

**Substitute for HOUSE BILL No. 2634**

By Committee on Education

3-12

1 AN ACT concerning schools; relating to school employees; performance  
2 and evaluation; professional development; amending K.S.A. 72-1412,  
3 72-9004 and 72-9005 and K.S.A. 2011 Supp. 72-5413, 72-9002, 72-  
4 9003 and 72-9608 and repealing the existing sections.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) (1) The board of education of each school district  
8 may apply to the state board for a grant of state moneys for the purpose of  
9 paying the costs for a probationary teacher or administrative employee to  
10 attend mentor programs. The state board shall award such grants of state  
11 moneys in accordance with the provisions of this section.

12 (2) To be eligible to receive a grant of state moneys, a board of  
13 education shall submit to the state board an application for a grant. The  
14 application shall be prepared in such form and manner as the state board  
15 shall require and shall be submitted at a time to be determined and  
16 specified by the state board. Approval by the state board of the application  
17 is prerequisite to the award of a grant.

18 (3) Each board of education which is awarded a grant shall make  
19 such periodic and special reports of statistical, financial and such other  
20 information to the state board as the state board may request.

21 (b) The state board may adopt rules and regulations, which establish:

22 (1) Standards and criteria for evaluating and approving mentor  
23 programs and applications of school districts for grants; and

24 (2) the evaluation and approval of mentor programs.

25 (c) Within the limitations of appropriations therefor, the state board  
26 shall determine the amount of grants to be awarded to each school district  
27 by considering the number of probationary teachers and administrative  
28 employees participating in a mentor program. Upon receipt of a grant of  
29 state moneys, in accordance with this section, the amount of the grant shall  
30 be deposited in the general fund of a school district. Moneys deposited in  
31 the general fund of a school district under this subsection shall be  
32 considered reimbursements for the purpose of the school district finance  
33 and quality performance act. The full amount of the grant shall be  
34 allocated among the probationary teachers and administrative employees  
35 employed by the school district.

36 (d) The state board shall provide any board of education of any

1 school district, upon request, with technical advice and assistance  
2 regarding an application for a grant of state moneys.

3 (e) This section shall be part of and supplemental to the provisions of  
4 article 14 of chapter 72 of the Kansas Statutes Annotated, and amendments  
5 thereto.

6 New Sec. 2. Evaluations adopted under K.S.A. 72-9004, and  
7 amendments thereto, shall meet the following criteria:

8 (a) Multiple measures of student achievement and growth to  
9 significantly inform the evaluation. Such multiple measures shall be  
10 determined by the state board of education.

11 (b) (1) An annual designation of each employee in one of the  
12 following rating categories:

13 (A) Highly effective;

14 (B) effective;

15 (C) progressing; or

16 (D) ineffective.

17 (2) The designation of a rating category under this subsection shall be  
18 based on the employee's performance using growth in student achievement  
19 as measured pursuant to subsection (a) as the primary factor for the  
20 evaluation.

21 (3) As used in this subsection the terms "highly effective,"  
22 "effective," "progressing" and "ineffective" shall be defined by the state  
23 board of education so as to clearly describe the effectiveness of an  
24 employee in accordance with the standards for effective employees as  
25 established by law or rules and regulations.

26 (c) Recommendations for areas in which the employee shall improve  
27 to achieve a higher rating category.

28 (d) A plan of assistance including, but not limited to, a timeline for  
29 when any recommended improvement is expected to be achieved. If the  
30 employee receives a rating of "progressing" or "ineffective," such plan of  
31 assistance shall also include a process by which such employee is given  
32 the opportunity to correct the identified deficiencies in the employee's  
33 performance.

34 (e) This section shall be part of and supplemental to the provisions of  
35 article 90 of chapter 72 of the Kansas Statutes Annotated, and amendments  
36 thereto.

37 New Sec. 3. (a) Grounds for nonrenewal or termination of a contract  
38 of a teacher **{who has earned due process protections and rights under**  
39 **K.S.A. 72-5445, and amendments thereto,}** include, but are not limited to,  
40 a teacher's receipt of a rating designation of ineffective pursuant to  
41 K.S.A. 72-9001 et seq., and amendments thereto, in two consecutive  
42 school years and, during such two-year period, the teacher was provided  
43 an opportunity to participate in appropriate professional development in

1 accordance with the provisions of K.S.A. 72-9601 et seq., and  
2 amendments thereto.

3 (b) This section shall be part of and supplemental to the provisions of  
4 article 54 of chapter 72 of the Kansas Statutes Annotated, and amendments  
5 thereto.

6 New Sec. 4. (a) Any moneys received under K.S.A. 72-9608, and  
7 amendments thereto, shall be expended towards deficiencies identified  
8 through the evaluation procedure set forth in K.S.A. 72-9001 et seq., and  
9 amendments thereto, and to support activities identified by the state board  
10 of education that measure teacher performance, including, but not limited to,  
11 growth in student achievement.

12 (b) The state board of education shall adopt any rules and regulations  
13 relating to expenditures of state aid which the state board deems necessary  
14 to administer and enforce the professional development act.

15 (c) This section shall be part of and supplemental to the professional  
16 development act.

17 Sec. 5. K.S.A. 72-1412 is hereby amended to read as follows: 72-  
18 1412. As used in K.S.A. 72-1412 through 72-1415 *and section 1*, and  
19 amendments thereto:

20 (a) *"Administrative employee" means, in the case of a school district,*  
21 *any person who is employed by a board of education in an administrative*  
22 *capacity, and who is fulfilling duties for which an administrator's*  
23 *certificate is required under K.S.A. 72-7513, and amendments thereto.*

24 (b) *"Mentor program" means any research-based mentoring program*  
25 *approved by the state board for the purpose of providing probationary*  
26 *teachers and administrative employees with professional support.*

27 (c) *"Mentor teacher program" means a program established and*  
28 *maintained by the board of education of a school district for the purpose of*  
29 *providing probationary teachers with professional support and the*  
30 *continuous assistance of an on-site mentor teacher.*

31 ~~(b)~~(d) *"Mentor teacher" means a certificated teacher who has*  
32 *completed at least three consecutive school years of employment in the*  
33 *school district, has been selected by the board of education of the school*  
34 *district on the basis of having demonstrated exemplary teaching ability as*  
35 *indicated by criteria established by the state board of education, and has*  
36 *participated in and successfully completed a training program for mentor*  
37 *teachers provided for by the board of education of the school district in*  
38 *accordance with guidelines prescribed by the state board of education. The*  
39 *primary function of a mentor teacher shall be to provide probationary*  
40 *teachers with professional support and assistance. A mentor teacher may*  
41 *provide assistance and guidance to not more than two probationary*  
42 *teachers.*

43 ~~(e)~~(e) *"Probationary teacher" means a certificated teacher to whom*

1 the provisions of K.S.A. 72-5438 through 72-5443, and amendments  
2 thereto, do not apply.

3 (f) *"State board" means the state board of education.*

4 Sec. 6. K.S.A. 2011 Supp. 72-5413 is hereby amended to read as  
5 follows: 72-5413. As used in this act ~~and in acts amendatory thereof or~~  
6 ~~supplemental thereto:~~

7 (a) The term "persons" includes one or more individuals,  
8 organizations, associations, corporations, boards, committees,  
9 commissions, agencies, or their representatives.

10 (b) "Board of education" means the state board of education pursuant  
11 to its authority under K.S.A. 76-1001a and 76-1101a, and amendments  
12 thereto, the board of education of any school district, the board of control  
13 of any area vocational-technical school and the board of trustees of any  
14 community college.

15 (c) "Professional employee" means any person employed by a board  
16 of education in a position which requires a certificate issued by the state  
17 board of education or employed by a board of education in a professional,  
18 educational or instructional capacity, but shall not mean any such person  
19 who is an administrative employee and, commencing in the 2006-2007  
20 school year, shall not mean any person who is a retirant from school  
21 employment of the Kansas public employees retirement system, regardless  
22 of whether an agreement between a board of education and an exclusive  
23 representative of professional employees that covers terms and conditions  
24 of professional service provides to the contrary.

25 (d) "Administrative employee" means, in the case of a school district,  
26 any person who is employed by a board of education in an administrative  
27 capacity and who is fulfilling duties for which an administrator's certificate  
28 is required under K.S.A. 72-7513, and amendments thereto; and, in the  
29 case of an area vocational-technical school or community college, any  
30 person who is employed by the board of control or the board of trustees in  
31 an administrative capacity and who is acting in that capacity and who has  
32 authority, in the interest of the board of control or the board of trustees, to  
33 hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or  
34 discipline other employees, or responsibly to direct them or to adjust their  
35 grievances, or effectively to recommend a preponderance of such actions,  
36 if in connection with the foregoing, the exercise of such authority is not of  
37 a merely routine or clerical nature, but requires the use of independent  
38 judgment.

39 (e) "Professional employees' organizations" means any one or more  
40 organizations, agencies, committees, councils or groups of any kind in  
41 which professional employees participate, and which exist for the purpose,  
42 in whole or part, of engaging in professional negotiation with boards of  
43 education with respect to the terms and conditions of professional service.

1 (f) "Representative" means any professional employees' organization  
2 or any person it authorizes or designates to act in its behalf or any person a  
3 board of education authorizes or designates to act in its behalf.

4 (g) "Professional negotiation" means meeting, conferring, consulting  
5 and discussing in a good faith effort by both parties to reach agreement  
6 with respect to the terms and conditions of professional service.

7 (h) "Mediation" means the effort through interpretation and advice by  
8 an impartial third party to assist in reconciling a dispute concerning terms  
9 and conditions of professional service which arose in the course of  
10 professional negotiation between a board of education or its  
11 representatives and representatives of the recognized professional  
12 employees' organization.

13 (i) "Fact-finding" means the investigation by an individual or board  
14 of a dispute concerning terms and conditions of professional service which  
15 arose in the course of professional negotiation, and the submission of a  
16 report by such individual or board to the parties to such dispute which  
17 includes a determination of the issues involved, findings of fact regarding  
18 such issues, and the recommendation of the fact-finding individual or  
19 board for resolution of the dispute.

20 (j) "Strike" means an action taken for the purpose of coercing a  
21 change in the terms and conditions of professional service or the rights,  
22 privileges or obligations thereof, through any failure by concerted action  
23 with others to report for duty including, but not limited to, any work  
24 stoppage, slowdown, or refusal to work.

25 (k) "Lockout" means action taken by a board of education to provoke  
26 interruptions of or prevent the continuity of work normally and usually  
27 performed by the professional employees for the purpose of coercing  
28 professional employees into relinquishing rights guaranteed by this act and  
29 the act of which this section is amendatory.

30 (l) (1) "Terms and conditions of professional service" means: (A) (i)  
31 Salaries and wages, including pay for duties under supplemental contracts;  
32 hours and amounts of work; vacation allowance, holiday, sick, extended,  
33 sabbatical, and other leave, and number of holidays; retirement; insurance  
34 benefits; wearing apparel; pay for overtime; jury duty; grievance  
35 procedure; including binding arbitration of grievances; disciplinary  
36 procedure; resignations; termination and nonrenewal of contracts, *in*  
37 *accordance with state law*; reemployment of professional employees;  
38 terms and form of the individual professional employee contract;  
39 probationary period; professional employee appraisal procedures *in*  
40 *accordance with state law and subject to the limitations in subsection (l)*  
41 *(1)(A)(ii)*; each of the foregoing being a term and condition of professional  
42 service, regardless of its impact on the employee or on the operation of the  
43 educational system; (ii) *on and after the adoption by the state board of*

1 *education, by rules and regulations, of the Kansas education evaluation*  
2 *protocol or statewide evaluation system substantially similar to the*  
3 *Kansas education evaluation protocol, for a board of education of any*  
4 *school district, the term "terms and conditions of professional service"*  
5 *does not include professional employee appraisal procedures; (B) matters*  
6 *which relate to privileges to be granted the recognized professional*  
7 *employees' organization including, but not limited to, voluntary payroll*  
8 *deductions; use of school or college facilities for meetings; dissemination*  
9 *of information regarding the professional negotiation process and related*  
10 *matters to members of the bargaining unit on school or college premises*  
11 *through direct contact with members of the bargaining unit, the use of*  
12 *bulletin boards on or about the facility, and the use of the school or college*  
13 *mail system to the extent permitted by law; reasonable leaves of absence*  
14 *for members of the bargaining unit for organizational purposes such as*  
15 *engaging in professional negotiation and partaking of instructional*  
16 *programs properly related to the representation of the bargaining unit; any*  
17 *of the foregoing privileges which are granted the recognized professional*  
18 *employees' organization through the professional negotiation process shall*  
19 *not be granted to any other professional employees' organization; and (C)*  
20 *such other matters as the parties mutually agree upon as properly related to*  
21 *professional service including, but not limited to, employment incentive or*  
22 *retention bonuses authorized under K.S.A. 72-8246, and amendments*  
23 *thereto.*

24 (2) Nothing in this act, and amendments thereto, shall authorize the  
25 diminution of any right, duty or obligation of either the professional  
26 employee or the board of education which have been fixed by statute or by  
27 the constitution of this state. Except as otherwise expressly provided in  
28 this subsection (1), the fact that any matter may be the subject of a statute  
29 or the constitution of this state does not preclude negotiation thereon so  
30 long as the negotiation proposal would not prevent the fulfillment of the  
31 statutory or constitutional objective.

32 (3) Matters which relate to the duration of the school term, and  
33 specifically to consideration and determination by a board of education of  
34 the question of the development and adoption of a policy to provide for a  
35 school term consisting of school hours, are not included within the  
36 meaning of terms and conditions of professional service and are not  
37 subject to professional negotiation.

38 (m) "Secretary" means the secretary of labor or a designee thereof.

39 (n) "Statutory declaration of impasse date" means June 1 in the  
40 current school year.

41 (o) "Supplemental contracts" means contracts for employment duties  
42 other than those services covered in the principal or primary contract of  
43 employment of the professional employee and shall include, but not be

1 limited to, such services as coaching, supervising, directing and assisting  
2 extracurricular activities, chaperoning, ticket-taking, lunchroom  
3 supervision, and other similar and related activities.

4 Sec. 7. K.S.A. 2011 Supp. 72-9002 is hereby amended to read as  
5 follows: 72-9002. As used in this act:

6 (a) *"Accredited" means accredited by the state board of education.*

7 (b) *"Board" means the board of education of a school district, the*  
8 *governing authority of any nonpublic school offering any of grades*  
9 *kindergarten through 12 in accredited schools and the board of control of*  
10 *an area vocational-technical school.*

11 ~~(b) "State board" means, in the case of school districts and nonpublic~~  
12 ~~schools, the state board of education; and in the case of area vocational-~~  
13 ~~technical schools, the state board of regents.~~

14 (c) *"Employees" means all licensed employees of school districts and*  
15 *of nonpublic schools and all instructional and administrative employees of*  
16 *area vocational-technical schools.*

17 (d) *"School year" means the period from July 1 to June 30.*

18 ~~(e) "Accredited" means accredited by the state board of~~  
19 ~~education. "State board" means, in the case of school districts and~~  
20 ~~nonpublic schools, the state board of education, and in the case of area~~  
21 ~~vocational-technical schools, the state board of regents.~~

22 (f) *"Superintendent" means the superintendent of schools, or the*  
23 *superintendent's designee, for the school district employing the employee.*

24 (g) *"Teacher" means any instructor who holds a teacher's certificate*  
25 *issued by the state board.*

26 Sec. 8. K.S.A. 2011 Supp. 72-9003 is hereby amended to read as  
27 follows: 72-9003. Each board shall adopt a written policy of personnel  
28 evaluation procedure in accordance with K.S.A. 72-9002 et seq., and  
29 amendments thereto. *For school districts, such policy shall include, but is*  
30 *not limited to, the Kansas educator evaluation protocol adopted by the*  
31 *state board of education. Every policy so adopted shall:*

32 (a) *Be prescribed in writing at the time of original adoption and at all*  
33 *times thereafter when any amendments are adopted;*

34 (b) *Include evaluation procedures applicable to all employees;*

35 (c) *Provide that all evaluations are to be made in writing and that*  
36 *evaluation documents and responses thereto are to be maintained in a*  
37 *personnel file for each employee for a period of not less than three years*  
38 *from the date each evaluation is made;*

39 (d) (1) *Except as provided herein and in subsection (d)(2), provide*  
40 *that every employee in the first two consecutive school years of*  
41 *employment shall be evaluated at least one time per semester by not later*  
42 *than the 60th school day of the semester. Any employee who is not*  
43 *employed for the entire semester shall not be required to be evaluated.*

1 During the third and fourth years of employment, every employee shall be  
2 evaluated at least one time each school year by not later than February 15.  
3 After the fourth year of employment, every employee shall be evaluated at  
4 least once in every three years not later than February 15 of the school  
5 year in which the employee is evaluated;

6 *(2) if a teacher receives a rating designation of progressing or*  
7 *ineffective pursuant to K.S.A. 72-9001 et seq., and amendments thereto, in*  
8 *such teacher's most recent evaluation, such teacher shall be evaluated at*  
9 *least one time per semester by not later than the 60th school day of the*  
10 *semester;*

11 *(e) for school districts, provide, at a minimum, the guidelines*  
12 *described in the Kansas educator evaluation protocol adopted by the state*  
13 *board of education; and*

14 *(f) be approved by the state board.*

15 Sec. 9. K.S.A. 72-9004 is hereby amended to read as follows: 72-  
16 9004. Evaluation policies adopted under K.S.A. 72-9003, and amendments  
17 thereto, shall meet the following guidelines or criteria:

18 (a) Consideration shall be given to the following employee attributes:  
19 Efficiency, personal qualities, professional deportment, ability, results and  
20 performance, including improvement in the academic performance of  
21 pupils or students insofar as the evaluated employee has authority to cause  
22 such academic improvement, in the case of teachers, the capacity to  
23 maintain control of pupils or students, and such other matters as may be  
24 deemed material.

25 (b) Community attitudes toward, support for and expectations with  
26 regard to educational programs shall be reflected.

27 (c) The original policy and amendments thereto shall be developed by  
28 the board in cooperation with the persons responsible for making  
29 evaluations and the persons who are to be evaluated, and, to the extent  
30 practicable, consideration shall be given to comment and suggestions from  
31 other community interests.

32 (d) Evaluations of the chief administrator employed by a board shall  
33 be made by the board. The board shall place primary responsibility upon  
34 members of the administrative staff in making evaluations of other  
35 employees.

36 (e) Persons to be evaluated shall participate in their evaluations, and  
37 shall be afforded the opportunity for self-evaluation.

38 (f) The contract of any person subject to evaluation shall not be  
39 nonrenewed on the basis of incompetence unless an evaluation of such  
40 person has been made prior to notice of nonrenewal of the contract and  
41 unless the evaluation is in substantial compliance with the board's policy  
42 of personnel evaluation procedure as filed with the state board in  
43 accordance with the provisions of K.S.A. 72-9003, and amendments



1 thereto.

2 (g) *Evaluations shall comply with the provisions of K.S.A. 72-9001 et*  
3 *seq., and amendments thereto.*

4 Sec. 10. K.S.A. 72-9005 is hereby amended to read as follows: 72-  
5 9005. (a) Whenever any evaluation is made of an employee, the written  
6 document thereof shall be presented to the employee, and the employee  
7 shall acknowledge such presentation by ~~his or her signature thereon~~  
8 *signing such written document*. At any time not later than two (2) weeks  
9 after such presentation, the employee may respond thereto in writing.

10 (b) *If an employee receives a rating designation of progressing or*  
11 *ineffective pursuant to section 2, and amendments thereto, such employee*  
12 *shall be entitled to an in-person conference with the superintendent to*  
13 *discuss such employee's evaluation.*

14 (c) Except by order of a court of competent jurisdiction, evaluation  
15 documents and responses thereto shall be available only to the evaluated  
16 employee, the board, the appropriate administrative staff members  
17 designated by the board, the school board attorney upon request of the  
18 board, the state board of education as provided in K.S.A. 72-7515, *and*  
19 *amendments thereto*, the board and the administrative staff of any school  
20 to which such employee applies for employment, and other persons  
21 specified by the employee in writing ~~to his or her board~~.

22 Sec. 11. K.S.A. 2011 Supp. 72-9608 is hereby amended to read as  
23 follows: 72-9608. (a) In each school year, each school district which is  
24 maintaining an approved professional development program shall be  
25 eligible to receive from state funds, within the limits of appropriations for  
26 professional development, an amount to be determined by the state board  
27 on the basis of priorities established ~~through a needs-assessment survey~~  
28 ~~conducted by the state board pursuant to section 4, and amendments~~  
29 *thereto*. In no event shall the amount allocated and distributed to any  
30 school district under this act exceed: (1) An amount which is equal to .50  
31 of 1% of the amount of the general fund budget of the school district, or an  
32 amount equal to 50% of the actual expenses incurred by the school district  
33 in maintaining an approved professional development program, whichever  
34 is the lesser amount; or (2) an amount which is equal to 50% of the actual  
35 expenses incurred by the school district for the provision of innovative and  
36 experimental procedures, activities and services, if any of the same are  
37 provided and approved by the state board, in a professional development  
38 program maintained by the school district and approved by the state board.

39 (b) If the amount of appropriations for professional development  
40 programs is insufficient to pay in full the amount each school district is  
41 determined to be eligible to receive for the school year, the state board  
42 shall prorate the amount appropriated among all school districts which are  
43 eligible to receive state aid under the provisions of this act in proportion to

1 the amount each school district is determined to be eligible to receive.

2 (c) The state board shall prescribe all forms necessary for reporting  
3 under this act.

4 (d) Every board shall make such periodic and special reports of  
5 statistical and financial information to the state board as it may request.

6 New Sec. 12. If any provision of this act, or the application thereof, is  
7 held invalid or unconstitutional, it shall be conclusively presumed that the  
8 legislature would have enacted the remainder of the act without such  
9 invalid or unconstitutional provision.

10 Sec. 13. K.S.A. 72-1412, 72-9004 and 72-9005 and K.S.A. 2011  
11 Supp. 72-5413, 72-9002, 72-9003 and 72-9608 are hereby repealed.

12 Sec. 14. This act shall take effect and be in force from and after July  
13 1, 2013, and its publication in the statute book.

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