SENATE FLOOR VERSION
March 28, 2011

ENGROSSED HOUSE
BILL NO. 1380

By: Holland, Derby, Kern, Newell, Osborn, Tibbs, Nelson and Denney of the House

and

Ford of the Senate

An Act relating to schools; amending 70 O.S. 2001, Sections 6-101.3, as amended by Section 8, Chapter 434, O.S.L. 2003 and 6-101.3, as last amended by Section 8, Chapter 291, O.S.L. 2010 (70 O.S. Supp. 2010, Section 6-101.3), which relate to teacher contract definitions; modifying certain definitions; deleting certain definitions; amending 70 O.S. 2001, Sections 6-101.26, as last amended by Section 2, Chapter 112, O.S.L. 2006, 6-101.26, as last amended by Section 12, Chapter 291, O.S.L. 2010 and 6-101.29 (70 O.S. Supp. 2010, Section 6-101.26), which relate to the Teacher Due Process Act of 1990; updating statutory language; deleting obsolete language; 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; repealing 70 O.S. 2001, Sections 6-101.27 and 6-101.27, as amended by Section 13, Chapter 291, O.S.L. 2010 (70 O.S. Supp. 2010, Section 6-101.27), which relate to a teacher's 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 6-101.3, as amended by Section 8, Chapter 434, O.S.L. 2003 (70 O.S. Supp. 2010, Section 6-101.3), is amended to read as follows:

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

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

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

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

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

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

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

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

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

~~8.~~ 7. "Suspension" or "suspended" means the temporary discontinuance of ~~an administrator's or teacher's~~ the services of an administrator or teacher, as provided by law; and

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

SECTION 2. AMENDATORY 70 O.S. 2001, Section 6-101.3, as last amended by Section 8, Chapter 291, O.S.L. 2010 (70 O.S. Supp. 2010, Section 6-101.3), is amended to read as follows:

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

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

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

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

4. "Career teacher" means a teacher who:

a. for teachers employed by a school district during the 2011-12 school year, has completed three (3) or more consecutive complete school years as a teacher in one school district under a written continuing or temporary teaching contract, or

b. for teachers employed for the first time by a school district under a written continuing or temporary teaching contract on or after July 1, 2012:

(1) has completed three (3) consecutive complete school years as a teacher in one school district under a written continuing or temporary teaching contract and has achieved a rating of "superior"

as measured pursuant to the Oklahoma Teacher and Leader Effectiveness Evaluation System (TLE) as set forth in Section 6 of this act for at least two (2) of the three (3) school years, with no rating below "effective",

(2) has completed four (4) consecutive complete school years as a teacher in one school district under a written continuing or temporary teaching contract, has averaged a rating of at least "effective" as measured pursuant to the TLE for the four-year period, and has received a rating of at least "effective" for the last two (2) years of the four-year period, or

(3) has completed four (4) or more consecutive complete school years in one school district under a written continuing or temporary teaching contract and has not met the requirements of subparagraph a or b of this paragraph, only if the principal of the school at which the teacher is employed submits a petition to the superintendent of the school district requesting that the teacher be granted career status, the superintendent agrees with the petition, and the school district board of education approves the

petition. The principal shall specify in the petition the underlying facts supporting the granting of career status to the teacher;

5. "~~Probationary teacher~~ Teacher hearing" means the hearing before a school district board of education after a recommendation for dismissal or nonreemployment of a ~~probationary~~ teacher has been made but before any final action is taken on ~~said~~ the recommendation, held for the purpose of affording ~~such~~ the teacher all rights guaranteed by the United States Constitution and the Constitution of Oklahoma under ~~such~~ circumstances and for enabling the board to determine whether to approve or disapprove the recommendation;

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

~~7.~~ "Probationary teacher" means a teacher who:

a. for teachers employed by a school district during the 2011-12 school year, has completed fewer than three

(3) consecutive complete school years as a teacher in one school district under a written teaching contract, or

b. for teachers employed for the first time by a school district under a written teaching contract on or after July 1, 2012, has not met the requirements for career teacher as provided in paragraph 4 of this section;

~~8.~~ 7. "Suspension" or "suspended" means the temporary discontinuance of ~~an administrator's or teacher's~~ the services of an administrator or teacher, as provided by law; and

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

SECTION 3. AMENDATORY 70 O.S. 2001, Section 6-101.26, as last amended by Section 2, Chapter 112, O.S.L. 2006 (70 O.S. Supp. 2010, Section 6-101.26), is amended to read as follows:

Section 6-101.26 A. Whenever a board of education receives a 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 delivery by a process server. By the same means, the board shall notify the teacher of 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 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 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 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 district board according to procedures established by the State Board of Education.

~~E.~~ C. Only after due consideration of the evidence and testimony presented at the hearing shall the 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 6-101.26, as last amended by Section 12, Chapter 291, O.S.L. 2010 (70 O.S. Supp. 2010, Section 6-101.26), is amended to read as follows:

Section 6-101.26 A. Whenever a board of education receives a 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 delivery by a process server. By the same means, the board shall notify the teacher of 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 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 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 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 the teacher is entitled as provided in Section 6-101.27 of this title. Such compensation and benefits shall not be provided during any further appeal process.~~

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

~~E.~~ C. Only after due consideration of the evidence and testimony presented at the hearing shall the 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 5. AMENDATORY 70 O.S. 2001, Section 6-101.29, is amended to read as follows:

Section 6-101.29 Whenever the superintendent of a school district has reason to believe that cause exists for the dismissal of a teacher and is of the opinion that the immediate suspension of

the teacher would be in the best interests of the children in the district, the superintendent or the local board of education upon receiving recommendation for suspension from the superintendent may suspend the teacher without notice or hearing. However, the suspension shall not deprive the teacher of any compensation or other benefits to which otherwise entitled. ~~Such suspension shall extend to such time as the teacher's case is adjudicated at a trial de novo for a career teacher but such extension shall not include time for any further appeal process.~~ Within ten (10) days' time after ~~such~~ the suspension becomes effective, the local board of education shall initiate a hearing for dismissal pursuant to law.

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

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

SECTION 7. REPEALER 70 O.S. 2001, Section 6-101.27, as amended by Section 13, Chapter 291, O.S.L. 2010 (70 O.S. Supp. 2010, Section 6-101.27), is hereby repealed.

SECTION 8. This act shall become effective July 1, 2011.

SECTION 9. 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.

COMMITTEE REPORT BY: COMMITTEE ON EDUCATION, dated 3-28-11 - DO PASS.