

**THE BROWARD COUNTY SCHOOL BOARD, FLORIDA**

THE BROWARD COUNTY SCHOOL BOARD<sup>1</sup>,

Petitioner,

v.

SHEILA LEWIS,

Respondent.

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**SUPERINTENDENT’S RESPONSE TO LEWIS’ SUPPLEMENT TO AMENDED  
REQUEST FOR ADMINISTRATIVE HEARING**

THIS CAUSE concerns the request for the AMENDED REQUEST FOR ADMINISTRATIVE HEARING (“Amended Request”) filed by SHEILA LEWIS (“Lewis”) with the Broward County School Board (hereinafter “School Board”).

1. On or about June 4, 2019, Sheila Lewis filed her Amended Request.
2. In accordance with statutory requirements, the undersigned notified Lewis’ counsel that the Superintendent would recommend that the School Board dismiss the Amended Request and invited Lewis to submit any amendments to the request or other response that she wanted the School Board to consider in making its decision. A copy of the Superintendent’s recommendation for dismissal was attached.
3. On or about July 8, 2019, Lewis filed a Supplement to Amended Request for Administrative Hearing (“Supplement”). That Supplement includes certain statements of law which require a response.
4. The Superintendent’s recommendation to dismiss the Amended Request is based on

<sup>1</sup> The style of the case has been changed to reflect the governing agency pursuant to 28-106.2015 (4) F.A.C. 2019.

the simple proposition that Lewis lost her **professional service contract** as a teacher when she accepted her position as an Assistant Principal in 2008, citing Bd. Of Ed of Levy v. Terrell, 967 So. 2d 394 (Fla. 1st DCA 2007).

5. Lewis attempts to circumvent that inescapable legal conclusion by suggesting that the Terrell decision was based on a provision that had once been included in a collective bargaining agreement<sup>2</sup>, but was later repealed. The Superintendent strongly disagrees.
6. First, rights under a professional services contract exist by operation of law, under § 1012.33, Fla. Stat., and may not be eliminated by a collective bargaining agreement or policy. Just as this School Board lacks the authority to take away a teacher's statutory professional service contract rights by contract or policy, the Board in Terrell lacked such authority too. As a result, Lewis' suggestion that Terrell is premised on the idea that the Board in that case took some action to eliminate the former administrator's professional service contract rights is fundamentally misplaced.
7. Second, in claiming that she is entitled to return as a teacher under her previous professional service contract which she earned before leaving teaching to serve as an Administrator, Lewis fails to recognize the fundamental difference between her former **professional service contract** and a **continuing contract**.
8. The law changed to prohibit the issuance of any new continuing contracts after 1984, although teachers who already held such a contract retained all of their previously vested rights. Lewis does not have a continuing contract.
9. Until 1981, § 231.36, Fla. Stat.,<sup>3</sup> contained an express provision stating:

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<sup>2</sup> While Lewis suggests that the claim of the employee in Terrell was based on a former "collective bargaining agreement," the employees claim in that case was based on a former board policy. Such misstatement appears innocent and is immaterial to the analysis below.

<sup>3</sup> § 231.36, Fla. Stat., was later transferred to § 1012.33, Fla. Stat., when the whole Education Code was renumbered.

(3)(F) Continuing contract status earned by any member of the instructional staff prior to assuming a position as supervisor or principal shall be retained in the position it was attained. Upon release from a position as supervisor or principal, the employee shall be entitled to reassignment to the same or similar position in which continuing contract status was attained, at the classification level and salary range that would have been earned had the position been held continuously.

(see Exhibit A)

As a result, there is no dispute that, if Lewis had held a continuing contract, she would have been entitled to return to her continuing contract as a teacher after her release as an Assistant Principal. Lewis, however, did not have a continuing contract. She had a professional service contract.

10. In 1982, the Legislature fundamentally altered the teacher tenure law by prohibiting any new continuing contracts for any teachers first hired after July 1, 1982, and establishing requirements for the school boards to start issuing new professional service contracts, instead. In the process, the Legislature eliminated several rights that teachers, superintendents, administrators and even board members previously enjoyed.

(see Exhibit B)

11. Importantly, one of the changes made by the Legislature was to completely eliminate the language from subsection (3)(F) quoted above. By doing so, the Legislature made it clear that teachers under professional service contracts would no longer enjoy the right to return under a previously acquired professional service contract after being released from employment as an administrator. Had the Legislature intended for that right to continue, it would not have taken affirmative action to eliminate the language-giving rise to that right.

12. Accordingly, the issue in Terrell was not whether the employee still had a vested

professional service contract that never expired. That issue was fully resolved when the Legislature eliminated the statutory language granting that right in 1982. The fundamental issue in Terrell was whether that Board's previous policy had guaranteed the employee a right to return to a **new** professional service contract after being released as an administrator.

13. At the time of the Terrell case, the law expressly allowed school boards to issue professional service contracts to newly hired teachers, based on previous teaching experience. In 2011, however, the law changed again to prohibit school boards from issuing any new professional service contracts after July 1, 2011. As a result, the School Board is prohibited by law from issuing Lewis a new professional service contract.

14. In sum, Lewis is attempting to suggest that, under her professional service contract, she enjoys the same rights previously enjoyed by teachers with continuing contract. The Legislature acted decisively, however, in 1982 to terminate that right for teachers under professional service contracts, like Lewis.

### **CONCLUSION**

For the reasons stated herein, the Superintendent respectfully recommends that the School Board dismiss Lewis' Amended Request for Administrative Hearing, as supplemented.<sup>4</sup>

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<sup>4</sup> In her supplement, Lewis also mistakenly suggest that, even if there are no disputed issues of material fact, she should be granted an "informal hearing" under § 120.57(2), Fla. Stat. Sections 120.567 and 120.57, Fla. Stat., only apply to decisions affecting substantial interests. Lewis had no substantial interests that were affected when her annual contract was not renewed. Lewis' efforts to mischaracterize her employment status at the time of such non-renewal doesn't create a substantial interest requiring a hearing.



Date: July 10, 2019

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing document was furnished this 10th day of July 2019, by electronic delivery to all counsel of record listed in the Service List below:

By: /s/ Douglas G. Griffin  
Douglas G. Griffin  
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school board at least 4 weeks prior to the close of each successive school year unless the superintendent or such teacher shall, not later than 3 months prior to the close of the school year, request the school board to reconsider the annual contract. The school board may reconsider any annual contract on its own motion and shall take whatever action that it deems necessary and proper as authorized by this or any other section.

**History.**—s. 1, ch. 63-316; s. 179, ch. 65-239; s. 1, ch. 69-300; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318.

**Note.**—Repealed effective October 1, 1982, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

### **231.36 Contracts with instructional staff.—**

(1) Each person employed as a member of the instructional staff in any district school system or as supervisor or principal shall be properly certificated and shall be entitled to and shall receive a written contract as specified in chapter 230. A supervisor or principal may receive a written contract for an initial period not to exceed 3 years, subject to annual review and renewal. After the first 3 years, the contract may be renewed for a period not to exceed 3 years and shall contain provisions for dismissal only for just cause, in addition to such other provisions as are prescribed by the school board. Periods of service as a supervisor or principal prior to July 1, 1974, or such service in another district or state, may be recognized by the school board to satisfy the requirements of the initial written contract referred to herein.

(2) Any person so employed on the basis of a written offer of a specific position by a duly authorized agent of the school board for a stated term of service at a specified salary and who accepted such offer by telegram or letter or by signing the regular contract form who shall violate the terms of such contract or agreement by leaving his position without first being released from his contract or agreement by the school board of the district in which he is employed shall be subject to the disciplinary process of the Education Practices Commission acting as a committee of the whole. The school board shall take official action on such violation and shall furnish a copy of the proceedings to the certification section of the State Department of Education and to the Education Practices Commission.

(3)(a) The school board of each district shall provide continuing contracts as prescribed herein. Each member of the instructional staff, excluding supervisors and principals, in each district school system, except in districts operating under local, special or general tenure laws with stated population application, who:

1. Holds a regular certificate based at least on graduation from a standard 4-year college, or as otherwise provided by law;
2. Has completed 3 years of service in the same district of the state during a period not in excess of 5 successive years, such service being continuous except for leave duly authorized and granted;
3. Has been reappointed for the fourth year; and
4. Has been recommended by the superintendent for such continuing contract based on successful performance of duties and demonstration of professional competence

shall be entitled to and shall be issued a continuing contract in such form as may be prescribed by regulations of the state board.

(b) The continuing contract shall be effective at the beginning of the school fiscal year following the completion of all requirements or, starting on July 1, 1968, at the beginning of the school fiscal year in which all requirements are completed on or before September 1 or before January 1, 1981, for persons who have had no opportunity to meet the teacher-examination requirements for regular certification.

(c) The period of service provided herein may be extended to 4 years when prescribed by the school board and agreed to in writing by the employee at the time of reappointment or as provided by s. 231.351.

(d) A school board may issue a continuing contract to a new member of the instructional staff provided such individual has previously held a continuing contract in the same or another district within this state.

(e) Each person to whom a continuing contract has been issued as provided herein shall be entitled to continue in his position or in a similar position in the district at the salary schedule authorized by the school board without the necessity for annual nomination or reappointment until such time as the position is discontinued, the person resigns, or his contractual status is changed as prescribed below.

(f) Continuing contract status earned by any member of the instructional staff prior to assuming a position as supervisor or principal shall be retained in the position in which it was attained. Upon release from a position as supervisor or principal, the employee shall be entitled to reassignment to the same or a similar position in which continuing contract status was attained, at the classification level and salary range that would have been earned had the position been held continuously.

(g) Any person who has previously earned continuing contract status as a supervisor or principal in the school district shall be continued in that status until such time as the position is discontinued, the person resigns, or his contractual status is changed by mutual agreement or as prescribed below.

(h) School boards are authorized to enter into continuing contracts with principals and supervisors who were employed as principals or supervisors on or before July 1, 1974, and who otherwise meet the requirements of paragraph (a). However, this authorization shall expire July 1, 1977. If a district school board elects not to exercise the authority in this paragraph, no showing of just cause shall be required.

(4) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any principal, who is under continuing contract, may be dismissed or may be returned to annual contract status for another 3 years in the discretion of the school board, when a recommendation to that effect is submitted in writing to the school board on or before April 1 of any school year, giving good and sufficient reasons therefor, by the superintendent, or by the principal if his contract is not under consideration, or by a majority of the school board. The employee whose contract is under consid-

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eration shall be duly notified in writing by the party or parties preferring the charges at least 5 days prior to the filing of the written recommendation with the school board, and such notice shall include a copy of the charges and the recommendation to the school board. The school board shall proceed to take appropriate action. Any decision adverse to the employee shall be made by a majority vote of the full membership of the school board. Any such decision adverse to the employee may be appealed by him in writing to the Department of Education, through the Commissioner of Education, for review; provided such appeal is filed within 30 days after the decision of the school board, and provided further that the decision of the department shall be final as to sufficiency or insufficiency for discontinuation of the continuing contract status.

(5) Should the school board have to choose from among its personnel who are on continuing contracts as to which should be retained, among the criteria to be considered shall be educational qualifications, efficiency, compatibility, character, and capacity to meet the educational needs of the community. Whenever a school board is required to or does consolidate its school program at any given school center by bringing together pupils theretofore assigned to separated schools, the school board may determine on the basis of the foregoing criteria from its own personnel, and any other certificated teachers, which teachers shall be employed for service at this school center, and any teacher no longer needed may be dismissed. The decision of the board shall not be controlled by any previous contractual relationship. In the evaluation of these factors the decision of the school board shall be final.

(6) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any principal, may be suspended or dismissed at any time during the school year; provided that the charges against him must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or conviction of any crime involving moral turpitude. Whenever such charges are made against any such employee of the school board, the school board may suspend such person without pay, but if charges are not sustained he shall be immediately reinstated, and his back salary shall be paid. In cases of suspension by the school board or by the superintendent, the school board shall determine upon the evidence submitted whether the charges have been sustained and, if said charges are sustained, either to dismiss said employee or fix the terms under which said employee may be reinstated. If such charges are sustained by a majority vote of the full membership of the school board and such employee is discharged, his contract of employment shall be thereby canceled. If the employee is under continuing contract, any such decision adverse to him may be appealed by him in writing to the Department of Education, through the Commissioner, for review; provided such appeal is filed within 30 days after the decision of the school board, and provided further that the decision of the department shall be final as to sufficiency of the grounds for dismissal.

(7) The school board of any given district may, at its own discretion:

(a) Grant to a person who has served as superintendent in that district, at the completion of his service as superintendent, a continuing contract as a classroom teacher. Service as superintendent shall be construed as continuous teaching service in the public schools of this state.

(b) Grant to a classroom teacher holding a continuing contract status who has served as school board member in that district, at the completion of his service as school board member, a continuing contract as classroom teacher. Service as school board member shall be construed as continuous teaching service in the public schools of this state.

(8) Notwithstanding any other provision of law, any member who has retired may interrupt retirement and be reemployed in any public school. Any member so reemployed by the same district from which he retired may be employed on the same contractual basis that existed immediately prior to retirement; however, he shall not be eligible to renew membership in the teacher retirement system.

(9) Any teacher who is employed in a cooperative education program in this state may be immediately placed on continuing contract with the school board wherein the cooperative education program is produced if, at the time of employment, such person is on a continuing contract in a district which is participating in support of the particular cooperative education program in which the person is employed; provided that if at the time of reappointment of personnel, during the first 3 years, said person is not recommended for continued employment in the cooperative education program, he shall automatically revert to continuing contract status in the district of immediate prior employment; and provided further, that in meeting the requirements for a continuing contract prescribed herein prior successive years of service rendered in any district participating in the support of the particular cooperative education program may be counted as years of probationary service for a continuing contract with the school board wherein the cooperative education program is produced.

**History.**—s. 536, ch. 19355, 1939; CGL 1940 Supp. 892(140); s. 21, ch. 23726, 1947; s. 2, ch. 25363, 1949; s. 1, ch. 29890, 1955; s. 1, ch. 31391, 1956; s. 8, ch. 59-371; s. 1, ch. 59-252; s. 1, ch. 59-359; s. 1, ch. 59-421; s. 3, ch. 61-263; s. 12, ch. 63-376; s. 63, ch. 65-239; s. 2, ch. 65-424; s. 2, ch. 67-184; s. 6, ch. 67-387; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 72-21; s. 2, ch. 72-215; s. 38, ch. 73-338; ss. 3, 4, ch. 74-351; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-95; ss. 4, 11, ch. 80-190; s. 8, ch. 80-325; s. 9, ch. 80-378; ss. 2, 3, ch. 81-318.

**Note.**—Repealed effective October 1, 1982, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

#### **§231.361 Vocational teachers; status.—**

(1) Vocational teachers and other teachers who qualify for certificates on the basis of nonacademic preparation shall be entitled to all the contractual rights and privileges now granted to other instructional personnel holding equivalent certificates.

(2) A holder of a certificate based on nonacademic preparation which entitled him to employment to teach classes in vocational or adult education shall not be assigned to teach in a regular academic field of the kindergarten through grade 12 school program.

**History.**—s. 1, ch. 29625, 1955; s. 3, ch. 67-181; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 5, ch. 78-423; ss. 2, 3, ch. 81-318.

**Note.**—Repealed effective October 1, 1982, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.



vide assistance in helping to correct such deficiencies within a reasonable, prescribed period of time.

(4) A complete statement of the assessment criteria shall include, but shall not be limited to, the following:

- (a) Ability to maintain appropriate discipline.
- (b) Educational qualifications.
- (c) Knowledge of subject matter, provided the current instructional assignment is in a field for which certification is held.
- (d) Efficiency.
- (e) Student progress toward instructional goals, based on student ability.
- (f) Satisfactory use of assessment criteria and procedures by the individual having assessment responsibilities.

(5) The individual responsible for the supervision of the employee shall make the assessment of the employee and forward such assessment to the superintendent for the purpose of reviewing the employee's contract.

(6) Nothing in this section shall be construed to grant a probationary employee a right to continued employment beyond the term of his contract.

(7) The personnel file of each employee shall be open to inspection only by the school board, the superintendent, the principal, the employee himself, and such other persons as the employee or the superintendent may authorize in writing.

**History.**—s. 529, ch. 19355, 1939; CGL 1940 Supp. 892(133); s. 1, ch. 61-286; s. 18, ch. 65-420; s. 1, ch. 67-369; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 85, ch. 72-221; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 80-295; ss. 2, 3, ch. 81-318; ss. 13, 28, 31, ch. 82-242.

<sup>1</sup>Note.—Expires October 1, 1992, pursuant to s. 31, ch. 82-242, and is scheduled for review pursuant to s. 11.61 in advance of that date.

<sup>2</sup>Note.—The words "comply with" were substituted by the editors for the word "include."

<sup>3</sup>Note.—The word "requirements" was inserted by the editors.

#### **231.30 Payment of fees.—**

(1) The State Board of Education shall have the authority to adopt rules providing for the payment of fees:

- (a) For a certificate;
- (b) For a reissued temporary certificate, a part-time certificate, or a substitute certificate;
- (c) For extension of a regular certificate; and
- (d) For a duplicate certificate or a name change.

(2) The proceeds from the collection of certification fees shall be remitted by the Department of Education to the Treasurer and shall be kept by him in a separate fund to be known as the "Educational Certification and Service Trust Fund" and disbursed for the payment of expenses incurred by the Educational Standards Commission, by the Educational Practices Commission, and in the printing of forms and bulletins and the issuing of certificates, upon vouchers approved by the department.

**History.**—s. 530, ch. 19355, 1939; CGL 1940 Supp. 892(134); s. 7, ch. 22858, 1945; s. 17, ch. 26869, s. 5, ch. 26894, 1951; s. 1, ch. 57-330; s. 2, ch. 61-119; s. 61, ch. 65-239; s. 4, ch. 67-440; ss. 15, 35, ch. 69-106; s. 8, ch. 72-333; s. 5, ch. 75-302; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-423; ss. 3, 11, ch. 80-190; ss. 2, 3, ch. 81-318; ss. 14, 28, 31, ch. 82-242.

<sup>1</sup>Note.—Expires October 1, 1992, pursuant to s. 31, ch. 82-242, and is scheduled for review pursuant to s. 11.61 in advance of that date.

**231.3505 Employment of directors of vocational education in school districts and community colleges.**—[The repeal of this section by s. 2, ch. 81-318, was nullified by s. 28, ch. 82-242. Repealed effective October 1, 1992, by s. 31, ch. 82-242,

and scheduled for review pursuant to s. 11.61 in advance of that date.]

#### **231.36 Contracts with instructional staff, supervisors, and principals.—**

(1)(a) Each person employed as a member of the instructional staff in any district school system shall be properly certificated and shall be entitled to and shall receive a written contract as specified in chapter 230. All such contracts, except continuing contracts as specified in subsection (4), shall contain provisions for dismissal during the term of the contract only for just cause. Just cause includes, but is not limited to, misconduct in office, incompetency, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude.

(b) A supervisor or principal shall be properly certified and shall receive a written contract as specified in chapter 230. Such contract may be for an initial period not to exceed 3 years, subject to annual review and renewal. After the first 3 years, the contract may be renewed for a period not to exceed 3 years and shall contain provisions for dismissal during the term of the contract only for just cause, in addition to such other provisions as are prescribed by the school board.

(2) Any person so employed on the basis of a written offer of a specific position by a duly authorized agent of the school board for a stated term of service at a specified salary, and who accepted such offer by telegram or letter or by signing the regular contract form, who violates the terms of such contract or agreement by leaving his position without first being released from his contract or agreement by the school board of the district in which he is employed shall be subject to the jurisdiction of the Education Practices Commission. The school board shall take official action on such violation and shall furnish a copy of its official minutes to the Commissioner of Education.

(3)(a) The school board of each district shall provide a professional service contract as prescribed herein. Each member of the instructional staff, excluding supervisors and principals, in each district school system who is employed with an effective date of initial employment subsequent to July 1, 1982, who:

1. Holds a regular certificate as prescribed by s. 231.17 and rules of the State Board of Education;
2. Has completed 3 years of probationary service in the district, 1 year of which shall be the beginning teacher program where required, during a period not in excess of 5 successive years, such service being continuous except for leave duly authorized and granted; and
3. Has been recommended by the superintendent for such professional service contract and reappointed by the school board based on successful performance of duties and demonstration of professional competence

shall be issued a professional service contract in such form as may be prescribed by rules of the state board.

(b) The professional service contract shall be effective at the beginning of the school fiscal year following the completion of all requirements<sup>2</sup>therefor.

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(c) The period of service provided herein may be extended to 4 years when prescribed by the school board and agreed to in writing by the employee at the time of reappointment.

(d) A school board may issue a professional service contract to any employee who has previously held a professional service contract or continuing contract in the same or another district within this state.

(e) A professional service contract shall be renewed each year unless the superintendent, after receiving the recommendations required by s. 231.29(5), charges the employee with unsatisfactory performance as determined under the provisions of s. 231.29 and notifies the employee in writing, no later than 6 weeks prior to the end of the post-school conference period, of performance deficiencies which may result in termination of employment, if not corrected during the subsequent year of employment (which shall be granted for an additional year in accordance with the provisions in subsection (1)). Except as otherwise hereinafter provided, this action shall not be subject to the provisions of chapter 120, but the following procedures shall apply:

1. On receiving notice of unsatisfactory performance, the employee, on request, shall be accorded an opportunity to meet with the superintendent or his designee for an informal review of the determination of unsatisfactory performance.

2. An employee notified of unsatisfactory performance may request an opportunity to be considered for a transfer to another appropriate position, with a different supervising administrator, for the subsequent year of employment.

3. During the subsequent year, the employee shall be provided assistance and inservice training opportunities to help correct the noted performance deficiencies. The employee shall also be evaluated periodically so that he will be kept apprised of progress achieved.

4. Not later than 6 weeks prior to the close of the post-school conference period of the subsequent year, the superintendent, after receiving and reviewing the recommendation required by s. 231.29(5), shall notify the employee, in writing, whether the performance deficiencies have been corrected. If so, a new professional service contract shall be issued to the employee. If the performance deficiencies have not been corrected, the superintendent may notify the school board and the employee, in writing, that the employee shall not be issued a new professional service contract; however, if the recommendation of the superintendent is not to issue a new professional service contract, and if the employee wishes to contest such recommendation, the employee will have 15 days from receipt of the superintendent's recommendation to demand, in writing, a hearing. In such hearing, the employee may raise as an issue, among other things, the sufficiency of the superintendent's charges of unsatisfactory performance. Such hearing shall be conducted at the employee's election in accordance with one of the following procedures:

a. A direct hearing conducted by the school board within 45 days of receipt of the written appeal. The hearing shall be conducted in accordance with the provisions of s. 120.57(1)(a)1. A majority vote of the

membership of the school board shall be required to sustain the superintendent's recommendation. The determination of the school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment; or

b. A hearing conducted by a hearing officer assigned by the Division of Administrative Hearings of the Department of Administration. The hearing shall be conducted within 45 days of receipt of the written appeal in accordance with chapter 120. The recommendation of the hearing officer shall be made to the school board. A majority vote of the membership of the school board shall be required to sustain or change the hearing officer's recommendation. The determination of the school board shall be final as to the sufficiency or insufficiency of the grounds for termination of employment.

(4)(a) An employee who has continuing contract status prior to July 1, 1984, shall be entitled to retain such contract and all rights arising therefrom in accordance with existing laws, rules of the State Board of Education, or any laws repealed by this act, unless the employee voluntarily relinquishes his continuing contract.

(b) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any principal, who is under continuing contract may be dismissed or may be returned to annual contract status for another 3 years in the discretion of the school board, at the end of the school year, when a recommendation to that effect is submitted in writing to the school board on or before April 1 of any school year, giving good and sufficient reasons therefor, by the superintendent, by the principal if his contract is not under consideration, or by a majority of the school board. The employee whose contract is under consideration shall be duly notified in writing by the party or parties preferring the charges at least 5 days prior to the filing of the written recommendation with the school board, and such notice shall include a copy of the charges and the recommendation to the school board. The school board shall proceed to take appropriate action. Any decision adverse to the employee shall be made by a majority vote of the full membership of the school board. Any such decision adverse to the employee may be appealed by the employee pursuant to s. 120.68.

(c) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any principal, who is under continuing contract may be suspended or dismissed at any time during the school year; however, the charges against him must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or conviction of a crime involving moral turpitude. Whenever such charges are made against any such employee of the school board, the school board may suspend such person without pay; but, if the charges are not sustained, he shall be immediately reinstated, and his back salary shall be paid. In cases of suspension by the school board or by the superintendent, the school board shall determine upon the evidence submitted whether the charges have been sustained and, if the charges are sustained, shall determine either to dis-



miss the employee or fix the terms under which he may be reinstated. If such charges are sustained by a majority vote of the full membership of the school board and such employee is discharged, his contract of employment shall be thereby canceled. Any such decision adverse to the employee may be appealed by the employee pursuant to s. 120.68, provided such appeal is filed within 30 days after the decision of the school board.

(5) Should a school board have to choose from among its personnel who are on continuing contracts or professional service contracts as to which should be retained, such decisions shall be made pursuant to the terms of a collectively bargained agreement, when one exists. If no such agreement exists, the district school board shall prescribe rules to handle reductions in work force.

(6)(a) Any member of the instructional staff, excluding an employee specified in subsection (4), may be suspended or dismissed at any time during the term of the contract; however, the charges against him must be based on just cause as provided in paragraph (1)(a). Whenever such charges are made against any such employee of the school board, the school board may suspend such person without pay; but, if the charges are not sustained, he shall be immediately reinstated, and his back salary shall be paid. When an employee is notified in writing of such charges, he will have 15 days from receipt of the notice to demand, in writing, a hearing to be conducted at his election in accordance with either sub-subparagraph a. or sub-subparagraph b. of subparagraph (3)(e)4. Any such decision adverse to the employee may be appealed by the employee pursuant to s. 120.68, provided such appeal is filed within 30 days after the decision of the school board.

(b) Any member of the district administrative or supervisory staff, including any principal but excluding an employee specified in subsection (4), may be suspended or dismissed at any time during the term of the contract; however, the charges against him must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or conviction of any crime involving moral turpitude. Whenever such charges are made against any such employee of the school board, the school board may suspend him without pay; but, if the charges are not sustained, he shall be immediately reinstated, and his back salary shall be paid. In cases of suspension by the school board or by the superintendent, the school board shall determine upon the evidence submitted whether the charges have been sustained and, if the charges are sustained, shall determine either to dismiss the employee or fix the terms under which he may be reinstated. If such charges are sustained by a majority vote of the full membership of the school board and such employee is discharged, his contract of employment shall be thereby canceled. Any such decision adverse to him may be appealed by him pursuant to s. 120.68, provided such appeal is filed within 30 days after the decision of the school board.

(7) The school board of any given district shall grant continuing service credit for time spent performing duties as a member of the Legislature to any district employee who possesses a professional ser-

vice contract, multiyear contract, or continuing contract.

(8) Notwithstanding any other provision of law, any member who has retired may interrupt retirement and be reemployed in any public school. Any member so reemployed by the same district from which he retired may be employed on a probationary contractual basis as provided in subsection (1); however, no regular retirement employee shall be eligible to renew membership under a retirement system created by chapter 121 or chapter 238.

**History.**—s. 536, ch. 19355, 1939; CGL 1940 Supp. 892(140); s. 21, ch. 23726, 1947; s. 2, ch. 25363, 1949; s. 1, ch. 29890, 1955; s. 1, ch. 31391, 1956; s. 8, ch. 59-371; s. 1, ch. 59-252; s. 1, ch. 59-359; s. 1, ch. 59-421; s. 3, ch. 61-263; s. 12, ch. 63-376; s. 63, ch. 65-239; s. 2, ch. 65-424; s. 2, ch. 67-184; s. 6, ch. 67-387; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 72-21; s. 2, ch. 72-215; s. 38, ch. 73-338; ss. 3, 4, ch. 74-351; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-95; ss. 4, 11, ch. 80-190; s. 8, ch. 80-325; s. 9, ch. 80-378; ss. 2, 3, ch. 81-318; ss. 15, 28, 31, ch. 82-242.

<sup>1</sup>Note.—Expires October 1, 1992, pursuant to s. 31, ch. 82-242, and is scheduled for review pursuant to s. 11.61 in advance of that date.

<sup>2</sup>Note.—The word "therefor" was inserted by the editors.

<sup>3</sup>Note.—The words "membership of the" were inserted by the editors.

**231.361 Vocational teachers; status.**—[The repeal of this section by s. 2, ch. 81-318, was nullified by s. 28, ch. 82-242. Repealed effective October 1, 1992, by s. 31, ch. 82-242, and scheduled for review pursuant to s. 11.61 in advance of that date.]

**231.381 Transfer of sick leave and annual leave.**—In implementing the provisions of ss. 230.23(4)(n) and 402.22(1)(d), educational personnel in Department of Health and Rehabilitative Services residential care facilities who are employed by a district school board may request, and the district school board shall accept, a lump-sum transfer of accumulated sick leave for such personnel to the maximum allowed by policies of the district school board, notwithstanding the provisions of s. 110.122. Educational personnel in Department of Health and Rehabilitative Services residential care facilities who are employed by a district school board under the provisions of s. 402.22(1)(d) may request, and the district school board shall accept, a lump-sum transfer of accumulated annual leave for each person employed by the district school board in a position in the district eligible to accrue vacation leave under policies of the district school board.

**History.**—ss. 3, 5, ch. 80-240; s. 2, ch. 81-318; ss. 17, 28, 31, ch. 82-242.

<sup>1</sup>Note.—Expires October 1, 1992, pursuant to s. 31, ch. 82-242, and is scheduled for review pursuant to s. 11.61 in advance of that date.

**231.39 Provisions for leaves of absence.**—All leaves of absence for all district school board employees, except those leaves prescribed by law, shall be granted with or without compensation pursuant to rules adopted by the district school board. Such leaves authorized by the school board shall include, but not be limited to, professional leave and extended professional leave, personal leave, military leave granted in compliance with chapter 115, and maternity leave.

**History.**—s. 539, ch. 19355, 1939; s. 5, ch. 20970, 1941; CGL 892(143); s. 14, ch. 63-376; s. 3, ch. 65-424; s. 7, ch. 67-387; s. 1, ch. 69-300; s. 1, ch. 73-253; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 9, ch. 80-295; ss. 2, 3, ch. 81-318; ss. 18, 28, 31, ch. 82-242.

<sup>1</sup>Note.—Expires October 1, 1992, pursuant to s. 31, ch. 82-242, and is scheduled for review pursuant to s. 11.61 in advance of that date.

**231.40 Sick leave.**—

(1) **ELIGIBILITY.**—Any member of the instructional staff or any other employee of a district school