

# **Am I entitled to a hearing?**

## *Definitions and steps of due process*

*By Richard Wilkinson  
OEA General Counsel*

One of the most frequent questions asked during this time of the school year is "am I entitled to a hearing when a local superintendent recommends that I be dismissed or non-renewed?" As with many legal questions, the answer depends upon the employment status of the individual employee. Generally, teachers, administrators, and education support professionals are entitled to some form of constitutional or statutory due process, i.e. a hearing, prior to their dismissal or non-reemployment from a local school district in Oklahoma. However, how the position is defined plays a prominent role in determining what kind of hearing is required prior to a recommendation for adverse employment action. For purposes of this article, the following definitions are the most relevant.

A "teacher" is defined by Oklahoma statute as "a duly certified or licensed person who is employed to serve as a counselor, librarian or school nurse or in any instructional capacity." A "career teacher" is a teacher who has completed three or more consecutive, complete school years in such capacity in one school district under a written teaching contract. A "probationary teacher" is a teacher who has completed fewer than three consecutive, complete school years in such capacity in one school district under a written teaching contract. Both career and probationary teachers are entitled to notice of the reasons for the proposed action, underlying facts in support of the reasons for the proposed action, and some form of "due process" before the local board of education.

First, career teachers are entitled to a fairly broad range of rights. Pursuant to a change in Oklahoma statute in 2003, the hearing before a local board of education for a career teacher has been modified to a "pre-termination" due process hearing, after which the teacher can petition a district court for a trial de novo. The "pre-termination" due process hearing for the career teacher consists of the following:

1. The superintendent or designee specifies the statutory grounds as well as the underlying facts and provides an explanation of the evidence supporting the recommendation for the dismissal or non-reemployment; and
2. The career teacher or designee has the opportunity to present reasons, either in person or in writing, why the proposed action should not be taken.

If the local board of education votes to accept the recommendation of the superintendent, the career teacher has the right to file a petition for trial de novo in district court, within 10 days of receiving the notice of the board's decision. A trial de novo is a non-jury trial in district court, handled like any other civil litigation.

Probationary teachers, however, do not enjoy the same rights. A probationary teacher is entitled to a full evidentiary hearing before the local board of education before any

termination or nonrenewal. Witnesses typically testify for both parties at such hearings and after considering the evidence presented the local board of education votes to either accept or reject the recommendation of the superintendent. The decision of the local board of education is final and, unlike a career teacher, a probationary teacher does not have the right to have a district court review the final decision.

Administrators also enjoy fewer protections than career teachers. An "administrator" is defined by Oklahoma statute as "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." Similar to the protections afforded probationary teachers, administrators are entitled to a statutory hearing procedure including a written statement of the reasons for the proposed dismissal or non-reemployment and an opportunity to appear before the local board of education for a hearing on the proposed recommendation if the administrator requests a hearing within 10 days of the notice. As with probationary teachers, the decision of the local board of education is final.

Support employees who have been employed by a local board of education for more than one year are entitled to protections similar to those afforded probationary teachers and administrators. For due process purposes, a "support employee" is defined by Oklahoma statutes as "a full-time employee of a school district as determined by the standard period of labor customarily understood to constitute full-time employment for the type of services performed by the employee who is employed a minimum of one hundred seventy-two (172) days and who provides those services, not performed by professional educators or licensed teachers, which are necessary for the efficient and satisfactory function of a school district, and shall not include adult education instructors or adult coordinators employed by technology center school districts." A support employee is entitled to a hearing before the local board of education if they face termination or nonrenewal, but they must request the hearing in writing within 10 days of receiving the notice of such termination or nonrenewal. As with probationary teachers and administrators, a decision of a local board of education shall be final.

The fundamental precepts of "due process" consist of reasonable notice and a reasonable opportunity to be heard before a fair and impartial decision maker. While the due process protections afforded school employees vary depending upon employment classification, the statutory scheme applicable to education employees in Oklahoma ensures that all employees have the opportunity to invoke the discretion of the decision maker before a final decision is made on their continued employment with a local school district.