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4 **SENATE BILL No. 117**

5
6 By Committee on Education

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8 1-31

9
10 AN ACT concerning school districts; relating to hearings provided for
11 teachers upon notice of nonrenewal or termination of contracts of em-
12 ployment; amending K.S.A. 72-5438 and 72-5440 and repealing the
13 existing sections.
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15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 72-5438 is hereby amended to read as follows: 72-
17 5438. (a) Whenever a teacher is given written notice of intention by a
18 board to not renew or to terminate the contract of the teacher as provided
19 in K.S.A. 72-5437, and amendments thereto, the written notice of the
20 proposed nonrenewal or termination shall include: (1) A statement of the
21 reasons for the proposed nonrenewal or termination; and (2) a statement
22 that the teacher may have the matter heard by a hearing officer upon
23 written request filed with the clerk of the board of education or the board
24 of control or the secretary of the board of trustees within 15 calendar
25 days from the date of such notice of nonrenewal or termination.

26 (b) ~~Upon~~ *Within 10 calendar days after* the filing of any written re-
27 quest of a teacher to be heard as provided in subsection (a), ~~within 10~~
28 ~~calendar days thereafter~~, the board shall notify the commissioner of ed-
29 ucation that a list of qualified hearing officers is required. Such notice
30 shall contain the mailing address of the teacher. Within 10 days after
31 receipt of notification from the board, the commissioner shall provide to
32 the board and to the teacher, a list of ~~nine~~ *five* randomly selected, qual-
33 ified hearing officers.

34 (c) Within ~~five~~ *five* days after receiving the list from the commissioner,
35 each party shall eliminate ~~four~~ *two* names from the list, and the remaining
36 individual on the list shall serve as hearing officer. In the process of elim-
37 ination, each party shall eliminate no more than one name at a time, the
38 parties alternating after each name has been eliminated. The first name
39 to be eliminated shall be chosen by the teacher; within ~~five~~ *five* days after
40 the teacher receives the list. The process of elimination shall be com-
41 pleted within ~~five~~ *five* days thereafter.

42 (d) Either party may request that one new list be provided within ~~five~~ *five*
43 *five* days after receiving the list. If such a request is made, the party

1 making the request shall notify the commissioner and the other party,
2 and the commissioner shall generate a new list and distribute it to the
3 parties in the same manner as the original list.

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

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

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

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

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

40 (b) The hearing officer shall be paid ~~\$240 per diem compensation,~~
41 ~~or a portion thereof, for each day of in actual attendance at the hearing~~
42 ~~or and for any meeting held for the purpose of performing compensation~~
43 ~~for time spent in actual attendance at the hearing and for time spent in~~

1 *performance* of the hearing officer's official duties. In addition to com-
2 pensation, the hearing officer shall be paid subsistence allowances, mile-
3 age, and other expenses as provided in K.S.A. 75-3223, and amendments
4 thereto. The costs for the services of the hearing officer shall be paid by
5 the board.

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

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

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

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

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

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