

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1620

By: Richardson

AS INTRODUCED

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 eligibility of hearing judge; 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 the board of education.

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) days or later than sixty (60) 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) 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) 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 board shall approve or reject the recommendation of the superintendent. The determination of dismissal or nonreemployment by the board shall be final and nonappealable. If the teacher does make notification within ten (10) days, the board shall, within ten (10) days from the date of notification, appoint a hearing judge to conduct the hearing.

E. If a probationary teacher fails to notify the board of education within ten (10) 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 initial determination

of dismissal or nonreemployment by the board shall become final and nonappealable. If the teacher does make notification within ten (10) days, the board shall, as soon as possible, hold a hearing as provided for in subsection J 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 to the district court, the provisions of the Oklahoma 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 board of education shall appoint the hearing judge. The hearing judge shall be an attorney with trial experience and who is a member of the Oklahoma Bar Association. No member of the Legislature shall be eligible to serve as a hearing judge. The board shall pay all expenses of the hearing judge.

J. 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.

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