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Court of Appeals No. 44750-9-II

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SUPREME COURT OF THE STATE OF WASHINGTON

LINDA SCHLOSSER,

Appellant,

v.

BETHEL SCHOOL DISTRICT,

Respondent.

ANSWER OF RESPONDENT TO PETITION FOR REVIEW

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I. IDENTITY OF THE RESPONDENT

Respondent Bethel School District requests that this Court deny review of the Court of Appeals decision in *Schlosser v. Bethel Sch. Dist.*, ___ Wn. App. ___, 333 P.3d 475 (2014) (“*Schlosser Opinion*”), attached as Appendix 1 to the Petition for Review.

II. ISSUE PRESENTED FOR REVIEW

1. Did the Court of Appeals correctly affirm the superior court’s affirmation of the hearing officer’s determination that substantial evidence supported the District’s determination that Ms. Schlosser’s performance was unsatisfactory and that the District had sufficient cause to issue the notice of nonrenewal of Ms. Schlosser’s employment contract?

2. Did the Court of Appeals correctly hold that the District’s compliance with the procedural protections in RCW 28A.405.100 and 28A.405.210—which provide for written notice of probable cause to not renew a teacher’s employment contract and an opportunity for the employee to challenge that nonrenewal—satisfy the requirements of the due process clause?

III. STATEMENT OF THE CASE

A. Schlosser’s evaluations indicated poor performance that persisted even after efforts to help her improve.

To better understand the facts of this case, a brief description of the statutory requirements for evaluating teachers would be helpful.

1. Washington law requires frequent evaluations of teachers.

Washington law requires all teachers to be evaluated annually and to be observed at work at least twice a year. RCW 28A.405.100 (2010).¹ Each district must negotiate with the teachers' union and adopt criteria for evaluating teachers. Under the law in effect in 2012, this criteria must include: instructional skill, classroom management, professional preparation and scholarship, effort towards improvement when needed, handling student discipline and attendant problems, interest in teaching students, and knowledge of subject matter.

Prior to nonrenewing a teacher for poor performance, there must be a sixty-school-day probationary period where the teacher is observed and evaluated on at least a monthly basis. RCW 28A.405.100(3)(a)-(4)(a). And before placing a teacher on probation, a school district must conclude that the teacher's overall performance is unsatisfactory, it must notify the teacher in writing of the deficiencies, and it must develop a reasonable plan for improvement to address these deficiencies. RCW 28A.405.100(4)(a).

In addition, the District's Collective Bargaining Agreement ("CBA") with the Bethel Education Association ("BEA") provides that if

¹ In 2012, the legislature revised RCW 28A.405.100 and established new criteria for evaluating teachers. *See* RCW 28A.405.100 (2012). This revised criteria, however, began with the 2013-14 school year. *See* RCW 28A.405.100(7)(c) (2012). Unless otherwise noted, all citations to RCW 28A.405.100 are to the statute in effect in 2012. A copy of RCW 28A.405.100 (2010) is attached as Appendix A.

a teacher receives an unsatisfactory evaluation, the teacher must be placed on the professional assistance track and an outside evaluator appointed to evaluate the teacher's performance and to help the teacher improve. (CP 367-70, 1188-94) If the teacher's performance remains unsatisfactory, the District's superintendent shall issue a notice of probable cause to not renew the teacher's contract. *See* RCW 28A.405.100(4)(a), 28A.405.210.

2. Several evaluators rated Schlosser's performance as unsatisfactory.

From 1998 through August 2012, Lynda Schlosser was a career technical education ("CTE") teacher at Bethel High School. In the 2008-09 school year, Schlosser received unsatisfactory evaluations. (CP 891) During that year, Assistant Principal Susan Mayne evaluated the CTE department. In her evaluation, Mayne rated Schlosser's performance as unsatisfactory in classroom management and handling student discipline. (CP 891) Mayne noted that many students were failing the class because they did not submit their work. Mayne questioned the pacing of the class and recommended that Ms. Schlosser use lesson plans. The evaluation stated that students often engaged in disruptive behavior, such as arm wrestling. (CP 891) Mayne noted that classroom management and student discipline should be a priority for Schlosser in the next school year. (CP 891) Mayne discussed her evaluation with Schlosser. (CP 105)

In Schlosser's evaluation for the 2009-10 school year, Mayne rated Schlosser unsatisfactory in instructional skill. She noted that many students continued to fail Schlosser's classes because they did not

complete their assignments. In addition, Schlosser again failed to use lesson plans. (CP 893)

For the 2010-11 school year, Assistant Principal Brad Westering evaluated the CTE department. Westering conducted three formal observations of Ms. Schlosser's classroom and did multiple "drop-ins" during the school year. (CP 896) He rated her unsatisfactory in instructional skill, classroom management, professional preparation and scholarship, effort towards improvement when needed, and knowledge of subject matter. (CP 896) Westering noted that Schlosser taught "without lesson plans, learning targets, a concise opening activity for immediate subject engagement, [and] little attention to the need for differentiating instruction." (CP 897) Regarding her classroom management, Westering noted that Schlosser "appeared unaware or more importantly, unconcerned that students" napped during class, talked amongst themselves, and ignored Schlosser's instruction. (CP 896)

After Westering evaluated Schlosser's overall performance as unsatisfactory, she was placed on the assistance track. In accordance with the CBA, the District hired Connie West, an outside evaluator and retired administrator from another school district, to develop a plan for improvement and to work with Ms. Schlosser during the 2011-12 school year. (CP 262-63) After she observed Schlosser, West met with her to discuss her observations and to go over ways that Schlosser might improve. (CP 275, 343)

Between October 4, 2011, and January 3, 2012, West observed Schlosser's classroom on 13 occasions. (CP 922-70) Based upon her observations, West rated Schlosser unsatisfactory in instructional skill, classroom management, professional preparation and scholarship, effort towards improvement when needed, handling student discipline and attendant problems, and knowledge of subject matter. She concluded that Schlosser's overall performance was unsatisfactory. (CP 910)

Based upon West's evaluation, Schlosser was placed on probation beginning February 3, 2012. (CP 974) West and Westering were her evaluators during the probationary period. A revised plan of assistance that paralleled the earlier plan was given to Schlosser. (CP 975-83) In addition, the union provided its own evaluator, Carol Coar, to assist Schlosser and to ensure that the district's evaluators were fair in their evaluation of Schlosser. (CP 392-94)

During her probationary period, Schlosser was observed on at least 20 occasions. (CP 985-1142) In an evaluation dated May 10, 2012, West and Westerling noted that there continued to be a lack of instruction in most of Schlosser's classes, a lack of clear directions, and problems with student behavior. The evaluation noted that Schlosser seemed to be unaware of "inappropriate conversations, use of profanity blurted out in the classroom, and students napping during class" and that there was no "climate conducive to learning." (CP 1133)

Because Schlosser failed to improve sufficiently, West and Westerling recommended to Superintendent Thomas Seigel that

Schlosser's employment not be renewed for the following school year. (CP 1144) The union's evaluator, Carol Coar, did not challenge the recommendation to not renew Schlosser's contract. (CP 11, 394)

Relying upon the recommendations of West and Westerling, Superintendent Seigel sent a letter to Schlosser on May 11, 2012 informing her that there was probable cause to not renew her employment contract for the next year. (CP 1146) The Superintendent's letter noted that the nonrenewal of her contract became effective at the end of the 2011-2012 school year (August 31, 2012). (CP 1146). Schlosser then appealed the decision to not renew her contract. (CP 1148).

A hearing was held before the Honorable Robert Peterson (Ret.). After four days of testimony, Judge Peterson found that "Bethel School District has proven by a preponderance of the evidence that Ms. Schlosser's performance was unsatisfactory." (CP 13) As a result, Judge Peterson concluded that the District had probable cause to issue the notice of nonrenewal. (CP 13)

3. The Superior Court and the Court of Appeals affirm the hearing officer's ruling that the District had probable cause to not renew Schlosser's contract.

Schlosser appealed Judge Peterson's decision to Pierce County Superior Court. On April 8, 2013, the Honorable K.A. van Doorninck affirmed the decision of the hearing officer. (CP 3262) The court held that the findings of the hearing officer were supported by substantial evidence and were not clearly erroneous, and that sufficient cause existed to support

the nonrenewal of Schlosser's contract. (CP 3262; Tr. of 3/22/2013 Hearing at 22-23)

In addition, the court held that "the procedures in RCW 28A.405.210 for nonrenewing an employee satisfy the requirements of the Due Process clause." (CP 3263) Judge van Doorninck added that Schlosser suffered no damages even if a reviewing court held that she was entitled to a hearing prior to receiving the notice of probable cause not to renew her contract because Schlosser had an opportunity to be heard before the notice of nonrenewal and she had a hearing after receiving the notice. (CP 3263).

For these reasons, the superior court affirmed the hearing officer's decision. (CP 3263). Schlosser appealed the superior court's affirmance.

On August 14, 2014, the Court of Appeals affirmed: "We hold that Schlosser was not entitled to a predeprivation hearing, that she received due process, and that substantial evidence supported the hearing officer's decision." *Schlosser Opinion*, 333 P.3d at 477. Schlosser has petitioned for review of this decision, primarily contending that it violated her due process rights.

IV. ARGUMENT FOR DENYING REVIEW

A. Review should not be granted because the Court of Appeals correctly followed prior decisions of this Court and the Supreme Court of the United States.

A petition for discretionary review will be granted only:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

(2) If the decision of the Court of Appeals is in conflict with a decision of another division of the Court of Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

Here, review should be denied because the decision of the Court of Appeals is in accord with prior decisions of Washington courts and with the Supreme Court of the United States.

B. The standard of review for a hearing officer's decision.

The Court of Appeals applied the correct standard for reviewing a hearing officer's decision. *Schlosser Opinion*, 333 P.3d at 479. Under this standard, the factual determinations of a hearing officer will be upheld unless they are clearly erroneous. *Griffith v. Seattle Sch. Dist. No. 1*, 165 Wn. App. 663, 670-71, 266 P.3d 932 (2011) *rev. denied*, 174 Wn.2d 1004 (2012). Whether a teacher was deficient in his or her teaching practices or methods is a factual question. *Clarke v. Shoreline School Dist.*, 106 Wn.2d 102, 110, 720 P.2d 793 (1986). Whether sufficient cause exists to nonrenew a teacher is a legal conclusion and "should not be disturbed unless it constitutes an error of law." *Griffith*, 165 Wn. App. at 671. An appellate court applies the same standard of review as the superior court. *Clarke*, 106 Wn.2d at 110.

Here, the hearing officer, Judge Peterson, concluded that “Bethel School District has proven by a preponderance of the evidence that Ms. Schlosser’s performance was unsatisfactory . . . over a two year period leading up to the May 11 notice of non-renewal.” (CP 13) As a result, Judge Peterson held that the District had probable cause to issue the notice of nonrenewal for Schlosser. (CP 13) To understand why the Court of Appeals correctly affirmed the superior court’s affirmance of the hearing officer’s decision requires a discussion of Washington law governing the nonrenewal of teachers.

C. Washington law provides the framework for identifying and evaluating teacher performance deficiencies, and for not renewing contracts because of these deficiencies.

In Washington, the employment of public school teachers is governed by statute. Under RCW 28A.405.210, teachers are employed for one-year terms which are usually renewed each year. RCW 28A.405.210.² The statute, however, permits school districts to *prevent* the renewal of teacher contracts for cause. RCW 28A.405.210. Probable or sufficient cause for the “nonrenewal” of a teacher contract typically occurs when a teacher’s performance deficiencies or a district’s economic difficulties lead a school district to conclude that the retention of the teacher’s services would be inappropriate. *See, e.g., Barnes v. Seattle School District No. 1*, 88 Wn.2d 483, 487, 563 P.2d 199 (1977).

² A copy of RCW 28A.405.210 is attached as Appendix B.

Teacher performance deficiencies are identified and, if possible, corrected through procedures set forth in RCW 28A.405.100. As directed by this statute, principals periodically observe and evaluate teacher performance according to evaluative criteria contained in the collective bargaining agreement between a school district and the union representing the teachers. Such agreements must contain the statutory criteria for evaluating performance set forth in RCW 28A.405.100(1)(a).

If performance deficiencies in any of these areas are found to be sufficiently serious to judge a teacher's performance unsatisfactory, the principal, or principal's designee, may recommend to the superintendent that the teacher be placed on probation for a period of 60 school days. RCW 28A.405.100(4)(a). Observations are conducted during the probationary period to monitor teacher performance carefully.

In addition to the above statutory procedure, the CBA specifies additional steps the District must follow prior to a teacher being placed on probation and ultimately nonrenewed. (CP 1188-94) Most important of the contractual requirements is the use of a professional assistance track and an outside evaluator. (CP 367-70, 1189)

1. Uncorrected performance deficiencies constitute "sufficient cause" for nonrenewal.

If teacher performance deficiencies remain uncorrected at the end of the probationary period, RCW 28A.405.100 expressly provides that probable cause for nonrenewal exists: "Lack of necessary improvement shall be specifically documented in writing with notification to the

probationer and shall constitute grounds for a finding of probable cause.” RCW 28A.405.100 (4)(a). In addition to this express statutory language, Washington courts have held that performance deficiencies constitute cause for the nonrenewal of a teacher’s contract. *See, e.g., Robel v. Highline Sch. Dist.*, 605 Wn.2d 477, 485, 398 P.2d 1 (1965).

When a school district’s superintendent determines that probable cause exists to nonrenew a teacher’s contract, this decision is communicated, in writing, to the teacher, who may request a hearing to determine whether sufficient cause exists for the nonrenewal. RCW 28A.405.210. The hearing procedure is prescribed in RCW 28A.405.310, which closely resembles superior court procedures for cases tried to the court. Under the statute, the hearing must occur within 10 days after the prehearing conference, unless the employee requests a continuance. RCW 28A.405.310(6)(d).

Here, Schlosser requested a hearing and that hearing was conducted before Judge Peterson. After a comprehensive four-day hearing, Judge Peterson found that sufficient cause existed for the District to not renew Schlosser’s employment.

Because Judge Peterson’s findings are not clearly erroneous and because he did not commit an error of law in concluding that sufficient cause existed to nonrenew Ms. Schlosser’s contract, the Court of Appeals and the superior court correctly affirmed the hearing officer’s decision.

The holdings of the Court of Appeals, the superior court and the hearing officer are in accord with court decisions that have recognized the

expertise of school principals and administrators in evaluating teacher qualifications and performance. *See, e.g., Clarke*, 106 Wn.2d at 119 n.4 (refusing to set aside a district's determination that a teacher was unqualified and stating "We decline to substitute our judgment for that of the District's Assistant Superintendent."); *Arnim v. Shoreline School District No. 412*, 23 Wn. App. 150, 594 P.2d 1380, *rev. denied*, 92 Wn.2d 1022 (1979).

2. The District followed the appropriate procedures in determining to not renew Schlosser's contract.

The extensive procedures in RCW 28A.405.100, RCW 28A.405.210, and in the CBA constitute a barrier to arbitrary and capricious action by a school district. These same procedures establish a "road map" that a district can follow to nonrenew the employment contract of a teacher who is not adequately performing in the classroom.

Adhering to these procedures, three experienced administrators conducted numerous observations of Schlosser, observations that indicated that Schlosser was a poor teacher: Students were napping in her class, using profanity, not paying attention, talking with each other, ignoring classroom protocol, and not responding to her instruction. Because Schlosser was a poor teacher who did not improve despite significant efforts to enhance the quality of her teaching, West and Westerling recommended that Schlosser's contract not be renewed. (CP 1144) The union's evaluator did not challenge this recommendation. (CP 11, 394)

Based upon the recommendations of West and Westerling, Superintendent Seigel notified Schlosser in May 2012 that probable cause existed to not renew her contract at the end of the school year. Schlosser appealed that decision. The hearing officer, the superior court and the Court of Appeals all affirmed the determination to not renew Schlosser's contract.

In her Petition, Schlosser argues that she was entitled to a hearing *before* the Superintendent issued his notice of nonrenewal in May 2012. Pet. at 5. This same argument was rejected by the hearing officer, the superior court and the Court of Appeals. As explained below, this Court should also reject Schlosser's argument.

D. Schlosser's argument that she was entitled to a hearing before the Superintendent's notice of nonrenewal without merit because: she confuses nonrenewal with discharge, she was not terminated when she received a notice of nonrenewal, she had an opportunity for a hearing, and she subsequently had a hearing to contest her nonrenewal.

Schlosser's misguided claim that she was entitled to a hearing before getting a letter informing her that her contract would not be renewed for the next school year stems from her misunderstanding of the different procedures governing teacher *nonrenewal* from teacher *discharge*. In her petition, for example, she repeatedly relies upon an employee discharge case, *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985), to support her claim. See Pet. at 5, 9-10.

Schlosser's attempt at grafting the procedures for discharge onto the procedures for nonrenewal is not required by Washington law, by U.S. Supreme Court precedent, or by the facts of this case. Moreover, requiring school districts to hold hearings prior to issuing notices of nonrenewal would have significant consequences as school districts in Washington may issue thousands of nonrenewal notices in any given year. For these reasons, the Court of Appeals correctly rejected Schlosser's claim that she was entitled to a hearing before receiving a notice that her contract would not be renewed for the next school year.

1. There is a fundamental difference between nonrenewal and discharge and this difference dictates the due process protections received by Schlosser.

Under RCW 28A.405.210, the District may elect to not renew the employment contract of a teacher for the next school year. Nonrenewal may be for financial reasons or for performance deficiencies, and it severs the employment relationship prospectively at the end of the current school year. Conversely, *discharge*, which is typically for employee misconduct, can occur at any time. Discharge is governed by the procedures found in RCW 28A.405.300.

If Ms. Schlosser had been discharged for misconduct on May 11, 2012, then she would have been entitled to a pre-termination hearing. This pre-termination hearing is called a *Loudermill* hearing after the Supreme Court's holding in *Cleveland Board of Education v. Loudermill*. In *Loudermill*, a security guard was fired for failing to disclose a felony conviction on his job application. The employee claimed that he

was fired before he was afforded an opportunity to respond to the charge of dishonesty or to challenge his dismissal. *Loudermill*, 470 U.S. at 535. The Court held that the employee was entitled to a hearing before being terminated and that at this hearing the employee should be given notice of the charges against him, the employer's evidence and an opportunity to present his side of the story. *Loudermill*. 470 U.S. at 546. As the Court of Appeals noted, *Loudermill* is an employee discharge case it is inapplicable to the notice of nonrenewal of a teacher for performance deficiencies. *Schlosser Opinion*, 333 P.3d at 481.

A more relevant case involving the nonrenewal of an employee's contract is *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972), a case that is largely ignored by Schlosser. It is *Roth*, and the Washington cases that apply its principles, that govern this case.

2. Neither *Roth* nor Washington case law require a hearing prior to issuing a notice of nonrenewal.

In *Roth*, the U.S. Supreme Court considered whether due process requirements, namely a statement of reasons and a hearing, applied to a school's decision not to renew a non-tenured teacher's one-year contract. *Roth*, 408 U.S. at 569. The Court held that the teacher did not have a property right in having his one-year contract renewed because the contract expressly terminated on a specific date and that state law did not require that his contract be renewed. *Roth*, 408 U.S. at 578. Finding no property interest in having the contract renewed, the Court held that due

process did not require a hearing in which the non-tenured teacher could challenge the school's decision not to renew his one-year contract. *Roth* at 579. As the *Roth* court held: “the respondent . . . did not have a property interest sufficient to require the University authorities to give him a hearing when they declined to renew his contract of employment.” *Roth*, 408 U.S. at 577-78.³

Washington has long followed the nonrenewal/discharge distinction under *Roth* and *Loudermill*. See, e.g., *Barnes*, 88 Wn.2d at 487-88 (the discharge statute was unavailable to terminate employees whose positions had been eliminated because of the adverse financial condition of the district); *Pierce v. Lake Stevens School District*, 84 Wn.2d 772, 775-76, 529 P.2d 810 (1974) (citing *Roth* for the proposition that different procedures govern nonrenewal and discharge); *Petroni v. Bd. of Directors of Deer Park Sch. Dist. No. 414*, 127 Wn. App. 722, 728, 113 P.3d 10 (2005) (the procedural protections governing discharge do not apply to the nonrenewal of a teacher); and *Carlson v. Centralia School District*, 27 Wn. App. 599, 619 P.2d 998 (1980) (Washington’s statutory process for teacher nonrenewal satisfies due process requirements, citing *Pierce*).

In *Pierce*, for example, the court noted that different procedures govern nonrenewal and discharge. *Pierce*, 84 Wn.2d at 775-76. The court then held that the statutory notice requirement for the nonrenewal of a

³ The teacher in *Roth* even claimed that he had a right to re-employment because most teachers were routinely re-hired each year. The Court dismissed that argument in a footnote, noting that there is no common law right to re-employment. *Roth*, 408 U.S. at 578 n.16

teacher satisfied due process. 84 Wn.2d at 777 (“The procedural requirements of due process as laid down by the Supreme Court in the cited cases are met by these statutes.”) Thus, the *Pierce* court held that the district’s notice of nonrenewal did not violate the teachers’ due process rights nor their rights under RCW 28A.67.070 (now RCW 28A.405.210). *Pierce*, 84 Wn.2d at 777-78.

Consistent with these decisions, the Court of Appeals correctly recognized the distinction between nonrenewal and discharge. *Schlosser Opinion*, 333 P.3d at 479. As the court stated: “This distinction is fatal to Schlosser’s claims.” *Id.*

Similarly, the Court of Appeals correctly recognized that Washington is a non-tenure state for high school teachers. *Schlosser Opinion*, 333 P.3d at 480 (citing *Kirk v. Miller*, 83 Wn.2d 777, 522 P.2d 843 (1974)). The *Kirk* court noted that by statute in Washington, teachers have one-year contracts that automatically renew in the absence of a nonrenewal notice. *Kirk*, 83 Wn.2d at 780. This system of one-year contracts does not establish the system of tenure that some other states provide. *Id.* (“We emphasize that a continuing contract statute such as ours, providing for automatic renewal of teachers’ contracts in the absence of notice, does not establish tenure for teachers”)

These distinctions between teacher nonrenewal versus discharge and between teachers on a continuing contract versus tenure are important here because they dictate the applicable legal precedent. This is a case of nonrenewal of a teacher on a one-year contract. It is not a teacher

discharge case, or a case of nonrenewal of a tenured teacher. Schlosser did not have tenure; she had a one-year contract with no guarantee of renewal. Therefore, *Roth* and its Washington progeny (e.g., *Barnes*, *Pierce*, *Petroni*, and *Carlson*) control this case.

Schlosser's petition, however, fails to mention *Roth* while largely ignoring the *Pierce*, *Barnes*, *Carlson*, and *Kirk* cases. Rather than discussing nonrenewal cases, Schlosser relies solely on teacher discharge, teacher tenure, or other cases from other jurisdictions with circumstances that are irrelevant to this case. Indeed, Schlosser cites no case from any jurisdiction holding that due process requires a hearing before a school district may decide not to renew, or issue a notice of probable cause not to renew, a non-tenured teacher's one-year contract at the end of its term.

E. The procedural due process protections received by Ms. Schlosser far transcended those required by *Roth*.

Roth and its Washington progeny articulate the Constitutional due process to which Ms. Schlosser, as a non-tenured teacher facing nonrenewal of her one-year contract, is entitled. Here, the District—because it followed Washington law and the CBA—provided Schlosser with greater due process protection than required under *Roth* because it provided her with a right to a hearing under RCW 28A.405.210

Even before Judge Peterson held that the District had probable cause to issue its notice of nonrenewal, the District's procedures gave Schlosser many opportunities to be heard. Since 2008, Schlosser's classroom performance had been evaluated by four different, experienced

educators, including one appointed by Schlosser's union. In many meetings with these evaluators between 2008-2012, Schlosser was given ample opportunity to voice her concerns and to participate in the process of improving her performance. When Schlosser's classroom performance did not sufficiently improve over those four years, she was put on probation.

When the Superintendent notified Schlosser in May 2012, that he had found probable cause to not renew her contract, that notice could not have surprised her. In addition, Schlosser had the right to a hearing to contest her nonrenewal and she took advantage of that right.

F. Requiring a hearing before every notice of nonrenewal would overburden school districts throughout Washington.


Often, a superintendent will determine that there is probable cause not to renew a teacher's contract for financial reasons requiring a reduction in force, or "RIF." RCW 28A.405.210. At times, these RIF notifications have been sent to a large number of teachers throughout the state. In 2009, for example, 137 of Washington's 295 school districts issued RIF notices to more than 1800 classroom teachers—representing 3% of all teachers in Washington. (CP 3204-32) The Bethel School District itself issued 67 RIF notices in 2011 and 220 RIF notices in 2009. (CP 3234-38). Requiring a hearing before all of these notices could be sent would be extremely burdensome upon school districts and not in the public interest.

V. CONCLUSION

Review should not be granted because the decision of the Court of Appeals is in accord with prior decisions of the U.S. Supreme Court and Washington courts. Under these decisions and the procedural protections found in RCW 28A.405.100 and RCW 28A.405.210, Schlosser had no right to a hearing before the Superintendent issued his notice of probable cause to not renew her contract. Because the hearing officer's findings of fact were not clearly erroneous and because the hearing officer did not commit an error of law when he held that the District had sufficient cause to not renew Schlosser's contract, the Court of Appeals correctly affirmed the superior court's affirmation of the hearing officer. For these reasons, the District requests that this Court deny the petition for review.

RESPECTFULLY SUBMITTED this 20th day of October, 2014.

VANDEBERG JOHNSON &
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APPENDIX A

prehension of the rights, duty and dignity of American citizenship, shall be permitted to teach in any common school in this state.

(2) Any person teaching in any school in violation of this section, and any school director knowingly permitting any person to teach in any school in violation of this section is guilty of a misdemeanor. [2003 c 53 § 167; 1990 c 33 § 384; 1969 ex.s. c 223 § 28A.67.030. Prior: 1919 c 38 § 2; RRS § 4846. Formerly RCW 28A.67.030, 28.67.030.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

28A.405.060 Course of study and regulations—Enforcement—Withholding salary warrant for failure. Certificated employees shall faithfully enforce in the common schools the course of study and regulations prescribed, whether regulations of the district, the superintendent of public instruction, or the state board of education, and shall furnish promptly all information relating to the common schools which may be requested by the educational service district superintendent.

Any certificated employee who wilfully refuses or neglects to enforce the course of study or the rules and regulations as above in this section required, shall not be allowed by the directors any warrant for salary due until said person shall have complied with said requirements. [1975 1st ex.s. c 275 § 132; 1971 c 48 § 49; 1969 ex.s. c 223 § 28A.67.060. Prior: (i) 1909 c 97 p 307 § 4; RRS § 4850; prior: 1899 c 142 § 11; 1897 c 118 § 54; 1886 p 18 § 47. Formerly RCW 28.67.060. (ii) 1909 c 97 p 360 § 8; RRS § 5051; prior: 1903 c 156 § 8; 1897 c 118 § 166. Formerly RCW 28A.67.060, 28.87.150.]

28A.405.070 Job sharing. Effective December 31, 1995, school and educational service districts shall have a policy on the sharing of jobs by district employees. [1995 c 335 § 701; 1989 c 206 § 1. Formerly RCW 28A.58.580.]

Additional notes found at www.leg.wa.gov

CRITERIA FOR EVALUATION AND MODEL PROGRAMS

28A.405.100 Minimum criteria for the evaluation of certificated employees, including administrators—Procedure—Scope—Models—Penalty. (1)(a) Except as provided in subsection (2) of this section, the superintendent of public instruction shall establish and may amend from time to time minimum criteria for the evaluation of the professional performance capabilities and development of certificated classroom teachers and certificated support personnel. For classroom teachers the criteria shall be developed in the following categories: Instructional skill; classroom management, professional preparation and scholarship; effort toward improvement when needed; the handling of student discipline and attendant problems; and interest in teaching pupils and knowledge of subject matter.

(b) Every board of directors shall, in accordance with procedure provided in RCW 41.59.010 through 41.59.170, 41.59.910 and 41.59.920, establish evaluative criteria and procedures for all certificated classroom teachers and certificated support personnel. The evaluative criteria must contain

as a minimum the criteria established by the superintendent of public instruction pursuant to this section and must be prepared within six months following adoption of the superintendent of public instruction's minimum criteria. The district must certify to the superintendent of public instruction that evaluative criteria have been so prepared by the district.

(2)(a) Pursuant to the implementation schedule established in subsection (7)(b) of this section, every board of directors shall, in accordance with procedures provided in RCW 41.59.010 through 41.59.170, 41.59.910, and 41.59.920, establish revised evaluative criteria and a four-level rating system for all certificated classroom teachers.

(b) The minimum criteria shall include: (i) Centering instruction on high expectations for student achievement; (ii) demonstrating effective teaching practices; (iii) recognizing individual student learning needs and developing strategies to address those needs; (iv) providing clear and intentional focus on subject matter content and curriculum; (v) fostering and managing a safe, positive learning environment; (vi) using multiple student data elements to modify instruction and improve student learning; (vii) communicating and collaborating with parents and [the] school community; and (viii) exhibiting collaborative and collegial practices focused on improving instructional practice and student learning.

(c) The four-level rating system used to evaluate the certificated classroom teacher must describe performance along a continuum that indicates the extent to which the criteria have been met or exceeded. When student growth data, if available and relevant to the teacher and subject matter, is referenced in the evaluation process it must be based on multiple measures that can include classroom-based, school-based, district-based, and state-based tools. As used in this subsection, "student growth" means the change in student achievement between two points in time.

(3)(a) Except as provided in subsection (10) of this section, it shall be the responsibility of a principal or his or her designee to evaluate all certificated personnel in his or her school. During each school year all classroom teachers and certificated support personnel shall be observed for the purposes of evaluation at least twice in the performance of their assigned duties. Total observation time for each employee for each school year shall be not less than sixty minutes. An employee in the third year of provisional status as defined in RCW 28A.405.220 shall be observed at least three times in the performance of his or her duties and the total observation time for the school year shall not be less than ninety minutes. Following each observation, or series of observations, the principal or other evaluator shall promptly document the results of the observation in writing, and shall provide the employee with a copy thereof within three days after such report is prepared. New employees shall be observed at least once for a total observation time of thirty minutes during the first ninety calendar days of their employment period.

(b) As used in this subsection and subsection (4) of this section, "employees" means classroom teachers and certificated support personnel.

(4)(a) At any time after October 15th, an employee whose work is not judged satisfactory based on district evaluation criteria shall be notified in writing of the specific areas of deficiencies along with a reasonable program for improvement. During the period of probation, the employee may not

be transferred from the supervision of the original evaluator. Improvement of performance or probable cause for nonrenewal must occur and be documented by the original evaluator before any consideration of a request for transfer or reassignment as contemplated by either the individual or the school district. A probationary period of sixty school days shall be established. The establishment of a probationary period does not adversely affect the contract status of an employee within the meaning of RCW 28A.405.300. The purpose of the probationary period is to give the employee opportunity to demonstrate improvements in his or her areas of deficiency. The establishment of the probationary period and the giving of the notice to the employee of deficiency shall be by the school district superintendent and need not be submitted to the board of directors for approval. During the probationary period the evaluator shall meet with the employee at least twice monthly to supervise and make a written evaluation of the progress, if any, made by the employee. The evaluator may authorize one additional certificated employee to evaluate the probationer and to aid the employee in improving his or her areas of deficiency; such additional certificated employee shall be immune from any civil liability that might otherwise be incurred or imposed with regard to the good faith performance of such evaluation. The probationer may be removed from probation if he or she has demonstrated improvement to the satisfaction of the principal in those areas specifically detailed in his or her initial notice of deficiency and subsequently detailed in his or her improvement program. Lack of necessary improvement during the established probationary period, as specifically documented in writing with notification to the probationer and shall constitute grounds for a finding of probable cause under RCW 28A.405.300 or 28A.405.210.

(b) Immediately following the completion of a probationary period that does not produce performance changes detailed in the initial notice of deficiencies and improvement program, the employee may be removed from his or her assignment and placed into an alternative assignment for the remainder of the school year. This reassignment may not displace another employee nor may it adversely affect the probationary employee's compensation or benefits for the remainder of the employee's contract year. If such reassignment is not possible, the district may, at its option, place the employee on paid leave for the balance of the contract term.

(5) Every board of directors shall establish evaluative criteria and procedures for all superintendents, principals, and other administrators. It shall be the responsibility of the district superintendent or his or her designee to evaluate all administrators. Except as provided in subsection (6) of this section, such evaluation shall be based on the administrative position job description. Such criteria, when applicable, shall include at least the following categories: Knowledge of, experience in, and training in recognizing good professional performance, capabilities and development; school administration and management; school finance; professional preparation and scholarship; effort toward improvement when needed; interest in pupils, employees, patrons and subjects taught in school; leadership; and ability and performance of evaluation of school personnel.

(6)(a) Pursuant to the implementation schedule established by subsection (7)(b) of this section, every board of

directors shall establish revised evaluative criteria and a four-level rating system for principals.

(b) The minimum criteria shall include: (i) Creating a school culture that promotes the ongoing improvement of learning and teaching for students and staff; (ii) demonstrating commitment to closing the achievement gap; (iii) providing for school safety; (iv) leading the development, implementation, and evaluation of a data-driven plan for increasing student achievement, including the use of multiple student data elements; (v) assisting instructional staff with alignment of curriculum, instruction, and assessment with state and local district learning goals; (vi) monitoring, assisting, and evaluating effective instruction and assessment practices; (vii) managing both staff and fiscal resources to support student achievement and legal responsibilities; and (viii) partnering with the school community to promote student learning.

(c) The four-level rating system used to evaluate the principal must describe performance along a continuum that indicates the extent to which the criteria have been met or exceeded. When available, student growth data that is referenced in the evaluation process must be based on multiple measures that can include classroom-based, school-based, district-based, and state-based tools. As used in this subsection, "student growth" means the change in student achievement between two points in time.

(7)(a) The superintendent of public instruction, in collaboration with state associations representing teachers, principals, administrators, and parents, shall create models for implementing the evaluation system criteria, student growth tools, professional development programs, and evaluator training for certificated classroom teachers and principals. Human resources specialists, professional development experts, and assessment experts must also be consulted. Due to the diversity of teaching assignments and the many developmental levels of students, classroom teachers and principals must be prominently represented in this work. The models must be available for use in the 2011-12 school year.

(b) A new certificated classroom teacher evaluation system that implements the provisions of subsection (2) of this section and a new principal evaluation system that implements the provisions of subsection (6) of this section shall be phased-in beginning with the 2010-11 school year by districts identified in (c) of this subsection and implemented in all school districts beginning with the 2013-14 school year.

(c) A set of school districts shall be selected by the superintendent of public instruction to participate in a collaborative process resulting in the development and piloting of new certificated classroom teacher and principal evaluation systems during the 2010-11 and 2011-12 school years. These school districts must be selected based on: (i) The agreement of the local associations representing classroom teachers and principals to collaborate with the district in this developmental work and (ii) the agreement to participate in the full range of development and implementation activities, including: Development of rubrics for the evaluation criteria and ratings in subsections (2) and (6) of this section; identification of or development of appropriate multiple measures of student growth in subsections (2) and (6) of this section; development of appropriate evaluation system forms; participation in professional development for principals and classroom teach-

ers regarding the content of the new evaluation system; participation in evaluator training; and participation in activities to evaluate the effectiveness of the new systems and support programs. The school districts must submit to the office of the superintendent of public instruction data that is used in evaluations and all district-collected student achievement, aptitude, and growth data regardless of whether the data is used in evaluations. If the data is not available electronically, the district may submit it in nonelectronic form. The superintendent of public instruction must analyze the districts' use of student data in evaluations, including examining the extent that student data is not used or is underutilized. The superintendent of public instruction must also consult with participating districts and stakeholders, recommend appropriate changes, and address statewide implementation issues. The superintendent of public instruction shall report evaluation system implementation status, evaluation data, and recommendations to appropriate committees of the legislature and governor by July 1, 2011, and at the conclusion of the development phase by July 1, 2012. In the July 1, 2011 report, the superintendent shall include recommendations for whether a single statewide evaluation model should be adopted, whether modified versions developed by school districts should be subject to state approval, and what the criteria would be for determining if a school district's evaluation model meets or exceeds a statewide model. The report shall also identify challenges posed by requiring a state approval process.

(8) Each certificated classroom teacher and certificated support personnel shall have the opportunity for confidential conferences with his or her immediate supervisor on no less than two occasions in each school year. Such confidential conference shall have as its sole purpose the aiding of the administrator in his or her assessment of the employee's professional performance.

(9) The failure of any evaluator to evaluate or supervise or cause the evaluation or supervision of certificated classroom teachers and certificated support personnel or administrators in accordance with this section, as now or hereafter amended, when it is his or her specific assigned or delegated responsibility to do so, shall be sufficient cause for the nonrenewal of any such evaluator's contract under RCW 28A.405.210, or the discharge of such evaluator under RCW 28A.405.300.

(10) After a certificated classroom teacher or certificated support personnel has four years of satisfactory evaluations under subsection (1) of this section or has received one of the two top ratings for four years under subsection (2) of this section, a school district may use a short form of evaluation, a locally bargained evaluation emphasizing professional growth, an evaluation under subsection (1) or (2) of this section, or any combination thereof. The short form of evaluation shall include either a thirty minute observation during the school year with a written summary or a final annual written evaluation based on the criteria in subsection (1) or (2) of this section and based on at least two observation periods during the school year totaling at least sixty minutes without a written summary of such observations being prepared. A locally bargained short-form evaluation emphasizing professional growth must provide that the professional growth activity conducted by the certificated classroom teacher be

specifically linked to one or more of the certificated classroom teacher evaluation criteria. However, the evaluation process set forth in subsection (1) or (2) of this section shall be followed at least once every three years unless this time is extended by a local school district under the bargaining process set forth in chapter 41.59 RCW. The employee or evaluator may require that the evaluation process set forth in subsection (1) or (2) of this section be conducted in any given school year. No evaluation other than the evaluation authorized under subsection (1) or (2) of this section may be used as a basis for determining that an employee's work is not satisfactory under subsection (1) or (2) of this section or as probable cause for the nonrenewal of an employee's contract under RCW 28A.405.210 unless an evaluation process developed under chapter 41.59 RCW determines otherwise. [2010 c 235 § 202; 1997 c 278 § 1; 1994 c 115 § 1; 1990 c 33 § 386; 1985 c 420 § 6; 1975-'76 2nd ex.s. c 114 § 3; 1975 1st ex.s. c 288 § 22; 1969 ex.s. c 34 § 22. Formerly RCW 28A.67.065.]

Finding—2010 c 235: See note following RCW 28A.405.245.

Construction of chapter—Employee's rights preserved: See RCW 41.59.920.

Construction of chapter—Employer's responsibilities and rights preserved: See RCW 41.59.930.

Criteria used for evaluation of staff members to be included in guide: RCW 28A.150.230.

Additional notes found at www.leg.wa.gov

28A.405.102 Analysis of evaluation systems. (1) Representatives of the office of the superintendent of public instruction and statewide associations representing administrators, principals, human resources specialists, and certificated classroom teachers shall analyze how the evaluation systems in RCW 28A.405.100 (2) and (6) affect issues related to a change in contract status.

(2) The analysis shall be conducted during each of the phase-in years of the certificated classroom teacher and principal evaluation systems. The analysis shall include: Procedures, timelines, probationary periods, appeal procedures, and other items related to the timely exercise of employment decisions and due process provisions for certificated classroom teachers and principals. [2010 c 235 § 204.]

Finding—2010 c 235: See note following RCW 28A.405.245.

28A.405.104 Professional development funding for new teachers—Districts participating in evaluation system in RCW 28A.405.100 (2) and (6). If funds are provided for professional development activities designed specifically for first through third-year teachers, the funds shall be allocated first to districts participating in the evaluation systems in RCW 28A.405.100 (2) and (6) before the required implementation date under that section. [2010 c 235 § 205.]

Finding—2010 c 235: See note following RCW 28A.405.245.

28A.405.110 Evaluations—Legislative findings. The legislature recognizes the importance of teachers in the educational system. Teachers are the fundamental element in assuring a quality education for the state's and the nation's children. Teachers, through their direct contact with children, have a great impact on the development of the child. The legislature finds that this important role of the teacher requires an assurance that teachers are as successful as possi-

APPENDIX B

ble in attaining the goal of a well-educated society. The legislature finds, therefore, that the evaluation of those persons seeking to enter the teaching profession is no less important than the evaluation of those persons currently teaching. The evaluation of persons seeking teaching credentials should be strenuous while making accommodations uniquely appropriate to the applicants. Strenuous teacher training and preparation should be complemented by examinations of prospective teachers prior to candidates being granted official certification by the professional educator standards board. Teacher preparation program entrance evaluations, teacher training, teacher preparation program exit examinations, official certification, in-service training, and ongoing evaluations of individual progress and professional growth are all part of developing and maintaining a strong precertification and postcertification professional education system.

The legislature further finds that an evaluation system for teachers has the following elements, goals, and objectives: (1) An evaluation system must be meaningful, helpful, and objective; (2) an evaluation system must encourage improvements in teaching skills, techniques, and abilities by identifying areas needing improvement; (3) an evaluation system must provide a mechanism to make meaningful distinctions among teachers and to acknowledge, recognize, and encourage superior teaching performance; and (4) an evaluation system must encourage respect in the evaluation process by the persons conducting the evaluations and the persons subject to the evaluations through recognizing the importance of objective standards and minimizing subjectivity. [2006 c 263 § 806; 1985 c 420 § 1. Formerly RCW 28A.67.205.]

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Reviser's note: (1) 1985 ex.s. c 6 § 501 provides specific funding for the purposes of this act.

(2) 1985 ex.s. c 6 took effect June 27, 1985.

Additional notes found at www.leg.wa.gov

28A.405.120 Training for evaluators. School districts shall require each administrator, each principal, or other supervisory personnel who has responsibility for evaluating classroom teachers to have training in evaluation procedures. [1995 c 335 § 401; 1985 c 420 § 3. Formerly RCW 28A.67.210.]

Additional notes found at www.leg.wa.gov

28A.405.130 Training in evaluation procedures required. No administrator, principal, or other supervisory personnel may evaluate a teacher without having received training in evaluation procedures. [1985 c 420 § 4. Formerly RCW 28A.67.215.]

Additional notes found at www.leg.wa.gov

28A.405.140 Assistance for teacher may be required after evaluation. After an evaluation conducted pursuant to RCW 28A.405.100, the principal or the evaluator may require the teacher to take in-service training provided by the district in the area of teaching skills needing improvement, and may require the teacher to have a mentor for purposes of achieving such improvement. [1993 c 336 § 403; 1990 c 33 § 387; 1985 c 420 § 5. Formerly RCW 28A.67.220.]

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.150.210.

Additional notes found at www.leg.wa.gov

CONDITIONS AND CONTRACTS OF EMPLOYMENT

28A.405.200 Annual salary schedules as basis for salaries of certificated employees. Every school district by action of its board of directors shall adopt annual salary schedules and reproduce the same by printing, mimeographing or other reasonable method, which shall be the basis for salaries for all certificated employees in the district. [1969 ex.s. c 283 § 1. Formerly RCW 28A.67.066, 28.67.066.]

Additional notes found at www.leg.wa.gov

28A.405.210 Conditions and contracts of employment—Determination of probable cause for nonrenewal of contracts—Nonrenewal due to enrollment decline or revenue loss—Notice—Opportunity for hearing. No teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with a school district, hereinafter referred to as "employee", shall be employed except by written order of a majority of the directors of the district at a regular or special meeting thereof, nor unless he or she is the holder of an effective teacher's certificate or other certificate required by law or the Washington professional educator standards board for the position for which the employee is employed. *

The board shall make with each employee employed by it a written contract, which shall be in conformity with the laws of this state, and except as otherwise provided by law, limited to a term of not more than one year. Every such contract shall be made in duplicate, one copy to be retained by the school district superintendent or secretary and one copy to be delivered to the employee. No contract shall be offered by any board for the employment of any employee who has previously signed an employment contract for that same term in another school district of the state of Washington unless such employee shall have been released from his or her obligations under such previous contract by the board of directors of the school district to which he or she was obligated. Any contract signed in violation of this provision shall be void.

In the event it is determined that there is probable cause or causes that the employment contract of an employee should not be renewed by the district for the next ensuing term such employee shall be notified in writing on or before May 15th preceding the commencement of such term of that determination, or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June 15th, which notification shall specify the cause or causes for nonrenewal of contract. Such determination of probable cause for certificated employees, other than the superintendent, shall be made by the superintendent. Such notice shall be served upon the employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the president, chair or secretary of the board of directors of the district within ten days after receiv- *

ing such notice, shall be granted opportunity for hearing pursuant to RCW 28A.405.310 to determine whether there is sufficient cause or causes for nonrenewal of contract: PROVIDED, That any employee receiving notice of nonrenewal of contract due to an enrollment decline or loss of revenue may, in his or her request for a hearing, stipulate that initiation of the arrangements for a hearing officer as provided for by RCW 28A.405.310(4) shall occur within ten days following July 15 rather than the day that the employee submits the request for a hearing. If any such notification or opportunity for hearing is not timely given, the employee entitled thereto shall be conclusively presumed to have been reemployed by the district for the next ensuing term upon contractual terms identical with those which would have prevailed if his or her employment had actually been renewed by the board of directors for such ensuing term.

This section shall not be applicable to "provisional employees" as so designated in RCW 28A.405.220; transfer to a subordinate certificated position as that procedure is set forth in RCW 28A.405.230 or 28A.405.245 shall not be construed as a nonrenewal of contract for the purposes of this section. [2010 c 235 § 303; 2009 c 57 § 1; 2005 c 497 § 216; 1996 c 201 § 1; 1990 c 33 § 390. Prior: 1983 c 83 § 1; 1983 c 56 § 11; 1975-'76 2nd ex.s. c 114 § 4; 1975 1st ex.s. c 275 § 133; 1973 c 49 § 2; 1970 ex.s. c 15 § 16; prior: 1969 ex.s. c 176 § 143; 1969 ex.s. c 34 § 12; 1969 ex.s. c 15 § 2; 1969 ex.s. c 223 § 28A.67.070; prior: 1961 c 241 § 1; 1955 c 68 § 3; prior: (i) 1909 c 97 p 307 § 5; 1897 c 118 § 55; 1891 c 127 § 14; 1890 p 369 § 37; 1886 p 18 § 47; Code 1881 § 3200; RRS § 4851. (ii) 1943 c 52 § 1, part; 1941 c 179 § 1, part; 1939 c 131 § 1, part; 1925 ex.s. c 57 § 1, part; 1919 c 89 § 3, part; 1915 c 44 § 1, part; 1909 c 97 p 285 § 2, part; 1907 c 240 § 5, part; 1903 c 104 § 17, part; 1901 c 41 § 3, part; 1897 c 118 § 40, part; 1890 p 364 § 26, part; Rem. Supp. 1943 § 4776, part. Formerly RCW 28A.67.070, 28.67.070.]

Finding—2010 c 235: See note following RCW 28A.405.245.

Effective date—2009 c 57: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 10, 2009]." [2009 c 57 § 5.]

Intent—Part headings not law—Effective date—2005 c 497: See notes following RCW 28A.305.011.

Minimum criteria for the evaluation of certificated employees, including administrators—Procedure—Scope—Models—Penalty: RCW 28A.405.100.

School superintendent—RCW 28A.405.210 not applicable to contract renewal: RCW 28A.400.010.

Additional notes found at www.leg.wa.gov

28A.405.220 Conditions and contracts of employment—Nonrenewal of provisional employees—Notice—Procedure. (1) Notwithstanding the provisions of RCW 28A.405.210, every person employed by a school district in a teaching or other nonsupervisory certificated position shall be subject to nonrenewal of employment contract as provided in this section during the first three years of employment by such district, unless: (a) The employee has previously completed at least two years of certificated employment in another school district in the state of Washington, in which case the employee shall be subject to nonrenewal of employment contract pursuant to this section during the first year of employment with the new district; or (b) the school district

superintendent may make a determination to remove an employee from provisional status if the employee has received one of the top two evaluation ratings during the second year of employment by the district. Employees as defined in this section shall hereinafter be referred to as "provisional employees."

(2) In the event the superintendent of the school district determines that the employment contract of any provisional employee should not be renewed by the district for the next ensuing term such provisional employee shall be notified thereof in writing on or before May 15th preceding the commencement of such school term, or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June 15th, which notification shall state the reason or reasons for such determination. Such notice shall be served upon the provisional employee personally, or by certified or registered mail, or by leaving a copy of the notice at the place of his or her usual abode with some person of suitable age and discretion then resident therein. The determination of the superintendent shall be subject to the evaluation requirements of RCW 28A.405.100.

(3) Every such provisional employee so notified, at his or her request made in writing and filed with the superintendent of the district within ten days after receiving such notice, shall be given the opportunity to meet informally with the superintendent for the purpose of requesting the superintendent to reconsider his or her decision. Such meeting shall be held no later than ten days following the receipt of such request, and the provisional employee shall be given written notice of the date, time and place of meeting at least three days prior thereto. At such meeting the provisional employee shall be given the opportunity to refute any facts upon which the superintendent's determination was based and to make any argument in support of his or her request for reconsideration.

(4) Within ten days following the meeting with the provisional employee, the superintendent shall either reinstate the provisional employee or shall submit to the school district board of directors for consideration at its next regular meeting a written report recommending that the employment contract of the provisional employee be nonrenewed and stating the reason or reasons therefor. A copy of such report shall be delivered to the provisional employee at least three days prior to the scheduled meeting of the board of directors. In taking action upon the recommendation of the superintendent, the board of directors shall consider any written communication which the provisional employee may file with the secretary of the board at any time prior to that meeting.

(5) The board of directors shall notify the provisional employee in writing of its final decision within ten days following the meeting at which the superintendent's recommendation was considered. The decision of the board of directors to nonrenew the contract of a provisional employee shall be final and not subject to appeal.

(6) This section applies to any person employed by a school district in a teaching or other nonsupervisory certificated position after June 25, 1976. This section provides the exclusive means for nonrenewing the employment contract of a provisional employee and no other provision of law shall be applicable thereto, including, without limitation, RCW 28A.405.210 and chapter 28A.645 RCW. [2010 c 235 § 203;