

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 3185

By: Hickman

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5  
6 AS INTRODUCED

7 An Act relating to schools; establishing the School  
8 District Empowerment Program; stating purpose;  
9 exempting certain districts from certain statutory  
10 requirements and rules; granting school districts  
11 certain options; specifying certain requirements with  
12 which participating school districts shall comply;  
13 identifying districts for participation and  
14 implementation of program; specifying method of  
15 selection of remaining districts and timeline for  
16 implementation; specifying certain categories of  
17 school districts; amending 70 O.S. 2001, Section 6-  
18 101.3, as amended by Section 8, Chapter 434, O.S.L.  
19 2003 (70 O.S. Supp. 2009, Section 6-101.3), which  
20 relates to definitions for teacher contracts;  
21 modifying certain definitions; amending 70 O.S. 2001,  
22 Sections 6-101.26, as last amended by Section 2,  
23 Chapter 112, O.S.L. 2006 and 6-101.27 (70 O.S. Supp.  
24 2009, Section 6-101.26), which relate to the Teacher  
Due Process Act of 1990; making the career teacher  
pretermination hearing process apply to certain  
career teachers; making the teacher hearing process  
apply to certain career teachers; making the right to  
a trial de novo apply to certain career teachers;  
providing for codification; and providing an  
effective date.

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

1           SECTION 1.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 3-129 of Title 70, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. There is hereby established the School District Empowerment  
5 Program which shall be administered by the State Board of Education.  
6 The purpose of the program is to empower locally elected school  
7 board members to govern school districts and make decisions based on  
8 the needs of their students and circumstances.

9           B. Except as otherwise provided for in this subsection, a  
10 school district identified by the State Board of Education for  
11 participation in the School District Empowerment Program shall be  
12 exempt from all statutory requirements and State Board of Education  
13 rules from which charter schools are exempt as provided for in the  
14 Oklahoma Charter Schools Act. Nothing in this section shall prevent  
15 a school district board of education from choosing to follow any or  
16 all state laws, rules, or regulations from which a charter school is  
17 exempt. A participating school district shall have the option to  
18 adopt policies to implement any requirement for the school district  
19 that is consistent with any statutory requirement or mandate or  
20 Board rule, but a participating school district shall comply with  
21 the following requirements:

22           1. Students who reside in the school district shall be entitled  
23 to attend school in the district as set forth in Section 1-114 of  
24 Title 70 of the Oklahoma Statutes;

1        2. School districts shall comply with the requirements of the  
2 minimum salary schedule for teachers as set forth in Section 18-  
3 114.12 of Title 70 of the Oklahoma Statutes;

4        3. Employees of school districts shall continue to participate  
5 as members of the Teachers' Retirement System of Oklahoma as set  
6 forth in Section 17-101 et seq. of Title 70 of the Oklahoma  
7 Statutes;

8        4. School districts shall comply with the requirement to  
9 provide a health insurance plan for school district employees as set  
10 forth in Section 5-117.5 of Title 70 of the Oklahoma Statutes and to  
11 establish or make available to school district employees a cafeteria  
12 plan as set forth in Section 26-104 of Title 70 of the Oklahoma  
13 Statutes;

14       5. School districts shall require any person employed by the  
15 school district to file with the district board a current Oklahoma  
16 criminal history record check from the Oklahoma State Bureau of  
17 Investigation as well as a national criminal history record check as  
18 defined in Section 150.9 of Title 74 of the Oklahoma Statutes. Each  
19 district shall adopt a policy regarding criminal history record  
20 checks as set forth in Section 5-142 of Title 70 of the Oklahoma  
21 Statutes or Section 5-142.1 of Title 70 of the Oklahoma Statutes, as  
22 applicable;

23       6. School districts shall comply with the requirement to  
24 evaluate teachers and to train personnel designated to conduct

1 personnel evaluations as set forth in Sections 6-101.10 and 6-101.11  
2 of Title 70 of the Oklahoma Statutes, the dismissal and due process  
3 procedures for administrators as set forth in Sections 6-101.13  
4 through 6-101.15 of Title 70 of the Oklahoma Statutes, and the due  
5 process procedures for teachers as set forth in Sections 6-101.21  
6 through 6-101.26 of Title 70 of the Oklahoma Statutes. A career  
7 teacher shall have a right to an administrative hearing as set forth  
8 in Section 6-101.26 of Title 70 of the Oklahoma Statutes but shall  
9 not have the right to a trial de novo in district court as stated in  
10 Section 6-101.26 of Title 70 of the Oklahoma Statutes and as set  
11 forth in Section 6-101.27 of Title 70 of the Oklahoma Statutes;

12 7. School districts shall comply with the requirement to make  
13 payroll deductions for either or both professional organization dues  
14 and political contributions upon the request of an employee as set  
15 forth in Section 5-139 of Title 70 of the Oklahoma Statutes;

16 8. School districts shall employ as teachers, counselors,  
17 librarians, school nurses, superintendents, principals, supervisors,  
18 or any other instructional, supervisory or administrative employee,  
19 only those persons who are certified or licensed by the State Board  
20 of Education in accordance with the Oklahoma Teacher Preparation  
21 Act, except for persons exempt from the certification or licensure  
22 requirements as otherwise provided by law;

23 9. School districts shall be required to offer and students  
24 enrolled in the school district shall be required to complete the

1 curriculum requirements as set forth in Section 11-103.6 of Title 70  
2 of the Oklahoma Statutes;

3 10. Students enrolled in the school district shall be required  
4 to demonstrate mastery of the state academic content standards as  
5 set forth in Section 1210.523 of Title 70 of the Oklahoma Statutes;  
6 and

7 11. Members of the school district board of education shall be  
8 required to satisfy the instruction and continuing education  
9 requirements as set forth in Sections 5-110, 5-110.1 and 5-110.2 of  
10 Title 70 of the Oklahoma Statutes.

11 C. School districts which include a school that has been  
12 identified for school improvement for the 2009-2010 school year by  
13 the State Board of Education pursuant to the Elementary and  
14 Secondary Education Act of 1965, as amended, 20 U.S.C., Section 6301  
15 et seq., shall be identified for participation in the School  
16 District Empowerment Program and shall implement the program  
17 beginning in the 2011-2012 school year.

18 D. By September 30, 2011, the State Board of Education shall  
19 adopt during an open meeting a five-year implementation schedule for  
20 participating school districts that provides for all school  
21 districts to be participating by the fifth year. For the  
22 implementation schedule, the Board shall randomly select twenty  
23 percent (20%) of the school districts, excluding school districts  
24 identified pursuant to subsection C of this section, from each of

1 the following categories for implementation each school year  
2 beginning with the 2012-2013 school year through the 2016-2017  
3 school year:

4 1. Districts with an Average Daily Membership (ADM) of less  
5 than two hundred fifty (250);

6 2. Districts with an ADM of less than five hundred (500) and  
7 greater than or equal to two hundred fifty (250);

8 3. Districts with an ADM of less than two thousand (2,000) and  
9 greater than or equal to five hundred (500); and

10 4. Districts with an ADM of two thousand (2,000) or more.

11 SECTION 2. AMENDATORY 70 O.S. 2001, Section 6-101.3, as  
12 amended by Section 8, Chapter 434, O.S.L. 2003 (70 O.S. Supp. 2009,  
13 Section 6-101.3), is amended to read as follows:

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

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

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

22 3. "Nonreemployment" means the nonrenewal of an administrator's  
23 or teacher's contract upon expiration of the contract;

24

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

4 5. "~~Probationary teacher~~ Teacher hearing" means the hearing  
5 before a local board of education after a recommendation for  
6 dismissal or nonreemployment of a probationary teacher or a career  
7 teacher employed by a school district participating in the School  
8 District Empowerment Program as provided for in Section 1 of this  
9 act has been made but before any final action is taken on said  
10 recommendation, held for the purpose of affording ~~such~~ the teacher  
11 all rights guaranteed by the United States Constitution and the  
12 Constitution of Oklahoma under such circumstances and for enabling  
13 the board to determine whether to approve or disapprove the  
14 recommendation;

15 6. "Career teacher pretermination hearing" means the informal  
16 proceeding before the local board of education held for the purpose  
17 of providing a meaningful opportunity to invoke the discretion of  
18 the decision maker after a recommendation for dismissal or  
19 nonreemployment of a career teacher employed by a school district  
20 that is not participating in the School District Empowerment Program  
21 as provided for in Section 1 of this act has been made but before  
22 any final action is taken on the recommendation in order to ensure  
23 that the career teacher is afforded the essential pretermination due  
24 process requirements of notice and an opportunity to respond;

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

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

7       9. "Teacher" means a duly certified or licensed person who is  
8 employed to serve as a counselor, librarian or school nurse or in  
9 any instructional capacity; an administrator shall be considered a  
10 teacher only with regard to service in an instructional,  
11 nonadministrative capacity.

12       SECTION 3.        AMENDATORY        70 O.S. 2001, Section 6-101.26, as  
13 last amended by Section 2, Chapter 112, O.S.L. 2006 (70 O.S. Supp.  
14 2009, Section 6-101.26), is amended to read as follows:

15       Section 6-101.26 A. Whenever a board of education receives a  
16 recommendation from the superintendent for the dismissal or  
17 nonreemployment of a teacher, the board or individual designated by  
18 the board shall mail a copy of the recommendation to the teacher by  
19 certified mail, restricted delivery, return receipt requested, by  
20 personal delivery to the teacher with a signed acknowledgement of  
21 receipt, or by delivery by a process server. By the same means, the  
22 board shall notify the teacher of the right to a hearing before the  
23 board and the date, time and place set by the board for the hearing,  
24 which shall be held within the school district not sooner than

1 twenty (20) days or later than sixty (60) days after receipt of  
2 notice by the teacher, the date on the personal receipt by hand-  
3 delivery to the teacher, or the date of delivery by a process  
4 server. The notice shall specify the statutory grounds upon which  
5 the recommendation is based upon for a career teacher or shall  
6 specify the cause upon which the recommendation is based upon for a  
7 probationary teacher. The notice shall also specify the underlying  
8 facts supporting the recommendation. At the hearing, the teacher  
9 shall be entitled to all rights guaranteed under the circumstances  
10 by the United States Constitution and the Constitution of Oklahoma.

11 B. The career teacher pretermination hearing for career  
12 teachers employed by a school district that is not participating in  
13 the School District Empowerment Program as provided for in Section 1  
14 of this act shall be conducted by the district board as follows:

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

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

24

1 C. Only after the career teacher employed by a school district  
2 that is not participating in the School District Empowerment Program  
3 as provided for in Section 1 of this act has a meaningful  
4 opportunity to respond to the recommendation for dismissal or  
5 nonreemployment at the pretermination hearing shall the board decide  
6 whether to accept or reject the recommendation of the  
7 superintendent. The vote made by the board shall be made in an open  
8 meeting. The board shall also notify the career teacher of a  
9 nonparticipating school district of its decision, including the  
10 basis for the decision, by certified mail, restricted delivery,  
11 return receipt requested or substitute process as provided by law.  
12 If the decision is to accept the recommendation of the  
13 superintendent, the board shall include notification of the right of  
14 the career teacher of a nonparticipating school district to petition  
15 for a trial de novo in the district court within ten (10) days of  
16 receipt of notice of the decision. At the pretermination hearing  
17 the burden of proof shall be upon the superintendent or designee and  
18 the standard of proof shall be by the preponderance of the evidence.  
19 The career teacher of a nonparticipating school district shall  
20 receive any compensation or benefits to which such teacher is  
21 otherwise entitled until such time as the teacher's case is  
22 adjudicated at a trial de novo if the career teacher petitions for  
23 the trial de novo. Such compensation and benefits shall not be  
24 provided during any further appeal process.

1 D. The ~~probationary~~ teacher hearing for probationary teachers  
2 and career teachers employed by a school district participating in  
3 the School District Empowerment Program as provided for in Section 1  
4 of this act shall be conducted by the district board according to  
5 procedures established by the State Board of Education.

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

1 be continued only until the end of the current contract of the  
2 teacher.

3 SECTION 4. AMENDATORY 70 O.S. 2001, Section 6-101.27, is  
4 amended to read as follows:

5 Section 6-101.27 A. A career teacher employed by a school  
6 district that is not participating in the School District  
7 Empowerment Program as provided for in Section 1 of this act shall  
8 be entitled to a trial de novo in the district court of the county  
9 in which the school district is located. Within ten (10) days of  
10 receipt of the board's notification of said teacher's right to a  
11 trial de novo, the teacher shall file a petition for a trial de  
12 novo.

13 Upon filing the petition, the court clerk shall issue a summons  
14 and cause service by mail to be made to the clerk of the local board  
15 of education by certified mail, restricted delivery with return  
16 receipt requested or substitute process as provided by law.

17 B. If, within the ten-day period, the career teacher fails to  
18 file a petition for a trial de novo concerning the teacher's  
19 dismissal or nonreemployment, the teacher shall be deemed to have  
20 waived the right to a trial de novo and the initial determination of  
21 the board shall be final.

22 C. The local school board shall serve its answer within twenty  
23 (20) days of the service of summons and petition upon it. The trial  
24 de novo shall be scheduled at the earliest possible date which will

1 permit both parties adequate time to prepare for a just trial of the  
2 issues involved, provided however, said trial de novo shall be  
3 scheduled and held not less than ten (10) days and no later than  
4 thirty (30) days after the answer has been filed.

5 D. Except as otherwise provided specifically in this section,  
6 the law generally applicable to civil suits filed in district court  
7 shall apply to the proceedings for trial de novo under this section.  
8 At the trial de novo the standard of proof shall be by the  
9 preponderance of the evidence and the burden of proof shall be on  
10 the district superintendent or designee, as representative of the  
11 local board of education, to establish de novo that the teacher's  
12 dismissal or nonreemployment is warranted. The trial de novo shall  
13 proceed as a nonjury trial before the court. The court shall  
14 determine de novo all issues of fact and law necessary for full  
15 adjudication of the dispute at the trial. The court shall not, by  
16 applying principles of collateral estoppel or res adjudicata or  
17 otherwise, give preclusive effect to findings of fact or  
18 determinations of the board with regard to the issues necessary to  
19 determine the adequacy of the dismissal or nonreemployment of the  
20 teacher in the trial de novo. Within three (3) days following the  
21 conclusion of the trial de novo, the judge shall prepare written  
22 findings of fact and conclusions of law and shall enter judgment  
23 directing either of the following:

24

1           1. That the local board of education reinstate the career  
2 teacher with full employment status and benefits; or

3           2. That the decision of the local board of education for the  
4 dismissal or nonreemployment of the career teacher be sustained.

5           In addition, the court may enter an order awarding the  
6 prevailing party attorneys fees and costs.

7           E. The time limits set forth in this section for the  
8 proceedings before the district court may be extended by mutual  
9 agreement of the parties with the approval of the district court.

10          F. The decision of the district court shall be final and  
11 binding upon the teacher and the board of education unless the  
12 teacher or the board of education appeals the decision of the  
13 district court in the manner provided by law for the appeal of civil  
14 cases from the district court.

15          SECTION 5. This act shall become effective September 1, 2010.

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