

**CHAPTER 1. STATE BOARD OF EDUCATION
SUBCHAPTER 5. DUE PROCESS**

210:1-5-7. Teacher evaluation, dismissal, and nonreemployment [AMENDED]

(a) Teacher Evaluation, Dismissal, and Nonreemployment Act.

(1) The State Board of Education recognizes its regulatory and leadership role in the implementation of this statute and commits its cooperation accordingly. It believes that the most effective vehicle to promote professional growth is self-motivation. The teacher should be the prime recipient of the benefits of teacher evaluation thus identifying his/her own needs for improvement. The evaluation instrument serves as one objective measure by which administrators and boards of education can validly infer inadequate competencies of both teachers and administrators.

(2) The State Board of Education believes that grievances between boards of education and teachers can best be settled in the locale and thus supports the principle of due process before the local school board. It further supports the right of appeal in the exercise of human rights.

(b) Duties. The law requires the State Board of Education to develop and adopt standards and procedures to be followed in due process hearings of local boards of education. Such standards are to follow the pattern of the Administrative Procedures Act [75-301-308.2].

(c) Written policy of evaluation. A teaching principal may conduct teacher evaluations if so designated by the local board of education.

(d) Minimum criteria for establishing evaluation systems. The written policy and procedures will facilitate the implementation of the Teacher Evaluation Law of 1977, as amended by House Bill No. 1466 (70-6-102.2). Written policy of evaluation for all teachers and administrators is to be based on minimum criteria developed by the State Board of Education and shall include both teaching and administrative criteria. Each board of education shall maintain and annually review the evaluation policy. Each district's evaluation system should contain the following elements:

(1) A written policy addressing purpose, goals, objectives, targets, procedures, methods, and uses of the evaluation system. This policy shall be developed by the board in consultation with representative teachers and administrators.

(2) Procedures for making evaluation information available to all affected personnel.

(3) A listing of the evaluation and hearing steps.

(4) Written performance criteria by which to evaluate all certificated staff. This must include, but is not limited to, state mandated minimum criteria for effective teaching performance and minimum criteria for effective administrative performance.

(5) Dates (or a schedule) for evaluation visits for probationary and tenured staff.

(6) Identification of the personnel or positions which will perform the evaluations.

(7) What is to be evaluated. Consideration should be given to:

(A) Self-evaluation progress reports by individuals being evaluated.

(B) Criteria, in addition to state mandated criteria, which might include: criteria related to the job description, district goals, school objectives, and the previously cooperatively developed position objectives.

(C) Equitable application of evaluation criteria to all personnel.

(D) Evaluating only those things which are currently applicable to the job the staff member is performing and not those things which should have been evaluated during preemployment.

(8) Specified ways that evaluation data will be collected as well as when, how long, and how observations will be performed.

(9) Security and controlled access to the evaluation reports.

(10) Provisions for initial, post visit, and follow-up conferences with evaluator or immediate supervisor. Forms should be completed by evaluator, signed, then reviewed, commented on, and signed by the person being evaluated.

(11) Place for recommendations, prescriptions, or citations of inadequacy. These procedures should include written statements by the evaluator as to:

- (A) What should be done by the person evaluated, including level of performance expected.
 - (B) When the corrective action is expected to be completed, which time shall not exceed two months.
 - (C) What resources the school will provide to help the person evaluated achieve the expected performance.
 - (D) The form in which the report of performance should be submitted (i.e., oral interview, self-evaluation report, narrative description, list of data action documents, etc.).
- (12) Ways the administration will provide resources and assistance for corrective action. This assistance should provide alternatives which could include:
- (A) Assignment to another school or position within the district.
 - (B) Visitations and planning.
 - (C) Demonstrations or simulations.
 - (D) Video tapings and assigned supervisor.
 - (E) Reports.
 - (F) Special supervision.
 - (G) Assignment to a performance team.
 - (H) Conference.
 - (I) Workshops and inservice sessions.
- (13) Ways the district will utilize the evaluation finding to improve learning in the district to:
- (A) Develop inservice education programs to resolve inadequacies.
 - (B) Identify areas where improvements are needed.
 - (C) Provide justification for changes in staff, facilities, resources, and programs, or to be a needs assessment for developing new programs.
 - (D) Disseminate valuable information to various publics.
 - (E) Provide a record of the quality of teaching and quality of staff in the district.

(e) **Procedures designed to avoid potential teacher dismissal.** Principals having delegated administrative responsibilities as a part of the comprehensive operation of their respective schools have an inherent obligation for the professional success of their teaching staff. Subsequent to an analysis of the results of a number of measures from which it can be validly inferred from a teacher's performance the principal or evaluator shall, according to law:

- (1) Bring the matter to the attention of the teacher, in writing, and make a reasonable effort to assist the teacher to correct whatever appears to be the cause for potential dismissal or nonreemployment; and
- (2) Allow a reasonable time for improvement, which time shall not exceed two (2) months. The nature and gravity of the teacher's conduct shall be considered in determining what length of time would be reasonable. If the teacher does not correct the cause for potential dismissal or nonreemployment within a reasonable length of time, the principal shall make a recommendation to the superintendent of the school district for the dismissal or nonreemployment of the teacher. (70-6-103.2) This section does not apply to a superintendent of schools. 648 P.2d 26
- (3) The school system should make facilities at its disposal available to help such teachers. The principal will encourage the use of such facilities as:
 - (A) an accessible professional library and/or media center;
 - (B) local, county, and State Department of Education supervisory services;
 - (C) inservice education activities with local, county, regional service center, college, or state groups;
 - (D) individual study; and
 - (E) the acquisition and utilization of a wide variety of teacher materials.

~~(f) **Pretermination procedures.** Subsequent to the decision by the superintendent that cause does, in fact, exist for the dismissal or nonreemployment of a teacher certain steps must be followed. These include notification and hearing. The United States Supreme Court has ruled that school employees have certain pretermination rights which must be met prior to dismissal which include:~~

- ~~(1) Being told orally or in writing the charges against the employee.~~
- ~~(2) Being given an explanation of the school's evidence against the employee; and~~
- ~~(3) Being given an opportunity to present evidence in person or in writing of why the employee should not be discharged.~~

210:1-5-8. Teacher due process hearings; hearing procedures; ~~probationary teachers~~ [AMENDED]

- (a) The parties to the hearing are the ~~probationary~~ teacher and the district superintendent or designee and they shall be afforded the following rights at any hearing held pursuant to these regulations.
 - (1) The right to be represented.
 - (2) The right to present witnesses in person or to present their testimony by interrogatories, affidavits, or depositions as agreed to by the parties. A list of all witnesses and a list of exhibits shall be furnished to the other party at least five (5) days before the hearing.
 - (3) The right to cross-examine witnesses.
 - (4) The right to testify in his/her own behalf and present evidence and argument on all issues involved.
 - (5) The right to have an orderly hearing.
 - (6) The right to have an impartial decision based upon the evidence presented.
- (b) The President of the school board, or in case of absence a designee, shall be the presiding officer at the hearing.
- (c) All hearings shall conform to the following:
 - (1) Hearings shall be held no sooner than twenty (20) and no later than sixty (60) days after the teacher receives written notification of the recommendation for dismissal or nonreemployment and notice of the opportunity for hearing.
 - ~~(2)~~ (2) Hearings held within the scope of these guidelines shall be convened by the President of the board who shall state the purpose of the hearing, introduce the parties and administer the oath to all persons who will testify.
 - ~~(3)~~ (3) Upon the request of either party, the Presiding Officer may exclude from the hearing room the witnesses not at the time under examination, except that a party to the proceeding and his/her representative shall not be excluded.
 - ~~(4)~~ (4) At the hearing, the burden of proof shall be on the superintendent and the standard of proof shall be by a preponderance of the evidence.
 - (4) (5) ~~While a record of the hearing is not required by law, the State Board of Education strongly suggests that~~ The local board of education shall maintain such a record (including a tape or other electronic or digital recording of the hearing and any documents or evidence presented to the board) for two (2) years from the date of the hearing.
 - ~~(6)~~ (6) Informal disposition of any recommendation for dismissal or nonrenewal may be made by written stipulation, agreed settlement, consent order or default.
- (d) The order of procedures shall be:
 - (1) Opening statement by superintendent.
 - (2) Opening statement by the teacher.
 - (3) Presentation of superintendent's evidence, followed by cross-examination of witnesses by teacher.
 - (4) Questions by local board members.
 - (5) Presentation of teacher's evidence followed by cross-examination of witnesses by superintendent.
 - (6) Questions by local board members.
 - (7) Presentation of Rebuttal and Surrebuttal Evidence as necessary.
 - (8) Closing argument by superintendent.
 - (9) Closing argument by teacher.
 - (10) Deliberation by local board.

- (11) Vote by local board to accept or reject the superintendent's recommendation and recitation of findings of fact upon which the decision is based.
- (e) Presentation and consideration of evidence shall abide by the following:
- (1) Only evidence which reasonably relates to the issues before the board, as reflected in the notice to the teacher, should be deemed relevant.
 - (2) Strict rules of evidence as required by a court of law shall not apply in these hearings.
 - (3) Rulings on admissibility of evidence will be made by the Presiding Officer.
 - (4) Documentary evidence may be received in the form of copies or excerpts.
 - (5) Documentary evidence presented to the board shall be marked with a distinguishing number or letter such as Teacher's Exhibit #1 or Superintendent's Exhibit #1.
 - (6) While hearings are open to the public, no questions or statements will be allowed by members of the public attending the hearing except through the parties or their council.
- (f) Decision on hearing will be rendered.
- (1) After due consideration of the evidence and the testimony presented at the hearing, the local board shall decide whether to dismiss or nonreemploy the teacher.
 - (2) The board's decision shall be voted in open meeting.
 - (3) The decision of the board shall include a recitation of the basic or underlying facts relied upon by the board in reaching its decision.
 - (4) The board shall notify the ~~probationary~~ teacher in writing of its decision as set out above by certified mail, restricted delivery, return receipt requested or substitute process as authorized by law within ten (10) business days of the hearing.
 - (5) The school board's decision regarding the dismissal or nonreemployment of a ~~probationary~~ teacher is final.