ENGROSSED HOUSE
BILL NO. 2756

By: Blackwell and Dank of the House

and

Laughlin of the Senate

An Act relating to schools; amending 70 O.S. 2001, Sections 6-101.22 and 6-101.26, as amended by Section 9, Chapter 434, O.S.L. 2003 (70 O.S. Supp. 2003, Section 6-101.26), which relate to the Teacher Due Process Act of 1990; modifying cause for dismissal of career teacher; establishing abandonment of contract as cause for termination; adding definition; modifying process by which recommendation may be delivered; modifying criteria for setting hearing date; clarifying statutory language; 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 6-101.22, is amended to read as follows:

Section 6-101.22 A. Subject to the provisions of the Teacher Due Process Act of 1990, a career teacher may be dismissed or not reemployed for:

1. Willful neglect of duty;

2. Repeated negligence in performance of duty;

3. Mental or physical abuse to a child;

4. Incompetency;

5. Instructional ineffectiveness;

6. Unsatisfactory teaching performance; ~~or~~

7. ~~Any reason involving~~ Commission of an act of moral turpitude; or

8. Abandonment of contract.

B. Subject to the provisions of the Teacher Due Process Act of 1990, a probationary teacher may be dismissed or not reemployed for cause.

C. A teacher shall be dismissed or not reemployed, unless a presidential or gubernatorial pardon has been issued, if during the term of employment ~~such~~ the teacher is convicted in this state, the United States or another state of:

1. Any sex offense subject to the Sex Offenders Registration Act in this state or subject to another state's or the federal sex offender registration provisions; or

2. Any felony offense.

D. A teacher may be dismissed, refused employment or not reemployed after a finding that such person has engaged in criminal sexual activity or sexual misconduct that has impeded the effectiveness of the individual's performance of school duties. As used in this subsection:

1. "Criminal sexual activity" means the commission of an act as defined in Section 886 of Title 21 of the Oklahoma Statutes, which is the act of sodomy; and

2. "Sexual misconduct" means the soliciting or imposing of criminal sexual activity.

E. As used in this section, "abandonment of contract" means the failure of a teacher to report at the beginning of the contract term or otherwise perform the duties of a contract of employment when the teacher has accepted other employment or is performing work for another employer that prevents the teacher from fulfilling the obligations of the contract of employment.

SECTION 2. AMENDATORY 70 O.S. 2001, Section 6-101.26, as amended by Section 9, Chapter 434, O.S.L. 2003 (70 O.S. Supp. 2003, 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 from the superintendent for the

dismissal or nonreemployment of a teacher, the board or individual designated by the board shall mail a copy of the recommendation to the teacher by certified mail, restricted delivery, return receipt requested, by personal delivery to the teacher with a signed acknowledgement of receipt, or by ~~substitute process as provided by law~~ delivery by a process server. By the same means, the board shall notify the teacher of ~~such teacher's~~ the 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 by the teacher, the date on the personal receipt by hand-delivery to the teacher, or the date of delivery by a process server. 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. At the hearing, the teacher shall be entitled to all rights guaranteed under the circumstances by the United States Constitution and the Constitution of Oklahoma.

B. The career teacher pretermination hearing shall be conducted by the ~~local~~ district board 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. 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 decide whether to accept or reject the recommendation of the superintendent. The vote made by the board shall be made in an open meeting. 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. Such compensation and benefits shall not be provided during any further appeal process.

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

E. Only after due consideration of the evidence and testimony presented at the hearing shall the ~~local~~ district 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 3. This act shall become effective July 1, 2006.

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.

Passed the House of Representatives the 14th day of March, 2006.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2006.

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Presiding Officer of the Senate