

Council of Chief Negotiators (CCN) Meeting
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MCL 380.1229 – Act 451: Employment of superintendent and administrators, notification of contract nonrenewal, meeting with the board.....

This statute, amongst other things, governs the nonrenewal of a local public school district administrator contract and that specific aspect of it continues to confound many people due to its terms or apparent, plain meaning, misunderstandings surrounding those terms, its purpose and applicability and its timing and remedy elements.

This short primer will focus on general points to remember when dealing with this aspect of the statute or its applicability and its timing elements for a nonrenewal of such an administrator's contract.

First, the following points are worth noting:

1. The statute sets forth a minimum standard that can be exceeded or rendered inapplicable by a specific policy, contract, collectively bargained agreement, enforceable past practice. For example, a carefully worded policy or contract can render the statute inapplicable to a "probationary" administrator. Conversely, many policies and contracts afford such administrators more protection than afforded by the statute.
2. The statute applies to the nonrenewal of an administrator contract and corresponding severance of employment pursuant thereto but may not apply to a "for cause" termination or an effective separation resulting from a bona fide economic lay-off, an administrative re-assignment or transfer or even a non-administrative re-assignment or transfer. Those types of employment relationship interruptions may not even implicate the statute but could, depending upon a myriad of factors (e.g., where the basis for the interruption is a pretext, discriminatory, or a deliberate evasion of the statute, etc., or where a contract controls).
3. Whether the extent to which the statute may apply, always involves an analysis of not just the statute, but all the factors that would determine whether and how it might apply including applicable policies, contracts and case law.
4. Although the statute provides 3 consequences for its violation, most would agree that those are not an exclusive remedies but, rather, just mandated consequences for certain violations of it. For example, a violation of the statute might also constitute and does not preclude seeking relief for a corresponding tort, breach of contract, statutory violation, civil rights violation or due process violation claim. Accordingly, violating the statute can expose the violator to risks beyond just the consequences the statute mandates. For example, a certain kind of violation of the statute could also constitute an Open Meetings Act violation and a claim alleging a violation of the statute does not preclude or limit a wrongful termination claim based on violations in addition to but apart from a violation of the statute.
5. There is no black letter law on whether the rights in the statute are or are not waivable, whether an agreement to arbitrate violations of it is always legal or enforceable and whether courts have exclusive jurisdiction over a claim that a nonrenewal was arbitrary or capricious.

So let's focus on the pertinent parts of the statute being addressed here and the best way to start that is to quote the statute's actual language in that regard and as it pertains to a school district administrator who is not its superintendent and who is not an administrator employed by a community district:

(1) (T)he board of a school district ... shall employ a superintendent of schools, who shall meet the requirements of section 1246. The superintendent shall not be a member of the board. Employment of a superintendent shall be by written contract. **The term of the superintendent's contract shall be fixed by the board, not to exceed 5 years. If written notice of nonrenewal of the contract of a superintendent is not given at least 90 days before the termination of the contract, the contract is renewed for an additional 1-year period.** However, for the superintendent of a community district, the minimum time period for the written notice required under this subsection is 30 days.

(2) The board of a school district ... may employ assistant superintendents, principals, assistant principals, guidance directors, and other **administrators** who do not assume tenure in that position under [the Teacher Tenure Act].... **The employment shall be by written contract. The term of the employment contract shall be fixed by the board, not to exceed 3 years. The board shall prescribe the duties of an individual described in this subsection.** If written notice of nonrenewal of the contract of an individual described in this subsection is not given at least 60 days before the termination date of the contract, the contract is renewed for an additional 1-year period. However, for an individual described in this subsection who is employed by a community district, the minimum time period for the written notice required under this subsection is 30 days.

(3) A notification of nonrenewal of contract of an individual described in subsection (2) may be given only for a reason that is not arbitrary or capricious. The board shall not issue a notice of nonrenewal under this section unless the affected individual has been provided with not less than 30 days' advance notice that the board is considering the nonrenewal together with a written statement of the reasons the board is considering the nonrenewal. However, for an individual described in subsection (2) who is employed by a community district, the minimum time period for the advance notice required under this subsection is 7 days. After the issuance of the written statement, but before the nonrenewal statement is issued, the affected individual shall be given the opportunity to meet with not less than a majority of the board to discuss the reasons stated in the written statement. The meeting shall be open to the public or a closed session, as the affected individual elects under section 8 of the open meetings act, 1976 PA 267, MCL 15.268. If the board fails to provide for a meeting with the board, or if a court finds that the reason for nonrenewal is arbitrary or capricious, the affected individual's contract is renewed for an additional 1-year period. This subsection does not apply to the nonrenewal of the contract of a superintendent of schools described in subsection (1).

(4) A school district, instead of directly employing a superintendent of schools, may contract with its intermediate school district for the intermediate superintendent to serve as the superintendent of schools for the school district or for the intermediate school district to provide another person to serve as superintendent of schools for the school district or may contract with another person, including, but not limited to, the superintendent of another school district, to serve as superintendent of schools for the school district. If a school district does not operate a public school directly on its own, the school district is not required to employ a superintendent.

(5) No standard is set forth in the statute for a superintendent nonrenewal whereas an administrator covered by the statute can only be renewed for a reason that is not or reasons that are not arbitrary or capricious. Although legal definitions of what is arbitrary or capricious may vary depending on circumstances, the following are pretty good working definitions:

Arbitrary: A decision based on random choice or personal whim. Willful and unreasoning action, without consideration and regard for facts and circumstances presented, bad faith or failure to exercise honest judgment.

Capricious: Subject to whim; impulsive and unpredictable.

Arbitrary and Capricious: A willful and unreasonable action without consideration or in disregard of facts or law or without determining principle.

Other than noting the highlighted language above generally, let's extrapolate the timing elements for a nonrenewal and the consequences for not following some of them:

Timing

1. The board shall not issue a notice of nonrenewal under this section unless the affected individual:

a) has been provided with not less than 30 days' advance notice that the board is considering the nonrenewal together with a written statement of the reasons the board is considering the nonrenewal; and

b) [those reasons are or the] reason ... is not arbitrary or capricious.

2. After the issuance of the written statement, but before the nonrenewal statement is issued, the ... individual shall be given the opportunity to meet with not less than a majority of the board to discuss the reasons stated in the written statement. The meeting shall be open to the public or a closed session, as the affected individual elects under section 8 of the open meetings act, 1976 PA 267, MCL 15.268.

3. [W]ritten notice of nonrenewal of the contract of an individual [must be] given at least 60 days before the termination date of the contract....

Consequences

There is no prescribed consequence for a failure to give the 30 day advance notice that nonrenewal is being considered.

If the board fails to provide for a meeting with the board, the contract is renewed for an additional 1-year period.

If written notice of nonrenewal ... is not given at least 60 days before the termination date of the contract, the contract is renewed for an additional 1-year period.

[I]f a court finds that the reason for nonrenewal is arbitrary or capricious, the contract is renewed for an additional 1-year period.