

SENATE BILL No. 25

By Committee on Education

1-11

AN ACT concerning school districts; relating to hearings provided for teachers upon notice of nonrenewal or termination of contracts of employment; amending K.S.A. 72-5438 and 72-5440 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 a hearing officer 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.

(b) ~~Upon~~ *Within 10 calendar days after* the filing of any written request of a teacher to be heard as provided in subsection (a), ~~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~~ *five* randomly selected, qualified hearing officers.

(c) Within ~~5~~ *five* days after receiving the list from the commissioner, each party shall eliminate ~~four~~ *two* 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~~ *five* days after the teacher receives the list. The process of elimination shall be completed within ~~5~~ *five* days thereafter.

(d) Either party may request that one new list be provided within ~~5~~ *five* days after receiving the list. If such a request is made, the party making the request shall notify the commissioner and the other party,

1 and the commissioner shall generate a new list and distribute it to the
2 parties in the same manner as the original list.

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

13 (f) The commissioner of education shall compile and maintain a list
14 of hearing officers comprised of residents of this state who are attorneys
15 at law. Such list shall include a statement of the qualifications of each
16 hearing officer.

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

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

29 Sec. 2. K.S.A. 72-5440 is hereby amended to read as follows: 72-
30 5440. (a) For appearing before the hearing officer at a hearing, witnesses
31 who are subpoenaed shall receive \$5 per day and mileage at the rate
32 prescribed under K.S.A. 75-3203, and amendments thereto, for miles
33 actually traveled in going to and returning from attendance at the hearing.
34 The fees and mileage for the attendance of witnesses shall be paid by the
35 party calling the witness, except that fees and mileage of witnesses sub-
36 poenaed by the hearing officer shall be paid by the board. Witnesses
37 voluntarily appearing before the hearing officer shall not receive fees or
38 mileage for attendance at the hearing.

39 (b) The hearing officer shall be paid ~~\$240 per diem~~ compensation,
40 ~~or a portion thereof~~, for each day ~~of~~, *or part thereof, spent in actual*
41 attendance at the hearing ~~or~~ *and for any meeting held for the purpose of*
42 ~~performing~~ *day, or part thereof, spent in performance of* the hearing
43 officer's official duties. In addition to compensation, the hearing officer

1 shall be paid subsistence allowances, mileage, and other expenses as pro-
2 vided in K.S.A. 75-3223, and amendments thereto. The costs for the serv-
3 ices of the hearing officer shall be paid by the board.

4 (c) Testimony at a hearing shall be recorded by a certified shorthand
5 reporter. The cost for the certified shorthand reporter's services shall be
6 paid by the board. The ~~transcript~~ *testimony* shall be transcribed if the
7 decision of the hearing officer is appealed to the district court, or if either
8 party requests transcription. The appellant or the party making the re-
9 quest shall pay for the cost of transcription. If both parties jointly request
10 that the ~~transcript~~ *testimony* be transcribed at the hearing level, the par-
11 ties shall each pay one-half of the cost of transcription.

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

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

16 Sec. 3. K.S.A. 72-5438 and 72-5440 are hereby repealed.

17 Sec. 4. This act shall take effect and be in force from and after its
18 publication in the statute book.

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