

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
4

As Engrossed: H3/23/09

A Bill

HOUSE BILL 1921

5 By: Representatives Nix, J. Roebuck, Nickels
6 By: Senators Elliott, Broadway
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For An Act To Be Entitled

9 AN ACT TO AMEND THE PUBLIC SCHOOL EMPLOYEE FAIR
10 HEARING ACT; AND FOR OTHER PURPOSES.
11
12

Subtitle

13 TO AMEND THE PUBLIC SCHOOL EMPLOYEE FAIR
14 HEARING ACT.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 *SECTION 1. Arkansas Code § 6-17-1702 is amended to read as follows:*

21 *6-17-1702. Definitions.*

22 *As used in this subchapter:*

23 (1) "Employee" shall mean any person employed by a school
24 district under a written annual contract, who is not required to have a
25 teaching ~~certificate~~ license issued by the Department of Education as a
26 condition of employment;

27 (2) "Full-time employee" means any employee who is contracted to
28 work at least twenty (20) hours per week; ~~and~~

29 (3) "Nonprobationary employee" means an employee who has
30 completed three (3) successive years of employment in any one (1) school
31 district in this state. However, when a nonprobationary employee begins
32 employment at a new school district, the employing school district by a
33 majority vote of its board of directors may provide for one (1) additional
34 year of probationary status for that particular employee, the same being the
35 employee's first year of employment with that district; and

36 ~~(3)~~(4) "Probationary employee" means an employee who:



1 (A) ~~has~~ Has not completed ~~one (1) year of employment in~~
 2 ~~the school district in which he is employed. Provided that at least thirty~~
 3 ~~(30) days prior to the completion of an employee's probationary period, the~~
 4 ~~superintendent of schools may recommend and the board of directors may vote~~
 5 ~~that one (1) additional year of probation is necessary for an employee~~ three
 6 (3) successive years of employment in any one (1) school district in this
 7 state; or

8 (B) Having completed three (3) successive years of
 9 employment in any one (1) school district in this state, begins employment at
 10 a new school district and the employing school district, by a majority vote
 11 of its board of directors, provides for one (1) additional year of
 12 probationary status for that employee, the same being the employee's first
 13 year of employment with that district.

14
 15 SECTION 2. Arkansas Code § 6-17-1703 is amended to read as follows:

16 6-17-1703. Termination or nonrenewal – Notice.

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

23 (b) ~~The recommendation of nonrenewal of a full-time nonprobationary~~
 24 ~~employee's contract shall be made~~ Every contract of employment made between a
 25 full-time employee and the board of directors of a school district shall be
 26 renewed in writing on the same terms and for the same salary, unless
 27 increased or decreased by law, for the next school year succeeding the date
 28 of termination fixed in the contract, which renewal may be made by an
 29 endorsement on the existing contract instrument unless no later than ~~thirty~~
 30 ~~(30)~~ forty-five (45) calendar days ~~prior to~~ before the beginning of the
 31 employee's next contract period the employee is notified by the school
 32 superintendent that the superintendent is recommending that the employee's
 33 contract not be renewed.

34 (c)(1) ~~Such~~ The written notice of termination or nonrenewal under this
 35 subchapter shall include a statement of the reasons for the proposed
 36 termination or nonrenewal grounds for the recommendation, setting forth the

1 grounds in separately numbered paragraphs so a reasonable employee can
2 prepare a defense.

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

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

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

16
17 SECTION 3. Arkansas Code § 6-17-1704 is amended to read as follows:
18 6-17-1704. Immediate suspension – Notice.

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

24 (b) The notice shall:

25 ~~(1) include a~~ Include a statement of ~~reasons for the suspension~~
26 the grounds for the recommendation, setting forth the grounds in separately
27 numbered paragraphs so a reasonable employee can prepare a defense;

28 ~~(2) state~~ State whether the superintendent is recommending
29 termination; and

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

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

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SECTION 4. Arkansas Code § 6-17-1705 is amended to read as follows:
6-17-1705. Hearing.

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

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

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

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

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

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

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

~~(d) In hearings held concerning a recommendation for the nonrenewal of a full-time non-probationary employee, either the board of directors or the employee may elect to have a record of the hearing made, and the expense for the record shall be shared equally between the board of directors and the employee~~
The board of directors shall not consider at the hearing any new reasons that were not specified in the notices provided under this subchapter.

~~(e) After the hearing, the school board of directors may terminate the employee or continue the suspension for a definite period of time. The salary~~

1 ~~of a suspended employee shall cease when the school board of directors~~
2 ~~sustains the suspension. Otherwise, the employee shall be reinstated without~~
3 ~~loss of compensation.~~

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

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7 SECTION 5. Arkansas Code Title 6, Chapter 17, Subchapter 17 is amended
8 to add additional sections to read as follows:

9 6-17-1706. Board action on termination or nonrenewal of a full-time
10 probationary employee.

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

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

17
18 6-17-1707. Board action on termination or nonrenewal of a full-time
19 nonprobationary employee.

20 (a) The board of directors may terminate a full-time nonprobationary
21 employee or refuse to renew the contract of a full-time nonprobationary
22 employee only:

23 (1) If there is a reduction in force that cannot be
24 accomplished through attrition and requires a layoff;

25 (2) For incompetent performance;

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

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

29 (5) For other just and reasonable cause.

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

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

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

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

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

10
11 6-17-1708. Board's written conclusions.

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

16
17 6-17-1709. Appeal for a nonprobationary full-time employee.

18 (a) The exclusive remedy for a nonprobationary full-time employee
19 aggrieved by the decision made by the board of directors shall be an appeal
20 of the decision of the board of directors to the circuit court of the county
21 in which the school district is located within one hundred twenty (120) days
22 of the date of receipt of written notice of the decision of the board of
23 directors.

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

27
28 6-17-1710. Construction.

29 (a) A nonrenewal, termination, suspension, or other disciplinary
30 action by a school district shall be void unless the school district
31 substantially complies with the provisions of this subchapter and the school
32 district's applicable personnel policies.

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

35
36 6-17-1711. Evaluation — Effect.

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

3 (b) Whenever a superintendent or other school administrator charged
4 with the supervision of an employee believes or has reason to believe that an
5 employee is having difficulties or problems meeting the expectations of the
6 school district or its administration and the administrator believes or has
7 reason to believe the problems could lead to termination or nonrenewal of the
8 employee's contract, the administrator shall:

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

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

14
15 6-17-1712. Employee personnel file.

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

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

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22 /s/ Nix
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