

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

SENATE BILL NO. 1021

BY: BROWN

AS INTRODUCED

AN ACT RELATING TO SCHOOLS; AMENDING 70 O.S. 1991, SECTIONS 5-117, 6-101.21, 6-101.26 AND 6-101.27, WHICH RELATE TO POWERS AND DUTIES OF DISTRICT BOARDS OF EDUCATION, STANDARDS OF PERFORMANCE AND CONDUCT OF TEACHERS, PROCEDURES FOR DISMISSAL OR NONREEMPLOYMENT OF TEACHERS, AND PROCEDURES FOR TRIAL; REQUIRING CERTAIN NEGOTIATIONS; REQUIRING CERTAIN TERMS IN CERTAIN AGREEMENTS; REQUIRING CONSIDERATION OF CERTAIN STANDARDS RELATING TO TEACHER PERFORMANCE; REQUIRING DISMISSAL OR NONREEMPLOYMENT OF TEACHER TO BE BASED ON JUST CAUSE; PROVIDING FOR BINDING ARBITRATION; ESTABLISHING PROCEDURES; PROVIDING FOR SELECTION OF ARBITRATOR; PLACING BURDEN OF PROOF; STATING STANDARD OF PROOF; AND LIMITING AUTHORITY OF ARBITRATOR.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 70 O.S. 1991, Section 5-117, is amended to read as follows:

Section 5-117. A. The board of education of each school district shall have power to:

1. elect its own officers;

2. make rules and regulations, not inconsistent with the law or rules and regulations of the State Board of Education, governing the board and the school system of the district;

3. maintain and operate a complete public school system of such character as the board of education shall deem best suited to the needs of the school district;

4. designate the schools to be attended by the children of the district;

5. provide and operate, when deemed advisable, cafeterias or other eating accommodations, thrift banks or other facilities for the teaching and practice of thrift and economy, bookstores, print shops, and vocational and other shops;

6. provide informational material concerning school bond elections and millage elections, including but not limited to all pertinent financial information relative to the bond issue, a statement of revenue sources necessary to retire proposed bonds, a statement of current bonded indebtedness of the school district, and a statement of proposed use of funds to be generated by the proposed bond issue. The informational material shall not contain the words "vote yes" or "vote no" or any similar words or statement any place on such informational material;

7. purchase, construct or rent, and operate and maintain, classrooms, libraries, auditoriums, gymnasiums, stadiums, recreation places and playgrounds, teacherages, school bus garages, laboratories, administration buildings, and other schoolhouses and school buildings, and acquire sites and equipment therefor;

8. have school district property insured;

9. acquire property by condemnation proceedings in the same manner as land is condemned for railroad purposes. School district funds may be used to erect buildings on leased land on which other buildings have been erected prior to April 3, 1969, or on land which is leased from a governmental entity;

10. lease real or personal property to the state or any political subdivision thereof for nominal cash consideration for so long as the use of the property by the lessee substantially benefits, in whole or in part, the same public served by the school district;

11. dispose of personal or real property no longer needed by the district by sale, exchange, lease, lease-purchase, sale and partial lease back, or otherwise. Real property shall be conveyed pursuant to a public sale, public bid, or private sale. Prior to the sale of any real property, the board of education shall have the real property appraised. The appraisal shall be confidential until the real property is sold. When the real property is sold the board of education shall make the appraisal available for public inspection. Prior to the conveyance of any real property by private sale, the board of education shall have offered the real property for sale by public sale or public bid. Any conveyance of real property by private sale to a nonprofit organization, association, or corporation to be used for public purposes, unless for exchange, shall contain a reversionary clause which returns the real property to the board of education upon the cessation of the use without profit or for public purposes by the purchaser or the assigns of the purchaser;

12. purchase necessary property, equipment, furniture, and supplies necessary to maintain and operate an adequate school system;

13. incur all expenses, within the limitations provided for by law, necessary to perform all powers granted by the provisions of this section;

14. contract with and fix the duties and compensation of physicians, dentists, optometrists, nurses, attorneys, superintendents, principals, teachers, bus drivers, janitors, and other necessary employees of the district and pay their necessary

itemized and documented travel expenses, and pay necessary itemized and documented travel expenses of members of the board of education; however, the board of education shall negotiate in good faith the duties and other terms and conditions of employment of teachers, bus drivers, janitors, and other necessary personnel with any appropriate labor organization representing same. Any agreement reached during such negotiations shall contain language requiring any dispute arising from or concerning the interpretation, application or enforcement of any collective bargaining agreement to be submitted to final and binding arbitration before a neutral arbitrator mutually selected by the school board and the labor organization as provided by subsection G of Section 6-101.27 of this title. Any such agreement shall further contain language that no career teacher shall be subject to discipline, dismissal or nonreemployment except for just cause;

15. pay necessary itemized and documented travel expenses and other related expenses of prospective employees for sponsored visits to the school district;

16. provide for employees' leaves of absence without pay;

17. exercise sole control over all the schools and property of the district, subject to other provisions of the Oklahoma School Code; and

18. allow district-owned school buses to be used for transportation of students from other districts or educational institutions while within the district on educational tours. This shall not restrict the authority of the board to authorize any other use of such buses which may now be permitted by law or regulation of the State Board of Education.

B. The board of education of any school district may rent, on a monthly basis, equipment and furniture, if such items are necessary for the operation of the school, and pay the rental charges for said usage during any fiscal year, or portion thereof, out of

appropriations made and approved for current expense purposes during said fiscal year. Any such rental contract extending beyond June 30 of such fiscal year shall be void unless it contains provisions for mutual ratification of renewal pursuant to the conditions provided for in this subsection. It is the intent of this subsection to authorize boards of education to enter into lease contracts but not to incur any obligation against the school district in excess of the income and revenue provided for such purposes for the fiscal year in which such lease contract is operative. Any lease agreement entered into by any board of education shall state the purchase price of equipment or furniture so leased. The lease shall not be extended so as to cause payment of more than the original purchase price of said equipment or furniture, plus interest not to exceed the legal rate. When said purchase price plus interest has been paid, the property shall belong to the lessee and the lessor shall deliver a deed or bill of sale to said property to the lessee. When any equipment or furniture has been leased or rented during any fiscal year pursuant to the provisions of any contract which permits continuance of such rental for the remainder of such fiscal year, the renting or leasing thereof must be continued for the remainder of said fiscal year unless the board of education renting or leasing the same certifies by proper resolution entered in the minutes of said board of education that the continuance of such rental is unnecessary and contrary to the public interest.

C. The boards of education of two or more school districts may enter into cooperative agreements and maintain joint programs including but not limited to, courses of instruction for handicapped children, courses of instruction in music and other subjects, practical instruction for trades and vocations, practical instruction in driver training courses, and health programs including visual care by persons legally licensed for such purpose, without favoritism as to either profession. The revenues necessary

to operate a joint program approved in cooperative agreements, whether from federal, state or local sources, including the individual contributions of participating school districts, shall be deposited into a fund separate from all other appropriated funds. The beginning fund balance each year, combined with all actual revenues, including collected and estimated revenues, must be appropriated before being expended. Purchase orders shall be issued against available appropriations and, once goods or services have been received, either payable or nonpayable warrants shall be issued in payment of all purchase orders. The fund shall be reported as a separate appropriated fund in all the financial reports of the school district which is chosen by the other school districts to keep the accounting records of the joint program.

D. Any school district may operate or maintain a school or schools on any military reservation which is within the boundaries of the school district or which is adjacent to the school district, and provide the instruction in the school or schools to children of personnel on the military reservation and, in doing so, shall conform to all federal laws and requirements.

E. The board of education of each school district shall adopt and maintain on file in the office of the superintendent of schools appropriate personnel policy and sick leave guide. The guide shall be made available to the public.

SECTION 2. AMENDATORY 70 O.S. 1991, Section 6-101.21, is amended to read as follows:

Section 6-101.21 A. The State Board of Education shall promulgate standards of performance and conduct for teachers. A copy of such standards, any amendments to such standards and any standards adopted by the board of education of the school district shall be provided by the board of education of each school district to each teacher on or before April 10 of each year.

B. The State Board of Education shall include the statutory grounds for dismissal and nonreemployment of career teachers within this standards document.

C. Standards which may be adopted by the board of education of a school district shall not conflict with state or federal law or standards promulgated by the State Board of Education.

D. In determining whether or not the professional performance of a teacher is adequate, the standards adopted by the State Board of Education shall be considered. Consideration ~~may~~ shall be given to any written standards of performance which have been adopted by ~~any other education-oriented organization or agency~~ the school district. Professional performance or conduct of a teacher which is in compliance with standards adopted by the State Board of Education or the local board of education pursuant to Section ~~71~~ 6-101.10 of this ~~act~~ title shall not be considered in support of any dismissal or nonreemployment action against the teacher.

SECTION 3. AMENDATORY 70 O.S. 1991, Section 6-101.26, is amended to read as follows:

Section 6-101.26 A. Whenever a board of education receives a superintendent's recommendation for the dismissal or nonreemployment of a teacher, the board shall mail a copy of the recommendation to the teacher by certified mail, restricted delivery, return receipt requested or by substitute process as provided by law. By the same means, the board shall notify the teacher of such teacher's right to a hearing before the board and the date, time and place set by the board for the hearing, which shall be held within the school district not sooner than twenty (20) days or later than sixty (60) days after the teacher's receipt of notice. The notice shall specify the statutory grounds upon which the recommendation is based upon for a career teacher or shall specify the cause upon which the recommendation is based upon for a probationary teacher. Said notice shall also specify the underlying facts supporting the

recommendation. At such hearing, the teacher shall be entitled to all rights guaranteed under such circumstances by the United States Constitution and the Constitution of Oklahoma.

B. The hearing shall be conducted by the local board according to procedures established by the State Board of Education.

C. Only after due consideration of the evidence and testimony presented at the hearing shall the local board decide whether to dismiss or nonreemploy the teacher. Any decision to dismiss or nonreemploy a career teacher shall be based upon just cause. The board's decision shall be voted in open meeting. The board shall also notify the teacher of its decision, including the basis for the decision, by certified mail, restricted delivery, return receipt requested or substitute process as provided by law. If the decision is to dismiss or nonreemploy a career teacher, the board shall include notification of said teacher's right to petition for a trial de novo in the district court and of the option to pursue final and binding arbitration before a neutral arbitrator within ten (10) days of receipt of notice of said decision. The board's decision regarding a probationary teacher shall be final. At the hearing the burden of proof shall be upon the superintendent or designee and the standard of proof shall be by the preponderance of the evidence. The career teacher shall receive any compensation or benefits to which such teacher is otherwise entitled until such time as the teacher's case is adjudicated at a trial de novo if the career teacher petitions for the trial de novo or by final and binding arbitration if the career teacher petitions for final and binding arbitration. Such compensation and benefits shall not be provided during any further appeal process. The probationary teacher shall receive any compensation or benefits to which such teacher is otherwise entitled until such time as the board's decision becomes final.

Provided, however, if the hearing for a probationary teacher is for nonreemployment of the probationary teacher, such compensation and benefits may be continued only until the end of such teacher's current contract.

SECTION 4. AMENDATORY 70 O.S. 1991, Section 6-101.27, is amended to read as follows:

Section 6-101.27 A. A career teacher shall be entitled to a trial de novo in the district court of the county in which the school district is located. Within ten (10) days of receipt of the board's notification of said teacher's right to a trial de novo, the teacher shall file a petition for a trial de novo.

Upon filing the petition, the court clerk shall issue a summons and cause service by mail to be made to the clerk of the local board of education by certified mail, restricted delivery with return receipt requested or substitute process as provided by law.

B. If, within the ten-day period, the career teacher fails to file a petition for a trial de novo concerning the teacher's dismissal or nonreemployment, the teacher shall be deemed to have waived the right to a trial de novo and the initial determination of the board shall be final.

C. The local school board shall serve its answer within twenty (20) days of the service of summons and petition upon it. The trial de novo shall be scheduled at the earliest possible date which will permit both parties adequate time to prepare for a just trial of the issues involved, provided however, said trial de novo shall be scheduled and held not less than ten (10) days and no later than thirty (30) days after the answer has been filed.

D. Except as otherwise provided specifically in this section, the law generally applicable to civil suits filed in district court shall apply to the proceedings for trial de novo under this section. At the trial de novo the standard of proof shall be by the preponderance of the evidence and the burden of proof shall be on

the district superintendent or designee, as representative of the local board of education, to establish de novo that the teacher's dismissal or nonreemployment is warranted. The trial de novo shall proceed as a nonjury trial before the court. The court shall determine de novo all issues of fact and law necessary for full adjudication of the dispute at the trial. The court shall not, by applying principles of collateral estoppel or res adjudicata or otherwise, give preclusive effect to findings of fact or determinations of the board with regard to the issues necessary to determine the adequacy of the dismissal or nonreemployment of the teacher in the trial de novo. Within three (3) days following the conclusion of the trial de novo, the judge shall prepare written findings of fact and conclusions of law and shall enter judgment directing either of the following:

1. That the local board of education reinstate the career teacher with full employment status and benefits; or

2. That the decision of the local board of education for the dismissal or nonreemployment of the career teacher be sustained.

In addition, the court may enter an order awarding the prevailing party attorneys fees and costs.

E. The time limits set forth in this section for the proceedings before the district court may be extended by mutual agreement of the parties with the approval of the district court.

F. The decision of the district court shall be final and binding upon the teacher and the board of education unless the teacher or the board of education appeals the decision of the district court in the manner provided by law for the appeal of civil cases from the district court.

G. The career teacher shall have the option to elect to pursue final and binding arbitration before a neutral arbitrator instead of a trial de novo. A career teacher shall not pursue both final and binding arbitration and a trial de novo. A career teacher must

notify the clerk of the board of education, by certified mail, return receipt requested, within ten (10) days of receipt of the board's notification. If there exists any agreement between the board of education and any education-oriented organization providing the procedures for selecting a neutral arbitrator, such procedures shall be followed. If no such agreement exists, the clerk of the board of education shall request a panel of seven (7) arbitrators from the Federal Mediation Conciliation Service within five (5) days of receipt of the career teacher request for arbitration. Upon receipt of such panel, the arbitrator shall be selected by the parties alternately striking names until only one name remains. The board of education shall strike the first name. The board's clerk shall immediately notify the arbitrator of their selection.

H. The arbitration hearing shall be scheduled at the earliest possible date which will permit both parties adequate time to prepare for a just adjudication of all issues but in no case shall such hearing be scheduled and held not less than ten (10) days and no later than thirty (30) days after notice to the arbitrator.

I. At the arbitration hearing, the burden of proof shall be on the district superintendent or designee and shall be by a preponderance of the evidence. The arbitrator shall have the authority to determine whether there exists just cause to support the dismissal or nonreemployment of the teacher. The arbitrator shall render his decision within thirty (30) days of the hearing. The decision of the arbitrator shall be final and binding on all parties.

J. The arbitrator's decision shall be either to reinstate the career teacher with full employment status and benefits or to sustain the decision of the board of education to dismiss or nonreemploy the career teacher.

K. The time limits set forth herein or in any agreement between the local board and any education-oriented organization concerning

arbitration may be extended by the mutual written agreement of the parties and with the approval of the arbitrator.

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