

1 AN ACT relating to hearing officers.

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

3 ➔Section 1. KRS 161.790 is amended to read as follows:

4 (1) The contract of a teacher shall remain in force during good behavior and efficient
5 and competent service by the teacher and shall not be terminated except for any of
6 the following causes:

7 (a) Insubordination, including but not limited to violation of the school laws of
8 the state or administrative regulations adopted by the Kentucky Board of
9 Education, the Education Professional Standards Board, or lawful rules and
10 regulations established by the local board of education for the operation of
11 schools, or refusal to recognize or obey the authority of the superintendent,
12 principal, or any other supervisory personnel of the board in the performance
13 of their duties;

14 (b) Immoral character or conduct unbecoming a teacher;

15 (c) Physical or mental disability; or

16 (d) Inefficiency, incompetency, or neglect of duty, when a written statement
17 identifying the problems or difficulties has been furnished the teacher or
18 teachers involved.

19 (2) Charges under subsection~~subsections~~ (1)(a) and ~~(1)~~(d) of this section shall be
20 supported by a written record of the actions of the teacher upon which the charge
21 is based, provided~~teacher performance~~ by the superintendent, principal, or other
22 supervisory personnel of the district, except when the charges are brought as a result
23 of a recommendation made under KRS 158.6455.

24 (3) No contract shall be terminated except upon notification of the board by the
25 superintendent. Prior to notification of the board, the superintendent shall furnish
26 the teacher with a written statement specifying in detail the charge against the
27 teacher. The teacher may within ten (10) days after receiving the charge notify the

1 commissioner of education and the superintendent of his or her intention to answer
2 the charge, and upon failure of the teacher to give notice within ten (10) days, the
3 dismissal shall be final.

4 (4) (a) Except as provided in KRS 163.032, upon receiving the teacher's notice of his
5 or her intention to answer the charge, the commissioner of education shall
6 appoint a three (3) member tribunal, consisting of one (1) teacher, who may be
7 retired, one (1) administrator, who may be retired, and one (1) attorney to
8 serve as hearing officer and chair of the tribunal~~[lay person]~~, none of whom
9 reside in the district, to conduct an administrative hearing in accordance with
10 KRS Chapter 13B within the district. Priority for selection as a teacher or
11 administrator tribunal member shall be from a pool of potential tribunal
12 members who have been designated and trained to serve as tribunal members
13 on a regular and ongoing basis, pursuant to administrative regulations
14 promulgated by the Kentucky Board of Education. Funds appropriated to the
15 Department of Education for professional development may be used to
16 provide tribunal member training. The commissioner of education shall name
17 the chairman and set the date and time for the hearing. The hearing shall begin
18 no later than forty-five (45) days after the teacher files the notice of intent to
19 answer the charge unless an extension is granted by the hearing officer or
20 otherwise agreed to by the parties.

21 (b) The hearing officer shall be appointed from a pool of hearing officers who
22 have received in-depth training in the law related to employment of teachers
23 and in the conduct of due process hearings pursuant to KRS Chapter 13B,
24 and who hold other qualifications as determined by the Kentucky Board of
25 Education.

26 (c) The hearing officer training shall be designed and conducted by the
27 Kentucky Department of Education.

1 (d) The Kentucky Board of Education shall adopt administrative regulations to
2 implement the due process provisions required by this section. Persons
3 -serving as hearing officers shall be paid or reimbursed as provided in KRS
4 13B.030.

5 (5) The hearing officer shall schedule a mandatory prehearing conference with the
6 parties, which may be held in person or electronically through the use of
7 technology. Prehearing motions may be disposed of at the conference. The
8 hearing officer shall have the authority to mediate settlement and to enter an
9 agreed order if the matter is resolved by the parties. A hearing officer shall have
10 final authority to rule on dispositive prehearing motions.

11 (6) If the matter is not settled or dismissed as a result of the prehearing conference, a
12 tribunal hearing shall be conducted. The hearing may be public or private at the
13 discretion of the teacher. At the hearing, ~~the~~ hearing officer appointed by the
14 commissioner of education shall preside with authority to rule on procedural
15 matters, but the tribunal as a whole shall be the ultimate trier of fact. The local
16 board shall pay each teacher and administrator member of the tribunal a per diem
17 of one hundred dollars (\$100) and travel expenses.

18 (7) Upon hearing both sides of the case, the tribunal may by a majority vote render its
19 decision or may defer its action for not more than five (5) days. The decision,
20 written in a recommended order, shall be limited to upholding or overturning the
21 decision of the superintendent. The hearing officer shall then within fifteen (15)
22 days submit to the parties the written recommended order in form complying with
23 the requirements of KRS 13B.110(1). Each party may file written exceptions no
24 later than fifteen (15) days from receipt of the recommended order. Upon
25 consideration of the exceptions filed by the parties, the hearing officer may order
26 a settlement conference between the parties. Within ten (10) days after either the
27 consideration of the exceptions or a settlement conference, whichever occurs

1 later, the hearing officer shall enter a final order. If there is no settlement
 2 reached, the final order shall affirm the recommended order. If a settlement is
 3 reached, the final order shall approve the terms of a written settlement as an
 4 agreed order. Provisions of KRS Chapter 13B notwithstanding, the hearing
 5 officer's~~[tribunal]~~ decision shall be a final order~~[- and may be rendered on the~~
 6 ~~record].~~

7 (8) The superintendent may suspend the teacher pending final action to terminate the
 8 contract, if, in his or her judgment, the character of the charge warrants the action.
 9 If the contract termination is overturned by the final order~~[after the hearing the~~
 10 ~~decision of the tribunal is against termination of the contract],~~ the suspended teacher
 11 shall be paid his or her full salary for any period of suspension.

12 (9) The teacher shall have the right to make an appeal to the Circuit Court having
 13 jurisdiction in the county where the school district is located in accordance with
 14 KRS Chapter 13B. The review of the final order shall be conducted by the Circuit
 15 Court as required by KRS 13B.150.

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

24 ➔Section 2. KRS 311.565 is amended to read as follows:

25 (1) The board may:

26 (a) Exercise all the administrative functions of the state in the prevention of
 27 empiricism and in the regulation of the practice of medicine and osteopathy,

- 1 which shall include but not be limited to promulgation of reasonable
2 administrative regulations enabling the board to regulate the conduct of its
3 licensees;
- 4 (b) Promulgate reasonable administrative regulations establishing moral, physical,
5 intellectual, educational, scientific, technical, and professional qualifications
6 of applicants for licenses and permits that may be issued by the board;
- 7 (c) Issue, deny, suspend, limit, restrict, and revoke any licenses or permits that
8 may be issued by the board, and to reprimand or to place licensees on
9 probation, in compliance with the provisions of KRS 311.530 to 311.620;
- 10 (d) Appoint an executive director and assistant executive directors and fix their
11 compensation. The executive director shall oversee the work of the board,
12 shall be authorized to discharge the duties of the secretary, as provided by
13 KRS 311.530 to 311.620, and shall carry out the duties of the executive
14 director as set forth elsewhere in this chapter;
- 15 (e) Appoint a general counsel and assistant general counsel and fix their
16 compensation;
- 17 (f) Appoint investigatory personnel and fix their compensation;
- 18 (g) Appoint one (1) or more hearing officers, *who shall be appointed from a pool*
19 *of hearing officers who have received in-depth training in the law related to*
20 *the employment of physicians or doctors of osteopathic medicine and in the*
21 *conduct of due process hearings pursuant to KRS Chapter 13B, and who*
22 *hold other qualifications as determined by the board.*
- 23 *1. The hearing officer training shall be designed and conducted by the*
24 *board.*
- 25 *2. The board shall adopt administrative regulations to implement the due*
26 *process provisions required by this paragraph. Persons serving as*
27 *hearing officers shall be paid or reimbursed as provided in KRS*

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13B.030.

3. All hearings shall be conducted by a hearing officer who shall conduct the hearing in accordance with KRS Chapter 13B and shall submit his or her recommendation to the board.

~~who need not be members of the board, and fix their compensation.]Every hearing officer shall be vested with the full and complete power and authority of the board to schedule and conduct hearings on behalf of and in the name of the board on all matters referred for hearing by the board or secretary thereof, including, among other things, proceedings for placing licensees on probation and for limitation, suspension, and revocation of licenses. [All administrative hearings conducted by the board, a member of the board, or a hearing officer appointed by the board, shall be conducted in accordance with KRS Chapter 13B.] No hearing officer shall be empowered to place any licensee on probation or to issue, refuse, suspend, limit, or revoke any license;~~

- (h) Appoint committees of licensees, who need not be board members, to review issues of public or medical interest before the board and to make recommendations to the board on the issues;
- (i) Promulgate administrative regulations to promote the efficient and fair conduct of disciplinary proceedings;
- (j) Promulgate a code of conduct governing the practice of medicine and osteopathy, which shall be based upon generally recognized principles of professional ethical conduct;
- (k) Utilize the services and facilities of professional organizations, and procure and receive the assistance and recommendations of professional organizations in administering KRS 311.530 to 311.620;
- (l) Make its personnel and facilities available to other governmental entities

- 1 under mutually agreeable terms and conditions;
- 2 (m) Issue regular licenses without further testing by endorsement from another
3 state having qualifications and standards at least as high as those of this state
4 or by endorsement from the National Board of Medical Examiners, the
5 National Board of Examiners for Osteopathic Physicians and Surgeons, the
6 National Joint Committee of Preregistration Physician Training Programs, or
7 any approved successors thereof;
- 8 (n) Issue and renew regular licenses to practice medicine or osteopathy in
9 accordance with KRS 311.530 to 311.620 and any reasonable regulations of
10 the board;
- 11 (o) Issue and renew, or refuse to issue or renew, or cancel and terminate limited
12 licenses pursuant to administrative regulations promulgated by the board;
13 provided however, no person who held a limited license for institutional
14 practice or general practice as of September 1, 1972, shall be denied the
15 renewal of that limited license for nondisciplinary reasons;
- 16 (p) Appoint examiners, who need not be members of the board, and employ or
17 contract with the Federation of State Medical Boards of the United States,
18 Inc., or the National Board of Medical Examiners or other organizations,
19 agencies, or individuals to prepare examination questions and grade
20 examination papers;
- 21 (q) Determine the schools, colleges, universities, institutions, and training
22 acceptable in connection with licensure under KRS 311.530 to 311.620;
- 23 (r) Prescribe the time, place, method, manner, scope, and content of
24 examinations;
- 25 (s) Prescribe all forms which it considers appropriate, and require the submission
26 of photographs, fingerprints, and personal history data;
- 27 (t) Require a criminal background investigation of all persons applying for

- 1 licensure at the time of initial application, and at other times at the request of
2 the board for good cause shown, by means of a fingerprint check by the
3 Department of Kentucky State Police and Federal Bureau of Investigation;
- 4 (u) Prescribe and collect reasonable fees and charges for examinations,
5 directories, and the issuance and renewal of licenses and permits; and
- 6 (v) Impose fines of not greater than five thousand dollars (\$5,000) per violation
7 and require the licensee to reimburse the board for the costs of the
8 administrative proceedings including consultant fees, upon a finding pursuant
9 to disciplinary proceedings that the licensee has violated any provision of
10 KRS 311.595 to 311.597 or duly promulgated disciplinary regulation of the
11 board.
- 12 (2) The board shall develop specific guidelines to follow upon receipt of an allegation
13 of sexual misconduct by a physician licensed by the board. The guidelines shall
14 include investigation, inquiry, and hearing procedures which ensure that the process
15 does not revictimize the alleged victim or cause harm if a physician is falsely
16 accused.
- 17 (3) The board, the hearing officer, and investigators hired by the board shall receive
18 training on the dynamics of sexual misconduct of professionals, including the nature
19 of this abuse of authority, characteristics of the offender, the impact on the victim,
20 the possibility and the impact of false accusations, investigative procedure in sex
21 offense cases, and effective intervention with victims and offenders.