

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 91

BY: WRIGHT

AS INTRODUCED

AN ACT RELATING TO SCHOOLS; AMENDING 70 O.S. 1981, SECTION 6-102.3, AS AMENDED BY SECTION 72, CHAPTER 2, O.S.L. SUPP. 1989, AND AS RENUMBERED BY SECTION 117, CHAPTER 2, O.S.L. SUPP. 1989, AND SECTIONS 81, 82, AND 84, CHAPTER 2, O.S.L. SUPP. 1989 (70 O.S. SUPP. 1990, SECTIONS 6-101.11, 6-101.26, 6-101.27, AND 6-101.29), WHICH RELATE TO THE TEACHER DUE PROCESS ACT OF 1990; DELETING RIGHT TO TRIAL DE NOVO; ESTABLISHING CERTAIN RIGHT TO APPEAL; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 70 O.S. 1981, Section 6-102.3, as amended by Section 72, Chapter 2, O.S.L. Supp. 1989 and as renumbered by Section 117, Chapter 2, O.S.L. Supp. 1989 (70 O.S. Supp. 1990, Section 6-101.11), is amended to read as follows:

Section 6-101.11 Whenever any evaluation is made of a teacher or administrator, a true copy of the evaluation shall be presented to the person evaluated, who shall acknowledge the written evaluation by signing the original. Within two (2) weeks after the evaluation, the person evaluated may respond and said response shall be made part of the record. Except by order of a court of competent

jurisdiction, evaluation documents and the responses thereto shall be available only to the evaluated person, the board of education, the administrative staff making the evaluation, the board and administrative staff of any school to which such evaluated person applies for employment and such other persons as are specified by the teacher in writing and shall be subject to disclosure at a hearing ~~or trial de novo~~ on the dismissal or nonreemployment of the teacher or administrator and on appeal in regard thereto.

SECTION 2. AMENDATORY Section 81, Chapter 2, O.S.L. Supp. 1989 (70 O.S. Supp. 1990, 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. 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~~ comprehensive findings of fact and conclusions of law, 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~~ appeal the board's decision to the district court 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~~ If the career teacher files an appeal, the 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 a~~ decision is entered by the district court. 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;~~ provided, 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 3. AMENDATORY Section 82, Chapter 2, O.S.L. Supp. 1989 (70 O.S. Supp. 1990, 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~~ appeal a decision by a board to dismiss or nonreemploy said teacher to 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~~ an appeal, the teacher shall file a ~~petition for a trial de novo~~ petition-in-error with the district court.

Upon filing ~~the petition~~ of such petition-in-error, 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~~ petition-in-error appealing the teacher's dismissal or nonreemployment, the teacher shall be deemed to have waived the right to a ~~trial de novo~~ an appeal and the initial determination of the board shall be final.

C. The local school board shall ~~serve~~ file its ~~answer~~ response within twenty (20) days of the service of ~~summons and petition upon it~~ the petition-in-error. The ~~trial de novo~~ hearing on the appeal shall be scheduled at the earliest possible date which will permit both parties adequate time to prepare for a ~~just trial~~ argument of the issues involved; ~~provided however,~~ said ~~trial de novo~~ hearing shall be scheduled and held not less than ten (10) days and no later than thirty (30) days after the ~~answer~~ response 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~~ review of a board's decision to dismiss or nonreemploy a teacher shall be made pursuant to Section 322 of Title 75 of the Oklahoma Statutes. Within three (3) days following the conclusion of the ~~trial de novo~~ hearing, the judge shall prepare written findings of fact and conclusions of law and shall enter ~~judgment~~ an order 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.

SECTION 4. AMENDATORY Section 84, Chapter 2, O.S.L. Supp. 1989 (70 O.S. Supp. 1990, Section 6-101.29), is amended to read as follows:

Section 6-101.29 Whenever the superintendent of a school district has reason to believe that cause exists for the dismissal of a teacher and is of the opinion that the immediate suspension of the teacher would be in the best interests of the children in the district, the superintendent or the local board of education upon

receiving recommendation for suspension from the superintendent may suspend the teacher without notice or hearing. However, the suspension shall not deprive the teacher of any compensation or other benefits to which otherwise entitled. ~~Such~~ For a career teacher, such suspension shall extend to such time as the teacher's case is adjudicated ~~at a trial de novo for a career teacher~~ reviewed on appeal by the district court, but such extension shall not include time for any further appeal process. Within ten (10) days' time after such suspension becomes effective, the local board of education shall initiate a hearing for dismissal pursuant to law.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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