

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1620

By: Richardson

COMMITTEE SUBSTITUTE

An Act relating to schools; amending 70 O.S. 2001, Section 6-101.26, as amended by Section 9, Chapter 434, O.S.L. 2003 (70 O.S. Supp. 2004, Section 6-101.26), which relates to Teacher Due Process Act of 1990; providing for approval of certain recommendation of the superintendent by the board of education; modifying procedures and content of notice of decision to dismiss or nonreemploy a teacher; modifying requirements for a pretermination hearing for career teachers and due process hearing for probationary teachers; establishing time period for notice of request by a teacher; providing for certain actions based on teachers response to right to a hearing; providing for selection of a hearing judge; providing for appointments to hearing judge list; stating qualifications of a hearing judge; providing for payment of hearing judge expenses; directing the State Superintendent of Public Instruction to submit hearing judge names upon notification; establishing procedure for selection from list of submitted names; establishing procedures for pretermination proceedings; providing for admission of evidence; recognizing certain privileges; allowing for the exclusion of certain evidence, objections, and written evidence; providing for form of documentary evidence; allowing for cross-examination; establishing the right to counsel; allowing for the exclusion of witnesses; repealing 70 O.S. 2001, Section 6-101.27, which relates to the right to a trial de novo; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 70 O.S. 2001, Section 6-101.26, as amended by Section 9, Chapter 434, O.S.L. 2003 (70 O.S. Supp. 2004, Section 6-101.26), is amended to read as follows:

Section 6-101.26 A. ~~Whenever a~~ The recommendation for the dismissal or nonreemployment of a career or probationary teacher

submitted by a superintendent as provided for in Section 6-101.25 of this title shall be approved or rejected upon a majority vote of a quorum of the board of education at the board meeting at which the recommendations of the hearing judge are considered as provided for in this section.

B. If the 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, if the teacher is a career teacher, the board shall notify the teacher of ~~such teacher's~~ the right to a pretermination hearing before a hearing judge appointed by 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) calendar days or later than sixty (60) calendar days after ~~the teacher's~~ receipt of notice a request for a hearing by the teacher. In the case of a probationary teacher, the notice shall state the right of the teacher to have a due process hearing conducted by the board of education. 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. The notice shall also specify the underlying facts supporting the recommendation.

C. Within ten (10) calendar days of receipt of the notice, the career or probationary teacher shall notify by certified mail, restricted delivery with return receipt requested, the board of education of the decision of the teacher to request a hearing.

D. If a career teacher fails to notify the board of education within ten (10) calendar days of the desire of the teacher to have a pretermination hearing before a hearing judge, the teacher shall be deemed to have waived the right to a hearing and the dismissal of

the teacher shall be final. The determination of dismissal or nonreemployment by the board shall be final and nonappealable. If the teacher does make notification within ten (10) calendar days, there shall be appointed, within ten (10) calendar days from the date of notification, a hearing judge to conduct the hearing.

E. If a probationary teacher fails to notify the board of education within ten (10) calendar days of the desire of the teacher to have a due process hearing before the board, the teacher shall be deemed to have waived the right to a hearing and the dismissal shall be final. If the teacher does make notification within ten (10) calendar days, the board shall, as soon as possible, hold a hearing as provided for in subsection K of this section.

F. At the hearing, the career or probationary teacher shall be entitled to all rights guaranteed under the circumstances by the United States Constitution and the Constitution of Oklahoma.

~~B.~~ G. The career teacher pretermination hearing shall be conducted by the local board hearing judge as follows:

1. The superintendent or designee shall, in person or in writing, specify the statutory ground upon which the recommendation is based. The superintendent or designee shall also specify the underlying facts and provide an explanation of the evidence supporting the recommendation for the dismissal or nonreemployment of the career teacher; and

2. The career teacher or designee shall have the opportunity to present reasons, either in person or in writing, why the proposed action should not be taken.

~~C.~~ H. Only after the career teacher has a meaningful opportunity to respond to the recommendation for dismissal or nonreemployment at the pretermination hearing shall the local board hearing judge decide whether to accept or reject the recommendation of the superintendent. Within ten (10) days after the conclusion of the hearing, the hearing judge shall submit the decision of the

judge to the board for approval or rejection. The vote made by the board shall be made in an open meeting. The decision of the board shall be final and nonappealable. The board shall also notify the career 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 accept the recommendation of the superintendent, the board shall include notification of the right of the career teacher to petition for a trial de novo in the district court within ten (10) days of receipt of notice of the decision.~~ At the pretermination 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~~ decision of the board becomes final. Such compensation and benefits shall not be provided during any further appeal process. If the career teacher appeals the decision of the board, based on the decision of the hearing judge, to the district court, the provisions of the Administrative Procedures Act shall apply to the appeal.

~~D. The probationary teacher hearing shall be conducted by the local board according to procedures established by the State Board of Education.~~

~~E. I.~~ I. The hearing judge for a career teacher pretermination hearing shall be selected as follows:

1. The State Board of Education shall select not less than twenty nor more than thirty persons to act as hearing judges and who shall be placed on a list of hearing judges by the State Superintendent of Public Instruction. The persons selected shall reside in Oklahoma, be an attorney with trial experience, be a member of the Oklahoma Bar Association, and be familiar with hearing

procedures as set forth in this section. No currently elected public officer, employee of the board of education involved in the termination, or officer or employee of an education employee organization shall be eligible to serve as a hearing judge. No person who is related within the second degree by consanguinity or affinity to an elected public officer, an employee of the board of education that is involved in the termination, or an employee of an education employee organization shall be eligible to serve as a hearing judge. The board of education shall pay all expenses of the hearing judge according to a fee schedule that the board develops each fiscal year for such purposes; and

2. Within then (10) calendar days of being notified that a hearing judge is needed, the State Superintendent of Public Instruction or a designee shall provide the names of five hearing judges selected at random from the hearing judge list who are available to serve as the hearing judge. The parties shall select the hearing judge from the five names within fifteen (15) calendar days after receiving the list of hearing judges. If the parties are unable to agree on a name, the name shall be selected by elimination. The teacher shall be given the first opportunity to strike a name from the list, then the school district shall have the opportunity to strike the next name. The process shall continue until one name is left. The final name shall be the hearing judge.

J. Proceeding for the pretermination hearing of a career teacher shall be conducted as follows:

1. The hearing judges may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs;

2. The hearing judge shall give effect to the rules of privilege recognized by law;

3. The hearing judge shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to

evidentiary offers may be made and shall be noted in the record.
Subject to these requirements, any part of the evidence may be
received in written form if the interests of the parties will not be
substantially prejudiced and it will expedite the hearing;

4. Documentary evidence may be received in the form of copies
or excerpts, if the original is not readily available. Upon
request, the parties shall be given an opportunity to compare the
copy with the original;

5. A party may conduct cross-examinations required for a full
and true disclosure of the facts;

6. Any party shall at all times have the right to counsel,
provided that counsel shall be duly licensed to practice law by the
Supreme Court of Oklahoma. Counsel for a party shall have the right
to appear and act for and on behalf of the party represented; and

7. A party may request the exclusion of witnesses to the extent
and for the purposes stated in Section 2615 of Title 12 of the
Oklahoma Statutes. Exclusion of a witness shall not be a violation
of the Oklahoma Open Meeting Act.

K. Only after due consideration of the evidence and testimony
presented at the hearing shall the local board decide whether to
dismiss or nonreemploy the probationary teacher. The vote of the
board shall be made in an open meeting. The board shall also notify
the probationary teacher of the decision, including the basis for
the decision, by certified mail, restricted delivery, return receipt
requested, or substitute process as provided by law. The decision
of the board regarding a probationary teacher shall be final and
nonappealable. 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 probationary teacher shall
receive any compensation or benefits to which the teacher is
otherwise entitled until such time as the decision of the board
becomes final. If the hearing for a probationary teacher is for

nonreemployment, such compensation and benefits may be continued only until the end of the current contract of the teacher.

SECTION 2. REPEALER 70 O.S. 2001, Section 6-101.27, is hereby repealed.

SECTION 3. This act shall become effective July 1, 2005.

SECTION 4. 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.

50-1-6653 KB 02/10/05