STATE OF NEW YORK

5544

2019-2020 Regular Sessions

IN ASSEMBLY

February 13, 2019

Introduced by M. of A. GOODELL -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to empowering school boards to make decisions regarding employment based on performance, qualifications and the best interests of the students

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 2 of section 1505-a of the education law, as added by chapter 871 of the laws of 1982, is amended to read as follows:

2. [~~Any~~] **Notwithstanding any other provision of law to the contrary, any** such teacher who is unable to obtain a teaching position in any such school district to which territory is added, because the number of positions needed are less than the number of teachers eligible to be considered employees pursuant to subdivision one of this section, shall, in all such school districts to which territory is added, be placed on a preferred eligible list of candidates for appointment to a vacancy that may thereafter occur in a position similar to the one such teacher filled in such former school district[~~. The teachers on such a preferred eligible list shall be appointed to such vacancies in such corresponding or similar positions under the jurisdiction of the school district to which territory is added in the order of their length of service in such former school district, within seven years from the date of the dissolution of such former school district~~] **pursuant to the provisions of subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of paragraph a and paragraph b of subdivision thirteen and subdivision thirteen-a of section eighteen hundred four of this title**.

§ 2. Section 1804 of the education law is amended by adding two new subdivisions 13 and 13-a to read as follows:

13. a. Notwithstanding any other provision of law to the contrary, whenever a board of education abolishes a position or positions under this chapter, the superintendent for the school district shall recommend

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD09344-01-9

which teacher or teachers should be terminated. Such recommendation shall be based on an evaluation of the teachers performance, qualifications and the educational needs of the school including but not limited to:

(i) annual professional performance reviews conducted pursuant to section three thousand twelve-c of this chapter;

(ii) analysis of available student performance data and other relevant information;

(iii) assessment of the teacher's performance by the teacher's building principal or other building administrator in charge of the school or program;

(iv) the educational qualifications of the teacher, the teacher's experience and demonstrated ability and attendance;

(v) the school needs for particular license areas, office or school needs, including curriculum specialized education, degrees, licenses or areas of expertise, the length of satisfactory service and any other factor related to experience and demonstrated ability; and

(vi) the teacher's salary shall not be a factor in making a lay off recommendation.

The board of education shall exercise its discretion and shall approve or reject the recommendations of the superintendent so as to minimize the adverse impact on students and the educational strength of the school district.

b. If a teaching position is abolished, the person filling such position at the time of its abolishment shall be placed upon a preferred eligible list of candidates for appointment to a vacancy that then exists or that may thereafter occur in a position similar to the one which such person filled without reduction in salary or increment, provided the record of such person has been one of faithful, competent service in the office or position he or she has filled.

13-a. a. Notwithstanding any other provision of law to the contrary, whenever a board of education abolishes an office or administrative positions under this chapter the principal for the school or other building administrator in charge of the school or program shall recommend which office or administrative positions should be terminated. Such recommendations shall be based upon an evaluation of the performance and qualifications of the individual.

b. If an office or administrative position is abolished, the person filling such position at the time of its abolishment shall be placed upon a preferred eligible list of candidates for appointment to a vacancy that then exists or that may thereafter occur in an office or position similar to the one which such person filled without reduction in salary or increment, provided the record of such person has been one of faithful, competent service in the office or positions he or she has filled.

§ 3. Section 1917 of the education law, as added by chapter 732 of the laws of 1981, is amended to read as follows:

§ 1917. Employees; employment rights. [~~Teachers~~] Notwithstanding any other provision of law to the contrary, teachers and other staff members of component districts, except the superintendent of schools, whose services in the component districts are no longer needed because of creation of a central high school district, shall be granted employment rights in central high school districts in accordance with [~~length of service in each tenure area~~] the provisions of subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of paragraph a of subdivision thirteen and

paragraph a of subdivision thirteen-a of section eighteen hundred four of this title.

§ 4. Section 1917-a of the education law, as added by section 93 of part L of chapter 405 of the laws of 1999, is amended to read as follows:

§ 1917-a. Employees; employment rights; creation of new central high school district. 1. [~~Teachers~~] **Notwithstanding any other provision of law to the contrary, teachers** and other staff members of component districts, except the superintendent of schools, whose services in the component districts are no longer needed because of the creation of a central high school district or the transference of students to an existing central high school district, shall be granted employment rights in central high school districts in accordance with the provisions of this section.

2. As used in this section, a "component district" shall mean a central, union free or common school district within the territory of the central high school district, and a "central high school district" shall mean a central high school district existing or created pursuant to this article.

3. In any case in which a component district sends students to a central high school district, each teacher and all other employees previously employed in the education of such students by such component district prior to the time that such component district sends its students to a central high school district shall be considered employees of such central high school district, with the same tenure status held in such component district.

For purposes of this section, when a component district takes back students that it sent to another district on a tuition basis and sends such students to a central high school district, such central high school district shall be deemed the "sending district" for purposes of the rights and protections provided in section three thousand fourteen-c of this chapter.

4. If the number of teaching and other positions needed to provide the educational services required by such central high school district is less than the number of teachers and other employees eligible to be considered employees of such central high school district as provided by subdivision three of this section, [~~the services of the teachers and other employees having the least seniority in the component district within the tenure area of the position shall be discontinued~~] **decisions about the retention of teachers and other employees in the component district shall be made pursuant to subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of paragraph a and paragraph b of subdivision thirteen and subdivision thirteen-a of section eighteen hundred four of this title respectively**. Such teachers and other employees **not retained as employees** shall be placed on a preferred eligible list of candidates for appointment**, pursuant to paragraph b of subdivision thirteen and paragraph b of subdivision thirteen-a of section eighteen hundred four of this title,** to a vacancy that may thereafter occur in an office or position under the jurisdiction of the component district, the "receiving district" as defined in section three thousand fourteen-c of this chapter, from which a component district has taken back students, and the central high school district similar to the one such teacher or other employee filled in such component district. The teachers and other employees on such preferred lists shall be reinstated or appointed to such vacancies in such corresponding or similar positions under the jurisdiction of the component district or the central high school

district [~~in the order of their length of service in such component district, within seven years from the date of the abolition of such office or position~~] pursuant to the criteria outlined in subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of paragraph a of subdivision thirteen and paragraph a of subdivision thirteen-a of section eighteen hundred four of this title.

5. For any such teacher or other employee as described in subdivision three of this section for salary, sick leave and any other purposes, the length of service credited in such component district shall be credited as employment time with such central high school district.

6. This section shall in no way be construed to limit the rights of any of such teachers or other employees described in this section granted by any other provision of law.

§ 5. Section 2510 of the education law, as added by chapter 762 of the laws of 1950, subdivision 3 as amended by chapter 240 of the laws of 1992 and paragraph (a) of subdivision 3 as amended by chapter 236 of the laws of 1993, is amended to read as follows:

§ 2510. Abolition of office or position. 1. If the board of education abolishes an office or position and creates another office or position for the performance of duties similar to those performed in the office or position abolished, the person filling such office or position at the time of its abolishment shall be appointed to the office or position thus created without reduction in salary or increment, provided the record of such person has been one of faithful, competent service in the office or position he or she has filled.

2. [~~Whenever~~] Notwithstanding any other provision of law to the contrary, whenever a board of education abolishes a position under this chapter, [~~the services of the teacher having the least seniority in the system within the tenure of the position abolished shall be discontinued~~] termination decisions shall be made pursuant to criteria outlined in subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of paragraph a of subdivision thirteen and paragraph a of subdivision thirteen-a of section eighteen hundred four of this title.

3. (a) If an office or position is abolished or if it is consolidated with another position without creating a new position, the person filling such position at the time of its abolishment or consolidation shall be placed upon a preferred eligible list of candidates for appointment to a vacancy that then exists or that may thereafter occur in an office or position similar to the one which such person filled [~~without reduction in salary or increment, provided the record of such person has been one of faithful, competent service in the office or position he has filled. The persons on such preferred list shall be reinstated or appointed to such vacancies in such corresponding or similar positions in the order of their length of service in the system at any time within seven years from the date of abolition or consolidation of such office or position~~] pursuant to the provisions of paragraph b of subdivision thirteen and paragraph b of subdivision thirteen-a of section eighteen hundred four of this title. Notwithstanding any other provision of law to the contrary, in the event that a member of the New York state teachers' retirement system, who is receiving a disability retirement allowance, shall have such disability retirement allowance rescinded, such member shall be placed upon such preferred eligible list as of the effective date of his or her disability retirement.

(b) The persons on such preferred list shall be reinstated, in accordance with the terms of paragraph (a) of this subdivision, to such substitute positions of five months or more in duration, as may from

time to time occur without losing their preferred status on such list. Declination of such reinstatement shall not adversely affect the persons' preferred eligibility status.

§ 6. Section 3013 of the education law, as added by chapter 737 of the laws of 1992, is amended to read as follows:

§ 3013. Abolition of office or position. 1. [~~If~~] **Notwithstanding any other provision of law to the contrary, if** a trustee, board of trustees, board of education or board of cooperative educational services abolishes an office or position and creates another office or position [~~for the performance of duties similar to those performed in the office or position abolished, the person filling such office or position at the time of its abolishment shall be appointed to the office or position thus created without reduction in salary or increment, provided the record of such person has been one of faithful, competent service in the office or position he or she has filled~~]**, decisions regarding employee retention shall be made pursuant to the provisions of subdivisions thirteen and thirteen-a of section eighteen hundred four of this chapter**.

2. [~~Whenever a trustee, board of trustee, board of education or board of cooperative educational services abolishes a position under this chapter, the services of the teacher having the least seniority in the system within the tenure of the position abolished shall be discontinued.~~

~~3. (a)~~] If an office or position is abolished or if it is consolidated with another position without creating a new position, the [~~person filling such position at the time of its abolishment or consolidation shall be placed upon a preferred eligible list of candidates for appointment to a vacancy that then exists or that may thereafter occur in an office or position similar to the one which such person filled without reduction in salary or increment, provided the record of such person has been one of faithful, competent service in the office or position he or she has filled. The persons on such preferred list shall be reinstated or appointed to such vacancies in such corresponding or similar positions in the order of their length of service in the system at any time within seven years from the date of abolition or consolidation of such office or position~~] **provisions of paragraph b of subdivisions thirteen and thirteen-a of section eighteen hundred four of this chapter shall control**.

[~~(b)~~] **3.** The persons on such preferred list shall be reinstated, in accordance with the terms of [~~paragraph (a)~~] **subdivision one** of this [~~subdivision~~] **section**, to such substitute positions of five months or more in duration, as may from time to time occur without losing their preferred status on such list. Declination of such reinstatement shall not adversely affect the persons' preferred eligibility status.

§ 7. Section 3014-a of the education law, as amended by chapter 511 of the laws of 1998, is amended to read as follows:

§ 3014-a. Teachers' rights as a result of a board or boards of cooperative educational services taking over a program formerly operated by a school district or districts or by a county vocational education and extension board. 1. In any case in which a board or boards of cooperative educational services duly take over the operation of a program formerly provided by a school district or school districts or by a county vocational education and extension board, each teacher, teaching assistant and teacher aide employed in such a program by such a school district or such a county vocational education and extension board at the time of such takeover by the board or boards of cooperative educational services, shall be considered an employee of such board or boards

of cooperative educational services with the same tenure or civil service status he **or she** maintained in such school district or in such county vocational education and extension board.

2. [~~If~~] **Notwithstanding any other provision of law to the contrary, if** the number of teaching positions needed to provide the services required by such program by the board or boards of cooperative educational services is less than the number of teachers, teaching assistants and teacher aides eligible to be considered employees of such board or boards of cooperative educational services as provided by subdivision one of this section, [~~the services of the teachers, teaching assistants and teacher aides having the least seniority in the school district or school districts or county vocational education and extension board whose programs are taken over by the board or boards of cooperative educational services within the tenure area or civil service title of the position shall be discontinued. Such teachers, teaching assistants and teacher aides shall be placed on a preferred eligible list of candidates for appointment to a vacancy that may thereafter occur in an office or position under the jurisdiction of the board or boards of cooperative educational services similar to the one such teacher, teaching assistant and teacher aide filled in such school district or school districts or such county vocational education and extension board. The teachers, teaching assistants and teacher aides on such preferred list shall be reinstated or appointed to such vacancies in such corresponding or similar positions under the jurisdiction of the board or boards of cooperative educational services in the order of their length of service in such school district or school districts or in such county vocational education and extension board, within seven years from the date of the abolition of such office or position~~] **decisions regarding the retention of employees and the procedures for laid off employees shall be made pursuant to the provisions of subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of paragraph a and paragraph b of subdivision thirteen and subdivision thirteen-a of section eighteen hundred four of this chapter**.

3. For any such teacher, teaching assistant and teacher aide as set forth in subdivision one of this section for salary, sick leave and any other purposes, the length of service credited in such school district or in such county vocational education and extension board shall be credited as employment time with such board or boards of cooperative educational services.

4. This section shall in no way be construed to limit the rights of any of such employees set forth in this section granted by any other provision of law.

5. Program takeovers pursuant to this section shall be considered a transfer pursuant to section seventy of the civil service law.

§ 8. Section 3014-b of the education law, as amended by chapter 511 of the laws of 1998, is amended to read as follows:

§ 3014-b. Teachers' rights as a result of a school district taking over a program formerly operated by a board of cooperative educational services. 1. In any case in which a school district duly takes over the operation of a program formerly provided by a board of cooperative educational services, each teacher, teaching assistant and teacher aide employed in such a program by such a board of cooperative educational services at the time of such takeover by the school district shall be considered an employee of such school district, with the same tenure or civil service status he **or she** maintained in such board of cooperative educational services.

2. [~~If~~] **Notwithstanding any other provision of law to the contrary, if** the number of teaching positions needed to provide the services required by such program by the school district is less than the number of teachers, teaching assistants and teacher aides eligible to be considered employees of such school district as provided by subdivision one of this section, [~~the services of the teachers, teaching assistants and teacher aides having the least seniority in the board of cooperative educational services whose programs are taken over by the school district within the tenure area or civil service title of the position shall be discontinued. Such teachers, teaching assistants and teacher aides shall be placed on a preferred eligible list of candidates for appointment to a vacancy that may thereafter occur in an office or position under the jurisdiction of the school district similar to the one such teacher, teaching assistant and teacher aide filled in such board of cooperative educational services. The teachers, teaching assistants and teacher aides on such preferred list shall be reinstated or appointed to such vacancies in such corresponding or similar positions under the jurisdiction of the school district in the order of their length of service in such board of cooperative educational services, within seven years from the date of the abolition of such office or position~~] **decisions regarding the retention of employees and the procedures for laid off employees shall be made pursuant to the provisions of subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of paragraph a and paragraph b of subdivision thirteen and subdivision thirteen-a of section eighteen hundred four of this chapter**.

3. For any such teacher, teaching assistant and teacher aide as set forth in subdivision one of this section for salary, sick leave and any other purposes, the length of service credited in such board of cooperative educational services shall be credited as employment time with such school district.

4. In the event that more than one school district duly takes over the operation of a program formerly provided by a board of cooperative educational services, then each teacher, teaching assistant and teacher aide employed in such program by such board of cooperative educational services at the time of such takeover by more than one school district, shall select the particular school district in which he **or she** shall be considered an employee, with all of the rights and privileges provided by the other provisions of this section. Such selection of the particular school district by such teacher, teaching assistant and teacher aide is to be based upon [~~the seniority of each teacher, teaching assistant and teacher aide in such board of cooperative educational services, with the right of selection passing from such teachers, teaching assistants and teacher aides with the most seniority to such teachers, teaching assistants and teacher aides with least seniority. Any such teacher, teaching assistant and teacher aide who is unable to obtain a teaching position in any such school districts because the number of positions needed to provide the services required in such programs with such school districts are less than the number of teachers, teaching assistants and teachers aides eligible to be considered employees of such school districts, shall be placed on a preferred eligible list in all such school districts in the method and with all of the rights provided by the other provisions of this section~~] **the provisions of subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of paragraph a of subdivision thirteen and paragraph b of subdivision thirteen-a of section eighteen hundred four of this chapter**.

5. This section shall in no way be construed to limit the rights of any of such employees set forth in this section granted by any other provision of law.

§ 9. Section 3014-c of the education law, as added by chapter 706 of the laws of 1989, is amended to read as follows:

§ 3014-c. Teachers' rights as a result of a school district taking back tuition students. 1. As used in this section, a "sending district" shall mean a school district which previously sent students to another school district on a tuition basis pursuant to section two thousand forty of this chapter, and a "receiving district" shall mean a school district which provided the educational program for students from another district on a tuition basis pursuant to section two thousand forty of this chapter.

2. In any case in which a sending district assumes the education of students formerly provided by a receiving district, each teacher employed in the education of such students by such receiving district at the time of such take back by the sending district shall be considered an employee of such sending district, with the same tenure status he **or she** maintained in such receiving district.

3. [~~If~~] **Notwithstanding any other provision of law to the contrary, if** the number of teaching positions needed to provide the educational services required by such sending district is less than the number of teachers eligible to be considered employees of such sending district as provided by subdivision two of this section, [~~the services of the teachers having the least seniority in the receiving district whose students are taken back by the sending district within the tenure area of the position shall be discontinued. Such teachers shall be placed on a preferred eligible list of candidates for appointment to a vacancy that may thereafter occur in an office or position under the jurisdiction of the sending district and the receiving district similar to the one such teacher filled in such receiving district. The teachers on such preferred list shall be reinstated or appointed to such vacancies in such corresponding or similar positions under the jurisdiction of the sending district or the receiving district in the order of their length of service in such receiving district, within seven years from the date of the abolition of such office or position~~] **decisions regarding the retention of employees shall be made pursuant to the provisions of subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of paragraph a of subdivision thirteen and paragraph a of subdivision thirteen-a of section eighteen hundred four of this chapter**.

4. For any such teacher as described in subdivision two of this section for salary, sick leave and any other purposes, the length of service credited in such receiving district shall be credited as employment time with such sending district.

5. In the event that more than one sending district assumes the education of students formerly provided by a receiving district, then each teacher employed in the education of such students in such receiving district at the time of such take back by more than one sending district, shall select the particular sending district in which he **or she** shall be considered an employee, with all of the rights and privileges provided by the other provisions of this section. [~~Such selection of the particular sending district by such teacher is to be based upon each teacher's seniority in such receiving district, with the right of selection passing from such teachers with the most seniority to such teachers with least seniority.~~] Any such teacher who is unable to obtain a teaching position in any such sending district because the number of

positions needed to provide the services required with such sending district are less than the number of teachers eligible to be considered employees of such sending districts, shall be placed on a preferred eligible list in all such sending districts in the method and with all of the rights provided by the other provisions of this section.

6. This section shall in no way be construed to limit the rights of any of such teachers described in this section granted by any other provision of law.

§ 10. Section 3014-d of the education law, as added by chapter 706 of the laws of 1989, is amended to read as follows:

§ 3014-d. Teachers' rights as a result of a school district sending students to another district on a tuition basis pursuant to section two thousand forty of this chapter. 1. As used in this section, a "sending district" shall mean a school district which sends students to another school district on a tuition basis pursuant to section two thousand forty of this chapter, and a "receiving district" shall mean a school district which receives and provides the educational program for students from another district on a tuition basis pursuant to section two thousand forty of this chapter.

2. In any case in which a sending district sends such students to a receiving district, each teacher previously employed in the education of students by such sending district prior to the time that such sending district sends its students to a receiving district shall be considered an employee of such receiving district, with the same tenure status he **or she** maintained in such sending district.

3. [~~If~~] **Notwithstanding any other provision of law to the contrary, if** the number of teaching positions needed to provide the educational services required by such receiving district is less than the number of teachers eligible to be considered employees of such receiving district as provided by subdivision two of this section, [~~the services of the teachers having the least seniority in the sending district within the tenure area of the position shall be discontinued. Such teachers shall be placed on a preferred eligible list of candidates for appointment to a vacancy that may thereafter occur in an office or position under the jurisdiction of the sending district and the receiving district similar to the one such teacher filled in such sending district. The teachers on such preferred list shall be reinstated or appointed to such vacancies in such corresponding or similar positions under the jurisdiction of the sending district or the receiving district in the order of their length of service in such sending district, within seven years from the date of the abolition of such office or position~~] **decisions regarding the retention of employees shall be made pursuant to the provisions of subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of paragraph a of subdivision thirteen and paragraph a of subdivision thirteen-a of section eighteen hundred four of this chapter**.

4. For any such teacher as described in subdivision two of this section for salary, sick leave and any other purposes, the length of service credited in such sending district shall be credited as employment time with such receiving district.

5. This section shall in no way be construed to limit the rights of any of such teachers described in this section granted by any other provision of law.

§ 11. This act shall take effect immediately.