

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2756

By: Blackwell

AS INTRODUCED

An Act relating to schools; amending 70 O.S. 2001, Sections 6-101.22, 6-101.24 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; adding cause for dismissal of career teacher; establishing abandonment of duty as cause for termination; specifying nonapplicability of certain provisions in cases of abandonment; providing substitute procedure for certain notification; specifying certain information, time period, and documentation; authorizing immediate suspension of teacher without pay in certain situation; amending 70 O.S. 2001, Section 6-101.46, which relates to procedures for disciplinary actions for support employees; establishing abandonment of duty as basis for dismissal of support employee; specifying notification procedure; authorizing immediate suspension without pay in certain situation; 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 moral turpitude; or

8. Abandonment of duty.

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 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.

SECTION 2. AMENDATORY 70 O.S. 2001, Section 6-101.24, is amended to read as follows:

Section 6-101.24 A. When an administrator who has the responsibility of evaluating a teacher identifies poor performance or conduct that the administrator believes may lead to a recommendation for the teacher's dismissal or nonreemployment, the administrator shall:

1. Admonish the teacher, in writing, and make a reasonable effort to assist the teacher in correcting the poor performance or conduct; and

2. Establish a reasonable time for improvement, not to exceed two (2) months, taking into consideration the nature and gravity of the teacher's performance or conduct.

B. If the teacher does not correct the poor performance or conduct cited in the admonition within the time specified, the administrator shall make a recommendation to the superintendent of the school district for the dismissal or nonreemployment of the teacher.

C. Whenever a member of the board of education, superintendent, or other administrator identifies poor performance or conduct that may lead to a recommendation for dismissal or nonreemployment of a teacher within the district, the administrator who has responsibility for evaluation of the teacher shall be informed, and that administrator shall comply with the procedures set forth in this section. If the administrator fails or refuses to admonish the teacher within ten (10) days after being so informed by the board, superintendent, or other administrator, such board, superintendent or other administrator shall admonish the teacher pursuant to the provisions of this section.

D. Repeated negligence in performance of duty, willful neglect of duty, incompetency, instructional ineffectiveness or unsatisfactory teaching performance, for a career teacher, or any cause related to inadequate teaching performance for a probationary teacher, shall not be a basis for a recommendation to dismiss or not reemploy a teacher unless and until the provisions of this section have been complied with.

E. The provisions of subsections A, B and C of this section shall not be applicable when the basis for dismissal or nonreemployment is abandonment of duty.

SECTION 3. 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 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. 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. When the basis for dismissal or nonreemployment is abandonment of duty, the provisions of subsection A of this section shall not apply, but the following procedures shall be substituted:

1. The board shall mail a copy of the recommendation for dismissal or nonreemployment to the teacher at the teacher's last known address by certified mail, return receipt requested, or by substitute process as provided by law;

2. The board shall include information for the teacher of the 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 ten (10) days or later than thirty (30) days after the notice is mailed. The notice shall specify abandonment of duty as the grounds for dismissal or nonreemployment. The notice shall also specify the underlying facts

supporting the recommendation, including documentation of efforts on behalf of the district to contact the teacher; and

3. The board shall not be obligated to pay the teacher for work not performed and may immediately suspend the teacher without pay.

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

~~E.~~ F. 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 4. AMENDATORY 70 O.S. 2001, Section 6-101.46, is amended to read as follows:

Section 6-101.46 A. After any suspension or prior to any demotion, termination or nonreemployment, a support employee shall receive notice of the right to a hearing. The hearing shall be conducted by the ~~local~~ district board of education. All notices shall be by certified mail, with the postmark used to determine the timeliness of the notice. Failure of the employee to request a

hearing within ten (10) working days of such notice shall be considered a waiver of the employee's right to a hearing.

B. Nonreemployment shall mean nonrenewal of a support employee's contract upon expiration of the contract.

C. If an employee is to be suspended for a period to exceed ten (10) days, the superintendent of the district shall initiate proceedings for termination and shall follow the procedures set forth in subsection A of this section. However, in a case involving a criminal charge or indictment, the suspension may be delayed until the employee's case is adjudicated at the trial. Nothing in this act shall prevent the school board from proceeding against the employee during or after the suspension for termination as provided in this act.

D. If the basis for dismissal or nonreemployment is abandonment of duty:

1. The board shall mail a copy of the recommendation for dismissal or nonreemployment and the right to a hearing to the employee at the employee's last known address by certified mail, return receipt requested or by substitute process as provided by law; and

2. The employee may be immediately suspended without pay.

SECTION 5. This act shall become effective July 1, 2006.

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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