

SENATE BILL No. 168

By Committee on Education

1-30

AN ACT concerning teachers; relating to hearings provided upon notice of nonrenewal or termination of contracts of employment; amending K.S.A. 72-5438, 72-5439, 72-5440, 72-5441, 72-5442, 72-5443 and 72-5446 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 72-5438 is hereby amended to read as follows: 72-5438. (a) Whenever a teacher is given written notice of intention by a board to not renew or to terminate the contract of the teacher as provided in K.S.A. 72-5437, and amendments thereto, the written notice of the proposed nonrenewal or termination shall include (1) a statement of the reasons for the proposed nonrenewal or termination, and (2) a statement that the teacher may have the matter heard by *the board, a committee of the board, or a hearing officer appointed by the board*, upon written request filed with the clerk of the board of education or the board of control or the secretary of the board of trustees within 15 calendar days from the date of such notice of nonrenewal or termination. *If the hearing is before the board or a committee of the board, the board shall designate one board member to serve as chairperson for purposes of the hearing.*

(b) Upon the filing of any written request of a teacher to be heard as provided in subsection (a), *and* within 10 calendar days thereafter, the board shall notify the ~~commissioner of education that a list of qualified hearing officers is required.~~ Such notice shall contain the mailing address of the teacher. ~~Within 10 days after receipt of notification from the board, the commissioner shall provide to the board and to the teacher, a list of nine randomly selected, qualified hearing officers~~ *teacher of the time and place where the hearing will be held, and the name of the person who will serve as chairperson of the board or committee of the board, or hearing officer who will hear the matter.*

~~(c) Within 5 days after receiving the list from the commissioner, each party shall eliminate four names from the list, and the remaining individual on the list shall serve as hearing officer. In the process of elimination, each party shall eliminate no more than one name at a time, the parties alternating after each name has been eliminated. The first name to be eliminated shall be chosen by the teacher, within 5 days after the teacher~~

1 receives the list. The process of elimination shall be completed within 5
2 days thereafter.

3 —(d)— Either party may request that one new list be provided within 5
4 days after receiving the list. If such a request is made, the party making
5 the request shall notify the commissioner and the other party, and the
6 commissioner shall generate a new list and distribute it to the parties in
7 the same manner as the original list.

8 —(e)— In lieu of using the process provided in subsections (b) and (c), if
9 the parties agree, they may make a request to the American Arbitration
10 Association for an arbitrator to serve as the hearing officer. Any party
11 desiring to use this alternative procedure shall so notify the other party
12 in the notice required under subsection (a). If the parties agree to use
13 this procedure, the parties shall make a joint request to the American
14 Arbitration Association for a hearing officer within 10 days after the
15 teacher files a request for a hearing. If the parties choose to use this
16 procedure, the parties shall each pay one-half of the cost of the arbitrator
17 and of the arbitrator's expenses.

18 —(f)— The commissioner of education shall compile and maintain a list
19 of hearing officers comprised of residents of this state who are attorneys
20 at law. Such list shall include a statement of the qualifications of each
21 hearing officer.

22 —(g)— Attorneys interested in serving as hearing officers under the pro-
23 visions of this act shall submit an application to the commissioner of ed-
24 ucation. The commissioner shall determine if the applicant is eligible to
25 serve as a hearing officer pursuant to the provisions of subsection (h).

26 —(h)— An attorney shall be eligible for appointment to the list if the
27 attorney has: (1) Completed a minimum of 10 hours of continuing legal
28 education credit in the area of education law, due process, administrative
29 law or employment law within the past five years; or (2) previously served
30 as the chairperson of a due process hearing committee prior to the ef-
31 fective date of this act. An attorney shall not be eligible for appointment
32 to the list if the attorney has been employed to represent a board or a
33 teacher in a due process hearing within the past five years.

34 Sec. 2. K.S.A. 72-5439 is hereby amended to read as follows: 72-
35 5439. The hearing provided for under K.S.A. 72-5438, and amendments
36 thereto, shall commence within ~~45~~ 60 calendar days after the hearing
37 officer is selected unless the hearing officer grants an extension of time
38 *date of notice of intent to nonrenew or terminate the contract as required*
39 *by subsection (a) of K.S.A. 72-5438, and amendments thereto.* The hearing
40 shall afford procedural due process, including the following:

41 (a) The right of each party to have counsel of such party's own choice
42 present and to receive the advice of such counsel or other person whom
43 such party may select;

1 (b) the right of each party or such party's counsel to cross-examine
2 any person who provides information for ~~the~~ consideration ~~of~~ at the hear-
3 ing officer, except those persons whose testimony is presented by
4 affidavit;

5 (c) the right of each party to present such party's own witnesses in
6 person, or their testimony by affidavit or deposition, except that testimony
7 of a witness by affidavit may be presented only if such witness lives more
8 than 100 miles from the location of the unified school district office, area
9 vocational-technical school or community college, or is absent from the
10 state, or is unable to appear because of age, illness, infirmity or impris-
11 onment. When testimony is presented by affidavit the same shall be
12 served upon the clerk of the board of education or the board of control,
13 or the secretary of the board of trustees, or the agent of the board and
14 upon the teacher in person or by first-class mail to the address of the
15 teacher which is on file with the board not less than 10 calendar days
16 prior to presentation ~~to~~ at the hearing officer;

17 (d) the right of the teacher to testify in the teacher's own behalf and
18 give reasons for the teacher's conduct, and the right of the board to pres-
19 ent its testimony through such persons as the board may call to testify in
20 its behalf and to give reasons for its actions, rulings or policies;

21 (e) the right of the parties to have an orderly hearing; and

22 (f) the right of the teacher to a fair and impartial decision based on
23 substantial evidence.

24 Sec. 3. K.S.A. 72-5440 is hereby amended to read as follows: 72-
25 5440. (a) For appearing before the hearing officer at a hearing, witnesses
26 who are subpoenaed shall receive \$5 per day and mileage at the rate
27 prescribed under K.S.A. 75-3203, and amendments thereto, for miles
28 actually traveled in going to and returning from attendance at the hearing.
29 The fees and mileage for the attendance of witnesses shall be paid by the
30 party calling the witness, ~~except that~~. Fees and mileage of witnesses sub-
31 poenaed by the *board, committee of the board, or* hearing officer shall be
32 paid by the board. Witnesses voluntarily appearing before the hearing
33 officer shall not receive fees or mileage for attendance at the hearing.

34 (b) ~~If the board appoints a hearing officer shall be paid \$240 per~~
35 ~~diem compensation, or a portion thereof, for each day of actual attend-~~
36 ~~ance at the hearing or for any meeting held for the purpose of performing~~
37 ~~the hearing officer's official duties. In addition to compensation, the hear-~~
38 ~~ing officer shall be paid subsistence allowances, mileage, and other ex-~~
39 ~~penses as provided in K.S.A. 75-3223, and amendments thereto. The to~~
40 ~~hear the case, the costs for the services of the hearing officer shall be paid~~
41 ~~by the board.~~

42 (c) Testimony at a hearing shall be recorded by a certified shorthand
43 reporter. The cost for the certified shorthand reporter's services shall be

1 paid by the board. The ~~transcript~~ *testimony at the hearing* shall be tran-
2 scribed if the decision of the ~~hearing officer~~ *board or committee of the*
3 *board* is appealed to the district court, or if either party requests tran-
4 scription. The appellant or the party making the request shall pay for the
5 cost of transcription. If both parties jointly request that the ~~transcript~~
6 *testimony* be transcribed at the hearing level, the parties shall each pay
7 one-half of the cost of transcription.

8 (d) Each party shall be responsible for the payment of its own attor-
9 ney fees.

10 (e) All costs of a hearing which are not specifically allocated in this
11 section shall be paid by the board.

12 Sec. 4. K.S.A. 72-5441 is hereby amended to read as follows: 72-
13 5441. When either party desires to present testimony by affidavit or by
14 deposition, that party shall furnish to the *board, committee of the board,*
15 *or hearing officer* the date on which the testimony shall be taken. A copy
16 of the affidavit or the deposition shall be furnished to the opposing party
17 within 10 days following the taking of any such testimony, and no such
18 testimony shall be presented at a hearing until the opposite party has had
19 at least 10 days prior to the date upon which the testimony is to be
20 presented to the *board, committee of the board, or hearing officer* to rebut
21 such testimony by affidavit or deposition or to submit interrogatories to
22 the affiant or deponent to be answered under oath. Such 10 day period,
23 for good cause shown, may be extended by the *board, committee of the*
24 *board, or hearing officer. Neither party shall depose a witness who will*
25 *be available to testify at the hearing.*

26 Sec. 5. K.S.A. 72-5442 is hereby amended to read as follows: 72-
27 5442. The *chairperson or hearing officer* may:

28 (a) Administer oaths;

29 (b) issue subpoenas for the attendance and testimony of witnesses
30 and the production of books, papers and documents relating to any matter
31 under investigation;

32 (c) authorize depositions to be taken, *but only if the witness to be*
33 *deposed will not be available to testify at the hearing;*

34 (d) receive evidence and limit lines of questioning and testimony
35 which are repetitive, cumulative or irrelevant;

36 (e) call and examine witnesses and introduce into the record docu-
37 mentary and other evidence;

38 (f) regulate the course of the hearing and dispose of procedural re-
39 quests, motions and similar matters; and

40 (g) take any other action necessary to make the hearing accord with
41 administrative due process.

42 Hearings under this section shall not be bound by rules of evidence
43 whether statutory, common law or adopted by the rules of court, except

1 that, the burden of proof shall initially rest upon the board in all instances
2 other than when the allegation is that the teacher's contract has been
3 terminated or nonrenewed by reason of the teacher having exercised a
4 constitutional right. All relevant evidence shall be admissible, except that
5 the *chairperson or hearing officer*, in the ~~hearing officer's~~ discretion of
6 *the chairperson or hearing officer*, may exclude any evidence if the *chair-*
7 *person or hearing officer* believes that the probative value of such evi-
8 dence is substantially outweighed by the fact that its admission will ne-
9 cessitate undue consumption of time.

10 Sec. 6. K.S.A. 72-5443 is hereby amended to read as follows: 72-
11 5443. (a) Unless otherwise agreed to by both the board and the teacher,
12 the *board, committee of the board, or hearing officer* shall render a written
13 opinion not later than 30 days after the close of the hearing, setting forth
14 the ~~hearing officer's~~ findings of fact and determination of the issues. *If*
15 *the board has served as the hearing panel, the decision of the board shall*
16 *be submitted to the teacher. If a committee of the board or a hearing*
17 *officer has heard the matter, the committee of the board, or hearing officer*
18 *shall submit proposed findings of fact and a recommended resolution of*
19 *the issue to the board and to the teacher. Within 30 days after receiving*
20 *the recommendation, the board shall consider the recommendation, re-*
21 *view the record of the hearing, hear oral arguments or receive written*
22 *briefs from the teacher and a representative of the board, and decide*
23 *whether the contract of the teacher shall be renewed or terminated. Not*
24 *later than 10 days after the close of oral argument or submission of written*
25 *briefs, the board shall submit its written opinion, including findings of*
26 *fact and a determination of the matter to the teacher. The decision of the*
27 ~~hearing officer board~~ shall be submitted to the teacher ~~and to the board.~~

28 (b) The decision of the ~~hearing officer~~ board shall be final, subject
29 to appeal to the district court by either party as provided in K.S.A. 60-
30 2101, and amendments thereto.

31 Sec. 7. K.S.A. 72-5446 is hereby amended to read as follows: 72-
32 5446. In the event any teacher, as defined in K.S.A. 72-5436, and amend-
33 ments thereto, alleges that the teacher's contract has been nonrenewed
34 by reason of the teacher having exercised a constitutional right, the fol-
35 lowing procedure shall be implemented:

36 (a) The teacher alleging an abridgment by the board of a constitu-
37 tionally protected right shall notify the board of the allegation within 15
38 days after receiving the notice of intent to not renew or terminate the
39 teacher's contract. Such notice shall specify the nature of the activity
40 protected, and the times, dates, and places of such activity;

41 (b) the *board, committee of the board, or hearing officer* provided for
42 by K.S.A. 72-5438, and amendments thereto, shall thereupon ~~be selected~~
43 ~~and shall~~ decide if there is substantial evidence to support the teacher's

1 claim that the teacher's exercise of a constitutionally protected right was
2 the reason for the nonrenewal;

3 (c) if the *board, committee of the board, or* hearing officer determines
4 that there is no substantial evidence to substantiate the teacher's claim of
5 a violation of a constitutionally protected right, the board's decision to
6 not renew the contract shall stand;

7 (d) if the *board, committee of the board, or* hearing officer determines
8 that there is substantial evidence to support the teacher's claim, the board
9 shall be required to submit ~~to the hearing officer~~ any reasons which may
10 have been involved in the nonrenewal;

11 (e) if the board presents any substantial evidence to support its rea-
12 sons, the board's decision not to renew the contract shall be upheld.

13 Sec. 8. K.S.A. 72-5438, 72-5439, 72-5440, 72-5441, 72-5442, 72-
14 5443 and 72-5446 are hereby repealed.

15 Sec. 9. This act shall take effect and be in force from and after its
16 publication in the statute book.

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