

SENATE BILL No. 119

AN ACT concerning teachers; relating to hearings provided upon notice of nonrenewal or termination of contracts of employment; amending K.S.A. 72-5438, 72-5440, 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. 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, and the commissioner shall generate a new list and distribute it to the parties in the same manner as the original list.

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

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

(g) Attorneys interested in serving as hearing officers under the provisions of this act shall submit an application to the commissioner of education. The commissioner shall determine if the applicant is eligible to serve as a hearing officer pursuant to the provisions of subsection (h).

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

Sec. 2. K.S.A. 72-5440 is hereby amended to read as follows: 72-5440. (a) For appearing before the hearing officer at a hearing, witnesses who are subpoenaed shall receive \$5 per day and mileage at the rate prescribed under K.S.A. 75-3203, and amendments thereto, for miles actually traveled in going to and returning from attendance at the hearing. The fees and mileage for the attendance of witnesses shall be paid by the

party calling the witness, except that fees and mileage of witnesses subpoenaed by the hearing officer shall be paid by the board. Witnesses voluntarily appearing before the hearing officer shall not receive fees or mileage for attendance at the hearing.

(b) The hearing officer shall be paid ~~\$240 per diem compensation, or a portion thereof, for each day of actual attendance at the hearing or for any meeting held for the purpose of performing~~ compensation for time spent in actual attendance at the hearing and for time spent in performance of the hearing officer's official duties. In addition to compensation, the hearing officer shall be paid subsistence allowances, mileage, and other expenses as provided in K.S.A. 75-3223, and amendments thereto. The costs for the services of the hearing officer shall be paid by the board.

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

(d) Each party shall be responsible for the payment of its own attorney fees.

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

Section 3. 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. 4. 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 be the chairperson and who shall in all cases be a resident of the state of Kansas. In the event that the two hearing committee members are unable to agree upon a third hearing committee member within five days after the designation of the second hearing committee member, a district judge of the home county of the state school shall appoint, upon application of the teacher or either of the first two hearing committee members, the third hearing committee member. Such appointment may be made by the district judge from a list, which shall be compiled and maintained by the secretary of human resources, of impartial persons who are representative of the public and who are qualified to serve as hearing committee members 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 state board, the secretary shall provide to the state board and to the teacher a list of five randomly selected, qualified hearing officers.

(c) Within five days after receiving the list from the secretary of human resources, each party shall eliminate 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 five days after the teacher receives the list. The process of elimination shall be completed within five days thereafter.

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

(e) In lieu of using the process provided in subsections (b) through (d), if the parties agree, they may make a request to the American Arbitration Association for an arbitrator to serve as the hearing officer. Any party desiring to use this alternative procedure shall so notify the other party at the time written request for a hearing is filed by the teacher. If the parties agree to use this procedure, the parties shall make a joint request to the American Arbitration Association for a hearing officer within 10 days after the teacher files the request for a hearing. If the parties choose to use this procedure, the parties shall each pay 1/2 of the cost of the arbitrator and of the arbitrator's expenses.

(f) The secretary of human resources shall compile and maintain a list of hearing officers comprised of residents of this state who are attorneys at law. Such list shall include a statement of the qualifications of each hearing officer.

(g) Attorneys interested in serving as hearing officers under the provisions of this act shall submit an application to the secretary of human resources. The secretary shall determine if the applicant is eligible to serve as a hearing officer pursuant to the provisions of subsection (h).

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

Sec. 5. K.S.A. 76-11a07 is hereby amended to read as follows: 76-11a07. The hearing provided for ~~in~~ under K.S.A. 76-11a06, and amendments thereto, shall commence within 45 calendar days after the hearing officer is selected unless the hearing officer grants an extension of time. The hearing shall afford procedural due process, including the following:

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

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

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

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

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

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

Sec. 6. K.S.A. 76-11a08 is hereby amended to read as follows: 76-11a08. (a) For ~~attending appearing~~ before the hearing ~~committee officer~~ at a hearing, witnesses who are subpoenaed shall receive \$5 per day and mileage at the rate prescribed under K.S.A. 75-3203, and amendments thereto, for miles actually traveled in going to and returning from attendance at the hearing. The fees and mileage for the attendance of witnesses shall be ~~borne paid~~ by the party calling the witness, except that fees and mileage of witnesses subpoenaed by the hearing ~~committee officer~~ shall be ~~borne equally paid~~ by the ~~parties state board~~. Witnesses voluntarily ~~attending appearing~~ before the hearing ~~committee officer~~ shall not receive fees or mileage for attendance at the hearing.

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

~~(c) Testimony at a hearing may, and upon the request of either party shall, be taken by a certified shorthand reporter or electronically recorded, and shall be transcribed upon request of either party or upon direction by a court.~~

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

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

(d) Each party shall be responsible for the payment of its own attorney fees.

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

Sec. 7. K.S.A. 76-11a09 is hereby amended to read as follows: 76-11a09. When either party desires to present testimony by affidavit or by deposition, that party shall furnish to the hearing ~~committee officer~~ the date on which the testimony shall be taken. A copy of the affidavit or the deposition shall be furnished to the opposing party within 10 days following the taking of any such testimony, and no such testimony shall be presented at a hearing until the opposite party has had at least 10 days prior to the date upon which the testimony is to be presented to the hearing ~~committee officer~~ to rebut such testimony by affidavit or deposition or to submit interrogatories to the affiant or deponent to be answered under oath. Such 10-day period may be extended, for good cause shown, by the ~~chairperson of the hearing committee officer~~.

Sec. 8. K.S.A. 76-11a10 is hereby amended to read as follows: 76-11a10. (a) ~~At any meeting of a~~ *The hearing committee, when authorized by a majority of the committee, any member thereof officer may:*

- (1) Administer oaths;
- (2) issue subpoenas for the attendance and testimony of witnesses and the production of books, papers and documents relating to any matter under investigation;
- (3) authorize depositions to be taken;
- (4) receive evidence and limit lines of questioning and testimony which are repetitive, cumulative or irrelevant;
- (5) call and examine witnesses and introduce into the record documentary and other evidence;

(6) regulate the course of the hearing and dispose of procedural requests, motions and similar matters; and

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

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

Sec. 9. K.S.A. 76-11a11 is hereby amended to read as follows: 76-11a11. (a) Unless otherwise agreed to by both the state board and the teacher, the hearing ~~committee officer~~ shall render a written ~~opinion decision~~ not later than 30 days after the close of the hearing, setting forth ~~its~~ *the hearing officer's* findings of fact and ~~recommendation as to the~~ determination of the issues. The ~~opinion decision~~ of the hearing ~~committee officer~~ shall be submitted to the teacher and to the state board.

(b) ~~If~~ *The members* decision of the hearing ~~committee~~ are unanimous in their opinion, the state board shall adopt the opinion as its decision in the matter and such ~~decision officer~~ shall be final, subject to appeal to the district court as provided in K.S.A. 60-2101, and amendments thereto review in accordance with the act for judicial review and civil enforcement of agency actions.

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

Sec. 10. K.S.A. 76-11a12 is hereby amended to read as follows: 76-11a12. Nothing in this act, *or in any act amendatory thereof or supplemental thereto*, shall be construed to create any right, or to authorize the creation of any right, which is not subject to amendment or nullification by act of the legislature. Nothing in this act and no amendment or repeal of this act or any part thereof shall be construed to constitute an impairment of any existing contractual right.

Sec. 11. K.S.A. 76-11a13 is hereby amended to read as follows: 76-11a13. (a) (1) Subject to the provisions of ~~K.S.A. 76-11a14 subsection (b)~~, the provisions of K.S.A. 76-11a06 through 76-11a11, *and amendments thereto*, apply only to: ~~(1)~~ (A) Teachers who have completed not less than ~~two~~ *three* consecutive years of employment, ~~prior to the effective date of this act and been offered a contract for a fourth year of employment~~, at the state school in which the teacher is currently employed; and ~~(2)~~ (B) teachers who have completed ~~one~~ *one* year of employment, ~~prior to the effective date of this act and, consecutively thereto, one year of employment, after the effective date of this act, at the state school in which the teacher is currently employed~~, and (3) teachers who have completed not less than ~~three~~ *two* consecutive years of employment, ~~after the effective date of this act and been offered a contract for a third year of employment~~, at the state school in which the teacher is currently employed; ~~and (4) teachers who have completed not less than two consecutive years of employment, after the effective date of this act, at the state school in which the teacher is currently employed if at any time prior to the current employment the teacher has completed the years of employment requirement of provision (1), (2) or (3) subpart (A) at the other state school.~~

~~(b)~~ (2) The state board may waive, at any time, the years of employment requirements of ~~subsection (a) provision (1)~~ for any teachers employed at a state school.

(3) *The provisions of this subsection are subject to the provisions of K.S.A. 76-11a14, and amendments thereto.*

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

Sec. 12. K.S.A. 76-11a14 is hereby amended to read as follows: 76-11a14. In the event that any teacher alleges that the teacher's contract has been nonrenewed or terminated by reason of the teacher having exercised a constitutional right, the following procedure shall be implemented:

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

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

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

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

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

New Sec. 13. If any clause, paragraph, subsection or section of this act shall be held invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of the act without such invalid or unconstitutional clause, paragraph, subsection or section.

Sec. 14. K.S.A. 72-5438, 72-5440, 76-11a05, 76-11a06, 76-11a07, 76-11a08, 76-11a09, 76-11a10, 76-11a11, 76-11a12, 76-11a13 and 76-11a14 are hereby repealed.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.