

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1623

By: Derby

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5
6 AS INTRODUCED

7 An Act relating to schools; amending 70 O.S. 2001,
8 Section 6-101.3, as amended by Section 8, Chapter
9 434, O.S.L. 2003 (70 O.S. Supp. 2006, Section 6-
10 101.3), which relates to teacher contract
11 definitions; modifying certain definitions; deleting
12 certain definitions; amending 70 O.S. 2001, Section
13 6-101.10, which relates to teacher evaluation
14 policies; updating statutory language; deleting
15 reference to probationary teachers; deleting certain
16 evaluation requirement; amending 70 O.S. 2001,
17 Sections 6-101.21, 6-101.22, as amended by Section 1,
18 Chapter 112, O.S.L. 2006, 6-101.24, 6-101.25, 6-
19 101.26, as last amended by Section 2, Chapter 112,
20 O.S.L. 2006 and 6-101.29 (70 O.S. Supp. 2006,
21 Sections 6-101.22 and 6-101.26), which relate to the
22 Teacher Due Process Act of 1990; updating statutory
23 language and citations; deleting obsolete language;
24 deleting inclusion of certain statutory grounds
within the standards document; deleting statutory
grounds for dismissal of a career teacher; deleting
reference to probationary teacher; deleting certain
definition; modifying prohibition for dismissal
recommendation; deleting requirement to include
statutory grounds in dismissal recommendation and
hearing notice; deleting career teacher
pretermination hearing procedures and requirements;
deleting right to trial de novo; deleting requirement
to extend suspensions until completion of a trial de
novo; granting certain teachers certain due process
rights; repealing 70 O.S. 2001, Section 6-101.27,
which relates to a teacher's right to a trial de
novo; providing for codification; providing an
effective date; and declaring an emergency.

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

2 SECTION 1. AMENDATORY 70 O.S. 2001, Section 6-101.3, as
3 amended by Section 8, Chapter 434, O.S.L. 2003 (70 O.S. Supp. 2006,
4 Section 6-101.3), is amended to read as follows:

5 Section 6-101.3 As used in Section 6-101 et seq. of this title:

6 1. "Administrator" means a duly certified person who devotes a
7 majority of time to service as a superintendent, elementary
8 superintendent, principal, supervisor, vice principal or in any
9 other administrative or supervisory capacity in the school district;

10 2. "Dismissal" means the discontinuance of the teaching service
11 of an administrator or teacher during the term of a written
12 contract, as provided by law;

13 3. "Nonreemployment" means the nonrenewal of ~~an administrator's~~
14 ~~or teacher's~~ the contract of an administrator or teacher upon
15 expiration of the contract;

16 4. ~~"Career teacher" means a teacher who has completed three (3)~~
17 ~~or more consecutive complete school years in such capacity in one~~
18 ~~school district under a written teaching contract;~~

19 5. ~~"Probationary teacher~~ "Teacher hearing" means the hearing
20 before a local board of education after a recommendation for
21 dismissal or nonreemployment of a ~~probationary~~ teacher has been made
22 but before any final action is taken on ~~said~~ the recommendation,
23 held for the purpose of affording ~~such~~ the teacher all rights
24 guaranteed by the United States Constitution and the Constitution of

1 Oklahoma under ~~such~~ the circumstances and for enabling the board to
2 determine whether to approve or disapprove the recommendation;

3 ~~6. "Career teacher pretermination hearing" means the informal~~
4 ~~proceeding before the local board of education held for the purpose~~
5 ~~of providing a meaningful opportunity to invoke the discretion of~~
6 ~~the decision maker after a recommendation for dismissal or~~
7 ~~nonreemployment of a career teacher has been made but before any~~
8 ~~final action is taken on the recommendation in order to ensure that~~
9 ~~the career teacher is afforded the essential pretermination due~~
10 ~~process requirements of notice and an opportunity to respond;~~

11 ~~7. "Probationary teacher" means a teacher who has completed~~
12 ~~fewer than three (3) consecutive complete school years in such~~
13 ~~capacity in one school district under a written teaching contract;~~

14 ~~8. 5. "Suspension" or "suspended" means the temporary~~
15 ~~discontinuance of an administrator's or teacher's the services of an~~
16 ~~administrator or teacher, as provided by law; and~~

17 ~~9. 6. "Teacher" means a duly certified or licensed person who~~
18 ~~is employed to serve as a counselor, librarian or school nurse or in~~
19 ~~any instructional capacity; an. An administrator shall be~~
20 ~~considered a teacher only with regard to service in an~~
21 ~~instructional, nonadministrative capacity.~~

22 SECTION 2. AMENDATORY 70 O.S. 2001, Section 6-101.10, is
23 amended to read as follows:

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1 Section 6-101.10 Each board of education shall maintain and
2 annually review, following consultation with or involvement of
3 representatives selected by local teachers, a written policy of
4 evaluation for all teachers and administrators. In those school
5 districts in which there exists a professional negotiations
6 agreement made in accordance with Sections 509.1 et seq. of this
7 title, the procedure for evaluating members of the negotiations unit
8 and any standards of performance and conduct proposed for adoption
9 beyond those established by the State Board of Education shall be
10 negotiable items. Nothing in this act shall be construed to annul,
11 modify or to preclude the renewal or continuing of any existing
12 agreement ~~heretofore~~ previously entered into between any school
13 district and any organizational representative of its employees.
14 Every policy so adopted shall:

15 1. Be based upon a set of minimum criteria developed by the
16 State Board of Education;

17 2. Be prescribed in writing at the time of adoption and at all
18 times when amendments ~~thereto~~ are adopted. The original policy and
19 all amendments to the policy shall be promptly made available to all
20 persons subject to the policy;

21 3. Provide that all evaluations be made in writing and that
22 evaluation documents and responses thereto be maintained in a
23 personnel file for each evaluated person;

24

1 4. Provide that every ~~probationary~~ teacher be evaluated at
2 least two times per school year, once prior to November 15 and once
3 prior to February 10 of each year; and

4 ~~5. Provide that every teacher be evaluated once every year,~~
5 ~~except as otherwise provided by law; and~~

6 ~~6.~~ Provide that, except for superintendents of independent and
7 elementary school districts and superintendents of area school
8 districts, who shall be evaluated by the local school board, all
9 certified personnel, including administrators, shall be evaluated by
10 certified administrative personnel designated by the local school
11 board.

12 All personnel designated by the local board to conduct the
13 personnel evaluations shall be required to participate in training
14 conducted by the State Department of Education prior to conducting
15 ~~such~~ the evaluations.

16 The State Department of Education shall develop and conduct
17 workshops pursuant to statewide criteria which train ~~such~~
18 administrative personnel in conducting evaluations.

19 The State Board of Education shall monitor compliance with the
20 provisions of this section by local school districts.

21 Refusal by a local school district to comply with the provisions
22 of this section shall be grounds for withholding State Aid funds
23 until ~~such~~ compliance occurs.

1 SECTION 3. AMENDATORY 70 O.S. 2001, Section 6-101.21, is
2 amended to read as follows:

3 Section 6-101.21 A. The State Board of Education shall
4 promulgate standards of performance and conduct for teachers. A
5 copy of ~~such~~ the standards, any amendments to ~~such~~ the standards and
6 any standards adopted by the board of education of the school
7 district shall be provided by the board of education of each school
8 district to each teacher on or before April 10 of each year.

9 ~~B. The State Board of Education shall include the statutory~~
10 ~~grounds for dismissal and nonreemployment of career teachers within~~
11 ~~this standards document.~~

12 ~~C.~~ Standards which may be adopted by the board of education of
13 a school district shall not conflict with state or federal law or
14 standards promulgated by the State Board of Education.

15 ~~D.~~ C. In determining whether or not the professional
16 performance of a teacher is adequate, the standards adopted by the
17 State Board of Education shall be considered. Consideration may be
18 given to any written standards of performance which have been
19 adopted by any other education-oriented organization or agency.
20 Professional performance or conduct of a teacher which is in
21 compliance with standards adopted by the State Board of Education or
22 the local board of education pursuant to Section ~~71~~ 6-101.10 of this
23 ~~act~~ title shall not be considered in support of any dismissal or
24 nonreemployment action against the teacher.

1 SECTION 4. AMENDATORY 70 O.S. 2001, Section 6-101.22, as
2 amended by Section 1, Chapter 112, O.S.L. 2006 (70 O.S. Supp. 2006,
3 Section 6-101.22), is amended to read as follows:

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

- 7 1. ~~Willful neglect of duty;~~
- 8 2. ~~Repeated negligence in performance of duty;~~
- 9 3. ~~Mental or physical abuse to a child;~~
- 10 4. ~~Incompetency;~~
- 11 5. ~~Instructional ineffectiveness;~~
- 12 6. ~~Unsatisfactory teaching performance;~~
- 13 7. ~~Commission of an act of moral turpitude; or~~
- 14 8. ~~Abandonment of contract.~~

15 ~~B.~~ Subject to the provisions of the Teacher Due Process Act of
16 1990, a ~~probationary~~ teacher may be dismissed or not reemployed for
17 cause.

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

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

1 2. Any felony offense.

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

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

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

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

18 SECTION 5. AMENDATORY 70 O.S. 2001, Section 6-101.24, is
19 amended to read as follows:

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

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

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

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

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

23 ~~D. Repeated negligence in performance of duty, willful neglect~~
24 ~~of duty, incompetency, instructional ineffectiveness or~~

1 ~~unsatisfactory teaching performance, for a career teacher, or any~~
2 Any cause related to inadequate teaching performance for a
3 ~~probationary~~ teacher, shall not be a basis for a recommendation to
4 dismiss or not reemploy a teacher unless and until the provisions of
5 this section have been complied with.

6 SECTION 6. AMENDATORY 70 O.S. 2001, Section 6-101.25, is
7 amended to read as follows:

8 Section 6-101.25 Whenever a superintendent decides to recommend
9 that a teacher employed within the school district be dismissed or
10 not reemployed, the superintendent shall state the recommendation in
11 writing, setting forth the basis for the recommendation, and shall
12 submit such recommendation to the board of education.

13 ~~If the teacher subject to such recommendation is a career~~
14 ~~teacher, the recommendation shall specify the statutory grounds for~~
15 ~~which the recommendation is based.~~

16 ~~If the teacher subject to such recommendation is a probationary~~
17 ~~teacher, the~~ The recommendation shall specify the cause for which
18 the recommendation is based.

19 The superintendent shall also specify the underlying facts
20 supporting the recommendation.

21 SECTION 7. AMENDATORY 70 O.S. 2001, Section 6-101.26, as
22 last amended by Section 2, Chapter 112, O.S.L. 2006 (70 O.S. Supp.
23 2006, Section 6-101.26), is amended to read as follows:

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1 Section 6-101.26 A. Whenever a board of education receives a
2 recommendation from the superintendent for the dismissal or
3 nonreemployment of a teacher, the board or individual designated by
4 the board shall mail a copy of the recommendation to the teacher by
5 certified mail, restricted delivery, return receipt requested, by
6 personal delivery to the teacher with a signed acknowledgement of
7 receipt, or by delivery by a process server. By the same means, the
8 board shall notify the teacher of the right to a hearing before the
9 board and the date, time and place set by the board for the hearing,
10 which shall be held within the school district not sooner than
11 twenty (20) days or later than sixty (60) days after receipt of
12 notice by the teacher, the date on the personal receipt by hand-
13 delivery to the teacher, or the date of delivery by a process
14 server. The notice shall specify the ~~statutory grounds upon which~~
15 ~~the recommendation is based upon for a career teacher or shall~~
16 ~~specify the cause upon which the recommendation is based upon for a~~
17 ~~probationary teacher.~~ The notice shall also specify the underlying
18 facts supporting the recommendation. At the hearing, the teacher
19 shall be entitled to all rights guaranteed under the circumstances
20 by the United States Constitution and the Constitution of Oklahoma.

21 B. ~~The career teacher pretermination hearing shall be conducted~~
22 ~~by the district board as follows:~~

23 1. ~~The superintendent or designee shall, in person or in~~
24 ~~writing, specify the statutory ground upon which the recommendation~~

1 ~~is based. The superintendent or designee shall also specify the~~
2 ~~underlying facts and provide an explanation of the evidence~~
3 ~~supporting the recommendation for the dismissal or nonreemployment~~
4 ~~of the career teacher; and~~

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

8 ~~C. Only after the career teacher has a meaningful opportunity~~
9 ~~to respond to the recommendation for dismissal or nonreemployment at~~
10 ~~the pretermination hearing shall the board decide whether to accept~~
11 ~~or reject the recommendation of the superintendent. The vote made~~
12 ~~by the board shall be made in an open meeting. The board shall also~~
13 ~~notify the career teacher of its decision, including the basis for~~
14 ~~the decision, by certified mail, restricted delivery, return receipt~~
15 ~~requested or substitute process as provided by law. If the decision~~
16 ~~is to accept the recommendation of the superintendent, the board~~
17 ~~shall include notification of the right of the career teacher to~~
18 ~~petition for a trial de novo in the district court within ten (10)~~
19 ~~days of receipt of notice of the decision. At the pretermination~~
20 ~~hearing the burden of proof shall be upon the superintendent or~~
21 ~~designee and the standard of proof shall be by the preponderance of~~
22 ~~the evidence. The career teacher shall receive any compensation or~~
23 ~~benefits to which such teacher is otherwise entitled until such time~~
24 ~~as the teacher's case is adjudicated at a trial de novo if the~~

1 ~~career teacher petitions for the trial de novo. Such compensation~~
2 ~~and benefits shall not be provided during any further appeal~~
3 ~~process.~~

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

7 E. C. Only after due consideration of the evidence and
8 testimony presented at the hearing shall the district board decide
9 whether to dismiss or nonreemploy the ~~probationary~~ teacher. The
10 vote of the board shall be made in an open meeting. The board shall
11 also notify the ~~probationary~~ teacher of the decision, including the
12 basis for the decision, by certified mail, restricted delivery,
13 return receipt requested, or substitute process as provided by law.
14 The decision of the board regarding a ~~probationary~~ teacher shall be
15 final and nonappealable. At the hearing the burden of proof shall
16 be upon the superintendent or designee, and the standard of proof
17 shall be by the preponderance of the evidence. The ~~probationary~~
18 teacher shall receive any compensation or benefits to which the
19 teacher is otherwise entitled until ~~such time as~~ the decision of the
20 board becomes final. If the hearing for a ~~probationary~~ teacher is
21 for nonreemployment, such compensation and benefits may be continued
22 only until the end of the current contract of the teacher.

23 SECTION 8. AMENDATORY 70 O.S. 2001, Section 6-101.29, is
24 amended to read as follows:

1 Section 6-101.29 Whenever the superintendent of a school
2 district has reason to believe that cause exists for the dismissal
3 of a teacher and is of the opinion that the immediate suspension of
4 the teacher would be in the best interests of the children in the
5 district, the superintendent or the local board of education upon
6 receiving recommendation for suspension from the superintendent may
7 suspend the teacher without notice or hearing. However, the
8 suspension shall not deprive the teacher of any compensation or
9 other benefits to which otherwise entitled. ~~Such suspension shall~~
10 ~~extend to such time as the teacher's case is adjudicated at a trial~~
11 ~~de novo for a career teacher but such extension shall not include~~
12 ~~time for any further appeal process.~~ Within ten (10) days' time
13 after ~~such~~ the suspension becomes effective, the local board of
14 education shall initiate a hearing for dismissal pursuant to law.

15 However, in a case involving a criminal charge or indictment,
16 ~~such~~ the suspension may extend ~~to such time as~~ until the teacher's
17 case for the teacher is finally adjudicated at trial. ~~Provided,~~
18 ~~however, such~~ The extension shall not include any appeal process.

19 SECTION 9. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 6-101.31 of Title 70, unless
21 there is created a duplication in numbering, reads as follows:

22 Any teacher who had completed three (3) or more consecutive
23 complete school years as a teacher in one school district under a
24 written teaching contract prior to July 1, 2007, shall be entitled

1 to the due process rights that were set forth in the Teacher Due
2 Process Act of 1990 prior to the effective date of this act.

3 SECTION 10. REPEALER 70 O.S. 2001, Section 6-101.27, is
4 hereby repealed.

5 SECTION 11. This act shall become effective July 1, 2007.

6 SECTION 12. It being immediately necessary for the preservation
7 of the public peace, health and safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

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