

AN ACT relating to due process for teachers.

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

➔Section 1. 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 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 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 intention to answer the charge, the commissioner of education shall appoint a **hearing officer**~~[three (3) member tribunal, consisting of one (1) teacher, who may be retired, one (1) administrator, who may be retired, and one (1) 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 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 an attorney 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 training shall be designed and conducted by the Kentucky Department of Education, with input and assistance from the Attorney General and the professional organizations representing teachers, administrators,**

superintendents, and school boards.

(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 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 due process hearing shall be conducted. The hearing may be public or private at the discretion of the teacher. At the hearing, a hearing officer appointed by the commissioner of education shall preside with authority to rule on procedural matters and~~[, but the tribunal]~~ shall be the ultimate trier of fact~~[. The local board shall pay each member of the tribunal a per diem of one hundred dollars (\$100) and travel expenses].~~
- (7) Upon hearing both sides of the case, the hearing officer shall within fifteen (15) days submit to the parties a written recommended order consistent with the requirements of KRS 13B.110(1). The recommended order shall be limited to upholding or overturning the decision of the superintendent. 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. If no settlement is reached, or no conference is ordered, the hearing officer shall, within ten (10) days, enter a final order, which may modify the recommended

~~*order*~~~~[tribunal may by a majority vote render its decision or may defer its action for not more than five (5) days].~~ 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 judgment, the character of the charge warrants the action. If *the contract termination is overturned by the due process hearing*~~[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.

➔Section 2. KRS 161.765 is amended to read as follows:

- (1) A superintendent may demote an administrator who has not completed three (3) years of administrative service, not including leave granted under KRS 161.770, by complying with the requirements of KRS 161.760.
- (2) An administrator who has completed three years of administrative service, not including leave granted under KRS 161.770, cannot be demoted unless the

following procedures have been complied with:

- (a) The superintendent shall give written notice of the demotion to the board of education and to the administrator. If the administrator wishes to contest the demotion, he shall, within ten (10) days of receipt of the notice, file a written statement of his intent to contest with the superintendent. If the administrator does not make timely filing of his statement of intent to contest, the action shall be final.
- (b) Upon receipt of the notice of intent to contest the demotion, a written statement of grounds for demotion, signed by the superintendent, shall be served on the administrator. The statement shall contain:
 - 1. A specific and complete statement of grounds upon which the proposed demotion is based, including, where appropriate, dates, times, names, places, and circumstances;
 - 2. The date, time, and place for a hearing, the date to be not less than twenty (20) nor more than thirty (30) days from the date of service of the statement of grounds for demotion upon the administrator.
- (c) Upon receipt of the statement of grounds for demotion the administrator shall, within ten (10) days, file a written answer. Failure to file such answer, within the stated period, will relieve the board of any further obligation to hold a hearing and the action shall be final. The board shall issue subpoenas as are requested.
- (d) The hearing on the demotion shall be public or private, at the discretion of the administrator and shall be limited to the matters set forth in the written statement of grounds for demotion. The board shall provide to the administrator a verbatim transcript of the hearing. The board of education shall hear the case, with the board chairman presiding. The board, upon hearing the evidence and argument presented, shall retire to private chambers

to arrive at a decision. Counsel or representatives for either party in the hearing shall not be consulted by the board unless the corresponding counsel or representatives for the other party are present and unless a verbatim transcript of such consultation is made for the record.

- (e) Within five (5) days from the close of the hearing, the board of education shall advise the parties of its decision and shall take official action in the case.
- (f) Appeal from final board action may be taken in the same manner and under the same provisions as an appeal from hearing officer~~[tribunal]~~ action under KRS 161.790.

➔Section 3. KRS 163.032 is amended to read as follows:

- (1) The Kentucky Department of Education, with assistance from the Kentucky Personnel Cabinet, shall adopt a salary schedule for teachers in the Kentucky School for the Deaf and the Kentucky School for the Blind. The salary schedule shall be the same as salary schedules in effect in local school districts in counties containing a city of the first class and shall conform to the requirements for a single salary schedule as defined in KRS 157.320, except the salary schedule shall not limit the number of years of experience for a certified employee who transfers to the school.
- (2)
 - (a) Certified teachers in the Kentucky School for the Deaf and the Kentucky School for the Blind shall have the same statutory employment status and benefits as certified teachers in the public schools.
 - (b) If a teacher qualifies for and requests a hearing~~[tribunal]~~ under KRS 161.790, the Attorney General shall appoint the members.
- (3) Once a teacher has been selected for hiring at the Kentucky School for the Blind or the Kentucky School for the Deaf, the Department of Education and the Personnel Cabinet shall complete the hiring process within two (2) weeks.
- (4) A certified teacher employed at one (1) of the schools on July 12, 2006, whose job

description does not include outreach responsibilities shall not be involuntarily assigned to work on a permanent basis outside the county in which the employing school is located.

- (5) Nothing in KRS 18A.115 or 163.032 shall result in a loss of any leave accrued by a certified teacher employed prior to July 12, 2006, by one (1) of the schools. Accrued leave may be taken in accordance with the policy of the school.
- (6) The Kentucky Department of Education, with assistance from the Kentucky Personnel Cabinet, shall adopt a salary schedule for administrators for the Kentucky School for the Deaf and the Kentucky School for the Blind. In considering the rate of pay and the requirements of KRS 18A.110(7)(b), the department and the cabinet shall consider rates that are based upon the duties and responsibilities of the positions and that are competitive with rates for similar or comparable services in Kentucky school districts. The salary schedule, which shall be computed prior to September 1 of each year, shall be based on two hundred sixty (260) days per year.