

## SENATE BILL No. 24

By Committee on Education

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AN ACT concerning teachers employed at the state school for the blind or the state school for the deaf; relating to hearings provided upon notice of nonrenewal or termination of contracts of employment; amending K.S.A. 76-11a05, 76-11a06, 76-11a07, 76-11a08, 76-11a09, 76-11a10, 76-11a11, 76-11a12, 76-11a13 and 76-11a14 and repealing the existing sections.

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

Section 1. K.S.A. 76-11a05 is hereby amended to read as follows: 76-11a05. All contracts of employment of teachers shall be deemed to continue for the next succeeding school year unless written notice of termination or nonrenewal is served as provided in this section. Written notice to terminate a contract may be served by the state board upon any teacher prior to the time the contract has been completed, and written notice of intention to nonrenew a contract shall be served by the state board upon any teacher on or before ~~April 10~~ *May 1*. A teacher shall give written notice to the state board that the teacher does not desire continuation of the contract on or before ~~May 10~~ *15*. Terms of a contract may be changed at any time by mutual consent of both the teacher and the state board.

Sec. 2. K.S.A. 76-11a06 is hereby amended to read as follows: 76-11a06. (a) Whenever a teacher is given written notice of intention by the state board to nonrenew or to terminate the contract of the teacher as provided in K.S.A. 76-11a05, *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 a hearing ~~committee officer~~ upon written request filed with the commissioner of education within 15 days from the date of such notice of nonrenewal or termination.

(b) ~~The~~ *Within 10 calendar days after the filing of a written request of the* by any teacher to be heard ~~shall include therein a designation of one hearing committee member. Upon the filing of any such request as provided in subsection (a), the state board shall designate, within 15 days thereafter, one hearing committee member. The two hearing committee members shall designate a third hearing committee member who shall~~

1 ~~be the chairperson and who shall in all cases be a resident of the state of~~  
2 ~~Kansas. In the event that the two hearing committee members are unable~~  
3 ~~to agree upon a third hearing committee member within five days after~~  
4 ~~the designation of the second hearing committee member, a district judge~~  
5 ~~of the home county of the state school shall appoint, upon application of~~  
6 ~~the teacher or either of the first two hearing committee members, the~~  
7 ~~third hearing committee member. Such appointment may be made by~~  
8 ~~the district judge from a list, which shall be compiled and maintained by~~  
9 ~~notify the secretary of human resources, of impartial persons who are~~  
10 ~~representative of the public and who are qualified to serve as hearing~~  
11 ~~committee members that a list of qualified hearing officers is required.~~  
12 *Such notice shall contain the mailing address of the teacher. Within 10*  
13 *days after receipt of notification from the state board, the secretary shall*  
14 *provide to the state board and to the teacher a list of five randomly se-*  
15 *lected, qualified hearing officers.*

16 *(c) Within five days after receiving the list from the secretary of hu-*  
17 *man resources, each party shall eliminate two names from the list, and*  
18 *the remaining individual on the list shall serve as hearing officer. In the*  
19 *process of elimination, each party shall eliminate no more than one name*  
20 *at a time, the parties alternating after each name has been eliminated.*  
21 *The first name to be eliminated shall be chosen by the teacher within five*  
22 *days after the teacher receives the list. The process of elimination shall be*  
23 *completed within five days thereafter.*

24 *(d) Either party may request that one new list be provided within*  
25 *five days after receiving the original list. If such a request is made, the*  
26 *party making the request shall notify the secretary of human resources*  
27 *and the other party, and the secretary shall generate a new list and dis-*  
28 *tribute it to the parties in the same manner as the original list.*

29 *(e) In lieu of using the process provided in subsections (b) through*  
30 *(d), if the parties agree, they may make a request to the American Arbi-*  
31 *tration Association for an arbitrator to serve as the hearing officer. Any*  
32 *party desiring to use this alternative procedure shall so notify the other*  
33 *party at the time written request for a hearing is filed by the teacher. If*  
34 *the parties agree to use this procedure, the parties shall make a joint*  
35 *request to the American Arbitration Association for a hearing officer*  
36 *within 10 days after the teacher files the request for a hearing. If the*  
37 *parties choose to use this procedure, the parties shall each pay ½ of the*  
38 *cost of the arbitrator and of the arbitrator's expenses.*

39 *(f) The secretary of human resources shall compile and maintain a*  
40 *list of hearing officers comprised of residents of this state who are attor-*  
41 *neys at law. Such list shall include a statement of the qualifications of*  
42 *each hearing officer.*

43 *(g) Attorneys interested in serving as hearing officers under the pro-*

1 *visions of this act shall submit an application to the secretary of human*  
2 *resources. The secretary shall determine if the applicant is eligible to serve*  
3 *as a hearing officer pursuant to the provisions of subsection (h).*

4 *(h) An attorney shall be eligible for appointment to the list if the*  
5 *attorney has: (1) Completed a minimum of 10 hours of continuing legal*  
6 *education credit in the area of education law, due process, administrative*  
7 *law or employment law within the past five years; or (2) previously served*  
8 *as the chairperson of a due process hearing committee prior to the effec-*  
9 *tive date of this act. An attorney shall not be eligible for appointment to*  
10 *the list if the attorney has been employed to represent the state board or*  
11 *a teacher in a due process hearing within the past five years.*

12 Sec. 3. K.S.A. 76-11a07 is hereby amended to read as follows: 76-  
13 11a07. The hearing provided for ~~in~~ under K.S.A. 76-11a06, and amend-  
14 ments thereto, shall commence within 45 calendar days after the hearing  
15 officer is selected unless the hearing officer grants an extension of time.  
16 The hearing shall afford procedural due process, including the following:

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

20 (b) the right of each party or such party's counsel to cross-examine  
21 any person who provides information for the consideration of the hearing  
22 ~~committee~~ officer, except those persons whose testimony is presented by  
23 affidavit; ~~and~~

24 (c) the right of each party to present such party's own witnesses in  
25 person, or their testimony by affidavit or deposition, except that testimony  
26 of a witness by affidavit may be presented only if such witness lives more  
27 than 100 miles from the location of the state school, or is absent from the  
28 state, or is unable to appear because of age, illness, infirmity or impris-  
29 onment. When testimony is presented by affidavit the same shall be  
30 served upon the commissioner of education or the agent of the state board  
31 and upon the teacher in person or by first class mail to the address of the  
32 teacher which is on file with the state board not less than 10 days prior  
33 to presentation to the hearing ~~committee~~ officer; ~~and~~

34 (d) the right of the teacher to testify in the teacher's own behalf and  
35 give reasons for the teacher's conduct, and the right of the state board to  
36 present its testimony through such persons as ~~it~~ the state board may call  
37 to testify in its behalf and to give reasons for its actions, rulings or policies;  
38 ~~and~~

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

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

42 Sec. 4. K.S.A. 76-11a08 is hereby amended to read as follows: 76-  
43 11a08. (a) For ~~attending~~ appearing before the hearing ~~committee~~ officer

1 at a hearing, witnesses who are subpoenaed shall receive \$5 per day and  
2 mileage at the rate prescribed under K.S.A. 75-3203, and amendments  
3 thereto, for miles actually traveled in going to and returning from attend-  
4 ance at the hearing. The fees and mileage for the attendance of witnesses  
5 shall be ~~borne~~ *paid* by the party calling the witness, except that fees and  
6 mileage of witnesses subpoenaed by the hearing ~~committee~~ *officer* shall  
7 be ~~borne~~ *equally paid* by the ~~parties~~ *state board*. Witnesses voluntarily  
8 ~~attending~~ *appearing* before the hearing ~~committee~~ *officer* shall not re-  
9 ceive fees or mileage for attendance at the hearing.

10 ~~(b) Each member of the hearing committee shall be paid compen-~~  
11 ~~sation, subsistence allowances, mileage and other expenses as provided~~  
12 ~~in K.S.A. 75-3223, and amendments thereto. The costs for the services~~  
13 ~~of members of the hearing committee shall be borne by the parties as~~  
14 ~~follows: (1) For each member who is designated by a party, the party~~  
15 ~~designating the member; and (2) for the third member, by the parties~~  
16 ~~equally.~~

17 ~~(c) Testimony at a hearing may, and upon the request of either party~~  
18 ~~shall, be taken by a certified shorthand reporter or electronically re-~~  
19 ~~corded, and shall be transcribed upon request of either party or upon~~  
20 ~~direction by a court.~~

21 *(b) The hearing officer shall be paid compensation for each day, or*  
22 *part thereof, spent in actual attendance at the hearing and for any day,*  
23 *or part thereof, spent in performance of the hearing officer's official duties.*  
24 *In addition to compensation, the hearing officer shall be paid subsistence*  
25 *allowances, mileage, and other expenses as provided in K.S.A. 75-3223,*  
26 *and amendments thereto. The costs for the services of the hearing officer*  
27 *shall be paid by the state board.*

28 *(c) Testimony at a hearing shall be recorded by a certified shorthand*  
29 *reporter. The cost for the certified shorthand reporter's services shall be*  
30 *paid by the state board. The testimony shall be transcribed if the decision*  
31 *of the hearing officer is appealed to the district court, or if either party*  
32 *requests transcription. The appellant or the party making the request shall*  
33 *pay for the cost of transcription. If both parties jointly request that the*  
34 *testimony be transcribed at the hearing level, the parties shall each pay*  
35 *½ of the cost of transcription.*

36 *(d) Each party shall be responsible for the payment of its own attor-*  
37 *ney fees.*

38 ~~(d)~~ *(e) All costs of a hearing which are not specifically allocated in*  
39 *this section shall be ~~borne~~ *equally paid* by the ~~parties~~ *state board*.*

40 Sec. 5. K.S.A. 76-11a09 is hereby amended to read as follows: 76-  
41 11a09. When either party desires to present testimony by affidavit or by  
42 deposition, that party shall furnish to the hearing ~~committee~~ *officer* the  
43 date on which the testimony shall be taken. A copy of the affidavit or the

1 deposition shall be furnished to the opposing party within 10 days follow-  
2 ing the taking of any such testimony, and no such testimony shall be  
3 presented at a hearing until the opposite party has had at least 10 days  
4 prior to the date upon which the testimony is to be presented to the  
5 hearing ~~committee~~ *officer* to rebut such testimony by affidavit or depo-  
6 sition or to submit interrogatories to the affiant or deponent to be an-  
7 swered under oath. Such 10-day period may be extended, for good cause  
8 shown, by the ~~chairperson of the hearing committee~~ *officer*.

9 Sec. 6. K.S.A. 76-11a10 is hereby amended to read as follows: 76-  
10 11a10. (a) ~~At any meeting of a~~ *The hearing committee, when authorized*  
11 ~~by a majority of the committee, any member thereof~~ *officer* may:

- 12 (1) Administer oaths;
- 13 (2) issue subpoenas for the attendance and testimony of witnesses  
14 and the production of books, papers and documents relating to any matter  
15 under investigation;
- 16 (3) authorize depositions to be taken;
- 17 (4) receive evidence and limit lines of questioning and testimony  
18 which are repetitive, cumulative or irrelevant;
- 19 (5) call and examine witnesses and introduce into the record docu-  
20 mentary and other evidence;
- 21 (6) regulate the course of the hearing and dispose of procedural re-  
22 quests, motions and similar matters; and
- 23 (7) take any other action necessary to make the hearing accord with  
24 administrative due process.

25 (b) Hearings under this act shall not be bound by rules of evidence  
26 whether statutory, common law or adopted by the rules of court; however,  
27 the burden of proof shall initially rest upon the state board in all instances  
28 other than when the allegation is that the teacher's contract has been  
29 terminated or nonrenewed by reason of the teacher having exercised a  
30 constitutional right. All relevant evidence shall be admissible, except that  
31 the hearing ~~committee~~ *officer*, at ~~its~~ *the hearing officer's* discretion, may  
32 exclude any evidence if ~~it~~ *the hearing officer* believes that ~~its~~ *the* probative  
33 value *of such evidence* is substantially outweighed by the fact that its  
34 admission will necessitate undue consumption of time.

35 Sec. 7. K.S.A. 76-11a11 is hereby amended to read as follows: 76-  
36 11a11. (a) Unless otherwise agreed to by both the state board and the  
37 teacher, the hearing ~~committee~~ *officer* shall render a written ~~opinion de-~~  
38 ~~cision~~ not later than 30 days after the close of the hearing, setting forth  
39 ~~its~~ *the hearing officer's* findings of fact and ~~recommendation as to the~~  
40 determination of the issues. The ~~opinion decision~~ of the hearing ~~com-~~  
41 ~~mittee~~ *officer* shall be submitted to the teacher and to the state board.

42 (b) ~~If The members decision of the hearing committee are unanimous~~  
43 ~~in their opinion, the state board shall adopt the opinion as its decision in~~

1 ~~the matter and such decision~~ *officer* shall be final, subject to appeal to  
2 ~~the district court as provided in K.S.A. 60-2101, and amendments thereto~~  
3 *review in accordance with the act for judicial review and civil enforcement*  
4 *of agency actions.*

5 ~~(c) If the members of the hearing committee are not unanimous in~~  
6 ~~their opinion, the state board shall consider the opinion, hear oral argu-~~  
7 ~~ments or receive written briefs from the teacher and a representative of~~  
8 ~~the state school, and decide whether the contract of the teacher shall be~~  
9 ~~renewed or terminated. The decision of the state board under this sub-~~  
10 ~~section shall be submitted to the teacher not later than 30 days after the~~  
11 ~~close of oral argument or submission of written briefs and such decision~~  
12 ~~shall be final, subject to appeal to the district court as provided by K.S.A.~~  
13 ~~60-2101, and amendments thereto.~~

14 Sec. 8. K.S.A. 76-11a12 is hereby amended to read as follows: 76-  
15 11a12. Nothing in this act, *or in any act amendatory thereof or supple-*  
16 *mental thereto*, shall be construed to create any right, or to authorize the  
17 creation of any right, which is not subject to amendment or nullification  
18 by act of the legislature. Nothing in this act and no amendment or repeal  
19 of this act or any part thereof shall be construed to constitute an impair-  
20 ment of any existing contractual right.

21 Sec. 9. K.S.A. 76-11a13 is hereby amended to read as follows: 76-  
22 11a13. (a) ~~(1)~~ Subject to the provisions of ~~K.S.A. 76-11a14 subsection (b),~~  
23 ~~the provisions of K.S.A. 76-11a06 through 76-11a11, and amendments~~  
24 ~~thereto~~, apply only to: ~~(1)~~ (A) Teachers who have completed not less than  
25 ~~two~~ *three* consecutive years of employment, ~~prior to the effective date of~~  
26 ~~this act and been offered a contract for a fourth year of employment,~~ at  
27 the state school in which the teacher is currently employed; and ~~(2)~~ (B)  
28 teachers who have completed ~~one year of employment, prior to the ef-~~  
29 ~~fective date of this act and, consecutively thereto, one year of employ-~~  
30 ~~ment, after the effective date of this act, at the state school in which the~~  
31 ~~teacher is currently employed; and (3) teachers who have completed not~~  
32 ~~less than three~~ *two* consecutive years of employment, ~~after the effective~~  
33 ~~date of this act and been offered a contract for a third year of employment,~~  
34 at the state school in which the teacher is currently employed; and ~~(4)~~  
35 ~~teachers who have completed not less than two consecutive years of em-~~  
36 ~~ployment, after the effective date of this act, at the state school in which~~  
37 ~~the teacher is currently employed if at any time prior to the current~~  
38 ~~employment the teacher has completed the years of employment require-~~  
39 ~~ment of provision (1), (2) or (3) subpart (A) at the other state school.~~

40 ~~(b)~~ (2) The state board may waive, at any time, the years of employ-  
41 ment requirements of ~~subsection (a) provision (1)~~ for any teachers em-  
42 ployed at a state school.

43 (3) *The provisions of this subsection are subject to the provisions of*

1 K.S.A. 76-11a14, and amendments thereto.

2 (b) The provisions of K.S.A. 76-11a06 through 76-11a11, and amend-  
3 ments thereto, do not apply to any teacher whose certificate has been  
4 nonrenewed or revoked by the state board for the reason that the teacher:  
5 (1) Has been convicted of a felony under the uniform controlled substances  
6 act; (2) has been convicted of a felony described in any section of article  
7 34 of chapter 21 of the Kansas Statutes Annotated or an act described in  
8 K.S.A. 21-3412 and amendments thereto, if the victim is a minor or stu-  
9 dent; (3) has been convicted of a felony described in any section of article  
10 35 of chapter 21 of the Kansas Statutes Annotated, or has been convicted  
11 of an act described in K.S.A. 21-3517 and amendments thereto, if the  
12 victim is a minor or student; (4) has been convicted of any act described  
13 in any section of article 36 of chapter 21 of the Kansas Statutes Annotated;  
14 (5) has been convicted of a felony described in article 37 of chapter 21 of  
15 the Kansas Statutes Annotated; (6) has been convicted of an attempt under  
16 K.S.A. 21-3301, and amendments thereto, to commit any act specified in  
17 this subsection; (7) has been convicted of any act which is described in  
18 K.S.A. 21-4301, 21-4301a or 21-4301c, and amendments thereto; (8) has  
19 been convicted in another state or by the federal government of an act  
20 similar to any act described in this subsection; or (9) has entered into a  
21 criminal diversion agreement after having been charged with any offense  
22 described in this subsection.

23 Sec. 10. K.S.A. 76-11a14 is hereby amended to read as follows: 76-  
24 11a14. In the event that any teacher alleges that the teacher's contract  
25 has been nonrenewed *or terminated* by reason of the teacher having ex-  
26 exercised a constitutional right, the following procedure shall be  
27 implemented:

28 (a) The teacher alleging an abridgment by the state board of a con-  
29 stitutionally protected right shall *notify the state board of the allegation*  
30 *within 15 days after receiving the notice of intention to nonrenew or*  
31 *terminate the teacher's contract. Such notification shall* specify the nature  
32 of the activity protected, and the times, dates, and places of such activity;

33 (b) the hearing ~~committee~~ *officer* provided for by K.S.A. 76-11a06,  
34 *and amendments thereto*, shall thereupon be ~~constituted~~ *selected* and shall  
35 decide if there is substantial evidence to support the teacher's claim that  
36 the teacher's exercise of a constitutionally protected right was the reason  
37 for the nonrenewal *or termination*;

38 (c) if the hearing ~~committee~~ *officer* determines that there is no sub-  
39 stantial evidence to substantiate the teacher's claim of a violation of a  
40 constitutionally protected right, the ~~hearing committee shall dissolve, and~~  
41 ~~the state board's decision to nonrenew or terminate the contract shall~~  
42 stand;

43 (d) if the hearing ~~committee~~ *officer* determines that there is substan-

1 tial evidence to support the teacher's claim, the state board shall be re-  
2 quired to submit to the ~~committee~~ *hearing officer* any reasons which may  
3 have been involved in the nonrenewal *or termination*;

4 (e) if the state board ~~has~~ *presents* any substantial evidence to support  
5 its reasons, the state board's decision not to renew *or to terminate* the  
6 contract shall be upheld.

7 New Sec. 11. If any clause, paragraph, subsection or section of this  
8 act shall be held invalid or unconstitutional, it shall be conclusively pre-  
9 sumed that the legislature would have enacted the remainder of the act  
10 without such invalid or unconstitutional clause, paragraph, subsection or  
11 section.

12 Sec. 12. K.S.A. 76-11a05, 76-11a06, 76-11a07, 76-11a08, 76-11a09,  
13 76-11a10, 76-11a11, 76-11a12, 76-11a13 and 76-11a14 are hereby  
14 repealed.

15 Sec. 13. This act shall take effect and be in force from and after its  
16 publication in the statute book.

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