

CHAPTER 30

(SB 8)

AN ACT relating to educators.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 161.770 is amended to read as follows:

- (1) Upon written request of a teacher or superintendent, a board of education may grant a leave of absence for a period of not more than two (2) consecutive school years for educational or professional purposes, and shall grant such leave where illness, maternity, adoption of a child or children, or other disability is the reason for the request. Upon subsequent request, such leave may be renewed by the board. A board of education may pay a sum of money equivalent to all or any portion of salary to a teacher or superintendent who has been granted leave for educational or professional purposes if the person taking said leave agrees in writing to return to employment with the board for no less than two (2) years.
- (2) Without request, a board of education may grant leave of absence and renewals thereof to any teacher or superintendent because of physical or mental disability, but such teacher or superintendent shall have the right to a hearing and appeal on such unrequested leave of absence or its renewal in accordance with the provisions for hearing and appeal in KRS 161.790.
- (3) ***Any action taken under subsection (1) or (2) of this section shall not violate the Americans with Disabilities Act of 1990, the Health Insurance Portability and Accountability Act of 1996, or any other applicable federal law. A board of education:***
 - (a) ***May only request medical information necessary to decide whether to grant a leave of absence;***
 - (b) ***Shall not request or retain unnecessary medical information; and***
 - (c) ***Shall not disclose any medical information received, except as permitted by state and federal law.***
- (4) Upon the return to service of a teacher or superintendent at the expiration of a leave of absence, he shall resume the contract status which he held prior to such leave.
- (5)~~(4)~~ Payments to any teacher or superintendent under this section by a local district are intended and presumed to be for and in consideration of services rendered and for the benefit of the common schools and such payments do not affect the eligibility of any school district to share in the distribution of funds from the public school funds as established in KRS Chapter 157.

➔Section 2. KRS 161.790 is amended to read as follows:

- (1) The contract of a teacher shall remain in force during good behavior and efficient and competent service by the teacher and shall not be terminated except for any of the following causes:
 - (a) Insubordination, including but not limited to violation of the school laws of the state or administrative regulations adopted by the Kentucky Board of Education, the Education Professional Standards Board, or lawful rules and regulations established by the local board of education for the operation of schools, or refusal to recognize or obey the authority of the superintendent, principal, or any other supervisory personnel of the board in the performance of their duties;
 - (b) Immoral character or conduct unbecoming a teacher;
 - (c) Physical or mental disability; or
 - (d) Inefficiency, incompetency, or neglect of duty, when a written statement identifying the problems or difficulties has been furnished the teacher or teachers involved.
- (2) Charges under ~~subsection~~~~subsections~~ (1)(a) and ~~(1)~~(d) of this section shall be supported by a written record of ***the actions of the teacher upon which the charge is based, provided***~~teacher performance~~ by the superintendent, principal, or other supervisory personnel of the district, except when the charges are brought as a result of a recommendation made under KRS 158.6455.
- (3) No contract shall be terminated except upon notification of the board by the superintendent. Prior to notification of the board, the superintendent shall furnish the teacher with a written statement specifying in

detail the charge against the teacher. The teacher may within ten (10) days after receiving the charge notify the commissioner of education and the superintendent of his *or her* intention to answer the charge, and upon failure of the teacher to give notice within ten (10) days, the dismissal shall be final.

- (4) (a) Except as provided in KRS 163.032, upon receiving the teacher's notice of his *or her* intention to answer the charge, the commissioner of education shall appoint a three (3) member tribunal, consisting of one (1) teacher, who may be retired, one (1) administrator, who may be retired, and one (1) *attorney to serve as hearing officer and chairperson of the tribunal*~~[lay person]~~, none of whom reside in the district, to conduct an administrative hearing in accordance with KRS Chapter 13B within the district. Priority for selection as a *teacher or administrator* tribunal member shall be from a pool of potential tribunal members who have been designated and trained to serve as tribunal members on a regular and ongoing basis, pursuant to administrative regulations promulgated by the Kentucky Board of Education. Funds appropriated to the Department of Education for professional development may be used to provide tribunal member training. The commissioner of education shall ~~[name the chairman and]~~ set the date and time for the hearing. The hearing shall begin no later than forty-five (45) days after the teacher files the notice of intent to answer the charge *unless an extension is granted by the hearing officer or otherwise agreed to by the parties.*
- (b) *The hearing officer shall be appointed from a pool of hearing officers who have received in-depth training in the law related to employment of teachers and in the conduct of due process hearings pursuant to KRS Chapter 13B, and who hold other qualifications as determined by the Kentucky Board of Education.*
- (c) *The hearing officer training shall be designed and conducted by the Kentucky Department of Education.*
- (d) *The Kentucky Board of Education shall adopt administrative regulations to implement the due process provisions required by this section. Persons serving as hearing officers shall be paid or reimbursed as provided in KRS 13B.030.*
- (5) *The hearing officer shall schedule a mandatory prehearing conference with the parties, which may be held in person or electronically through the use of technology. Prehearing motions may be disposed of at the conference. The hearing officer shall have the authority to mediate settlement and to enter an agreed order if the matter is resolved by the parties.* A hearing officer shall have final authority to rule on dispositive prehearing motions.
- (6) *If the matter is not settled or dismissed as a result of the prehearing conference, a tribunal hearing shall be conducted.* The hearing may be public or private at the discretion of the teacher. At the hearing, ~~the~~ hearing officer appointed by the commissioner of education shall preside with authority to rule on procedural matters, but the tribunal *as a whole* shall be the ultimate trier of fact. The local board shall pay each *teacher and administrator* member of the tribunal a per diem of one hundred dollars (\$100) and travel expenses.
- (7) Upon hearing both sides of the case, the tribunal may by a majority vote render its decision or may defer its action for not more than five (5) days. *The decision, written in a recommended order, shall be limited to upholding or overturning the decision of the superintendent. The hearing officer shall then within fifteen (15) days submit to the parties the written recommended order in a form complying with the requirements of KRS 13B.110(1). Each party may file written exceptions no later than fifteen (15) days from receipt of the recommended order. Upon consideration of the exceptions filed by the parties, the hearing officer may order a settlement conference between the parties. Within ten (10) days after either the consideration of the exceptions or a settlement conference, whichever occurs later, the hearing officer shall enter a final order. If there is no settlement reached, the final order shall affirm the recommended order. If a settlement is reached, the final order shall approve the terms of a written settlement as an agreed order.* Provisions of KRS Chapter 13B notwithstanding, the *hearing officer's*~~[tribunal]~~ decision shall be a final order~~[and may be rendered on the record]~~.
- (8) The superintendent may suspend the teacher pending final action to terminate the contract, if, in his *or her* judgment, the character of the charge warrants the action. If *the contract termination is overturned by the final order*~~[after the hearing the decision of the tribunal is against termination of the contract]~~, the suspended teacher shall be paid his *or her* full salary for any period of suspension.
- (9) The teacher shall have the right to make an appeal to the Circuit Court having jurisdiction in the county where the school district is located in accordance with KRS Chapter 13B. The review of the final order shall be conducted by the Circuit Court as required by KRS 13B.150.

- (10) As an alternative to termination of a teacher's contract, the superintendent upon notifying the board and providing written notification to the teacher of the charge may impose other sanctions, including suspension without pay, public reprimand, or private reprimand. The procedures set out in subsection (3) of this section shall apply if the teacher is suspended without pay or publicly reprimanded. The teacher may appeal the action of the superintendent if these sanctions are imposed in the same manner as established in subsections (4) to (9) of this section. Upon completion of a suspension period, the teacher may be reinstated.

Signed by Governor March 19, 2019.