employed requests such employment in writing. The provisions of this section shall not apply to any teacher who was employed prior to the time he or his family member became a board member. For purposes of this section, the immediate family of a member of the board of trustees shall include only his parents, children, brothers or sisters. Provided, that the provisions of this section shall not apply to school bus drivers.

HISTORY: 1962 Code Section 21‑351; 1952 Code Section 21‑351; 1942 Code Section 5374; 1932 Code Section 5401; Civ. C. ‘22 Section 2645; Civ. C. ‘12 Section 1777; Civ. C. ‘02 Section 1228; 1900 (23) 366; 1929 (36) 100; 1961 (52) 183; 1976 Act No. 652, Section 1.

CROSS REFERENCES

General powers and duties of school trustees, see Section 59‑19‑90.

LIBRARY REFERENCES

Schools 127.

Westlaw Key Number Search: 345k127.

C.J.S. Schools and School Districts Sections 191 to 195.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Schools Section 38 , Introductory Comments.

Attorney General’s Opinions

The board of trustees of a school district may adopt a hiring policy prohibiting the employment of new teachers or other staff members who are related within the second degree to current members of the board or the district office administrative staff. 1976‑77 Op Atty Gen, No 77‑255, p 185.

When the duties of a county board of education have been placed by statute on the county school district board of trustees, the district trustees may approve the employment of a teacher related to a trustee. 1975‑76 Op Atty Gen, No 4265, p 80.

Where school trustee enters into contract in violation of this section [Code 1962 Section 21‑351], the status of the trustee as a member is not ipso facto affected, but the contract may be disaffirmed. 1963‑64 Op Atty Gen, No 1652, p 88.

Members of a board of education who do not serve also as a board of trustees are not affected by the provisions of this section and Code 1962 Section 21‑810. 1963‑64 Op Atty Gen, No 1652, p 88.

Substitute teacher may not be employed by a board of trustees if such teacher is related to a member of the board of trustees within the second degree. 1962‑63 Op Atty Gen, No 1563, p 133.

**SECTION 59‑25‑20.** Qualifications of teachers.

No board of school trustees shall hereafter employ any teacher who has not a certificate to teach in the free public schools of the State. This provision, however, shall not affect the employment of any teacher now teaching in any of the schools of the special school districts. The trustees of any such school may also impose any additional examinations and qualifications they may deem proper before or after employing any teacher.

HISTORY: 1962 Code Section 21‑354; 1952 Code Section 21‑354; 1942 Code Section 5358; 1932 Code Sections 5384, 5596; Civ. C. ‘22 Sections 2616, 2630; Civ. C. ‘12 Sections 1753, 1761; Civ. C. ‘02 Sections 1211, 1218; Cr. C. ‘22 Section 452; 1896 (22) 165; 1920 (31) 1046; 1923 (33) 180; 1937 (40) 75.

CROSS REFERENCES

Interstate agreement on qualification of educational personnel, see Sections 59‑27‑10 et seq.

Person with infectious disease being prohibited to teach and health certificate being prerequisite to teacher’s employment, see Sections 44‑29‑150 et seq.

Prohibiting teacher or scholar to attend school to prevent spread of disease, see Section 44‑29‑200.

School trustees generally, see Sections 59‑19‑10 et seq.

LIBRARY REFERENCES

Schools 133.1(1).

Westlaw Key Number Search: 345k133.1(1).

C.J.S. Schools and School Districts Section 206.

Attorney General’s Opinions

The school board may legally fix a policy prohibiting the employment of any teacher who is a member of a labor union. 1963‑64 Op Atty Gen, No 1778, p 298.

**SECTION 59‑25‑30.** Officials not permitted to designate place for teacher to board or live.

It shall be unlawful for any trustee of any public school or any superintendent or other official thereof to require any teacher to board or live at any teacherage or specified place. Each individual teacher shall have the right to choose his or her boarding place, and for so doing his right to teach shall not be voided by the trustees of any school board or superintendent or other official. Any school trustee or superintendent who shall violate the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than twenty‑five dollars nor more than one hundred dollars or be imprisoned for not less than ten days nor more than thirty days, in the discretion of the court.

HISTORY: 1962 Code Section 21‑356; 1952 Code Section 21‑356; 1942 Code Section 5383; 1936 (39) 1693.

LIBRARY REFERENCES

Schools 127.

Westlaw Key Number Search: 345k127.

C.J.S. Schools and School Districts Sections 191 to 195.

**SECTION 59‑25‑40.** Effective date of pay increase resulting from examination.

In the event that a teacher takes the teacher’s examination and becomes entitled to a pay increase as a result thereof such increase shall become effective and payable commencing with the semester following the date of examination.

HISTORY: 1962 Code Section 21‑360; 1967 (55) 669.

LIBRARY REFERENCES

Schools 144(4).

Westlaw Key Number Search: 345k144(4).

C.J.S. Schools and School Districts Sections 323 to 329.

NOTES OF DECISIONS

In general 1

1. In general

Use of National Teachers Examinations for both certification and pay purposes meets rational relationship test, and does not violate Fourteenth Amendment equal protection clause; however, even if more rigorous constitutional standard were applied, examination bears fair and substantial relationship to achievement of important and constitutionally permissible government objective, since state has right to adopt academic requirements and to use written achievement tests designed and validated to disclose minimum amount of knowledge necessary to effective teaching. United States v South Carolina (1977, DC SC) 445 F Supp 1094, 15 BNA FEP Cas 1196, 15 CCH EPD ¶7920, affd 434 US 1026, 54 L Ed 2d 775, 98 S Ct 756, 16 BNA FEP Cas 501, 15 CCH EPD ¶8027.

Use of National Teachers Examination scores for salary purposes does not violate Title VII of Civil Rights Act of 1964 (42 USCA Sections 2000e et seq.) since distinction for pay purposes between those who are qualified and those who are not qualified survives business necessity test, where it appears that no alternative is available to State, within reasonable limits of risk and cost, for providing incentive necessary to motivate thousands of persons to acquire, generally at own time and own expense, necessary additional academic training so that they will be minimally competent teachers. United States v South Carolina (1977, DC SC) 445 F Supp 1094, 15 BNA FEP Cas 1196, 15 CCH EPD ¶7920, affd 434 US 1026, 54 L Ed 2d 775, 98 S Ct 756, 16 BNA FEP Cas 501, 15 CCH EPD ¶8027.

No discriminatory intent was found in state teachers’ pay system, based partly on National Teachers Examination scores, notwithstanding alleged differential impact as result of differential performance by race upon such examination. United States v South Carolina (1977, DC SC) 445 F Supp 1094, 15 BNA FEP Cas 1196, 15 CCH EPD ¶7920, affd 434 US 1026, 54 L Ed 2d 775, 98 S Ct 756, 16 BNA FEP Cas 501, 15 CCH EPD ¶8027.

**SECTION 59‑25‑45.** Health and dental insurance.

Teachers working less than thirty hours a week, but no less than fifteen hours a week, shall qualify for state health and dental insurance. The Public Employee Benefit Authority is directed to amend its “Plan of Benefits” regarding fringe benefits to conform to the provisions of this section. Teachers and employers shall each contribute toward the cost of these benefits with the employer paying only that portion of the employer’s normal cost which is attributable to the time the teacher is working, and the teacher shall pay all remaining costs. However, the employer’s contribution shall be no less than half the normal cost.

HISTORY: 2000 Act No. 393, Section 9.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

LIBRARY REFERENCES

Schools 144(1).

Westlaw Key Number Search: 345k144(1).

C.J.S. Schools and School Districts Sections 315 to 316, 321 to 322, 329 to 331, 338.

**SECTION 59‑25‑50.** Salary adjustments for certified instructional personnel of state agency.

Each state agency having certified instructional personnel shall receive an allocation based on the following formula: Each state agency shall receive such funds as are required to adjust the pay of all certified instructional personnel to the appropriate salary provided by the salary schedules of the surrounding school districts utilized for the 1984‑85 school year and subsequent years.

HISTORY: 1984 Act No. 512, Part II, Section 9, Division II, Subdivision C, SubPart 2, Section 4.

LIBRARY REFERENCES

States 60(1).

Westlaw Key Number Search: 360k60(1).

**SECTION 59‑25‑55.** Expansion of number of high achieving minority students entering teaching.

The Center for Educator Recruitment, Retention, and Advancement of South Carolina (CERRA‑South Carolina) in cooperation with the Commission on Higher Education shall establish a program with the purpose of expanding the number of high achieving minority students entering teacher education programs. The program shall include, but not be limited to, identification of minority high school students who have an interest in teaching and recruitment of those students into the teacher cadet program, personal counseling of minority students in the teacher cadet program about high demand certification areas, and college opportunities.

HISTORY: 1989 Act No. 194, Section 21; 2003 Act No. 14, Section 1, eff upon approval (became law without the Governor’s signature on April 23, 2003).

Effect of Amendment

The 2003 amendment, in the first sentence, substituted “Center for Educator Recruitment, Retention, and Advancement for South Carolina (CERRA‑South Carolina)” for “South Carolina Center for Teacher Recruitment”.

LIBRARY REFERENCES

Colleges and Universities 9.15.

Westlaw Key Number Search: 81k9.15.

C.J.S. Colleges and Universities Section 30.

**SECTION 59‑25‑57.** Salaries negotiable below schedule for non‑TERI retired teachers.

Notwithstanding another provision of law, school districts uniformly may negotiate salaries below the school district salary schedule for the 2014‑2015 school year for retired teachers who are not participants in the Teacher and Employee Retention Incentive program. Thereafter, school districts annually may continue to uniformly negotiate salaries below the school district salary schedule for retired teachers who are not participants in the Teacher and Employee Retention Incentive program for each upcoming school year through the 2019‑2020 school year. The provisions of this section expire on July 1, 2020.

HISTORY: 2014 Act No. 238 (S.1219), Section 1, eff June 2, 2014.

ARTICLE 3

Examinations and Teachers’ Certificates

**SECTION 59‑25‑110.** System for examination and certification of teachers.

The State Board of Education, by rules and regulations, shall formulate and administer a system for the examination and certification of teachers.

HISTORY: 1962 Code Section 21‑371; 1952 Code Section 21‑371; 1942 Code Section 5380; 1932 Code Section 5292; Civ. C. ‘22 Section 2550; Civ. C. ‘12 Section 1730; Civ. C. ‘02 Section 1200; 1897 (22) 516; 1903 (24) 1084; 1906 (25) 37; 1908 (25) 1151; 1909 (26) 73; 1910 (26) 740; 1911 (27) 116; 1912 (27) 575; 1913 (28) 21; 1914 (28) 500; 1917 (30) 390; 1920 (31) 965; 1974 (58) 1928.

CROSS REFERENCES

Program approval standards for South Carolina teacher education institutions, see S.C. Code of Regulations R. 43‑90.

Requirements for teacher education and certification, see S.C. Code of Regulations R. 43‑50 et seq.

LIBRARY REFERENCES

Schools 130.

Westlaw Key Number Search: 345k130.

C.J.S. Schools and School Districts Sections 196 to 199, 201 to 203.

Attorney General’s Opinions

The State Board of Education may implement the new certification requirements based on NTE scores despite the pending litigation challenging the use of the NTE. Pursuant to the new regulations, all persons with incomplete applications on file with the State Department of Education would be subject to the new requirements. Further action of the State Board of Education is necessary in order to reinstate and/or revise the regulation relating to adding endorsements to valid certificates. 1975‑76 Op Atty Gen, No 4476, p 335.

NOTES OF DECISIONS

In general 1

1. In general

Use of National Teachers Examinations by state is proper and legal, since examinations create classifications on permissible bases of knowledge or skill and ability in applying knowledge, and are not used with intent to discriminate. United States v South Carolina (1977, DC SC) 445 F Supp 1094, 15 BNA FEP Cas 1196, 15 CCH EPD ¶7920, affd 434 US 1026, 54 L Ed 2d 775, 98 S Ct 756, 16 BNA FEP Cas 501, 15 CCH EPD ¶8027.

Use of National Teachers Examinations for both certification and pay purposes meets rational relationship test, and does not violate Fourteenth Amendment equal protection clause; however, even if more rigorous constitutional standard were applied, examination bears fair and substantial relationship to achievement of important and constitutionally permissible government objective, since state has right to adopt academic requirements and to use written achievement tests designed and validated to disclose minimum amount of knowledge necessary to effective teaching. United States v South Carolina (1977, DC SC) 445 F Supp 1094, 15 BNA FEP Cas 1196, 15 CCH EPD ¶7920, affd 434 US 1026, 54 L Ed 2d 775, 98 S Ct 756, 16 BNA FEP Cas 501, 15 CCH EPD ¶8027.

Use of standardized test scores which reflect individual achievement with respect to specific subject matter content for teacher certification survives business necessity test under Title 7 of Civil Rights Act of 1964 (42 USCA 2000e et seq) since only suggested alternative, certification based upon mere graduation from approve program, would not achieve State’s purpose in certifying minimally competent persons as well as use of content‑validated standardized test, due to variations in admissions requirements, academic standards, and grading practices at various teacher training institutions within State. United States v South Carolina (1977, DC SC) 445 F Supp 1094, 15 BNA FEP Cas 1196, 15 CCH EPD ¶7920, affd 434 US 1026, 54 L Ed 2d 775, 98 S Ct 756, 16 BNA FEP Cas 501, 15 CCH EPD ¶8027.

Results of validity study of National Teachers Examination, measuring degree to which content of tests matches content of teacher training programs of South Carolina, are sufficiently trustworthy to sustain defendants’ burden under Title VII of Civil Rights Act of 1964 (42 USCA Sections 2000e et seq.) of showing that state’s use of test scores in teacher certification decisions which allegedly disqualify substantially disproportionate numbers of blacks, had rational relationship to legitimate employment objectives. United States v South Carolina (1977, DC SC) 445 F Supp 1094, 15 BNA FEP Cas 1196, 15 CCH EPD ¶7920, affd 434 US 1026, 54 L Ed 2d 775, 98 S Ct 756, 16 BNA FEP Cas 501, 15 CCH EPD ¶8027.

**SECTION 59‑25‑115.** Notice to enrollee in teacher education program regarding effect of prior criminal record; criminal records check and fingergprinting requirements.

(A) A person enrolled in a teacher education program in South Carolina must be advised by the college or university that his prior criminal record could prevent certification as a teacher in this State in accordance with State Board of Education guidelines.

(B) Before beginning full‑time clinical teaching experience in this State, a teacher education candidate shall undergo a state criminal records check by the South Carolina Law Enforcement Division and a national criminal records check supported by fingerprints by the Federal Bureau of Investigation. The cost associated with the FBI background checks are those of the applicant. Information reported relative to prior arrests or convictions will be reviewed by the State Department of Education, and the State Board of Education when warranted, according to board guidelines. A teacher education candidate with prior arrests or convictions of a serious nature that could affect his fitness to teach in the public schools of South Carolina may be denied the opportunity to complete the clinical teaching experience and qualify for initial teacher certification. An individual who is denied this opportunity as a result of prior arrests or convictions, after one year, may request reconsideration under guidelines established by the State Board of Education.

(C) A graduate of a teacher education program applying for initial teacher certification must have completed the FBI fingerprint process within eighteen months of formally applying for initial teacher certification or the fingerprint process must be repeated.

HISTORY: 1990 Act No. 387, Section 1; 2004 Act No. 195, Section 1, eff January 1, 2005.

Effect of Amendment

The 2004 amendment deleted the first paragraph relating to state and FBI fingerprint review, deleted the second paragraph relating to the fee for fingerprint review, and replaced the two deleted paragraphs with new subsections (A) through (C).

CROSS REFERENCES

“Certified teacher” and “noncertified teacher” defined, charter schools, see Section 59‑40‑40.

LIBRARY REFERENCES

Schools 133.1(4).

Westlaw Key Number Search: 345k133.1(4).

C.J.S. Schools and School Districts Section 204.

**SECTION 59‑25‑120.** Examination on United States Constitution and loyalty thereto.

All persons applying for certificates authorizing them to become teachers in the public schools of this State shall, in addition to other requirements and before receiving such certificate, be required to pass a satisfactory examination upon the provisions and principles of the Constitution of the United States and shall also satisfy the examining power of their loyalty thereto.

HISTORY: 1962 Code Section 21‑372; 1952 Code Section 21‑372; 1942 Code Section 5324; 1932 Code Section 5342; 1924 (33) 1186.

LIBRARY REFERENCES

Schools 130.

Westlaw Key Number Search: 345k130.

C.J.S. Schools and School Districts Sections 196 to 199, 201 to 203.

**SECTION 59‑25‑130.** Record of teachers’ certificates.

A full record of all teachers’ certificates shall be kept in the State Department of Education showing the name, age, sex, color and date of certificate of each person and such other information as may be desired.

HISTORY: 1962 Code Section 21‑373; 1952 Code Section 21‑373; 1942 Code Section 5381; 1932 Code Section 5295; Civ. C. ‘22 Section 2553; 1920 (31) 965; 1933 (38) 323.

LIBRARY REFERENCES

Schools 130.

Westlaw Key Number Search: 345k130.

C.J.S. Schools and School Districts Sections 196 to 199, 201 to 203.

**SECTION 59‑25‑140.** Fee for duplicate certificate; use of resulting fund.

The board of examiners for teachers may charge a fee of fifty cents for every duplicate certificate. The proceeds from such fees shall be deposited with the State Treasurer to be used by the board of examiners to cover the expense and labor of issuing duplicate certificates promptly and to pay the traveling expenses of the director of the board of examiners while in the discharge of his official duties. All disbursements of such fees shall be made only on vouchers approved by the State Superintendent of Education. An itemized statement of such expenditures shall be kept and published in the annual report of the State Superintendent of Education.

HISTORY: 1962 Code Section 21‑374; 1952 Code Section 21‑374; 1942 Code Section 5381; 1932 Code Section 5295; Civ. C. ‘22 Section 2553; 1920 (31) 965; 1933 (38) 323.

LIBRARY REFERENCES

Schools 130.

Westlaw Key Number Search: 345k130.

C.J.S. Schools and School Districts Sections 196 to 199, 201 to 203.

**SECTION 59‑25‑150.** Revocation or suspension of certificate.

The State Board of Education may, for just cause, either revoke or suspend the certificate of any person.

HISTORY: 1962 Code Section 21‑375; 1974 (58) 1928.

LIBRARY REFERENCES

Schools 132.

Westlaw Key Number Search: 345k132.

C.J.S. Schools and School Districts Section 200.

NOTES OF DECISIONS

In general 1

1. In general

The State Board of Education was required to comply with the statutes and regulations providing for revocation of a teaching certificate before depriving a teacher of her teaching certificate based on cancellation of her National Teacher’s Examination scores. Brown v. South Carolina State Bd. of Educ. (S.C. 1990) 301 S.C. 326, 391 S.E.2d 866.

**SECTION 59‑25‑160.** Revocation or suspension of certificate; “just cause” defined.

“Just cause” may consist of any one or more of the following:

(1) Incompetence;

(2) Wilful neglect of duty;

(3) Wilful violation of the rules and regulations of the State Board of Education;

(4) Unprofessional conduct;

(5) Drunkenness;

(6) Cruelty;

(7) Crime against the law of this State or the United States;

(8) Immorality;

(9) Any conduct involving moral turpitude;

(10) Dishonesty;

(11) Evident unfitness for position for which employed; or

(12) Sale or possession of narcotics.

HISTORY: 1962 Code Section 21‑375.1; 1974 (58) 1928.

CROSS REFERENCES

Reporting of terminations of certain school district employees, see S.C. Code of Regulations R. 43‑58.1.

School district criminal record searches and National Sex Offender Registry checks, see Section 59‑19‑117.

LIBRARY REFERENCES

Schools 132.

Westlaw Key Number Search: 345k132.

C.J.S. Schools and School Districts Section 200.

**SECTION 59‑25‑170.** Revocation or suspension of certificate; notice to teacher and opportunity for hearing.

No person’s certificate may be either revoked or suspended unless written notice specifying the cause for either the revocation or suspension has been given to the person by the State Board of Education and a hearing has been afforded such person.

HISTORY: 1962 Code Section 21‑375.2; 1974 (58) 1928.

LIBRARY REFERENCES

Schools 132.

Westlaw Key Number Search: 345k132.

C.J.S. Schools and School Districts Section 200.

**SECTION 59‑25‑180.** Revocation or suspension of certificate; notice to district board of trustees.

Whenever the State Board of Education either revokes or suspends a certificate of any person it shall immediately notify the chairman of the district board of trustees that employs such person of the revocation or suspension.

HISTORY: 1962 Code Section 21‑375.3; 1974 (58) 1928.

LIBRARY REFERENCES

Schools 132.

Westlaw Key Number Search: 345k132.

C.J.S. Schools and School Districts Section 200.

**SECTION 59‑25‑190.** Revocation or suspension of certificate; effect; payment of salary.

The revocation or suspension of the certificate of any person shall terminate the employment of such person until such time as a decision is reached concerning the charge against such person; however, such person shall be paid until the final disposition of the case by the State Board of Education.

HISTORY: 1962 Code Section 21‑375.4; 1974 (58) 1928.

LIBRARY REFERENCES

Schools 132.

Westlaw Key Number Search: 345k132.

C.J.S. Schools and School Districts Section 200.

**SECTION 59‑25‑200.** Revocation or suspension of certificate; request for hearing; conduct of hearing; determination by board.

Within fifteen days after receipt of notice of revocation or suspension, such person may serve upon the chairman of the State Board of Education or the State Superintendent of Education a written request for either a public or private hearing before the board. The hearing shall be held by the board not less than ten days nor more than twenty days after the request is served, and a notice of the time and place of the hearing shall be given the person not less than four days prior to the date of the hearing. At the hearing, which shall be as summary and as simple as reasonably may be, the parties may appear in person and by counsel, if desired, and may present any testimony, under oath, or other evidence as may be pertinent. Within fifteen days following the hearing, the board shall determine whether there existed just cause for the notice of revocation or suspension and shall render its written order accordingly either affirming, withdrawing, or modifying the notice of revocation or suspension.

HISTORY: 1962 Code Section 21‑375.5; 1974 (58) 1928.

LIBRARY REFERENCES

Schools 132.

Westlaw Key Number Search: 345k132.

C.J.S. Schools and School Districts Section 200.

**SECTION 59‑25‑210.** Revocation or suspension of certificate; power of board to issue subpoenas, administer oaths and examine witnesses.

The State Board of Education, for the purposes of this article, shall have the power to subpoena witnesses, to administer oaths, and to examine witnesses and such parts of any books and records as relate to the issue or issues involved.

HISTORY: 1962 Code Section 21‑375.6; 1974 (58) 1928.

LIBRARY REFERENCES

Schools 132.

Westlaw Key Number Search: 345k132.

C.J.S. Schools and School Districts Section 200.

**SECTION 59‑25‑220.** Revocation or suspension of certificate; depositions.

Any party to such proceedings may cause to be taken the deposition of witnesses within or without the State and either by commission or de bene esse. Such depositions shall be taken in accordance with and subject to the same provisions, conditions, and restrictions as apply to the taking of like depositions in civil actions at law in the court of common pleas, and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification thereof and matters of practice relating thereto shall apply.

HISTORY: 1962 Code Section 21‑375.7; 1974 (58) 1928.

LIBRARY REFERENCES

Schools 132.

Westlaw Key Number Search: 345k132.

C.J.S. Schools and School Districts Section 200.

**SECTION 59‑25‑230.** Revocation or suspension of certificate; service of notices.

Notices to be given by a party shall be served upon the opposite party prior to the filing thereof. All notices shall be served in person or by registered mail.

HISTORY: 1962 Code Section 21‑375.8; 1974 (58) 1928.

LIBRARY REFERENCES

Schools 132.

Westlaw Key Number Search: 345k132.

C.J.S. Schools and School Districts Section 200.

**SECTION 59‑25‑240.** Revocation or suspension of certificate; service of subpoenas; witness fees.

The county sheriffs and their respective deputies shall serve all subpoenas of the State Board of Education and shall receive the same fees as are now provided by law for like service. Each witness who appears in obedience to such subpoena shall receive for attendance the fees and mileage of witnesses in civil cases in the courts of the county in which the hearing is held.

HISTORY: 1962 Code Section 21‑375.9; 1974 (58) 1928.

LIBRARY REFERENCES

Schools 132.

Westlaw Key Number Search: 345k132.

C.J.S. Schools and School Districts Section 200.

**SECTION 59‑25‑250.** Revocation or suspension of certificate; powers and duties of court of common pleas; warrant for production of witnesses.

(A) Upon application by the State Board of Education, the court of common pleas shall enforce by proper proceedings the attendance and testimony of witnesses and the production of books, papers, and records. The unexcused failure or refusal to attend and give testimony or produce books, papers, and records as may have been required in any subpoena issued by the State Board of Education is a misdemeanor. A person who engages in this conduct, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

(B) The State Board of Education may issue to the sheriff of the county in which a hearing is held a warrant requiring him to produce at the hearing a witness who has ignored or failed to comply with any subpoena issued by the State Board of Education and properly served upon the witness. The warrant authorizes the sheriff to arrest and produce at the hearing the witness, and it is his duty to do so. The failure of a witness to appear in response to a subpoena may be excused on the same grounds as provided by law for the attendance of witnesses in the courts of this State.

HISTORY: 1962 Code Section 21‑375.10; 1974 (58) 1928; 1993 Act No. 184, Section 255.

LIBRARY REFERENCES

Schools 132.

Westlaw Key Number Search: 345k132.

C.J.S. Schools and School Districts Section 200.

**SECTION 59‑25‑260.** Revocation or suspension of certificate; appeals.

The findings of fact by the State Board of Education are final and conclusive. A person aggrieved by the order of the State Board of Education, within thirty days, may appeal to the Administrative Law Court as provided in Sections 1‑23‑380(B) and 1‑23‑600(D), to review errors of law only, by filing with the Administrative Law Court and the State Board of Education notice of appeal. The State Board of Education shall file a certified copy of the record with the Administrative Law Court in accordance with its rules of procedure. An appeal from the order of the Administrative Law Court must be taken in the manner provided by the South Carolina Appellate Court Rules.

HISTORY: 1962 Code Section 21‑375.11; 1974 (58) 1928; 1999 Act No. 55, Section 52; 2006 Act No. 387, Section 43, eff July 1, 2006.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

Effect of Amendment

The 2006 amendment rewrote this section to provide for appeals to the Administrative Law Court and judicial review of the administrative law judge’s decision.

LIBRARY REFERENCES

Schools 132.

Westlaw Key Number Search: 345k132.

C.J.S. Schools and School Districts Section 200.

**SECTION 59‑25‑270.** Revocation or suspension of certificate; reinstatement.

If either the State Board of Education, the court of common pleas, the court of appeals, or the Supreme Court of South Carolina reverses the order of revocation or suspension, the person whose certificate had been either revoked or suspended by the state board shall be fully reinstated and shall receive all salary lost as a result of such revocation or suspension of his certificate; provided, however, that where the State Board of Education, within the time prescribed by law, appeals from an order of the court of common pleas reversing an order of revocation or suspension rendered by the State Board of Education, the person whose certificate had either been revoked or suspended by the state board shall not be entitled to be reinstated and to receive all salary lost as a result of his certificate’s revocation or suspension by the state board unless and until the Supreme Court or court of appeals affirms the order of the court of common pleas.

HISTORY: 1962 Code Section 21‑375.13; 1974 (58) 1928; 1999 Act No. 55, Section 53.

LIBRARY REFERENCES

Schools 132.

Westlaw Key Number Search: 345k132.

C.J.S. Schools and School Districts Section 200.

**SECTION 59‑25‑280.** Crimes warranting revocation, refusal to issue or nonrenewal of certificate.

(A) The State Board of Education permanently shall revoke, refuse to issue, or renew a certificate without a hearing, if the holder of or applicant for the certificate pleads guilty, pleads nolo contendere, or is found guilty of the following crimes, whether or not a sentence is imposed and regardless of where the matter was tried:

(1) a violent crime as defined in Section 16‑1‑60;

(2) certain offenses related to obscenity, material harmful to minors, child exploitation, and child prostitution, including Sections 16‑15‑305, 16‑15‑335, 16‑15‑345, 16‑15‑355, 16‑15‑365, 16‑15‑385, 16‑15‑387, 16‑15‑395, 16‑15‑405, 16‑15‑410, 16‑15‑415, and 16‑15‑425; or

(3) a criminal offense similar in nature to the crimes listed in items (1) and (2) committed in other jurisdictions or pursuant to federal law.

(B) A school district may not employ an educator in any capacity whose South Carolina certificate is revoked pursuant to subsection (A).

HISTORY: 2004 Act No. 307, Section 4, eff September 8, 2004.

ARTICLE 4

American Board for the Certification of Teacher Excellence Act

**SECTION 59‑25‑310.** Authority to hire individuals with passport certificate issued by the American Board for the Certification of Teacher Excellence (ABCTE).

In addition to individuals certified for employment as school teachers pursuant to Article 3 of this chapter, a school district may hire individuals who have received a passport certificate issued by the American Board for the Certification of Teacher Excellence (ABCTE) and who meet the requirements of this article in the content areas of biology, chemistry, English, mathematics, physics, or science. Additional areas of certification may be approved by the State Board of Education upon review of the longitudinal information required in Section 59‑25‑350.

HISTORY: 2007 Act No. 75, Section 2, eff June 13, 2007.

Editor’s Note

2007 Act No. 75, Section 1, provides as follows:

“This act may be cited as the ‘American Board for the Certification of Teacher Excellence Act’.”

**SECTION 59‑25‑320.** State and national criminal records check.

A person who has received a passport certificate issued by the ABCTE must not be hired by a school district in South Carolina without submitting to the State Department of Education, Office of Educator Certification at the time of application a Federal Bureau of Investigation fingerprint card and without having undergone a criminal records check by the South Carolina Law Enforcement Division and a national criminal records check supported by fingerprints and conducted by the Federal Bureau of Investigation pursuant to Section 59‑25‑115(B) completed within the previous eighteen months.

HISTORY: 2007 Act No. 75, Section 2, eff June 13, 2007.

**SECTION 59‑25‑330.** Alternative route certification.

A person who has received a passport certificate issued by the ABCTE, who has a minimum of a bachelor’s degree from a regionally accredited college or university or an institution with a teacher education program that has been approved by the State Board of Education for certification purposes, and who has met the requirements of Section 59‑25‑320 is considered to have met the requirements for certification and must be issued an appropriate alternative route certificate as determined by the State Board of Education. The alternative route certificate must be valid for one year and may be renewed annually for two additional years upon the successful completion of teaching and of the hiring district’s induction program.

HISTORY: 2007 Act No. 75, Section 2, eff June 13, 2007.

**SECTION 59‑25‑340.** South Carolina adopted pedagogy examination.

A person who has received a passport certificate issued by the ABCTE, possesses an alternative route certificate, and has been initially hired by a school district must be required, as a condition for professional certification, to successfully pass the South Carolina adopted pedagogy examination.

HISTORY: 2007 Act No. 75, Section 2, eff June 13, 2007.

**SECTION 59‑25‑350.** Reports.

The State Department of Education shall submit annually by March thirty‑first to the State Board of Education and the General Assembly the total number of individuals employed in South Carolina with a passport certificate issued by ABCTE by district and nonprivileged information collected on these individuals through the ADEPT reporting system.

HISTORY: 2007 Act No. 75, Section 2, eff June 13, 2007.

**SECTION 59‑25‑360.** Rights of persons hired pursuant to article.

A person who has completed all requirements of this article and has been hired by a school district has the same responsibilities and rights as other teachers hired by the district.

HISTORY: 2007 Act No. 75, Section 2, eff June 13, 2007.

ARTICLE 5

Employment and Dismissal

CROSS REFERENCES

Charter school application, see Section 59‑40‑60.

**SECTION 59‑25‑410.** Notification of employment for ensuing year; notification of assignment.

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

(B) On or before August fifteenth, the superintendent, principal, where applicable, or supervisor shall notify the teacher of his tentative assignment for the ensuing school year.

(C) This section does not apply to a teacher whose contract of employment or dismissal is under appeal under Section 59‑25‑450.

(D) For purposes of this article, “teacher” means an employee possessing a professional certificate issued by the State Department of Education, except an employee working pursuant to a multiyear contract.

HISTORY: 1962 Code Section 21‑361; 1974 (58) 2343; 1976 Act No. 634 Section 1; 1988 Act No. 392, Section 1; 2016 Act No. 221 (H.3560), Section 1, eff June 3, 2016.

Effect of Amendment

2016 Act No. 221, Section 1, rewrote the section, extending the deadline to May first, and making other nonsubstantive changes.

CROSS REFERENCES

Powers of school trustees as to hiring and discharge of teachers, see Section 59‑19‑90.

Provision making employment dismissal provisions of this article inapplicable during one year provisional contract period, see Section 59‑26‑40.

Service of notice, see Section 59‑25‑510.

South Carolina retirement systems, generally, see Section 9‑1‑10 et seq.

LIBRARY REFERENCES

Schools 133.15.

Westlaw Key Number Search: 345k133.15.

C.J.S. Schools and School Districts Sections 206, 264 to 269.

Attorney General’s Opinions

Teacher aide is not within the class of persons designated “teacher” for the purposes of Section 59‑25‑410 et seq., concerning teacher employment and dismissal. 1978 Op Atty Gen, No 78‑190, p 214.

Administrative or extra duty assignments of teachers are not included in or protected by the Teacher Employment Dismissal Act (Section 21‑361 [1976 Code Section 59‑25‑410] through 370.3). [1976 Code Section 59‑25‑530] 1976‑77 Op Atty Gen, No 77‑114, p 99.

Failing to renew a public school teacher’s contract for the ensuing school year, without giving the teacher any notice or opportunity to be heard, violates 1962 Code Sections 21‑361 et seq. [1976 Code Sections 59‑25‑410 et seq.] 1975‑76 Op Atty Gen, No 4251, p 54.

The legal effect of employing substitutes for fulltime employees on long term sick leave depends on the terms of the individual employment contracts with the substitute or part‑time employees. 1975‑76 Op Atty Gen, No 4441, p 296.

A school superintendent is not a “teacher” within 1962 Code Section 21‑361 [1976 Code Section 59‑25‑410]. The decision to suspend a superintendent may be appealed to the County Board of Education, pursuant to 1962 Code Section 21‑247 [1976 Code Section 59‑19‑510]. 1975‑76 Op Atty Gen, No 4536, p 400.

Proposed amendment to Act No. 1099 of 1974 [Article 5 of Chapter 25 of Title 59 of the 1976 Code], which would require two years teaching in a school district and the signing of a contract for a third year before the rights created by Act No. 1099 [Article 5 of Chapter 25 of Title 59 of the 1976 Code] would apply, is constitutional. 1974‑75 Op Atty Gen, No 4193, p 243.

NOTES OF DECISIONS

In general 1

Due process 3

Termination hearing 2

1. In general

Pursuant to statute governing rights of certified education personnel employed as administrators, while a certified educator who is employed as an administrator on an annual or multi‑year contract retains her rights as a teacher under the Teacher Employment and Dismissal Act, those rights are not granted to the position or salary of administrator. Henry‑Davenport v. School Dist. of Fairfield County (S.C. 2011) 391 S.C. 85, 705 S.E.2d 26, rehearing denied, answer to certified question conformed to 832 F.Supp.2d 602, affirmed 498 Fed.Appx. 193, 2012 WL 5898082. Education 419; Education 522; Public Employment 354

Because teacher did not raise the issue of automatic renewal of her contract under Teacher Employment and Dismissal Act to the circuit court, this issue was not preserved for appellate court’s review. Brown v. James (S.C.App. 2010) 389 S.C. 41, 697 S.E.2d 604. Education 603(6); Public Employment 778

Elementary school teacher seeking to challenge school district superintendent’s decision to suspend her and recommendation that school board terminate her could not bring action in circuit court until she had exhausted her administrative remedies under Teacher Employment and Dismissal Act by seeking review before school board. Adamson v. Richland County School Dist. One (S.C.App. 1998) 332 S.C. 121, 503 S.E.2d 752, certiorari denied. Education 608; Public Employment 436

The school district’s failure to comply with the requirements of The Teacher Employment and Dismissal Act, Sections 59‑25‑410 et seq., obliged the plaintiff’s reemployment as an assistant principal where the district issued plaintiff a teaching contract thereby terminating plaintiff’s position as an assistant principal and the school district’s failure to follow the Act’s notice procedures worked a financial hardship on the plaintiff. Johnson v. Spartanburg County School Dist. No. 7 (S.C. 1994) 314 S.C. 340, 444 S.E.2d 501, rehearing denied.

An assistant principal’s additional position as a rental coordinator of a building was a separate contract outside the ambit of the Teacher Employment and Dismissal Act, Sections 59‑25‑410 et seq., and therefore the termination of the position did not require the formal notice prescribed by Section 59‑25‑410. Johnson v. Spartanburg County School Dist. No. 7 (S.C. 1994) 314 S.C. 340, 444 S.E.2d 501, rehearing denied.

The Teacher Employment and Dismissal Act was not applicable in a lawsuit brought by a former school district employee seeking to be rehired, where the appeal from the decision of the County Board of Education to the circuit court was properly brought under Section 59‑19‑560, requiring the circuit judge to try these cases de novo as equity cases; accordingly, the scope of review was not governed by the substantial evidence rule. Hamilton v. Board of Trustees of Oconee County School Dist. (S.C.App. 1984) 282 S.C. 519, 319 S.E.2d 717. Education 560; Education 603(6); Public Employment 254; Public Employment 778

2. Termination hearing

Even if probationary teachers were constitutionally entitled to pretermination hearings, plaintiffs voluntarily and deliberately waived this right by declining proffered invitation to appear before board. Fuller v. Laurens County School Dist. No. 56 (C.A.4 (S.C.) 1977) 563 F.2d 137. Civil Rights 1421

Due process did not demand hearing before refusing to renew probationary teachers’ employment contracts, since teachers had been clearly notified of their probationary status and that renewal of contracts was conditioned upon improvement. (Case decided under prior law Section 21‑288 (1962 code) since repealed). Fuller v. Laurens County School Dist. No. 56 (C.A.4 (S.C.) 1977) 563 F.2d 137.

3. Due process

Review undertaken by school board of teacher’s non‑renewal hearing was insufficient to satisfy the due process requirements of state constitution and the Teacher Employment and Dismissal Act (TEDA), absent a showing that the board engaged in a meaningful review and made an informed decision based on the evidence presented by both parties; hearing transcript was not available to board at the time of review, and teacher was informed of the meeting by board’s in‑house counsel just 15 minutes before the meeting took place, which was insufficient to allow teacher to be present, and to be represented by counsel before the full board. Young v. Charleston County School Dist. (S.C. 2012) 397 S.C. 303, 725 S.E.2d 107. Constitutional Law 4202; Education 602; Public Employment 541

**SECTION 59‑25‑415.** Priority for certified personnel as to rehiring within two years; mailing of notice of intent to rehire.

Certified personnel who have taught in a school district for at least one year and who are dismissed for economic reasons have priority for being rehired to fill any vacancy for which they are qualified which occurs within two years from the date of their dismissal. A school district has complied with the requirements of this section by mailing a notice of intent to rehire to the teacher’s last known address.

HISTORY: 1994 Act No. 497, Part II, Section 15D.

LIBRARY REFERENCES

Schools 147.48.

Westlaw Key Number Search: 345k147.48.

C.J.S. Civil Rights Section 138.

**SECTION 59‑25‑420.** Teacher required to notify board of acceptance; opportunity for hearing if not reemployed.

(A) A teacher who is reemployed by written notification pursuant to Section 59‑25‑410 shall before May eleventh notify the board of trustees in writing of his acceptance of the contract. Failure on the part of the teacher to notify the board of acceptance within the specified time limit is conclusive evidence of the teacher’s rejection of the contract.

(B) A teacher, receiving a notice that he will not be reemployed for the ensuing year, has the same notice and opportunity for a hearing provided in this article for a teacher dismissed for cause during the school year.

HISTORY: 1962 Code Section 21‑362; 1974 (58) 2343; 2016 Act No. 221 (H.3560), Section 2, eff June 3, 2016.

Effect of Amendment

2016 Act No. 221, Section 2, in (A), substituted “before May eleventh” for “by April twenty‑fifth first” and “is conclusive” for “shall be conclusive”; and in (B), substituted “has the same notice” for “shall have the same notice” and “in this article for a teacher” for “in subsequent sections for teachers”.

CROSS REFERENCES

Provision making employment dismissal provisions of this article inapplicable during one year provisional contract period, see Section 59‑26‑40.

Service of notice, see Section 59‑25‑510.

LIBRARY REFERENCES

Schools 133.15.

Westlaw Key Number Search: 345k133.15.

C.J.S. Schools and School Districts Sections 206, 264 to 269.

Attorney General’s Opinions

Administrative or extra duty assignments of teachers are not included in or protected by the Teacher Employment Dismissal Act (Section 21‑361 [1976 Code Section 59‑25‑410] through 370.3). [1976 Code Section 59‑25‑530] 1976‑77 Op Atty Gen, No 77‑114, p 99.

Failing to renew a public school teacher’s contract for the ensuing school year, without giving the teacher any notice or opportunity to be heard, violates 1962 Code Sections 21‑361 et seq. [1976 Code Sections 59‑25‑410 et seq.], 1975‑76 Op Atty Gen, No 4251, p 54.

NOTES OF DECISIONS

In general 1

1. In general

School district did not breach employment contract with school principal when it reassigned him to teaching position without a hearing under statute providing teachers with such process; principal, at time of reassignment, was not a teacher subject to the statute, and there was no provision in employment contract that entitled him to continued employment. King v. Charleston County School Dist., 2009, 664 F.Supp.2d 571. Education 419; Public Employment 326

To exhaust administrative remedies, teacher challenging decision not to renew contract was required to make written request for hearing before school district board of trustees within 15 days of notice of nonrenewal, the time frame prescribed by Teacher Employment and Dismissal Act. Brown v. James (S.C.App. 2010) 389 S.C. 41, 697 S.E.2d 604. Education 603(1); Public Employment 436

The involuntary transfer of an assistant superintendent of a school district to the position of principal does not amount to a constructive discharge. Barr v. Board of Trustees of Clarendon County School Dist. No. 2 (S.C.App. 1995) 319 S.C. 522, 462 S.E.2d 316, rehearing denied, certiorari denied.

Although the Teacher Employment and Dismissal Act provides for a full, adversarial hearing when a teacher is dismissed or nonrenewed, pursuant to Sections 59‑25‑420, 59‑25‑430, and 59‑25‑460, it does not provide for such a hearing when a teacher is merely transferred, reassigned, or demoted, and, accordingly, reassigned school principals, who were “teachers” within the meaning of Section 59‑1‑130, were properly denied such a hearing by their county school board. Snipes v. McAndrew (S.C. 1984) 280 S.C. 320, 313 S.E.2d 294.

**SECTION 59‑25‑430.** Dismissal of teachers; grounds; opportunity for hearing; suspension pending resolution of charges.

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

Notwithstanding the provisions of Section 59‑25‑450, when any teacher is charged with a violation of the law of this State or the United States which upon conviction may lead to, or be cited as a reason for, dismissal, such teacher may be suspended pending resolution of the charges and receive his usual compensation during the suspension period, such compensation not to exceed the term of his teaching contract. If the teacher is convicted, including pleading guilty or nolo contendere to the charges, he may then be subject to dismissal proceedings. If no conviction results, his suspension shall be terminated.

HISTORY: 1962 Code Section 21‑363, 1974 (58) 2343; 1976 Act No. 634, Section 2.

CROSS REFERENCES

Powers of school trustees as to hiring and discharge of teachers, see Section 59‑19‑90.

Prohibition against teaching by persons having infectious diseases, see Sections 44‑29‑150 et seq.

Provision making employment dismissal provisions of this article inapplicable during one year provisional contract period, see Section 59‑26‑40.

LIBRARY REFERENCES

Schools 147.8, 147.30.

Westlaw Key Number Searches: 345k147.8; 345k147.30.

C.J.S. Civil Rights Section 138.

C.J.S. Schools and School Districts Sections 245 to 248, 260, 267 to 268, 271 to 272, 275 to 276, 280, 286.

RESEARCH REFERENCES

ALR Library

78 ALR 3rd 83 , What Constitutes “Insubordination” as Ground for Dismissal of Public School Teacher.

127 ALR 1298 , Teachers’ Tenure Statutes.

Encyclopedias

38 Am. Jur. Proof of Facts 3d 63, Defense of a Teacher Charged With Unfitness to Teach.

Attorney General’s Opinions

Administrative or extra duty assignments of teachers are not included in or protected by the Teacher Employment Dismissal Act (Section 21‑361 [1976 Code Section 59‑25‑410] through 370.3). [1976 Code Section 59‑25‑530] 1976‑77 Op Atty Gen, No 77‑114, p 99.

NOTES OF DECISIONS

In general 1

Transfers 3

Unfitness 2

Weight and sufficiency of evidence 4

1. In general

Teacher who wrote and distributed a letter throughout the school urging other teachers to participate in a sick‑out to protest the manner of payment during the summer months and to protest the school districts mismanagement of the budget, suborned a misrepresentation about sick leave and encouraged a deliberate violation of regulation and employment terms, for which the provided sanction is dismissal. Stroman v. Colleton County School Dist. (C.A.4 (S.C.) 1992) 981 F.2d 152.

Single act of disobedience could, under some circumstances, be sufficient to justify teacher’s termination even though it was unrelated to that teacher’s classroom performance. Hall v. Board of Trustees of Sumter County School Dist. No. 2 (S.C.App. 1998) 330 S.C. 402, 499 S.E.2d 216, rehearing denied. Education 577; Public Employment 265

In line with the broad legislative grant of authority to school boards by Section 59‑19‑90(2), the authority of the judiciary to review district board decisions in matters brought pursuant to the Teachers Employment and Dismissal Act, Sections 59‑25‑10 et seq., is limited to determining whether the decision to terminate employment is supported by substantial evidence. Barr v. Board of Trustees of Clarendon County School Dist. No. 2 (S.C.App. 1995) 319 S.C. 522, 462 S.E.2d 316, rehearing denied, certiorari denied. Education 603(4); Public Employment 768(16)

Teacher Employment and Dismissal Act [Sections 59‑25‑410 through 59‑25‑530] was not so much intended to limit power to discharge teachers when good and sufficient reasons for so doing existed, (as required by Section 59‑19‑90(2)), as it was intended to prevent its abuse. Adams v. Clarendon County School Dist. No. 2 (S.C. 1978) 270 S.C. 266, 241 S.E.2d 897. Education 570; Public Employment 252

Section 59‑25‑430 expressly authorizes dismissal at any time, subject only to rights of notice and hearing, for evident unfitness for teaching. Adams v. Clarendon County School Dist. No. 2 (S.C. 1978) 270 S.C. 266, 241 S.E.2d 897.

2. Unfitness

Although teacher disobeyed principal’s directive by discussing her situation with others, school board failed to produce sufficient evidence showing that teacher’s alleged insubordination demonstrated evident unfitness to teach so as to warrant her termination; statute defined “unfitness for teaching” as including persistent neglect of duty, wilful violation of rules and regulations, and drunkenness, and this conduct exceeded teacher’s failure to comply with principal’s directive to not discuss the matter until his return to the school. Toney v. Lee County School District (S.C.App. 2017) 419 S.C. 210, 797 S.E.2d 55, rehearing denied. Education 577; Public Employment 265

County school board did not show that teacher’s failure to supervise students on student trip and insubordination in disobeying principal’s order not to talk to other employees about investigation into her supervision of students demonstrated that she was unfit for teaching, and, thus, did not justify her dismissal without reasonable time for improvement, where teacher had agreement with another teacher that she would only chaperone students on way to and from Florida and during trip to mall, teacher fulfilled agreement, and record did not show that she sought to undermine investigation by speaking to other employees. Hall v. Board of Trustees of Sumter County School Dist. No. 2 (S.C.App. 1998) 330 S.C. 402, 499 S.E.2d 216, rehearing denied. Education 587; Public Employment 263

Although Teacher Employment and Dismissal Act contemplates evident unfitness for teaching to encompass broad variety of deficiencies, Act was also intended to prevent abuse of school board’s power of termination. Hall v. Board of Trustees of Sumter County School Dist. No. 2 (S.C.App. 1998) 330 S.C. 402, 499 S.E.2d 216, rehearing denied. Education 575; Public Employment 262

Substantial evidence supported a school board’s decision to dismiss a special education teacher where the teacher was hired to teach between 5 and 7 students with learning disabilities, the students in the class were unruly or involved in altercations with each other which should have been handled by the teacher, the teacher involved the principal in 13 or 14 of these matters in the first 13 days, efforts to help the teacher manage the class resulted in no significant changes, and the teacher struck a student because he wouldn’t do as she had asked. Hendrickson v. Spartanburg County School Dist. No. Five (S.C.App. 1992) 307 S.C. 108, 413 S.E.2d 871, rehearing denied, certiorari denied.

School director whose conduct manifests evident unfitness for teaching is subject to immediate removal, after being given prior notice and opportunity for hearing, notwithstanding school board policy, following lead of Section 59‑25‑440, calling for written notice of reason that may lead to dismissal or nonrenewal and opportunity to correct problem; school director who, among other things, (1) reprimands teachers in presence of other teachers and students, referring to them as “stupid,” (2) hides employee’s keys knowing employee is looking for them, (3) foolishly and irresponsibly obstructs provision of emergency medical service for pregnant student suffering miscarriage and when told child has miscarried into commode reacts with callous expression of “that’s one more we won’t have to pay for,” and (4) addresses teachers with intemperate language on other occasions, resulting in school environment filled with turmoil, tension, conflict, and absence of trust and respect for director has manifested evidence unfitness for teaching. Kizer v. Dorchester County Vocational Educ. Bd. of Trustees (S.C. 1986) 287 S.C. 545, 340 S.E.2d 144.

Allegations of incompetence or evident unfitness for teaching are broad terms and should be closely scrutinized when offered as ground for teacher dismissal. Adams v. Clarendon County School Dist. No. 2 (S.C. 1978) 270 S.C. 266, 241 S.E.2d 897. Education 575; Public Employment 262

Low basic level of English, both oral and written, amply supported by record and not denied or contested by teacher, was sufficient in itself to bring teacher under Section 59‑25‑430 and subject him to dismissal at any time. Adams v. Clarendon County School Dist. No. 2 (S.C. 1978) 270 S.C. 266, 241 S.E.2d 897.

Circumstances under which teacher may be discharged were separated by Teacher Employment and Dismissal Act into two categories, one explicitly set out in Section 59‑25‑430, and other implicit in Section 59‑25‑440. Adams v. Clarendon County School Dist. No. 2 (S.C. 1978) 270 S.C. 266, 241 S.E.2d 897.

3. Transfers

The involuntary transfer of an assistant superintendent of a school district to the position of principal does not amount to a constructive discharge. Barr v. Board of Trustees of Clarendon County School Dist. No. 2 (S.C.App. 1995) 319 S.C. 522, 462 S.E.2d 316, rehearing denied, certiorari denied.

The record contained substantial evidence to support the School Board’s termination of an assistant superintendent where the Board did not breach her contract by transferring her to the position of principal, and after she was transferred to that position, she failed to report to work. Barr v. Board of Trustees of Clarendon County School Dist. No. 2 (S.C.App. 1995) 319 S.C. 522, 462 S.E.2d 316, rehearing denied, certiorari denied.

Although the Teacher Employment and Dismissal Act provides for a full, adversarial hearing when a teacher is dismissed or nonrenewed, pursuant to Sections 59‑25‑420, 59‑25‑430, and 59‑25‑460, it does not provide for such a hearing when a teacher is merely transferred, reassigned, or demoted, and, accordingly, reassigned school principals, who were “teachers” within the meaning of Section 59‑1‑130, were properly denied such a hearing by their county school board. Snipes v. McAndrew (S.C. 1984) 280 S.C. 320, 313 S.E.2d 294.

4. Weight and sufficiency of evidence

Substantial evidence did not support the school board’s decision to terminate teacher’s employment based upon her communication with a board member; school district’s letter, regarding teacher’s contact with other district employees, did not prohibit teacher from contacting a board member, teacher’s contact with the board was not related to the reasons for her administrative leave, and substantial evidence did not indicate teacher willfully disregarded a directive in contacting a board member. Toney v. Lee County School District (S.C.App. 2017) 419 S.C. 210, 797 S.E.2d 55, rehearing denied. Education 600(4); Public Employment 617

Substantial evidence did not support the school board’s decision to terminate teacher’s employment based upon a pattern of unprofessional conduct; principal stated that, prior to teacher’s placement on administrative leave, he had no reason to recommended teacher’s employment be terminated, teacher was continually offered a contract to teach, and incidents cited by the board did not reveal a pattern of conduct demonstrating teacher’s unfitness for teaching. Toney v. Lee County School District (S.C.App. 2017) 419 S.C. 210, 797 S.E.2d 55, rehearing denied. Education 600(4); Public Employment 617

**SECTION 59‑25‑440.** Written notice to teacher of possible dismissal; school administrator required to make reasonable effort to assist teacher in corrective measures; reasonable time for improvement required.

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

HISTORY: 1962 Code Section 21‑364; 1974 (58) 2343; 1976 Act No. 634, Section 3.

CROSS REFERENCES

Inapplicability of employment dismissal provisions of this chapter during one year provisional contract period, see Section 59‑26‑40.

Service of notice, see Section 59‑25‑510.

LIBRARY REFERENCES

Schools 147.26, 147.34(1).

Westlaw Key Number Searches: 345k147.26; 345k147.34(1).

C.J.S. Schools and School Districts Sections 260, 279, 281 to 282.

Attorney General’s Opinions

Administrative or extra duty assignments of teachers are not included in or protected by the Teacher Employment Dismissal Act (Section 21‑361 [1976 Code Section 59‑25‑410] through 370.3). [1976 Code Section 59‑25‑530] 1976‑77 Op Atty Gen, No 77‑114, p 99.

NOTES OF DECISIONS

In general 1

1. In general

Use of National Teachers Examinations by state is proper and legal, since examinations create classifications on permissible bases of knowledge or skill and ability in applying knowledge, and are not used with any intent to discriminate. United States v South Carolina (1977, DC SC) 445 F Supp 1094, 15 BNA FEP Cas 1196, 15 CCH EPD ¶7920, affd 434 US 1026, 54 L Ed 2d 775, 98 S Ct 756, 16 BNA FEP Cas 501, 15 CCH EPD ¶8027.

Even if South Carolina statute requiring written notice to teacher subject to dismissal and reasonable time for improvement applied to principal, there was no evidence that school district, at time principal was informed he would be offered a teaching position rather than his principal position, had reason to believe he would be dismissed or not reemployed, as required to establish breach of employment contract; rather, school district offered principal continued employment, albeit in a different position, and the concerns that surrounded principal’s performance during his reassignment were wholly unrelated to the conduct that ultimately led to his termination. King v. Charleston County School Dist., 2009, 664 F.Supp.2d 571. Education 419; Public Employment 326

School director whose conduct manifests evident unfitness for teaching is subject to immediate removal, after being given prior notice and opportunity for hearing, notwithstanding school board policy, following lead of Section 59‑25‑440, calling for written notice of reason that may lead to dismissal or nonrenewal and opportunity to correct problem; school director who, among other things, (1) reprimands teachers in presence of other teachers and students, referring to them as “stupid,” (2) hides employee’s keys knowing employee is looking for them, (3) foolishly and irresponsibly obstructs provision of emergency medical service for pregnant student suffering miscarriage and when told child has miscarried into commode reacts with callous expression of “that’s one more we won’t have to pay for,” and (5) addresses teachers with intemperate language on other occasions, resulting in school environment filled with turmoil, tension, conflict, and absence of trust and respect for director has manifested evidence unfitness for teaching. Kizer v. Dorchester County Vocational Educ. Bd. of Trustees (S.C. 1986) 287 S.C. 545, 340 S.E.2d 144.

Teacher suspended pursuant to Code Section 59‑25‑450 is not entitled to reasonable time to correct alleged deficiencies prior to dismissal as provided by this section. McWhirter v. Cherokee County School Dist. No. 1 (S.C. 1979) 274 S.C. 66, 261 S.E.2d 157.

Teacher Employment and Dismissal Act [Sections 59‑25‑410 through 59‑25‑530] was not so much intended to limit power to discharge teachers when good and sufficient reasons for so doing existed, (as required by Section 59‑19‑90(2)), as it was intended to prevent its abuse. Adams v. Clarendon County School Dist. No. 2 (S.C. 1978) 270 S.C. 266, 241 S.E.2d 897. Education 570; Public Employment 252

Section 59‑25‑440 must address deficiencies or shortcomings other than those which manifest evident unfitness for teaching, but which do, nevertheless, constitute improper performance of duties. Adams v. Clarendon County School Dist. No. 2 (S.C. 1978) 270 S.C. 266, 241 S.E.2d 897.

Timing of termination is solely within discretion of school board where immediate termination is authorized under Section 59‑25‑430, and fact that board allows teacher to serve out remainder of school year gives teacher no cause to allege noncompliance with Section 59‑25‑440. Adams v. Clarendon County School Dist. No. 2 (S.C. 1978) 270 S.C. 266, 241 S.E.2d 897.

Circumstances under which teacher may be discharged were separated by Teacher Employment and Dismissal Act into two categories, one explicitly set out in Section 59‑25‑430, and other implicit in Section 59‑25‑440. Adams v. Clarendon County School Dist. No. 2 (S.C. 1978) 270 S.C. 266, 241 S.E.2d 897.

Allegations of incompetence or evident unfitness for teaching are broad terms and should be closely scrutinized when offered as ground for teacher dismissal. Adams v. Clarendon County School Dist. No. 2 (S.C. 1978) 270 S.C. 266, 241 S.E.2d 897. Education 575; Public Employment 262

Reason which may lead to termination of employment under Section 59‑25‑440 does not become good and sufficient reason under Section 59‑19‑90(2) until after reasonable time for improvement has been allowed; it is failure to improve which constitutes good and sufficient reason warranting termination of employment. Adams v. Clarendon County School Dist. No. 2 (S.C. 1978) 270 S.C. 266, 241 S.E.2d 897.

**SECTION 59‑25‑450.** Suspension of teachers; reinstatement.

Whenever a superintendent has reason to believe that cause exists for the dismissal of a teacher and when he is of the opinion that the immediate suspension of the teacher is necessary to protect the well‑being of the children of the district or is necessary to remove substantial and material disruptive influences in the educational process, in the best interest of the children in the district, the superintendent may suspend the teacher without notice or without a hearing. The superintendent shall notify the teacher in writing of the suspension. Such written notice shall include the cause for suspension and the fact that a hearing before the board is available to the teacher upon request provided such request is made in writing within fifteen days as prescribed by Section 59‑25‑470.

The salary of a suspended teacher shall cease as of the date the board sustains the suspension. If sufficient grounds for suspension are not subsequently found, the teacher shall be reinstated without loss of compensation.

HISTORY: 1962 Code Section 21‑365; 1974 (58) 2343; 1976 Act No. 634, Section 4.

CROSS REFERENCES

Exception from notification requirement where teacher’s contract of employment, or dismissal, is under appeal, see Section 59‑25‑410.

Provision making employment dismissal provisions of this chapter inapplicable during one year provisional contract period, see Section 59‑26‑40.

Service of notice, see Section 59‑25‑510.

LIBRARY REFERENCES

Schools 144(3), 147.4, 147.34(1).

Westlaw Key Number Searches: 345k144(3); 345k147.4; 345k147.34(1).

C.J.S. Schools and School Districts Sections 240, 259 to 260, 273 to 274, 281 to 282, 317, 319 to 320, 329 to 331.

Attorney General’s Opinions

Administrative or extra duty assignments of teachers are not included in or protected by the Teacher Employment Dismissal Act (21‑361 [1976 Code Section 59‑25‑410] through 370.3). [1976 Code Section 59‑25‑530] 1976‑77 Op Atty Gen, No 77‑114, p 99.

NOTES OF DECISIONS

In general 1

1. In general

A school board does not have the authority to enter into an agreement with a teacher that interferes with its duty to the public to remove a teacher when necessary to protect the well‑being of the children of the district or is necessary to remove substantial and material disruptive influences in the educational process. Barr v. Board of Trustees of Clarendon County School Dist. No. 2 (S.C.App. 1995) 319 S.C. 522, 462 S.E.2d 316, rehearing denied, certiorari denied.

Teacher suspended pursuant to this section is not entitled to reasonable time to correct alleged deficiencies prior to dismissal as provided by Code Section 15‑25‑440. McWhirter v. Cherokee County School Dist. No. 1 (S.C. 1979) 274 S.C. 66, 261 S.E.2d 157.

**SECTION 59‑25‑460.** Notice of dismissal; hearing; costs.

(A) A teacher may not be dismissed unless written notice specifying the cause of dismissal first is given to the teacher by the superintendent and the teacher is given an opportunity for an evidentiary hearing. The superintendent or his designee may meet with the teacher before issuing a notice of dismissal to discuss alternative resolutions. The parties attending this meeting must have the option of having a representative present. This written notice must include the fact that a hearing before the board or its designee is available to the teacher upon request if the request is made in writing within fifteen days as provided in Section 59‑25‑470. Any such hearing must be public unless the teacher requests in writing that it be private. A board that chooses to delegate the evidentiary hearing to one or more designees, as provided in this section, shall indicate in board policy that it engages in this practice. The hearing process becomes effective when the board adopts the policy, and must be communicated to all affected employees within fifteen days. A subsequent change only may be made pursuant to the board policy revision process.

(B)(1) If the board chooses to delegate the evidentiary hearing to a designee, the designee must be:

(a) an attorney licensed to practice law in this State;

(b) certified by the South Carolina Supreme Court as a mediator or arbitrator; and

(c) designated by the board to hear all evidentiary hearings in the district for the school year, except when:

(i) both parties consent to use an alternate hearing officer; or

(ii) the district uses more than one designee, in which case the parties may by mutual consent select one of these designees for their hearing or, if they fail to reach such an agreement, the board randomly shall select one of its designees for the hearing.

(2) If the designee holds the evidentiary hearing, he shall issue a written report and recommendation containing findings of facts and conclusions of law to the board, superintendent, and teacher within fifteen days after the hearing concludes. The superintendent and the teacher may submit a written response to this report and recommendation to the board within ten days after the date on which the report and recommendation are issued, after which the board shall issue a decision affirming or withdrawing the notice of suspension or dismissal within thirty days. In the interim, the board may conduct a hearing on the order to consider any written responses from the superintendent and teacher, but this hearing may not operate to extend the thirty‑day limit in which the board shall issue its decision affirming or withdrawing the notice of suspension or dismissal. The board retains final decision‑making authority regarding the teacher dismissal or suspension recommendation based on its consideration of the record, the report and recommendation, and any written submission of the superintendent and teacher.

(C) If the board holds the evidentiary hearing, the board shall issue its decision within the thirty days after the hearing. This decision must be in writing and must include findings of facts and conclusions of law.

(D) The board shall determine if the evidence shows good and just cause for the notice of suspension or dismissal, and accordingly shall render a decision to affirm or withdraw the notice of suspension or dismissal.

(E) The District Board of Trustees as provided in subsection (C), or its designee, as provided in subsection (B), may issue subpoenas requiring the attendance of witnesses at the hearing and, at the request of the teacher against whom a charge is made, shall issue these subpoenas, but it may limit the number of these witnesses to ten. Testimony at a hearing must be taken under oath. A member of the board, or its designee, may administer oaths to witnesses. The board, or its designee, shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all testimony.

(F) If the board’s decision is favorable to the teacher, the board shall pay the cost of the reporter’s attendance and services at the hearing. If the decision is unfavorable to the teacher, one‑half of the cost of the reporter’s attendance and services must be borne by the teacher. A party desiring a transcript of the hearing must pay for the costs of obtaining the transcript.

HISTORY: 1962 Code Section 21‑366; 1974 (58) 2343; 1976 Act No. 634, Section 5; 2016 Act No. 221 (H.3560), Section 3, eff June 3, 2016.

Effect of Amendment

2016 Act No. 221, Section 3, rewrote the section, providing that the hearings are evidentiary hearings, providing the hearings may be conducted by school boards or their designees, providing required qualifications for board designees, providing for preliminary meetings at which parties and their representatives may discuss alternative resolutions, revising the process for districts to adopt certain policies concerning their dismissal procedures, and providing miscellaneous requirements concerning the conduct of hearings and related matters.

CROSS REFERENCES

Inapplicability of employment dismissal provisions of this chapter during one year provisional contract period, see Section 59‑26‑40.

Request for hearing, determination by board, time and place of hearing, procedures, see Section 59‑25‑470.

Service of notice, see Section 59‑25‑510.

LIBRARY REFERENCES

Schools 147.34(1), 147.38.

Westlaw Key Number Searches: 345k147.34(1); 345k147.38.

C.J.S. Schools and School Districts Sections 245, 260, 262, 268, 281 to 283, 285.

Attorney General’s Opinions

Administrative or extra duty assignments of teachers are not included in or protected by the Teacher Employment Dismissal Act (Section 21‑361 [1976 Code Section 59‑25‑410] through 370.3). [1976 Code Section 59‑25‑530] 1976‑77 Op Atty Gen, No 77‑114, p 99.

NOTES OF DECISIONS

In general 1

1. In general

The observance of the procedural requirements of the Teacher Employment and Dismissal Act is mandatory and not a matter of discretion. Brown v. James (S.C.App. 2010) 389 S.C. 41, 697 S.E.2d 604. Administrative Law And Procedure 229

To exhaust administrative remedies, teacher challenging decision not to renew contract was required to make written request for hearing before school district board of trustees within 15 days of notice of nonrenewal, the time frame prescribed by Teacher Employment and Dismissal Act. Brown v. James (S.C.App. 2010) 389 S.C. 41, 697 S.E.2d 604. Education 603(1); Public Employment 436

The involuntary transfer of an assistant superintendent of a school district to the position of principal does not amount to a constructive discharge. Barr v. Board of Trustees of Clarendon County School Dist. No. 2 (S.C.App. 1995) 319 S.C. 522, 462 S.E.2d 316, rehearing denied, certiorari denied.

Although the Teacher Employment and Dismissal Act provides for a full, adversarial hearing when a teacher is dismissed or nonrenewed, pursuant to Sections 59‑25‑420, 59‑25‑430, and 59‑25‑460, it does not provide for such a hearing when a teacher is merely transferred, reassigned, or demoted, and, accordingly, reassigned school principals, who were “teachers” within the meaning of Section 59‑1‑130, were properly denied such a hearing by their county school board. Snipes v. McAndrew (S.C. 1984) 280 S.C. 320, 313 S.E.2d 294.

Teacher had sufficient notice of charges against him where superintendent sent two letters setting forth five fairly specific and unambiguous reasons for his suspension and eventual dismissal. McWhirter v. Cherokee County School Dist. No. 1 (S.C. 1979) 274 S.C. 66, 261 S.E.2d 157.

**SECTION 59‑25‑470.** Request for hearing; determination by board; time and place of hearing; procedures.

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

(B) If the teacher fails to make such a request, or after a hearing as provided in this article, the board shall take action and shall enter an order as it considers lawful and appropriate.

(C) The hearing must be held by the board, or its designee, within forty‑five days after the request is served. A notice of the time and place of the hearing must be given the teacher not less than five days before the date of the hearing.

(D) The teacher may be present with counsel at the hearing, and may cross‑examine witnesses, may offer evidence and witnesses, and present defenses to the charges. The board, or its designee, shall order the appearance of any witness requested by the teacher, subject to the limitations of Section 59‑25‑460. The superintendent shall initiate the introduction of evidence in substantiation of the charges.

HISTORY: 1962 Code Section 21‑367; 1974 (58) 2343; 1976 Act No. 634, Section 6; 2016 Act No. 221 (H.3560), Section 4, eff June 3, 2016.

Effect of Amendment

2016 Act No. 221, Section 4, rewrote the section, making conforming changes, extending the period for scheduling hearings to forty‑five days, and revising procedures concerning the conduct of hearings.

CROSS REFERENCES

Inapplicability of employment dismissal provisions of this chapter during one year provisional contract period, see Section 59‑26‑40.

Notice of dismissal, hearing, costs, see Section 59‑25‑460.

Service of notice, see Section 59‑25‑510.

LIBRARY REFERENCES

Schools 147.38.

Westlaw Key Number Search: 345k147.38.

C.J.S. Schools and School Districts Sections 245, 260, 262, 268, 283, 285.

Attorney General’s Opinions

Administrative or extra duty assignments of teachers are not included in or protected by the Teacher Employment Dismissal Act (Section 21‑361 [1976 Code Section 59‑25‑410] through 370.3). [1976 Code Section 59‑25‑530] 1976‑77 Op Atty Gen, No 77‑114, p 99.

NOTES OF DECISIONS

In general 1

1. In general

Requesting and participating in hearing after school district board of trustees had made final decision not to renew teacher’s contract was within futility exception to requirement to exhaust administrative remedies, and, thus, teacher could appeal to circuit court without participating in hearing. Brown v. James (S.C.App. 2010) 389 S.C. 41, 697 S.E.2d 604. Education 603(1); Public Employment 436

The observance of the procedural requirements of the Teacher Employment and Dismissal Act is mandatory and not a matter of discretion. Brown v. James (S.C.App. 2010) 389 S.C. 41, 697 S.E.2d 604. Education 590; Public Employment 451

School district board of trustees’ decision to terminate teacher’s contract even before expiration of 15‑day period for her to request hearing after notice of intent not to renew the contract was final decision reviewable without teacher participating in hearing requested by her; fact that an administrative hearing was not conducted rested with the board’s failure to follow procedure, as prescribed in the Teacher Employment and Dismissal Act, and not in any failure of teacher to exhaust her administrative remedies. Brown v. James (S.C.App. 2010) 389 S.C. 41, 697 S.E.2d 604. Education 603(1); Public Employment 436

Elementary school teacher seeking to challenge school district superintendent’s decision to suspend her and recommendation that school board terminate her could not bring action in circuit court until she had exhausted her administrative remedies under Teacher Employment and Dismissal Act by seeking review before school board. Adamson v. Richland County School Dist. One (S.C.App. 1998) 332 S.C. 121, 503 S.E.2d 752, certiorari denied. Education 608; Public Employment 436

Failure to give notice of suspension hearing is irrelevant error where dismissal hearing is subject of the appeal and no prejudice has been shown. McWhirter v. Cherokee County School Dist. No. 1 (S.C. 1979) 274 S.C. 66, 261 S.E.2d 157.

**SECTION 59‑25‑480.** Appeals; costs and damages.

(A) The decision of the district board of trustees is final, unless within thirty days afterward an appeal is made to the court of common pleas of any county in which the major portion of such district lies.

(B) Notice of the appeal and the grounds thereof shall be filed with the district board of trustees. The district board shall, within thirty days thereafter, file a certified copy of the transcript record with the clerk of such court. An appeal from the order of the circuit court shall be taken in the manner provided by the South Carolina Appellate Court Rules. If the decision of the board is reversed on appeal, on a motion of either party the trial court shall order reinstatement and shall determine the amount for which the board shall be liable for actual damages and court costs. In no event shall any liability extend beyond two years from the effective date of dismissal. Amounts earned or amounts earnable with reasonable diligence by the person wrongfully suspended shall be deducted from any back pay.

HISTORY: 1962 Code Section 21‑368; 1974 (58) 2343; 1999 Act No. 55, Section 54; 2016 Act No. 221 (H.3560), Section 5, eff June 3, 2016.

Effect of Amendment

2016 Act No. 221, Section 5, inserted the paragraph designators, and corrected archaic language.

CROSS REFERENCES

Inapplicability of employment dismissal provisions of this chapter during one year provisional contract period, see Section 59‑26‑40.

LIBRARY REFERENCES

Schools 147.44, 147.54.

Westlaw Key Number Searches: 345k147.44; 345k147.54.

C.J.S. Schools and School Districts Sections 269, 293 to 298, 308 to 309.

Attorney General’s Opinions

Administrative or extra duty assignments of teachers are not included in or protected by the Teacher Employment Dismissal Act (Section 21‑361 [1976 Code Section 59‑25‑410] through 370.3). [1976 Code Section 59‑25‑530] 1976‑77 Op Atty Gen, No 77‑114, p 99.

NOTES OF DECISIONS

In general 1

1. In general

Decision of school board to terminate teacher’s employment can be set aside only if allegations made against teacher are unsupported by substantial evidence. Laws v. Richland County School Dist. No. 1 (S.C. 1978) 270 S.C. 492, 243 S.E.2d 192.

Decision of board to terminate employment of music teacher was sustained as supported by substantial evidence where there was considerable testimony concerning teacher’s unresponsiveness to recommendations aimed at remedying disciplinary problems. Laws v. Richland County School Dist. No. 1 (S.C. 1978) 270 S.C. 492, 243 S.E.2d 192.

**SECTION 59‑25‑490.** Depositions.

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

HISTORY: 1962 Code Section 21‑369; 1974 (58) 2343; 2016 Act No. 221 (H.3560), Section 6, eff June 3, 2016.

Effect of Amendment

2016 Act No. 221, Section 6, rewrote the section, correcting archaic language.

LIBRARY REFERENCES

Schools 147.31.

Westlaw Key Number Search: 345k147.31.

C.J.S. Schools and School Districts Sections 245, 247, 260, 268, 286.

Notes of Decisions

In general 1

1. In general

Teacher Employment and Dismissal Act did not vest school district board of trustees with authority to dismiss teacher’s request for a hearing based on her nonparticipation in a deposition, and instead, it prescribed procedural mechanisms, including seeking sanctions from the circuit court, to compel participation in a deposition. Brown v. James (S.C.App. 2010) 389 S.C. 41, 697 S.E.2d 604. Education 597; Public Employment 522

**SECTION 59‑25‑500.** Service of subpoenas; witness fees.

The county sheriffs and their respective deputies shall serve all subpoenas of the district board and shall receive the same fees as are now provided by law for like service. Each witness who appears in obedience to such subpoenas shall receive for attendance the fees and mileage of witnesses in civil cases in courts of the county in which the hearing is held.

HISTORY: 1962 Code Section 21‑370; 1974 (58) 2343.

LIBRARY REFERENCES

Schools 147.31.

Westlaw Key Number Search: 345k147.31.

C.J.S. Schools and School Districts Sections 245, 247, 260, 268, 286.

Notes of Decisions

In general 1

1. In general

Teacher Employment and Dismissal Act did not vest school district board of trustees with authority to dismiss teacher’s request for a hearing based on her nonparticipation in a deposition, and instead, it prescribed procedural mechanisms, including seeking sanctions from the circuit court, to compel participation in a deposition. Brown v. James (S.C.App. 2010) 389 S.C. 41, 697 S.E.2d 604. Education 597; Public Employment 522

**SECTION 59‑25‑510.** Service of notices.

All notices to be given under this article by the district board shall be given to both parties and the notices herein required to be given by a party shall be served upon the opposite party prior to the filing thereof. All such notices may be served by registered mail.

HISTORY: 1962 Code Section 21‑370.1; 1974 (58) 2343.

LIBRARY REFERENCES

Schools 147.34.

Westlaw Key Number Search: 345k147.34.

C.J.S. Schools and School Districts Sections 266 to 267, 281.

**SECTION 59‑25‑520.** Powers and duties of court of common pleas; warrant for production of witnesses.

The court of common pleas shall, on application of the district board, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records and shall have the power to punish as for contempt of court, by a fine or imprisonment or both, the unexcused failure or refusal to attend and give testimony or produce books, papers and records as may have been required in any subpoena issued by the district board. The district board may issue to the sheriff of the county in which any hearing is held a warrant requiring him to produce at the hearing any witness who shall have ignored or failed to comply with any subpoena issued by the district board and duly served upon such witness. Such a warrant shall authorize the sheriff to arrest and produce at the hearing such witness, and it shall be his duty to do so; but the failure of a witness so to appear in response to any such subpoena may be excused on the same grounds as provided by law in the courts of this State as to the attendance of witnesses and jurors.

HISTORY: 1962 Code Section 21‑370.2; 1974 (58) 2343.

LIBRARY REFERENCES

Schools 147.44.

Westlaw Key Number Search: 345k147.44.

C.J.S. Schools and School Districts Sections 269, 293 to 298.

Notes of Decisions

In general 1

1. In general

Teacher Employment and Dismissal Act did not vest school district board of trustees with authority to dismiss teacher’s request for a hearing based on her nonparticipation in a deposition, and instead, it prescribed procedural mechanisms, including seeking sanctions from the circuit court, to compel participation in a deposition. Brown v. James (S.C.App. 2010) 389 S.C. 41, 697 S.E.2d 604. Education 597; Public Employment 522

**SECTION 59‑25‑530.** Unprofessional conduct; breach of contract.

Any teacher who fails to comply with the provisions of his contract without the written consent of the school board shall be deemed guilty of unprofessional conduct. A breach of contract resulting from the execution of an employment contract with another board within the State without the consent of the board first employing the teacher makes void any subsequent contract with any other school district in South Carolina for the same employment period. Upon the formal complaint of the school board, substantiated by conclusive evidence, the State board shall suspend or revoke the teacher’s certificate, for a period not to exceed one calendar year. State education agencies in other states with reciprocal certification agreements shall be notified of the revocation of the certificate.

HISTORY: 1962 Code Section 21‑370.3; 1974 (58) 2343.

CROSS REFERENCES

Inapplicability of employment dismissal provisions of this chapter during one year provisional contract period, see Section 59‑26‑40.

LIBRARY REFERENCES

Schools 132, 137, 147.9.

Westlaw Key Number Searches: 345k132; 345k137; 345k147.9.

C.J.S. Schools and School Districts Sections 200, 219 to 220.

ARTICLE 7

Remedy for Discrimination Against Teachers

**SECTION 59‑25‑710.** Teacher discriminated against in fixing salary may file complaint.

Any school teacher who may feel that he has been discriminated against on any ground or for any cause whatsoever by a board of trustees in fixing the salary of such teacher, in the exercise of the wide discretion conferred upon trustees by law in the fixing of teachers’ salaries, may file a complaint for the purpose of having such discrimination abated and in so doing shall follow the procedure hereinafter set out.

HISTORY: 1962 Code Section 21‑381; 1952 Code Section 21‑381; 1947 (45) 110.

LIBRARY REFERENCES

Civil Rights 441.

Westlaw Key Number Search: 78k441.

C.J.S. Civil Rights Section 448.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Schools Section 38 , Introductory Comments.

Attorney General’s Opinions

Contract language providing for salary reductions and layoffs upon losses in funding or changes in course programming cannot be invoked unless reasonable under the circumstances. 1983 Op Atty Gen, No. 83‑15, p. 28.

NOTES OF DECISIONS

In general 1

1. In general

Equal Pay Act (17 Stat. 56, [29 USCA 206(d)(1)]) is severable from minimum wage and overtime provisions and its application to state and local government employees is proper exercise of Congress’ power to enforce Fourteenth Amendment. Usery v. Charleston County School Dist. of Charleston County, South Carolina (C.A.4 (S.C.) 1977) 558 F.2d 1169. Labor And Employment 2454; States 4.1(2); Statutes 1535(15)

**SECTION 59‑25‑720.** Complaint filed with county board.

Such teacher may at any time, during the period for which he has been employed, file with the county board of education of the county in which the school is located a complaint in writing which shall set forth briefly the manner and method by which the alleged discrimination is claimed to have occurred. Any number of teachers that are employed by the same school district may join in the filing of a complaint.

HISTORY: 1962 Code Section 21‑382; 1952 Code Section 21‑382; 1947 (45) 110.

CROSS REFERENCES

Compensation received prior to filing of complaint, see Section 59‑25‑850.

LIBRARY REFERENCES

Civil Rights 441.

Westlaw Key Number Search: 78k441.

C.J.S. Civil Rights Section 448.

**SECTION 59‑25‑730.** Hearing on complaint.

Upon the filing of such complaint, the county board of education shall fix a date for the hearing thereof and at least ten days prior to the date fixed shall notify the complainant and the board of trustees of the school district in which the teacher is employed of the time and place of such hearing. It shall set forth in such notice the grounds of such alleged discrimination.

HISTORY: 1962 Code Section 21‑383; 1952 Code Section 21‑383; 1947 (45) 110.

LIBRARY REFERENCES

Civil Rights 441.

Westlaw Key Number Search: 78k441.

C.J.S. Civil Rights Section 448.

**SECTION 59‑25‑740.** Process and procedure shall be summary and simple.

The process and procedure under this article shall be as summary and simple as reasonably may be. The county board of education shall have the power, for the purpose of this article, to subpoena witnesses, to administer oaths and to examine such parts of any books and records as relate to the questions involved. Any party to such proceedings may cause to be taken the depositions of witnesses within or without the State and either by commission or de bene esse. Such depositions shall be taken in accordance with and subject to the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the court of common pleas, and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification thereof and matters of practice relating thereto shall apply.

HISTORY: 1962 Code Section 21‑384; 1952 Code Section 21‑384; 1947 (45) 110.

LIBRARY REFERENCES

Civil Rights 441.

Westlaw Key Number Search: 78k441.

C.J.S. Civil Rights Section 448.

**SECTION 59‑25‑750.** Service of subpoenas; witness fees.

The county sheriffs and their respective deputies shall serve all subpoenas of the county board and shall receive the same fees as are now provided by law for like service. Each witness who appears in obedience to such subpoena shall receive for attendance the fees and mileage of witnesses in civil cases in courts of the county in which the hearing is held.

HISTORY: 1962 Code Section 21‑385; 1952 Code Section 21‑385; 1947 (45) 110.

LIBRARY REFERENCES

Civil Rights 441.

Westlaw Key Number Search: 78k441.

C.J.S. Civil Rights Section 448.

**SECTION 59‑25‑760.** Service of notices.

All notices to be given under this article by either the county board or the State Board shall be given to both parties and the notices herein required to be given by a party shall be served upon the opposite party prior to the filing thereof. All of such notices may be served by registered mail.

HISTORY: 1962 Code Section 21‑386; 1952 Code Section 21‑386; 1947 (45) 110.

LIBRARY REFERENCES

Civil Rights 441.

Westlaw Key Number Search: 78k441.

C.J.S. Civil Rights Section 448.

**SECTION 59‑25‑770.** Powers and duties of court of common pleas; warrant for production of witnesses.

The court of common pleas shall, on application of the county board, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records and shall have the power to punish as for contempt of court, by a fine or imprisonment or both, the unexcused failure or refusal to attend and give testimony or produce books, papers and records as may have been required in any subpoena issued by the county board. The county board may issue to the sheriff of the county in which any hearing is held a warrant requiring him to produce at the hearing any witness who shall have ignored or failed to comply with any subpoena issued by the county board and duly served upon such witness. Such warrant shall authorize the sheriff to arrest and produce at the hearing such witness, and it shall be his duty so to do. But the failure of a witness so to appear in response to any such subpoena may be excused on the same grounds as provided by law in the courts of this State as to the attendance of witnesses and jurors.

HISTORY: 1962 Code Section 21‑387; 1952 Code Section 21‑387; 1947 (45) 110.

LIBRARY REFERENCES

Civil Rights 441.

Westlaw Key Number Search: 78k441.

C.J.S. Civil Rights Section 448.

**SECTION 59‑25‑780.** Hearing; decision.

The hearing before the county board shall be open to the public and shall be stenographically reported, and the county board may contract for the reporting of such hearing. The county board shall hear the parties at issue and their attorneys, if any, and shall determine the matter in a summary manner setting forth its findings and conclusions in writing. If it shall find that such teacher shall have been discriminated against, it shall require the board of trustees to discontinue such discrimination. The county board shall give notice by registered mail to both parties of its decision.

HISTORY: 1962 Code Section 21‑388; 1952 Code Section 21‑388; 1947 (45) 110.

LIBRARY REFERENCES

Civil Rights 441.

Westlaw Key Number Search: 78k441.

C.J.S. Civil Rights Section 448.

**SECTION 59‑25‑790.** Basis of decision.

The county board, in passing upon such matters, is hereby vested with full discretion to the same extent as if the duty of fixing salaries of teachers had been originally imposed upon the county board and shall have the right to take into consideration changed conditions arising since the issuance of the certificates held by the teachers involved and other facts that will be helpful in rendering a just decision.

HISTORY: 1962 Code Section 21‑389; 1952 Code Section 21‑389; 1947 (45) 110.

LIBRARY REFERENCES

Civil Rights 441.

Westlaw Key Number Search: 78k441.

C.J.S. Civil Rights Section 448.

**SECTION 59‑25‑800.** Reclassification of all teachers in district.

The county board may, in determining whether or not a discrimination exists, recommend that the State Board of Education require all teachers in the district to be examined and recertified under the procedure then in force for the certification of teachers as to their qualifications and may thereupon require the trustees of such district to classify such teachers in accordance with such recertification for the purpose of fixing their salaries, to the end that the salaries of such teachers shall be based upon the value of the services rendered, it being found as a fact that each grade of teachers’ certificates now outstanding is held by teachers of greatly varying efficiency, abilities and accomplishments. Should no appeal be taken from a decision of the county board making such recommendation, the State Board of Education shall carry out such recommendation.

HISTORY: 1962 Code Section 21‑390; 1952 Code Section 21‑390; 1947 (45) 110.

LIBRARY REFERENCES

Schools 144(4).

Westlaw Key Number Search: 345k144(4).

C.J.S. Schools and School Districts Sections 323 to 329.

**SECTION 59‑25‑810.** Appeal to State Board of Education.

Within thirty days after the receipt of any such notice of such decision of the county board, any party thereto shall have the right to appeal to the State Board of Education by filing a notice of appeal, stating the grounds thereof, with the county board of education. Upon such appeal being filed, the county board, within thirty days thereafter, shall file a full and complete certified transcript of the proceedings had before it with the State Board of Education. Upon receipt of such appeal, the State Board of Education shall fix a time and place for the hearing thereof and give notice, by registered mail, to the parties involved. Such appeal shall be heard upon the transcript of the proceedings from the county board and such other investigation and additional testimony as the State Board may elect to take, all of which, if taken, shall be reported and made a part of the record. The State Board of Education shall review all questions of law and fact and, in determining the matter, exercise its discretion as an original duty imposed upon it. All powers and remedies herein conferred on county boards as to subpoenaing witnesses, enforcing attendance, taking and production of evidence and other procedural matters are hereby conferred upon the State Board.

HISTORY: 1962 Code Section 21‑391; 1952 Code Section 21‑391; 1947 (45) 110.

LIBRARY REFERENCES

Schools 47.

Westlaw Key Number Search: 345k47.

C.J.S. Schools and School Districts Sections 81 to 92, 174.

NOTES OF DECISIONS

In general 1

1. In general

Notwithstanding appellant’s contention that portion of his case regarding discrimination in pay must be appealed to State Board of Education under Section 59‑25‑810, Circuit Court properly exercised jurisdiction under procedures of Sections 59‑19‑510 and 59‑19‑560 where appellant’s allegations of discrimination in pay were closely connected to his action for reinstatement involving construction of school policy. Lexington County School Dist. One Bd. of Trustees v. Mayer (S.C. 1984) 282 S.C. 36, 316 S.E.2d 679.

**SECTION 59‑25‑820.** Reclassification on order of State Board of Education.

The State Board of Education, upon its own initiative, in the accomplishment of justice in the matter, may require all teachers in the district from which the appeal came to be examined and recertified under the procedure then in force for the certification of teachers as to their qualifications and shall thereupon require the trustees of such district to classify such teachers in accordance with such recertification for the purpose of fixing their salaries, to the end that the salaries of such teachers shall be based upon the value of services rendered.

HISTORY: 1962 Code Section 21‑392; 1952 Code Section 21‑392; 1947 (45) 110.

LIBRARY REFERENCES

Schools 144(4).

Westlaw Key Number Search: 345k144(4).

C.J.S. Schools and School Districts Sections 323 to 329.

**SECTION 59‑25‑830.** Finality of findings of fact by State Board of Education; appeal on errors of law.

The findings of fact by the State Board of Education are final and conclusive as to all parties, but any party, within thirty days, may appeal to the Administrative Law Court as provided in Section 1‑23‑380(B) and Section 1‑23‑600(D), to review error of law only, by filing with the State Board of Education and the Administrative Law Court notice of the appeal and of the grounds for the appeal. The state board shall file a certified copy of the record with the Administrative Law Court in accordance with its rules of procedure. A party may have judicial review of the decision of the administrative law judge as provided by law.

HISTORY: 1962 Code Section 21‑393; 1952 Code Section 21‑393; 1947 (45) 110; 1999 Act No. 55, Section 55; 2006 Act No. 387, Section 44, eff July 1, 2006.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

Effect of Amendment

The 2006 amendment rewrote this section to provide for appeals to the Administrative Law Court and judicial review of the administrative law judge’s decision.

LIBRARY REFERENCES

Schools 47.

Westlaw Key Number Search: 345k47.

C.J.S. Schools and School Districts Sections 81 to 92, 174.

**SECTION 59‑25‑840.** Filing of unappealed decision; enforcement.

Any decision of either the county board or the State Board which shall become final by reason of no appeal being taken therefrom as herein provided shall be filed in the office of the clerk of court of the county in which the complaint arose within ten days after such decision becomes final by the board rendering the decision. Any party thereto shall have the right to apply to the circuit court of such county for the enforcement of such decision and the court shall enforce such decision in the same manner as judgments of such court are enforced.

HISTORY: 1962 Code Section 21‑394; 1952 Code Section 21‑394; 1947 (45) 110.

LIBRARY REFERENCES

Schools 47.

Westlaw Key Number Search: 345k47.

C.J.S. Schools and School Districts Sections 81 to 92, 174.

**SECTION 59‑25‑850.** Compensation received prior to filing of complaint not affected.

Nothing contained herein shall give any teacher any right to claim compensation in addition to that received for the period prior to the filing of the complaint with the county board as provided in Section 59‑25‑720.

HISTORY: 1962 Code Section 21‑395; 1952 Code Section 21‑395; 1947 (45) 110.

LIBRARY REFERENCES

Schools 144(4).

Westlaw Key Number Search: 345k144(4).

C.J.S. Schools and School Districts Sections 323 to 329.

**SECTION 59‑25‑860.** Costs; fees of clerks of boards.

Costs shall be taxed in the proceedings authorized hereunder by the respective boards in accordance with the procedure and limitations applicable to taxing costs in a civil action at law in the court of common pleas. The clerk of each board shall be allowed the same fees as clerks of court of the county in which the proceedings arose, and any other fees or costs allowed by law in the court of common pleas in actions at law, and which are taxable as costs, shall apply in the proceedings before the boards and be taxable as costs. The costs so taxed of both parties shall be paid by the State Board of Education.

HISTORY: 1962 Code Section 21‑396; 1952 Code Section 21‑396; 1947 (45) 110.

LIBRARY REFERENCES

Civil Rights 441.

Westlaw Key Number Search: 78k441.

C.J.S. Civil Rights Section 448.