TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2024-042

April 19, 2024

The Honorable Clarke Tucker
State Senator
Post Office Box 7268
Little Rock, Arkansas 72217

Dear Senator Tucker:

You indicate that the "Little Rock School District (LRSD) is in the process of notifying a number of current employees that they will not have employment contracts with the District for the 2024-25 school year. These decisions are based on budgetary constraints, not disciplinary issues or performance problems."

You note that Act 237 of 2023 (the LEARNS Act) prohibits school districts from "adopt[ing] a personnel policy or incorporate[ing] terms into a personnel contract that provide more rights to personnel than those provided under state law…."[1] You have attached LRSD's personnel policy that provides a hearing for "grievances," which is defined broadly enough to include nonrenewals of employee contracts. Paraphrasing your question, you ask: Does this policy improperly provide more rights than "those provided under state law"?[2]

RESPONSE

As explained more fully below, the LRSD policy is generally consistent with state law, but it also contains some provisions that are inconsistent with state law. The latter provisions would provide more rights than those provided under state law, and therefore, are invalid.

[1] A.C.A. § 6-17-2403(b)(2)(B)(i).

[2] Your opinion request contains multiple questions: (1) "In the absence of those statutes, do the employees have a right to a hearing?"; (2) "Does Ark. Code Ann. 6-17-208, for example, provide the right to a board hearing in this situation?"; (3) Does "the grievance statute, combined with LRSD's grievance policy, provide[] the right to a hearing?"; and (4) May "a district…offer a hearing if it decides to do so," or is "a hearing…prohibited by the LEARNS Act?" Boiled down, each question ultimately asks whether, the LRSD policy is consistent with state law. While I have paraphrased your question, I answer each of the foregoing questions in the analysis below.

DISCUSSION

1. Hearings before LEARNS. Before the LEARNS Act, the Teacher Fair Dismissal Act of 1983[3] and the Public School Employee Fair Hearing Act[4] required notice and hearing upon request if certain school employees, such as teachers, were recommended for nonrenewal.[5] Any such recommendation of nonrenewal was required to be made at least 30 days before the next contract period.[6]

2. Hearings after LEARNS. In 2023, the LEARNS Act repealed both the Teacher Fair Dismissal Act and the Public School Employee Fair Hearing Act.[7] Although the LEARNS Act still requires notice and hearing if an employee is recommended for termination,[8] it does not provide employees with a right to a hearing concerning the nonrenewal of a contract or recommendation for nonrenewal.[9] Nor does it require notice to an employee whose contract will be nonrenewed, unless that employee is a teacher on "intensive support status" under A.C.A. § 6-17-2807.[10] Thus, in general, a school need not notify an employee whose contract will not be renewed before letting the employee's contract expire.[11] The

[3] A.C.A. §§ 6-17-1501 to -1510 (repealed 2023).

[4] *Id.* §§ 6-17-1701 to -1705 (repealed 2023).

[5] *Id.* §§ 6-17-1509 (repealed 2023) (Teacher Fair Dismissal Act), 6-17-1703 (repealed 2023) (Public School Employee Fair Hearing Act).

[6] *Id.* § 6-17-1703(b) (repealed 2023).

[7] Act 237 of 2023, §§ 33–34.

[8] A.C.A. § 6-13-636(d)(1)(E).

[9] Nonrenewal and termination are distinct words that have different meanings. *See* Ark. Att'y Gen. Op. 2001-125 (opining that "[i]t is generally held…that 'non-renewal' and 'termination' are distinct concepts"); BLACK'S LAW DICTIONARY 1270 (11th ed. 2019) (defining "nonrenewal" as "[a] failure to renew something"); *id.* at 1550 (11th ed. 2019) (defining "renewal" as "[t]he act of restoring or reestablishing" such as "[t]he recreation of a legal relationship or the replacement of an old contract with a new contract, as opposed to the mere extension of a previous relationship or contract"); *id.* at 1774 (11th ed. 2019) (defining "termination" to mean "[t]he act of ending something").

[10] *See* A.C.A. § 6-17-2807(a)(1)–(4) (providing that a teacher may be placed in "intensive support status" if, "as evidenced by low performance ratings on the evaluation rubric," the teacher: "(1) Is not continuously improving professional practice; (2) Has not demonstrated commitment to students, the school, and the profession; (3) Fails to demonstrate growth or progress in professional practice after receiving targeted feedback and support; or (4) Does not advance student growth or progress as demonstrated on local and state measures").

[11] If, however, "a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him," due process requires "notice and an opportunity to be heard." *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 573 (1972) (citations omitted). You have not presented any facts that indicate a teacher's "good name, reputation, honor, or integrity" is a stake.

LEARNS Act prohibits a public school from "adopt[ing] a personnel policy or incorporat[ing] terms into a personnel contract that provides more rights to personnel than those provided under state law in effect during the term of the personnel contract," but it does not allow public schools to deny "personnel rights provided by other laws, including without limitation due process."[12]

3. State law regarding grievance procedures. LEARNS did not repeal A.C.A. § 6-17-208, which requires "[e]ach school district [to] have a written grievance procedure" that allows "[a]ll school employees…the right to file grievances and have those grievances heard."[13] This statute "allows all school employees to challenge or appeal any disciplinary actions or other grievances through the administration and may eventually appeal to the school board."[14]

4. Nonrenewals and grievances. So the question is whether the nonrenewal of a teacher's contract is subject to a hearing under A.C.A. § 6-17-208. It would be if the nonrenewal were considered a "grievance," which is defined as "*any concern related to personnel policy*, salary, federal laws and regulations, state laws and rules, or terms or conditions of employment raised by an employee."[15] The definition of "personnel policy" explicitly includes a "teacher's employment" and "nonrenewal."[16] Given this broad definition of a "grievance," the nonrenewal of a school employee's contract is almost certainly considered a "grievance." Therefore, to the extent that a school employee knows about the nonrenewal of his or her contract before the expiration of the terms of the contract, that employee could, in my opinion, take the nonrenewal up through the school's grievance policy as a "grievance,"[17] assuming that grievance policy complies with state law.[18] And, in my

[12] A.C.A. § 6-17-2403(a)(2)(B)(i)–(ii)(a).

[13] A.C.A. § 6-17-208(a)(1)(A)–(B)(i); *see also id.* §§ 6-17-208(a)(2)(B) (defining "employee" as "a person employed by a school district under a written contract"), 6-17-208(b)(1) (providing the procedural requirements for resolving a "grievance"), 6-17-208(b)(2)(B) (providing hearing requirements).

[14] *Releford v. Pine Bluff Sch. Dist. No. 3*, 355 Ark. 503, 509, 140 S.W.3d 483, 486–87 (2004).

[15] A.C.A. § 6-17-208(a)(2)(A) (emphases added).

[16] A.C.A. § 6-17-201(b)–(c); *see also* Ark. Att'y Gen. Ops. 2009-191 (looking to the § 6-17-201(c) definition of "personnel policy" because that phrase is undefined by A.C.A. § 6-17-208), 95-400 (opining that "the grievance procedure required by A.C.A. § 6-17-208 is applicable to all school district personnel policies").

[17] And even though I cannot find caselaw that indicates the nonrenewal of a contract has historically fallen under the grievance procedure, nonrenewals would have fallen under the former Teacher Fair Dismissal Act and the former Public School Employee Fair Hearing Act, which have now been repealed by the LEARNS Act. *See, e.g.*, *Releford*, 355 Ark. at 509, 140 S.W.3d at 486–87 (illustrating that before the LEARNS Act nonrenewals would not have been brought under a grievance procedure in light of other statutes in existence at that time).

[18] *See also Caldwell v. Blytheville, Arkansas Sch. Dist., No. Five*, 23 Ark. App. 159, 163–64, 746 S.W.2d 381, 383 (1988) (noting that a certified teacher may be terminated or a school "may refuse to renew the

opinion, a public school that follows this statutory process for grievances would not violate or conflict with the LEARNS Act.

Nevertheless, a public school or school district cannot incorporate notice provisions concerning nonrenewals into an employee contract without violating the LEARNS Act because no state law requires such notice. Therefore, if the grievance policy required such notice, that policy would violate LEARNS's provisions by "provid[ing] more rights to personnel than those provided under state law."[19]

5. LRSD's Section 3.23. The foregoing analysis indicates that LRSD's policy is only partly consistent with state law.

You have provided me Section 3.23, "Licensed Personnel Grievances," from what appears to be LRSD's grievance procedures as adopted on November 19, 2018, and last revised on April 20, 2020.[20] This document provides for informal resolution with an immediate supervisor and then, if "the grievance is not resolved to the grievant's satisfaction through informal discussions," a three-level formal grievance procedure: "Level One – Immediate Supervisor"; "Level Two – Superintendent"; and "Level Three – Appeal to the LRSD Board of Directors." The grievance procedure, under 3.23(B), expressly excludes "from this grievance procedure" "recommendations for nonrenewal, terminations, or suspensions under the Arkansas Teacher Fair Dismissal Act (A.C.A. § 6-17-1510) and the Public School Employee Fair Hearing Act (A.C.A. § 6-17-1705)," which are instead "governed by the requirements of those statutes."

It thus appears the policy has not been updated since the LEARNS Act became law because the LEARNS Act repealed those statutes. Therefore, some of the out-of-date language causes the grievance policy to conflict with A.C.A. § 6-17-208. For example, grievances related to nonrenewals skip the "lowest possible administrative level" required by § 6-17-208(a)(1), (b)(1) and move a teacher straight to "Level Three – Appeal to the LRSD Board of Directors." Based on these facts, a court could find that a public school violates A.C.A. § 6-17-208 when its grievance procedures do not meet the minimum statutory standards. Additionally, a court could find that the public school violates the LEARNS Act when it has adopted a personnel policy or incorporated terms concerning hearings and notice into a personnel contract that provide more rights than those provided under state law. So a

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contract of such teacher for any cause which is not arbitrary, capricious, or discriminatory, or for violating the reasonable rules and regulations promulgated by the school board").

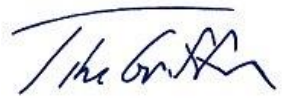
[19] A.C.A. § 6-17-2403(a)(2)(B)(i)–(ii)(a).

[20] Although this office has a long-standing policy of refraining from construing and interpreting specific terms of contracts or other agreements, *see, e.g.*, Ark. Att'y Gen. Ops. 2012-044, 2002-340, this office has consistently reviewed school grievance policies to determine their consistency with state law. Ark. Att'y Gen. Ops. 2009-191 (reviewing a specific provision of a grievance policy), 93-039 (reviewing sample grievance procedures). I will thus assess whether the specific grievance policy you have provided conflicts with state law.

public school should treat recommendations for nonrenewals as it does other "grievances" under its grievance policy and begin at the "lowest possible administrative level."

Assistant Attorney General William R. Olson prepared this opinion, which I hereby approve.

Sincerely,



TIM GRIFFIN
Attorney General