AN EVALUATION OF SCHOOL BOARD HEARING PROCEDURES AND THE TRIAL DE NOVO APPEAL IN CAREER TEACHER EMPLOYMENT TERMINATION PROCEEDINGS IN OKLAHOMA PUBLIC SCHOOLS

James O. Tate
Southwestern Oklahoma State University

Abstract

The Teacher Due Process Act (1990) (TDPA) of Oklahoma sets out the procedures for conducting a teacher dismissal hearing and a trial de novo for a career teacher. In a trial de novo, the matter of the teacher dismissal is tried anew in district court as if no decision had been previously rendered by the school board. Proponents for school districts and proponents for teacher groups continue to disagree over issues of fairness regarding the statutory dismissal procedures of the TDPA. This article looks at the perceptions of fairness of procedures for conducting career teacher dismissal hearings among Oklahoma career teachers, principals, superintendents, school board members, and attorneys who represent educational interests. Using the Kruskal-Wallis one-way ANOVA, the author measured independent variables and Likert-type scale preference scores to determine the degree of fairness perceived among those respondent groups regarding the dismissal procedures of the TDPA. Three personal interviews were used in this study. The qualitative data were coded and analyzed. Results show a significant difference in perceptions of fairness of the dismissal procedures among the respondents.

House Bill 1017, the Omnibus Education Reformation and Funding Act of 1990, brought dramatic changes to public education in Oklahoma. Most changes that occurred as a result of House Bill 1017 have been absorbed into Oklahoma’s public education system. The Teacher Due Process Act of 1990 (TDPA) of House Bill 1017, which sets out the procedures for conducting a teacher dismissal hearing and a trial de novo appeal for career teachers, remains
controversial. The reason for the controversy is that proponents for both sides (school districts and teachers) continue to disagree over issues of fairness regarding the certain elements of the TDPA. Those disagreements were present prior to passage of House Bill 1017 and continue to exist today.

The root of the controversy in Oklahoma’s career teacher employment termination process is whether or not a local school board can provide an unbiased hearing to a teacher facing dismissal or nonrenewal. In contention is whether or not a career teacher’s statutory right to appeal a board’s employment termination decision in a trial de novo is fair to the school district. In a trial de novo, the matter of the teacher dismissal is tried anew in district court as if no decision had been previously rendered by the school board. Proponents for school districts and teachers posture for leverage in maintaining their own interests on the matter of career teacher employment termination.

Under the current TDPA, the costs in terms of legal fees, human resources, as well as school and community relations can be high in a career teacher termination proceeding. The public interest is better served when school districts have effective legal recourse for dismissing teachers who have demonstrated ineffective teaching performances. The public interest is served when quality teachers have statutory protection from unlawful termination actions by school districts. The legal cost to the school district involved becomes an important public issue, since the taxpayers ultimately bear the cost of career teacher termination proceedings.

Statement of the Problem

Interviews with representatives of school organizations and teacher organizations in Oklahoma confirm that differences exist between the two side regarding career teacher dismissal procedures. The issues are: (a) the statutory designation of the school board as the hearing board in career teacher dismissal proceedings; and (b) the career teacher’s statutory right to a de novo appeal of a school board’s negative employment decision.

The researcher’s experience in public school administration and legal consulting on career teacher dismissal matters confirms that differences exist between public school district organizations and teacher organizations on the role of school boards in career teacher dismissal proceedings and the trial de novo appeal right of career teachers. It is the researcher’s position that the difference held between the two sides (school districts and teachers) regarding career teacher dismissal procedures will continue to exist under the current TDPA until the TDPA is amended to resolve the controversies.

Research Questions

Preliminary data and comments by professionals and lay persons in education have indicated marked differences in opinion as to whether the designation of the school board as the hearing board affects a career teacher’s right to due process under law in dismissal proceedings. Those data and comments indicated similar disagreement as to whether the statutory right to a trial de novo appeal for the career teacher affects a school district’s right to due process under law in those proceedings.

This study was guided by two questions: (a) How does the statutory designation of the local school board, as the hearing board in a career teacher dismissal hearing, affect the participants’ perceptions of due process afforded to school districts and career teachers? (b) How does the statutory right to a trial de novo for career teachers affect the participants’ perceptions of due process afforded to the school districts and career teachers?
Review of the Literature

Career teachers in Oklahoma hold constitutionally protected property interest rights in their teaching contracts with school districts. The TDPA of 1990 requires that career teachers may only be terminated for breach of statutory grounds for dismissal or nonreemployment.

Due Process

The concept of due process is historically grounded in constitutional law, case law, and statutory law at federal and state levels in the United States. The Fourteenth Amendment of the U.S. Constitution applies to the states. Section I of the amendment states, “... nor shall any state deprive any person of life, liberty, or property without due process of law” (U.S. Constitution).

The U.S. Supreme Court, in Cleveland Board of Education v. Loudermill (1985), held that the existence of state statutes listing specific reasons for which a public employee may be dismissed may be enough to create a property interest in the employee's employment. Another case, from the Supreme Court of Connecticut, acknowledged a protected Fourteenth Amendment property interest, statutorily created, in a teacher's employment. In that case, Connecticut Education Association, Inc. v. Tirozzi (1989), held that a teacher's teaching certificate constituted a property interest because the relevant statute in Connecticut states that a teaching certificate can be revoked only for cause.

Fundamental Fairness

The Court in Gillett v. Unified Sch. Dist. No. 276 (1980) held that a proper teacher pretermination hearing is one that is “fair and just.” “Fair and just,” or fundamental fairness, is a broad phrase encompassing many important procedural and substantive issues in school employment law. Those issues include impermissible commingling of roles in the process, conflict of interest of hearing participants, constructive actions, ex parte communications (communications with only one party, and without notice to, or contested by, any person adversely interested in the matter), and ethical considerations of the process.

Task Force 2000 Report

The Task Force 2000 Report, Blueprint for Excellence (1989) in Oklahoma reported that, “Perhaps the most volatile issue facing the Task Force has been the questions of teacher tenure.” Critics of tenure claimed that tenure prevented ineffective teachers from being dismissed, while proponents of tenure argued that tenure ensured unfettered exercise of the First Amendment rights of free speech and expression. The recommendation of Task Force 2000 was to abolish tenure and recast the essential protections afforded under tenure into a new statutory framework.

The new statutory framework of tenure became the “Protection for Teachers; Grounds for Dismissal” of the TDPA. As a trade-off, the Task Force 2000 recommended the procedures by which a teacher can be terminated must also be supplemented. That supplement to procedure for dismissal recommendation was the catalyst for the provision of the trial de novo in district court for career teachers.

House Bill 1017

House Bill 1017 (1990) was the legislation promulgated requiring a dismissal or nonreemployment hearing for a teacher to be held before the board of education. In addition, it
guaranteed a trial de novo appeal of a school board’s negative employment decision in district for career teachers.

House Bill 1017 provided the definition for “career teacher” and stated the statutory grounds for termination. It established the hearing procedures before the local school board and the trial de novo appeal in district court. Under the guidelines of House Bill 1017, the board of education is called upon to be an objective hearing panel for teacher termination proceedings. The trial de novo appeal creates the scenario whereby the board of education becomes the defendant in the proceedings if the career teacher files an appeal of the board’s decision in district court.

Other States’ Teacher Due Process Statutes

A select review of teacher due process statutes from Florida, Missouri, and Oregon was completed for the study. Those state statutes were selected because they present a variety of alternatives to be compared with procedures in Oklahoma’s TDPA.

Florida’s statutes require the superintendent to notify the State Department of Education when two consecutive unsatisfactory evaluations have been given to a teacher. The State Department of Education then conducts an investigation and makes a determination as to whether action is to be taken against the teacher.

Missouri’s statutes more closely resemble Oklahoma’s statutes. Missouri, however, requires a longer period for tenure to vest and expressly provides for an appeal from the circuit court. Oklahoma statutes do not expressly provide for an appeal from the trial de novo in district court.

Oregon’s statutes provides a teacher with the option to appeal the school board’s dismissal decision to a Dismissal Appeals Board panel or to have the matter decided by arbitration. The decision to go to arbitration requires the mutual consent of the teacher and the school district.

Methodology

Quantitative Design

Study participants included career teachers, principals, superintendents, school board members, and attorneys who represent educational interests. Respondents held a variety of assignments and had a variety of experience levels in education. Respondents represented a purposeful stratified sample from the four quadrants of Oklahoma divided by Interstate 35 and Interstate 40.

The schools were selected according to their 1998-99 secondary average daily membership (ADM) for Oklahoma Secondary Schools Activities Association (OSSAA) classification purposes. The schools were grouped according to their relative sizes of small (2A and smaller), medium (3A and 4A), and larger (5A and 6A) per their ADM.

The 1998-99 Educational Directory of the Oklahoma State Department of Education was used as a basis for identifying school personnel within the limitations of the study. Organization membership lists of attorneys who represent school district organizations and teacher organizations was used as a basis for identifying attorneys within the limitations of the study.

The questionnaire developed for this study focused on the respondents’ perceptions of due process afforded to career teachers and school district in career teacher dismissal proceedings. Specifically, the questionnaire focused on the respondents’ perception of fairness regarding the school board being the trier of fact in the proceeding and the perception of
fairness regarding the career teacher’s statutory right to a trial de novo hearing in district court.

The questionnaire consisted of three sections. Section one provided professional background information. Section two provided information on the respondents’ perception of fairness of the current career teacher dismissal procedures in Oklahoma. The perceptions or attitudes held by the respondents toward the dismissal process were the respondents’ viewpoints or dispositions toward the process. The study used a Likert-type scale to measure attitudes. The Likert-type scale asks individuals to check their level of agreement with various statements (Gall, Borg, & Gall, 1996). Section three asked the respondents to select, in order of preference, the dismissal hearing setting they perceived as most fair. The hearing setting choices included the current TDPA hearing, a court of law, pre-House Bill 1017 hearing setting, a professional independent hearing board, and arbitration.

Qualitative Design

Purposeful, nonstatistical sampling was used for the qualitative part of the study. The goal in purposeful sampling is to select cases that are “information rich” with respect to the purposes of the study (Gall et al., 1996). The three participants were selected because they suited the purposes of the study. One participant was experienced professional representing schools’ interests on teacher dismissal matters. One participant was an expert representing teachers’ interests on teacher dismissal matters, and one was an experienced professional with neutral interests on teacher dismissal matters.

Legal conceptual questions were developed to determine each subject’s perception of fairness in career teacher dismissal proceedings. The questions were worded in non-legal terminology in order to provide for an easier flow of dialogue with the interviewees. The questions were in-depth, unbiased, and open-ended to ensure spontaneous responses.

The subjects were interviewed regarding their perceptions of fairness in career teacher dismissal proceedings. The data were coded and analyzed for themes indicating the subjects’ perceptions of fairness in dismissal proceedings of “for,” “against,” or combinations of the two. Direct quotes of the subjects supported conclusions drawn from the data.

Data Analysis

The purpose of the descriptive design of the study was to systematically describe the perceptions of fairness of the categorical data in career teacher dismissal proceedings in Oklahoma. Descriptive statistics were used in the analysis. The Kruskal-Wallis one-way ANOVA measured the independent variables (categorical data) and the preference scores (ranked, ordinal data) reported on the Likert-type scale. Nine hypotheses guided the study with each representing an attempt to determine whether one of a variety of categorical characteristics might explain each category’s perception of fundamental fairness with regards to the TDPA employment dismissal procedures for career teacher in Oklahoma.

A bivariate correlational coefficient score (Spearman’s rho) statistical calculation was conducted to determine the extent to which data expressed as continuous scores might be significantly related. The data containing continuous variable included: (a) years of experience of the respondents, (b) the number of plans of improvement in which administrators were involved, and (c) the number of plans of improvement in which career teachers were involved. The relationship between the years of experience of school personnel and the degree of fairness perceived in career teacher dismissals was examined through the use of bivariate correlation statistics.

Perceptions of fairness in career teacher dismissal proceedings by the respondents were determined by their responses on a Likert-type scale to the following survey items:
1. Most public school boards in Oklahoma make impartial career teacher dismissal decisions.

2. A career teacher’s statutory right to appeal a school board’s termination decision to a trial de novo is unfair because it takes the final decision making out of the local control of the board.

3. A career teacher’s statutory right to appeal a school board’s dismissal decision in a trial de novo is unfair because it is a completely new hearing rather than a review of the record of the school board hearing.

Conclusions and Recommendations

Statistical Findings

The study examined the categorical groups’ perceptions of fairness regarding the statutory designation of the local school board as the hearing board in career teacher termination proceedings and the trial de novo appeal for career teachers. A high level of statistical significance was shown between the perceptions of fairness of the different categories regarding career teacher dismissal procedures. A high level of significance was also shown between perceptions of fairness of those categories and the subjects’ Dismissal Hearing Setting Preference as well as their Purpose of Hearings preferences.

Dependent variables that do not seem to be significantly related to perceptions of fairness of the categories and career teacher dismissal procedures include the existence of a negotiated labor agreement between the teachers of the district and the board of education. No significant relationship was found regarding the appearance of a respondent in a career teacher dismissal proceeding on behalf of a teacher or school district or the degree of experience of the respondent in career teacher dismissals before or after the passage of House Bill 1017 (1990). No significant relationship was found regarding the appearance of a respondent in career teacher dismissals before or after the passage of House Bill 1017 (1990). No significant relationship was found regarding the number of plans of improvement in which the respondents were involved, or the number of times the respondents were involved in a trial de novo. Finally, no significant relationship was found regarding the number of plans of improvement in which a respondent was involved and perceptions of fairness in career teacher dismissal proceedings.

The best predictor of attitudes among the six variables considered that was statistically confirmed was the type of position the respondent held. Career teachers and building administrators looked more to the teachers’ viewpoint, while central office staff and board members tended to favor the district’s viewpoint. The remaining five variables cannot be considered to be dependable predictors.

Practical Findings

Of practical significance was the finding that respondents reported infrequent involvement in plans of improvement. Considering that the respondents had a minimum of three years of experience (career teachers) or more (administrators), this finding is important.

More than half (52%) of the respondents reported involvement in two or plans of improvement or less. Sixty-four percent of the career teachers, 14% of the principals, 3% of the superintendents, 42% of the board members, and 38% of the attorneys reported no involvement in plans of improvement.

A plan of improvement, which only results from an unsatisfactory evaluation, must occur before any further steps may be taken in the dismissal process. It may be said that the infrequent use of plans of improvement, as reported in the data, is an indication of the marked disagreement among teachers and administrators as to the purpose and use of the plans. This finding is of practical significance and supports Seyfarth’s (1996) contention that
disagreements exist regarding the purpose and use of evaluations among those who have a state in the process.

**Recommendations**

The TDPA statute regarding career teacher dismissal and appeal procedures should be amended to provide due process protection for teachers while preserving the rights of school districts to dismiss teachers who fail to meet the minimum criteria for effective teaching or breach the standards of performance and conduct for teachers in Oklahoma. Agreement between school districts and the teachers in those districts concerning the purposes and uses of career teacher dismissal and appeal procedures will help resolve the current divisiveness that exists between those two groups.

The following recommendations are based upon the findings and data from the study. School districts and teachers should work toward reaching agreement as to the purposes and uses of formative and summative teacher evaluations, plans of improvement, dismissal, and appeal procedures. The TDPA should be amended to provide for the use of formative evaluations. The TDPA should be further amended to allow school districts to dismiss teacher who demonstrate failure to meet the minimum criteria for effective teaching or breach the standards of performance and conduct for teachers in Oklahoma.

A career teacher who wishes to contest a school board’s negative employment decision should be able to appeal that decisions to an administrative hearing board outside of the school setting. An appeal from the decision of the administrative hearing board should be based on a review of the record of the administrative hearing rather than a trial de novo. A career teacher who has been dismissed from a school district should have normal personal appeal rights from the administrative hearing to the district court in which the school district is located. However, regular compensation and benefits for the career teacher should not extend beyond the decision of the administrative hearing board.

**References**

United States Constitution, Amendment XIV § I.