

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009

# A Bill

HOUSE BILL 1921

4  
5 By: Representatives Nix, J. Roebuck, Nickels  
6 By: Senators Elliott, Broadway

## For An Act To Be Entitled

7  
8  
9  
10 AN ACT TO AMEND THE PUBLIC SCHOOL EMPLOYEE FAIR  
11 HEARING ACT; AND FOR OTHER PURPOSES.

## Subtitle

12  
13  
14 TO AMEND THE PUBLIC SCHOOL EMPLOYEE FAIR  
15 HEARING ACT.

16  
17  
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19  
20 SECTION 1. Arkansas Code § 6-17-1703 is amended to read as follows, is  
21 amended to read as follows:

22 6-17-1703. Termination or nonrenewal – Notice.

23 (a) The superintendent of a school district may recommend termination  
24 of ~~an~~ a full-time employee during the term of any contract or the nonrenewal  
25 of a full-time nonprobationary employee's contract ~~provided that~~ if he or she  
26 gives notice in writing, personally delivered, or by letter posted by  
27 registered or certified mail to the employee's residence address as reflected  
28 in the employee's personnel file.

29 (b) ~~The recommendation of nonrenewal of a full-time nonprobationary~~  
30 ~~employee's contract shall be made~~ Every contract of employment made between a  
31 full-time nonprobationary employee and the board of directors of a school  
32 district shall be renewed in writing on the same terms and for the same  
33 salary, unless increased or decreased by law, for the next school year  
34 succeeding the date of termination fixed in the contract, which renewal may  
35 be made by an endorsement on the existing contract instrument unless no later  
36 than ~~thirty (30)~~ forty-five (45) calendar days ~~prior to~~ before the beginning



1 of the employee's next contract period the employee is notified by the school  
2 superintendent that the superintendent is recommending that the employee's  
3 contract not be renewed.

4 (c)(1) ~~Such~~ The written notice of termination or nonrenewal under this  
5 subchapter shall include ~~a statement of the reasons for the proposed~~  
6 ~~termination or nonrenewal~~ a simple but complete statement of each reason for  
7 the recommendation in separately numbered paragraphs so that a reasonable  
8 employee would be able to mount a defense free of guesswork and speculation.

9 (2) An objective standard based on the content of the notice  
10 itself shall be used to determine whether the notice complies with this  
11 section.

12 (d) The notice shall further state that ~~an~~ a full-time employee being  
13 recommended for termination or a full-time nonprobationary employee being  
14 recommended for nonrenewal is entitled to a hearing before the school board  
15 of directors upon request ~~provided that~~ if the request is made in writing to  
16 the superintendent within twenty-five (25) calendar days from receipt of the  
17 notice.

18 (e) It is the public policy of the State of Arkansas that employees,  
19 as defined in this subchapter, shall not be considered "at will" employees  
20 with regard to the termination of their employment, notwithstanding any  
21 contractual provision to the contrary.

22  
23 SECTION 2. Arkansas Code § 6-17-1704 is amended to read as follows:  
24 6-17-1704. Immediate suspension – Notice.

25 (a) ~~Nothing in this subchapter shall be construed or interpreted to~~  
26 This subchapter does not preclude the superintendent from placing ~~an~~ a full-  
27 time employee on immediate suspension, ~~provided if~~ if he or she gives written  
28 notice of ~~such~~ the action to the employee within two (2) school days of the  
29 suspension.

30 (b) The notice shall:

31 (1) ~~include a~~ Include a simple but complete statement of each  
32 ~~reasons~~ reason for the suspension in separately numbered paragraphs so that a  
33 reasonable employee would be able to mount a defense free of guesswork and  
34 speculation;

35 (2) ~~state~~ State whether the superintendent is recommending  
36 termination; and

1           (3) ~~state~~ State that a hearing before the school board of  
 2 directors is available upon request ~~provided that~~ if the request is made in  
 3 writing to the superintendent within twenty-five (25) calendar days from  
 4 receipt of the notice.

5           (c) The salary of a suspended employee shall cease for the term of the  
 6 suspension when the school board of directors sustains the suspension.  
 7 Otherwise, the employee shall be reinstated without loss of compensation.

8  
 9           SECTION 3. Arkansas Code § 6-17-1705 is amended to read as follows:  
 10         6-17-1705. Hearing.

11           (a) Upon receipt of a request for a hearing, the school board of  
 12 directors shall conduct a hearing in accordance with the following  
 13 provisions:

14                 (1) The hearing shall take place no ~~fewer~~ less than five (5) nor  
 15 more than ~~ten (10)~~ twenty (20) days after the written request has been  
 16 received by the superintendent, except that the employee and board of  
 17 directors may, in writing, agree to an earlier or later hearing date; and

18                 (2) The hearing shall be public or private at the request of the  
 19 employee.

20           (b) The employee may be represented by persons of his or her own  
 21 choosing.

22           (c) ~~In hearings held concerning a recommendation for the termination~~  
 23 ~~of an employee's contract, either the board of directors or the employee may~~  
 24 ~~elect to have a record of the hearing made at the board of director's expense~~  
 25 A full record of the proceedings is not necessary to be made and preserved  
 26 unless:

27                 (1) The board of directors elects to make and preserve a record  
 28 of the hearing at its own expense, in which event a copy shall be furnished  
 29 the employee, upon request, without cost to the employee; or

30                 (2) A written request is filed with the board of directors by  
 31 the employee at least twenty-four (24) hours before the time set for the  
 32 hearing, in which event the board of directors shall make and preserve at its  
 33 own expense a record of the hearing and shall furnish a transcript to the  
 34 employee without cost.

35           (d) ~~In hearings held concerning a recommendation for the nonrenewal of~~  
 36 ~~a full-time non-probationary employee, either the board of directors or the~~

1 ~~employee may elect to have a record of the hearing made, and the expense for~~  
2 ~~the record shall be shared equally between the board of directors and the~~  
3 ~~employee The board of directors shall not consider at the hearing any new~~  
4 ~~reasons that were not specified in the notices provided under this~~  
5 ~~subchapter.~~

6 ~~(e) After the hearing, the school board of directors may terminate the~~  
7 ~~employee or continue the suspension for a definite period of time. The salary~~  
8 ~~of a suspended employee shall cease when the school board of directors~~  
9 ~~sustains the suspension. Otherwise, the employee shall be reinstated without~~  
10 ~~loss of compensation.~~

11 ~~(f) The decision of the school board of directors shall be made within~~  
12 ~~ten (10) calendar days of the hearing.~~

13  
14 SECTION 4. Arkansas Code Title 6, Chapter 17, Subchapter 17 is amended  
15 to add additional sections to read as follows:

16 6-17-1706. Board action on termination or nonrenewal of a full-time  
17 probationary employee.

18 (a) Upon conclusion of its hearing with respect to the termination or  
19 nonrenewal of a contract of a full-time probationary employee, the board of  
20 directors shall take action on the recommendations by the superintendent with  
21 respect to the termination or nonrenewal of the contract.

22 (b) The board of directors' decision with regard to termination or  
23 nonrenewal of a probationary employee shall be final.

24  
25 6-17-1707. Board action on termination or nonrenewal of a full-time  
26 nonprobationary employee.

27 (a) The board of directors may terminate a full-time nonprobationary  
28 employee or refuse to renew the contract of a full-time nonprobationary  
29 employee only:

30 (1) If there is a reduction in force created by a school  
31 district-wide reduction in employees;

32 (2) For incompetent performance;

33 (3) For conduct that materially interferes with the continued  
34 performance of the employee's duties;

35 (4) For repeated or material neglect of duty; or

36 (5) For other just and reasonable cause.

1           (b) Within ten (10) days upon completion of the hearing with respect  
 2 to the termination or nonrenewal of the contract of a full-time  
 3 nonprobationary employee, the board of directors shall:

4                   (1) Uphold the recommendation of the superintendent to terminate  
 5 or not renew the full-time nonprobationary employee's contract;

6                   (2) Reject or modify the superintendent's recommendation to  
 7 terminate or not renew the full-time nonprobationary employee's contract; or

8                   (3) Vote to continue the contract of the full-time  
 9 nonprobationary employee under such restrictions, limitations, or assurances  
 10 as the board of directors considers to be in the best interest of the school  
 11 district.

12           (c) The decision shall be reached by the board of directors within ten  
 13 (10) days from the date of the hearing, and a copy of the decision shall be  
 14 furnished in writing to the employee involved, either by personally  
 15 delivering it to the employee or by addressing it to the employee's last  
 16 known address by registered or certified mail.

17  
 18           6-17-1708. Board's written conclusions.

19           After a hearing granted an employee under this subchapter, the board of  
 20 directors, by majority vote, shall make specific written conclusions with  
 21 regard to the truth of each reason given the employee in support of the  
 22 recommended termination or nonrenewal.

23  
 24           6-17-1709. Appeal for a nonprobationary full-time employee.

25           (a) The exclusive remedy for a nonprobationary full-time employee  
 26 aggrieved by the decision made by the board of directors shall be an appeal  
 27 of the decision of the board of directors to the circuit court of the county  
 28 in which the school district is located within one hundred twenty (120) days  
 29 of the date of receipt of written notice of the decision of the board of  
 30 directors.

31           (b) Additional testimony and evidence may be introduced on appeal to  
 32 show facts and circumstances to establish that the termination or nonrenewal  
 33 was lawful or unlawful.

34  
 35           6-17-1710. Construction.

36           (a) A nonrenewal, termination, suspension, or other disciplinary

1 action by a school district shall be void unless the school district  
 2 substantially complies with all provisions of this subchapter and the school  
 3 district's applicable personnel policies.

4 (b) This subchapter is not an employee tenure law in that it does not  
 5 confer lifetime appointment of employees.

6  
 7 6-17-1711. Evaluation — Effect.

8 (a) An employee employed by the board of directors of a school  
 9 district must be annually evaluated in writing.

10 (b) Whenever a superintendent or other school administrator charged  
 11 with the supervision of an employee believes or has reason to believe that an  
 12 employee is having difficulties or problems meeting the expectations of the  
 13 school district or its administration and the administrator believes or has  
 14 reason to believe the problems could lead to termination or nonrenewal of the  
 15 employee's contract, the administrator shall:

16 (1) Bring the problems and difficulties to the attention of the  
 17 employee involved in writing; and

18 (2) Document the efforts that have been undertaken to assist the  
 19 employee to correct whatever appears to be the cause for potential  
 20 termination or nonrenewal.

21  
 22 6-17-1712. Employee personnel file.

23 (a) The school district shall maintain a personnel file for each  
 24 employee that shall be available to the employee for inspection and copying  
 25 at the employee's expense during normal office hours.

26 (b) The employee may submit for inclusion in the file written  
 27 information in response to any of the material contained in the file.