

FEB 20 2002

EDUCATION

HOUSE FILE 2458

BY T. TAYLOR

Passed House, Date _____ Passed Senate, Date _____
 Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
 Approved _____

A BILL FOR

1 An Act establishing discipline and discharge procedures for
 2 school boards and their nonprobationary, nonteacher employees
 3 who are covered under collective bargaining agreements without
 4 discipline or discharge provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2458

1 Section 1. NEW SECTION. 279.60 NONTEACHER EMPLOYEE --
2 DISCIPLINE -- DISCHARGE.

3 1. A nonprobationary public school employee who is not a
4 teacher and is covered under a collective bargaining agreement
5 which does not contain a discipline and discharge provision
6 shall not be disciplined or discharged except for just cause.
7 To establish just cause, an employer shall show by a
8 preponderance of evidence that any of the following apply:

9 a. That progressive discipline was followed unless clear
10 and convincing evidence exists that the infraction is of such
11 a heinous nature that a reasonable person would assume the
12 infraction would result in immediate discharge.

13 b. That the infraction is work-related in that it injured
14 the reputation, efficiency, or safety of the employer.

15 c. That the employee was notified in writing of the
16 alleged infraction with a statement of facts concerning the
17 infraction, that a fair and impartial investigation was
18 conducted, and that the employee was given time to prepare and
19 rebut the employer's allegations.

20 d. That the discipline or discharge imposed is related to
21 the seriousness of the infraction and takes into account the
22 past record of the employee.

23 e. That no disparate or discriminatory treatment has been
24 provided in implementing the discipline or discharge.

25 2. The superintendent or the superintendent's designee
26 shall submit a written notice of discipline or discharge by
27 certified mail to an employee who meets the criteria
28 established in subsection 1. The notice shall state the
29 reasons for the discipline or discharge. Within two days of
30 the employee's receipt of a notice of discipline or discharge,
31 the employee shall be permitted to obtain a copy of the
32 employee's personnel file maintained by the employee's
33 employer, including but not limited to performance
34 evaluations, disciplinary records, and other information
35 concerning employer-employee relations.

1 3. Within seven days of the employee's receipt of a notice
2 of discipline or discharge as provided in this section, the
3 employee may file a complaint with the employer's designated
4 representative and request, in writing to the secretary of the
5 school board, a private hearing with the school board. The
6 private hearing shall not be subject to chapter 21 or 22 and
7 shall be held within thirty days following the employee's
8 receipt of the employee's personnel file unless the parties
9 otherwise agree. The secretary of the board shall notify the
10 employee in writing of the date, time, and location of the
11 private hearing, and at least five days before the hearing
12 shall also furnish to the employee any documentation which may
13 be presented to the board at the private hearing and a list of
14 persons who may address the board at the private hearing in
15 support of the superintendent's decision to discipline or
16 discharge the employee. At least three days before the
17 hearing, the employee shall provide any documentation the
18 employee expects to present at the private hearing, along with
19 the names of any persons who may address the board on behalf
20 of the employee. This exchange of information shall be at the
21 time specified unless otherwise agreed. The participants at
22 the private hearing shall be at least a majority of the
23 members of the board, their legal representatives, if any, the
24 superintendent, the superintendent's designated
25 representatives, if any, the employee's immediate supervisor,
26 the employee, the employee's representatives, if any, and the
27 witnesses for the parties. The presiding officer of the board
28 may administer oaths in the same manner and with like effect
29 and under the same penalties as in the case of magistrates
30 exercising criminal or civil jurisdiction. The board shall
31 cause subpoenas to be issued for such witnesses and the
32 production of such books and papers as either the board or the
33 employee may designate. The subpoenas shall be signed by the
34 presiding officer of the board. The superintendent or the
35 superintendent's designee shall present evidence and argument

1 on all issues involved and the employee may cross-examine,
2 respond, and present evidence and argument in the employee's
3 behalf relevant to all issues involved. All evidence is
4 admissible providing it is relevant, material, and not
5 excluded under the hearsay rule. The school board shall
6 record the hearing by mechanical means and a transcript of the
7 hearing shall be made at the request of either party with the
8 expense of transcription charged to the requesting party. If
9 the employer does not timely meet a notification or hearing
10 deadline as required under subsection 2 or this subsection,
11 the employee may appeal the action of the superintendent
12 directly to an adjudicator in the manner described in
13 subsection 5.

14 4. Within five working days after the private hearing, the
15 board shall issue a written disposition and shall set forth
16 its findings of fact and conclusions of law, separately
17 stated. Findings of fact, if set forth in statutory language,
18 shall be accompanied by a concise and explicit statement of
19 the underlying facts supporting the findings. Each conclusion
20 of law shall be supported by cited authority or by reasoned
21 opinion.

22 5. If the employee is not satisfied with the board's
23 disposition, the employee may, within ten days, appeal the
24 determination of the board to an adjudicator by filing a
25 notice of appeal with the secretary of the board. The notice
26 of appeal shall contain a concise statement of the action
27 which is the subject of the appeal, the particular board
28 action appealed from, the grounds on which relief is sought
29 and the relief sought. If the employee does not timely
30 request an appeal to an adjudicator, the decision, opinion, or
31 conclusion of the board shall become final and binding. If
32 the certified employee organization that represents the
33 employee disagrees with the employee's decision to appeal, the
34 organization may withdraw its representation without
35 prejudice.

1 6. Within ten working days following receipt by the
2 secretary of the notice of appeal, the board or the board's
3 legal representative, if any, or the employee or the
4 employee's representative, if any, may notify the chairperson
5 of the public employment relations board by transmitting the
6 notice of appeal, and the chairperson of the public employment
7 relations board shall within five days provide a list of five
8 adjudicators to the parties. Within three days from receipt
9 of the list of adjudicators, the parties shall select an
10 adjudicator by alternately removing a name from the list until
11 only one name remains. The person whose name remains shall be
12 the adjudicator. The parties shall determine by lot which
13 party shall remove the first name from the list submitted by
14 the chairperson of the public employment relations board. The
15 secretary of the board shall inform the chairperson of the
16 public employee relations board of the name of the adjudicator
17 selected.

18 7. Within thirty days after filing the notice of appeal,
19 or within further time allowed by the adjudicator, the board
20 shall transmit to the adjudicator the original or a certified
21 copy of the entire record of the private hearing which may be
22 the subject of the petition. By stipulation of the parties to
23 review the proceedings, the record of the case may be
24 shortened. The adjudicator may require or permit subsequent
25 corrections or additions to the shortened record.

26 8. The record certified and filed by the board shall be
27 the record upon which the appeal shall be heard; however, the
28 adjudicator may require the superintendent or the
29 superintendent's designee to present evidence and argument on
30 all issues involved and the employee may cross-examine,
31 respond, and present evidence and argument in the employee's
32 behalf relevant to all issues involved. The adjudicator may
33 agree to hear new evidence in addition to that found in the
34 record of the case if it is shown to the adjudicator that the
35 additional evidence is material and that good reasons existed

1 for failure to present it in the private hearing before the
2 board.

3 9. The adjudicator shall reverse, modify, or grant any
4 appropriate relief from the board action if substantial rights
5 of the employee have been prejudiced because the board action
6 is any of the following:

7 a. In violation of a board rule or policy or contract.

8 b. Unsupported by a preponderance of the competent
9 evidence in the record made before the board when that record
10 is viewed as a whole.

11 c. Unreasonable, arbitrary, or capricious or characterized
12 by an abuse of discretion or a clearly unwarranted exercise of
13 discretion.

14 10. The adjudicator shall, within fifteen days after the
15 hearing, make a decision, which shall be based upon the
16 evidence required pursuant to subsection 1, and shall give a
17 copy of the decision to the employee and the secretary of the
18 board. The decision of the adjudicator is final and binding
19 and subject to enforcement in accordance with section 20.17,
20 subsection 5, and section 20.23.

21 11. All costs of the adjudicator shall be shared equally
22 by the employee and the board.

23 Sec. 2. IMPLEMENTATION OF ACT. Section 25B.2, subsection
24 3, shall not apply to this Act.

25 EXPLANATION

26 This bill establishes discipline and discharge procedures
27 for school boards and their nonprobationary, nonteacher
28 employees who are covered under collective bargaining
29 agreements which do not contain a discipline or discharge
30 provision. The bill provides that such a public school
31 employee shall not be disciplined or discharged except for
32 just cause.

33 The bill describes "just cause" as a preponderance of
34 evidence that progressive discipline was followed, unless
35 there is clear and convincing evidence the infraction is of

1 such a heinous nature that a reasonable person would know the
2 infraction would result in immediate discharge; that the work-
3 related infraction injured the reputation, efficiency, or
4 safety of the employer; that the employee was notified in
5 writing of the alleged infraction, that a fair and impartial
6 investigation was conducted, and that the employee was given
7 time to prepare and rebut the employer's allegations; that the
8 action is related to the seriousness of the infraction and
9 takes the employee's past record into account; and that there
10 has been no disparate or discriminatory treatment in
11 implementing discipline or discharge.

12 The school district must send written notice of the action
13 to the employee, stating the reasons for the discipline or
14 discharge. The employee shall be permitted to obtain a copy
15 of the employee's personnel file and may file a complaint with
16 the employer's designated representative and request a private
17 hearing with the school board.

18 The superintendent or the superintendent's designee shall
19 present evidence and argument on all issues involved and the
20 employee may cross-examine, respond, and present evidence and
21 argument in the employee's behalf relevant to all issues
22 involved. All evidence is admissible providing it is relevant
23 and material and not excluded under the hearsay rule.

24 If the employer does not timely meet a notification
25 requirement or hearing deadline, the employee may appeal the
26 determination of the superintendent directly to an
27 adjudicator.

28 If the employee is not satisfied with the board's
29 disposition after the private hearing, the employee may appeal
30 the board's determination to an adjudicator. If the certified
31 employee organization that represents the employee disagrees
32 with the employee's decision to appeal, the organization may
33 withdraw its representation without prejudice.

34 The record certified and filed by the board shall be the
35 record upon which the appeal shall be heard; however, the

1 adjudicator may require the superintendent or the
2 superintendent's designee to present evidence and argument on
3 all issues involved and the employee may cross-examine,
4 respond, and present evidence and argument in the employee's
5 behalf relevant to all issues involved. The adjudicator may
6 agree to hear new evidence in addition to that found in the
7 record of the case if it is shown to the adjudicator that the
8 additional evidence is material and that there were good
9 reasons for failure to present it in the private hearing
10 before the board.

11 The decision of the adjudicator is final and binding and
12 subject to enforcement in accordance with Code section 20.17,
13 subsection 5, and Code section 20.23, which provide for legal
14 action under the collective bargaining laws.

15 The bill may include a state mandate as defined in Code
16 section 25B.3. The bill makes inapplicable Code section
17 25B.2, subsection 3, which would relieve a political
18 subdivision from complying with a state mandate if funding for
19 the cost of the state mandate is not provided or specified.
20 Therefore, political subdivisions are required to comply with
21 any state mandate included in the bill.

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