

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2345

By: Staggs

AS INTRODUCED

An Act relating to the State Department of Rehabilitation Services; amending 10 O.S. 2001, Section 1419, which relates to the Oklahoma School for the Blind and the Oklahoma School for the Deaf; modifying employment authority of the Director of the State Department of Rehabilitation Services; defining certain professionals and other staffing; providing for powers and duties of the Director; providing for duties and compensation of employees; providing for benefits for certain specialist; making certain personnel eligible for membership in the Teachers' Retirement System; providing for adoption of personnel policies; requiring rulemaking by a certain date; establishing requirements for professional development programs; authorizing certain disciplinary action; making hearings subject to the Administrative Procedures Act; making certain action not subject to the Administrative Procedures Act; providing for notification regarding certain contracts; removing out-of-date language; authorizing the selection of a bargaining unit; requiring recognition by the Commission; providing for trials de novo and for appeals for dismissal or nonrenewal of certain contracts; providing procedures; providing exceptions; providing for petitions, hearings and other proceedings; providing for application of certain principals; providing for written findings; requiring certain judgments; authorizing extensions; making certain decision binding; specifying exceptions; amending 74 O.S. 2001, Sections 840-5.3 and 840-5.12, which relate to the Oklahoma Personnel Act; modifying categories of employees; making certain superintendents unclassified state employees; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 1419, is amended to read as follows:

Section 1419. A. The Commission for Rehabilitation Services shall establish and maintain such methods of administration, including methods relating to the establishment and maintenance of

personnel standards, as are necessary for the proper and efficient administration of the Oklahoma School for the Blind and the Oklahoma School for the Deaf, and programs thereat; shall maintain records and reports, shall provide a uniform accounting system; and shall incur such expenses and make such expenditures as it deems necessary to maintain and operate such institutions.

B. 1. Instructional Personnel. The Director of the State Department of Rehabilitation Services shall, ~~subject to the approval of the Commission,~~ employ or contract with such qualified instructional personnel including, but not limited to, teachers, ~~principals, directors of student assessment and program development, vocational teachers, career vocational coordinators, head school librarians, school psychologists, mental health counselors, school counselors, school psychometrists, occupational therapists, physical therapists, orientation and mobility specialists (OSB), speech services supervisors and speech language pathologists,~~ and appoint or employ the superintendent and such other personnel persons serving in an instructional capacity, as the director deems necessary for the proper operation of each ~~institution,~~ school and shall fix their duties and compensation. ~~The superintendent, teachers and other employees shall be eligible for membership or participation in the Teachers' Retirement System of Oklahoma to the same extent and on the same basis as teachers and other employees of other state educational institutions and public schools~~ The Director shall not employ or contract with a person as instructional personnel unless the superintendent of the school has recommended that person.

2. Career Teacher. A career teacher is a member of the instructional staff who has served in an instructional capacity for three (3) or more consecutive years in either school, or who has served in a public school district in such a way so as to meet the definition of a "career teacher" as provided for in Section 6-101.3

of Title 70 of the Oklahoma Statutes. "Career teacher" shall not include a school nurse.

3. Probationary Teacher. A probationary teacher is a member of the instructional staff who has served in an instructional capacity for less than three (3) consecutive years in either school, or who has served in a public school district in such a way so as to meet the definition of a "probationary teacher" as provided for in Section 6-101.3 of Title 70 of the Oklahoma Statutes.

C. Administrative Personnel.

1. The Director of the State Department of Rehabilitation Services shall employ or appoint the superintendent of each school and shall fix their duties and compensation. The superintendents shall be in the unclassified service.

2. The Director of the State Department of Rehabilitation Services shall employ or contract with such other administrative personnel as the Director deems necessary for the proper operation of each school and shall fix their duties and compensation. The administrative personnel may include but is not limited to assistant superintendents, principals, vice-principals and other persons who devote a majority of their time to service in a supervisory or administrative capacity.

D. Support Personnel. The Director of the State Department of Rehabilitation Services shall employ or appoint such support personnel as the Director deems necessary for the proper operation of each school and shall fix their duties.

E. An orientation and mobility specialist employed by the State Department of Rehabilitation Services to serve at the Oklahoma School for the Blind or the Oklahoma School for the Deaf shall be accorded the same protection of laws and all other benefits accorded instructional personnel, including but not limited to the minimum salary level for instructional personnel.

F. Instructional personnel and administrative personnel shall be eligible for membership or participation in the Teachers' Retirement System of Oklahoma to the same extent and on the same basis as teachers and other employees of other state education institutions and public schools.

G. 1. The Commission shall promulgate, pursuant to the Administrative Procedures Act, adopt personnel rules and establish policies similar to those for instructional and administrative personnel, except for superintendents, that are consistent with the law applicable to public school district employees for those employees listed in subsection B of this section, including but not limited to leave and employment policies, evaluation policy, grievance procedures, professional development, and a minimum salary schedule. Contingent upon the availability of funds, the The Commission shall initiate a rulemaking process for the personnel policies for instructional and administrative personnel no later than October 1, 2002. The minimum salary level for qualified instructional personnel listed in subsection B of this section shall meet or exceed the minimum salary level provided for public school teachers in Section 18-114.7 of Title 70 of the Oklahoma Statutes. The Department shall be authorized to notify teachers and other personnel on or before April 10 of each year concerning the renewal of contracts consistent with the requirements for public school teachers as provided for in Section 6-101 of Title 70 of the Oklahoma Statutes. The policy for professional development programs for instructional and administrative personnel shall be consistent with the requirements for professional development programs for public school teachers as provided in Section 6-194 of Title 70 of the Oklahoma Statutes.

2. Final disciplinary action taken against a member of the instructional or administrative staff, including termination or the nonrenewal of a contract, shall be subject to the administrative

hearing procedures as set forth in Article II of the Oklahoma Administrative Procedures Act. If the final decision of the Director is to terminate or to not renew the contract of a career teacher, the career teacher shall not have a right to judicial review pursuant to Article II of the Oklahoma Administrative Procedures Act, but shall have a right to a trial de novo as provided for in Section 2 of this act. Disciplinary action against a probationary teacher shall be final unless otherwise provided for by law.

~~D.~~ H. The State Department of Education shall insure that any funds which have been received in Oklahoma by the State Department of Education because of students who are enrolled and attending the Oklahoma School for the Blind and the Oklahoma School for the Deaf are transferred to the State Department of Rehabilitation Services for use by these schools in proportion to the number of students enrolled and attending who were the basis for the receipt of these federal funds.

~~E. These~~ I. Instructional and support personnel in an appropriate bargaining unit employed at either school shall be entitled to select by election an employee organization which shall be the exclusive representative of all the employees in the unit. The Commission shall recognize any employee organization elected by such personnel. Elections for an employee organization shall be held as provided for in Section 509.2 of Title 70 of the Oklahoma Statutes.

J. School personnel listed in subsection B of this section who have entered into contracts with the schools on or before July 1, 1995, shall be entitled to longevity pay as provided in Section 840-2.18 of Title 74 of the Oklahoma Statutes.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1419a of Title 10, unless there is created a duplication in numbering, reads as follows:

A. A career teacher, as defined in Section 1419 of Title 10 of the Oklahoma Statutes, who has been dismissed or whose contract has not been renewed shall be entitled to a trial de novo in the district court of the county in which the school is located.

B. In the event that a career teacher is dismissed or the teacher's contract is not renewed, the Director of the State Department of Rehabilitation Services shall notify the teacher of the right to trial de novo within ten (10) days of receipt of the final order of the Commission.

C. Within ten (10) days of receipt of the notification of the right to a trial de novo, the career teacher may 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 upon the State Department of Rehabilitation Services by certified mail, restricted delivery with return receipt requested or substitute process as provided by law.

D. If, within the ten-day period, the career teacher fails to file a petition for a trial de novo concerning the dismissal or nonreemployment, the teacher shall be deemed to have waived the right to trial de novo and the decision of the Director to dismiss or not to renew the contract shall be final.

E. The Department 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.

F. 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 State Department of Rehabilitation Services to establish de novo that the career 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 Commission with regard to the issue necessary to determine the adequacy of the dismissal or nonreemployment of the career 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 State Department of Rehabilitation Services reinstate the career teacher with full employment status and benefits; or

2. That the decision of the State Department of Rehabilitation Services for the dismissal or nonreemployment of the career teacher be sustained.

In addition, the court shall enter an order awarding the prevailing party attorney fees and costs.

G. 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.

H. The decision of the district court shall be final and binding upon the career teacher and the State Department of Rehabilitation Services unless the teacher or the Department appeals the decision of the district court in the manner provided by law for the appeal of civil cases from the district court.

I. This section shall not apply to the following:

1. Administrative personnel;

2. Instructional personnel serving under a temporary contract or as a substitute teacher as defined in Section 6-105 of Title 70 of the Oklahoma Statutes; and

3. Probationary teachers.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 840-5.3, is amended to read as follows:

Section 840-5.3 A. The following offices, positions and personnel shall not be considered state employees except as otherwise provided by law:

1. Patient and inmate help in the state charitable, mental and correctional institutions;

2. Persons engaged in public work for the state, but employed by contractors when the performance of such contract is authorized by the Legislature or other competent authority;

3. All employees of all public school districts; and

4. Officers and members of the Oklahoma National Guard, as such.

B. ~~Contract instructional~~ 1. Instructional and administrative personnel, except for superintendents, of the State Department of Rehabilitation Services at the Oklahoma School for the Blind and the Oklahoma School for the Deaf pursuant to Section 1419 of Title 10 of the Oklahoma Statutes shall be considered state employees, except they shall not be considered state employees for the purposes of the Oklahoma Personnel Act, unless otherwise provided by law. However, the Office of Personnel Management may categorize such employees as unclassified solely for the purpose of entering and maintaining employment data in the state Personnel Management Information System established pursuant to Section 840-2.13 of this title.

2. The superintendents at the Oklahoma School for the Blind and the Oklahoma School for the Deaf shall be state employees in the unclassified service, subject to the Oklahoma Personnel Act.

SECTION 4. AMENDATORY 74 O.S. 2001, Section 840-5.12, is amended to read as follows:

Section 840-5.12 A. The State Department of Rehabilitation Services shall be under the Merit System. Except as otherwise provided in this section, all offices, positions and personnel shall be classified and subject to the provisions of the Merit System of Personnel Administration and rules promulgated hereunder. This section shall supersede and repeal any and all executive orders issued pursuant to Section 840-1.1 et seq. of this title to place the agency or its predecessors under the Merit System.

B. In addition to offices, positions and personnel that are unclassified pursuant to Section 840-5.5 of this title, the Director of the State Department of Rehabilitation Services may establish positions in the unclassified service and place employees in the positions provided the total number of unclassified positions does not exceed fifty-two (52). This limit does not include State Department of Rehabilitation Services employees subject to Section 840-5.3 of this title.

C. The limit on unclassified positions provided for in subsection B of this section shall not apply to the instructional and administrative personnel at the Oklahoma School for the Blind and the Oklahoma School for the Deaf as listed in Section 1419 of Title 10 of the Oklahoma Statutes.

D. The limit on unclassified positions provided for in subsection B of this section shall not apply to the employees of the Disability Determination Division of the State Department of Rehabilitation Services. The Director of the State Department of Rehabilitation Services may establish positions in the unclassified service in the Disability Determination Division and may place employees in those positions provided the total number of those unclassified positions does not exceed ten.

E. ~~Contract instructional~~ Instructional and administrative personnel of the State Department of Rehabilitation Services at the Oklahoma School for the Blind and the Oklahoma School for the Deaf pursuant to ~~subsection B~~ of Section 1419 of Title 10 of the Oklahoma Statutes shall be considered unclassified state employees solely for the purpose of entering and maintaining employment data in the state Personnel Management Information System established pursuant to Section 840-2.13 of this title, unless otherwise provided by law.

SECTION 5. This act shall become effective July 1, 2002.

SECTION 6. 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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