

## HOUSE BILL No. 2212

By Representative F. Miller

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9 AN ACT relating to schools; concerning procedures relating to teacher  
10 contracts; amending K.S.A. 72-5439 and 72-5443 and K.S.A. 2004  
11 Supp. 72-5438, 76-11a06, 76-11a07 and 76-11a11 and repealing the  
12 existing sections.  
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14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2004 Supp. 72-5438 is hereby amended to read as  
16 follows: 72-5438. (a) Whenever a teacher is given written notice of inten-  
17 tion by a board to not renew or to terminate the contract of the teacher  
18 as provided in K.S.A. 72-5437, and amendments thereto, the written no-  
19 tice of the proposed nonrenewal or termination shall include: (1) A state-  
20 ment of the reasons for the proposed nonrenewal or termination; and (2)  
21 a statement that the teacher may have the matter heard by a hearing  
22 officer upon written request filed with the clerk of the board of education  
23 or the board of control or the secretary of the board of trustees within  
24 ~~15~~ 10 calendar days from the date of such notice of nonrenewal or  
25 termination.

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

33 (c) Within ~~five~~ eight days after receiving the list from the commis-  
34 sioner, each party shall eliminate ~~two~~ three names from the list, and the  
35 remaining individual on the list shall serve as hearing officer. In the pro-  
36 cess of elimination, each party shall eliminate no more than one name at  
37 a time, the parties alternating after each name has been eliminated. The  
38 first name to be eliminated shall be chosen by the teacher ~~within five~~  
39 ~~days after the teacher receives the list. The process of elimination shall~~  
40 ~~be completed within five days thereafter.~~

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

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

3 ~~(c)~~ 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)~~ (d) The commissioner of education shall compile and maintain a  
14 list of hearing officers comprised of residents of this state who are attor-  
15 neys at law. Such list shall include a statement of the qualifications of  
16 each hearing officer.

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

21 ~~(h)~~ (f) 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~~ year.

29 Sec. 2. K.S.A. 72-5439 is hereby amended to read as follows: 72-  
30 5439. The hearing provided for under K.S.A. 72-5438, and amendments  
31 thereto, shall commence within ~~45~~ 15 calendar days after the hearing  
32 officer is selected unless the hearing officer grants an extension of time.  
33 The hearing shall afford procedural due process, including the following:

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

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

40 (c) the right of each party to present such party's own witnesses in  
41 person, or their testimony by affidavit or deposition, except that testimony  
42 of a witness by affidavit may be presented only if such witness lives more  
43 than 100 miles from the location of the unified school district office, area

1 vocational-technical school or community college, or is absent from the  
2 state, or is unable to appear because of age, illness, infirmity or impris-  
3 onment. When testimony is presented by affidavit the same shall be  
4 served upon the clerk of the board of education or the board of control,  
5 or the secretary of the board of trustees, or the agent of the board and  
6 upon the teacher in person or by first-class mail to the address of the  
7 teacher which is on file with the board not less than 10 calendar days  
8 prior to presentation to the hearing officer;

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

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

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

16 Sec. 3. K.S.A. 72-5443 is hereby amended to read as follows: 72-  
17 5443. (a) Unless otherwise agreed to by both the board and the teacher,  
18 the hearing officer shall render a written opinion not later than ~~30~~ 15  
19 days after the close of the hearing, setting forth the hearing officer's find-  
20 ings of fact and determination of the issues. The decision of the hearing  
21 officer shall be submitted to the teacher and to the board.

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

25 Sec. 4. K.S.A. 2004 Supp. 76-11a06 is hereby amended to read as  
26 follows: 76-11a06. (a) Whenever a teacher is given written notice of in-  
27 tention by the state board to nonrenew or to terminate the contract of  
28 the teacher as provided in K.S.A. 76-11a05, and amendments thereto, the  
29 written notice of the proposed nonrenewal or termination shall include:  
30 (1) A statement of the reasons for the proposed nonrenewal or termina-  
31 tion; and (2) a statement that the teacher may have the matter heard by  
32 a hearing officer upon written request filed with the commissioner of  
33 education within ~~15~~ 10 days from the date of such notice of nonrenewal  
34 or termination.

35 (b) Within ~~10~~ *seven* calendar days after the filing of a written request  
36 by any teacher to be heard as provided in subsection (a), the state board  
37 shall notify the secretary of labor that a list of qualified hearing officers  
38 is required. Such notice shall contain the mailing address of the teacher.  
39 Within ~~10~~ *seven* days after receipt of notification from the state board,  
40 the secretary shall provide to the state board and to the teacher a list of  
41 ~~five~~ *seven* randomly selected, qualified hearing officers.

42 (c) Within ~~five~~ *eight* days after receiving the list from the secretary  
43 of labor, each party shall eliminate ~~two~~ *three* names from the list, and the

1 remaining individual on the list shall serve as hearing officer. In the pro-  
2 cess of elimination, each party shall eliminate no more than one name at  
3 a time, the parties alternating after each name has been eliminated. The  
4 first name to be eliminated shall be chosen by the teacher ~~within five~~  
5 ~~days after the teacher receives the list. The process of elimination shall~~  
6 ~~be completed within five days thereafter.~~

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

12 ~~—(c) In lieu of using the process provided in subsections (b) through~~  
13 ~~(d), if the parties agree, they may make a request to the American Arbi-~~  
14 ~~tration Association for an arbitrator to serve as the hearing officer. Any~~  
15 ~~party desiring to use this alternative procedure shall so notify the other~~  
16 ~~party at the time written request for a hearing is filed by the teacher. If~~  
17 ~~the parties agree to use this procedure, the parties shall make a joint~~  
18 ~~request to the American Arbitration Association for a hearing officer~~  
19 ~~within 10 days after the teacher files the request for a hearing. If the~~  
20 ~~parties choose to use this procedure, the parties shall each pay ½ of the~~  
21 ~~cost of the arbitrator and of the arbitrator's expenses.~~

22 ~~(f) (d)~~ The secretary of labor shall compile and maintain a list of  
23 hearing officers comprised of residents of this state who are attorneys at  
24 law. Such list shall include a statement of the qualifications of each hear-  
25 ing officer.

26 ~~(g) (e)~~ Attorneys interested in serving as hearing officers under the  
27 provisions of this act shall submit an application to the secretary of labor.  
28 The secretary shall determine if the applicant is eligible to serve as a  
29 hearing officer pursuant to the provisions of subsection (h).

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

38 Sec. 5. K.S.A. 2004 Supp. 76-11a07 is hereby amended to read as  
39 follows: 76-11a07. The hearing provided for under K.S.A. 76-11a06, and  
40 amendments thereto, shall commence within ~~45~~ 15 calendar days after  
41 the hearing officer is selected unless the hearing officer grants an exten-  
42 sion of time. The hearing shall afford procedural due process, including  
43 the following:

- 1 (a) The right of each party to have counsel of such party's own choice  
2 present and to receive the advice of such counsel or other person whom  
3 such party may select;
- 4 (b) the right of each party or such party's counsel to cross-examine  
5 any person who provides information for the consideration of the hearing  
6 officer, except those persons whose testimony is presented by affidavit;
- 7 (c) the right of each party to present such party's own witnesses in  
8 person, or their testimony by affidavit or deposition, except that testimony  
9 of a witness by affidavit may be presented only if such witness lives more  
10 than 100 miles from the location of the state school, or is absent from the  
11 state, or is unable to appear because of age, illness, infirmity or impris-  
12 onment. When testimony is presented by affidavit the same shall be  
13 served upon the commissioner of education or the agent of the state board  
14 and upon the teacher in person or by first class mail to the address of the  
15 teacher which is on file with the state board not less than 10 days prior  
16 to presentation to 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 state board to  
19 present its testimony through such persons as the state board may call to  
20 testify in 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. 6. K.S.A. 2004 Supp. 76-11a11 is hereby amended to read as  
25 follows: 76-11a11. (a) Unless otherwise agreed to by both the state board  
26 and the teacher, the hearing officer shall render a written decision not  
27 later than ~~30~~ 15 days after the close of the hearing, setting forth the  
28 hearing officer's findings of fact and determination of the issues. The  
29 decision of the hearing officer shall be submitted to the teacher and to  
30 the state board.
- 31 (b) The decision of the hearing officer shall be final, subject to review  
32 in accordance with the act for judicial review and civil enforcement of  
33 agency actions.
- 34 Sec. 7. K.S.A. 72-5439 and 72-5443 and K.S.A. 2004 Supp. 72-5438,  
35 76-11a06, 76-11a07 and 76-11a11 are hereby repealed.
- 36 Sec. 8. This act shall take effect and be in force from and after its  
37 publication in the statute book.