

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION

The meeting was called to order by Representative Don Crumbaker at  
Chairperson

3:30 ~~am~~/p.m. on February 25, 1985 in room 519-S of the Capitol.

All members were present except:

Representatives Bowden, Brady, Hensley, Harder, Leach, Miller, Polson, Ramirez and Reardon, who were excused.

Committee staff present:

Ben Barrett, Legislative Research Department  
Avis Swartzman, Revisor of Statutes' Office  
Dale Dennis, State Department of Education  
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Craig Grant, Kansas-National Education Association  
David Schauner, Kansas-National Education Association, General Counsel  
Bill Curtis, Kansas Association of School Boards  
Dr. M. D. McKenney, United School Administrators of Kansas  
Dr. Richard Funk, Kansas Association of School Boards

The Chairman opened the meeting by referring to a letter from Joan Wesselowski, Executive Director of Kansas Association of Rehabilitation Facilities requesting the committee to introduce a bill to provide for special education sources for preschool aged exceptional children. (ATTACHMENT 1) The Chairman noted that if the Committee grants this request it would not plan on hearing the bill, but designate it for an interim study.

Representative Potorff moved that the bill be introduced. Representative Hassler seconded the motion. The motion was adopted.

The Chairman opened the hearing for HB 2266 which relates to appointment of hearing committee members of hearings upon contract termination or nonrenewal of teachers.

Craig Grant, K-NEA, testified in support of HB 2266. (ATTACHMENT 2)

David Schauner, K-NEA General Counsel, testified in support of HB 2266. (ATTACHMENT 3)

Bill Curtis, KASB, testified in opposition of HB 2266. He stated that they do not feel there is a problem with the current process. The delays referred to in the previous testimony are caused by other factors than the selection of the third party of the hearing committee. (ATTACHMENT 10)

Dr. M. D. McKenney, USA, testified in opposition of HB 2266. (ATTACHMENT 4)

This concluded the hearing for HB 2266. The Chairman opened the hearing for HB 2115 which addresses the payment of hearing committee members expenses of contract termination or nonrenewal hearings for teachers.

Bill Curtis, KASB, testified in support of HB 2115. He stated that their intent of this bill was to have each party be responsible for the payment of their member's expenses, but that the remaining expenses be shared equally between the parties. They request that the bill be amended on lines 46, 47 and 48 to read: "upon request of either party or upon direction by a court. (d) All costs of a hearing which are not". They would also request that the amount being paid the hearing committee be adjusted as it is difficult to hire a qualified individual at "subsistence allowance". He referred the Committee to lines 26, 27 and 38 of the bill.

Dr. M. D. McKenney, USA, testified in support of HB 2115. (ATTACHMENT 5) He further added that they would have no problem supporting the proposed amendments of KASB.

Craig Grant, K-NEA, testified with comments to HB 2115. He stated that after the explanation of Dr. Curtis concerning their intent, the bill made sense. He agreed with the increase of payment for the third party as qualified individuals are difficult to find if they are not allowed to pay them a sufficient amount. However, he added, that they would have a problem with allowing the responsible parties an unlimited amount of pay for their committee member.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION,  
room 519-S, Statehouse, at 3:30 ~~xxx~~/p.m. on February 25, 1985

This concluded the hearing for HB 2115. The Chairman opened the hearing for HB 2116 which would change the notification date for discontinuation of contracts.

Bill Curtis, KASB, testified in support of HB 2116. (ATTACHMENT 6)

Craig Grant, K-NEA, testified in opposition of HB 2116. He stated their objection to narrowing the 30 day window that was agreed upon during the 1984 session. They feel this window is a necessity for their members and would object to the bill as printed.

This concluded the hearing for HB 2116. The Chairman opened the hearing for HB 2214 which would disqualify any school district employee from serving on that school board.

Dr. Richard Funk, KASB, testified in support of HB 2114. (ATTACHMENTS 7 & 8)

Dr. M. D. McKenney, USA, testified in support of HB 2114. (ATTACHMENT 9) He added that he was not aware of a past problem but supports the bill philosophically.

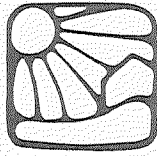
Craig Grant, K-NEA, testified in opposition of HB 2114. He stated that the voters should be allowed to vote for their school board and not have stipulations. The people would be aware if the candidate is an employee of the district and could vote accordingly. There are times when an employee of the district would have possibly more knowledge and/or interest in the district. He is not aware of any position now where there is a problem, or in the past when the situation existed was there a problem.

This concluded the hearing for HB 2114.

The meeting was adjourned at 4:59 p.m.

The next meeting of the Committee will be February 26, 1985 at 3:30 p.m. in Room 519-S.





## Kansas Association of Rehabilitation Facilities

TownCenter Building 120 West Sixth, Suite 110  
Newton, KS 67114 316-284-2330

February 21, 1985

Representative Don E. Crumbaker  
Room 182-W  
State Capitol  
Topeka, Kansas 66612

Dear Representative Crumbaker and Members of the House  
Education Committee:

In response to our meeting February 20, 1985, the Kansas  
Association of Rehabilitation Facilities is requesting the  
House Education Committee to introduce a House Bill to  
provide for special education sources for preschool-aged  
exceptional children as therein defined amending K.S.A.  
72-966, 72-970, 72-972 and 72-977 and K.S.A. 1984 Supp.  
72-962 and 72-963; and repealing the existing sections and  
K.S.A. 72-933.

The merit of the request is based on the need to provide  
services to 80% who are still unserved and on the need to  
have a comprehensive plan to fund the services which these  
children so desperately depend on.

This issue needs continued attention until legislators do  
take action on it.

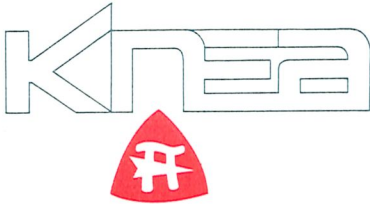
We hope you consider this request positively. Thank you very  
much.

Sincerely,

JOAN E. WESSELOWSKI  
EXECUTIVE DIRECTOR

JW:sh

Craig Grant Testimony Before The  
House Education Committee  
February 25, 1985



Thank you, Mr. Chairman. Members of the Committee, my name is Craig Grant and I represent Kansas-NEA. I appreciate the chance to talk to you about HB 2266. As you remember, HB 2266 is a committee bill which you introduced at the request of K-NEA.

The main change of this bill is on the second page, lines 47 through 54. Presently, if the two members of the due process hearing panel (one appointed by the board and one by the teacher) are unable to reach agreement on the third panel member, the district judge is asked to appoint the third member. The change we are seeking is for the two members to seek the appointment by the commissioner of education from a list compiled and maintained by the commissioner of qualified and impartial persons who are representative of the public.

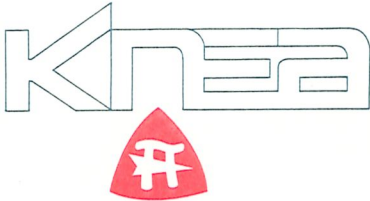
Kansas-NEA believes that this change is necessary for two reasons. The first is the trouble that judges have had in finding third committee members. Our experience would show that there has been trouble finding these members which have caused delays in the hearings. The process seems to drag out too long presently without this problem adding to the length. With the commissioner maintaining a list of people who would serve, the third member can be appointed much more rapidly and the hearing can commence. Judges have told us of their problem and we believe that this would help the situation.

The second reason for the change surrounds lines 53 and 54 of the bill. We would like the third person to be both qualified and impartial. This person is the chairperson of the committee and, as such, runs the hearing. There could often be procedural questions that need to be decided and there needs to be someone in charge who knows about this administrative hearing process. There is a manual developed jointly by KASB and K-NEA which explains how to run a hearing. That manual could be used as a training booklet for prospective third parties to the hearing panel. The best people I believe to train these prospective hearing panel members would be Pat Baker of KASB and David Schauner of K-NEA. If representatives from both parties would train the panel member before the hearing starts, we can be fairly well assured that the hearing will be run in an efficient and competent manner.

Kansas-NEA believes that this refinement will guarantee a speedier and better run due process hearing. There have been problems in the past and we think that this revision can help the process. We ask that you report HB 2266 favorably for passage.

Thank you, Mr. Chairman and Members of the Committee, for listening to the concerns of teachers.

DAVID SCHAUNER TESTIMONY BEFORE THE HOUSE EDUCATION COMMITTEE  
February 28, 1985



Thank you, Mr. Chairman. Members of the Committee, my name is David Schauner and I represent Kansas-National Education Association. I want to thank you for the opportunity to speak with you today about House Bill 2266.

I have been personally involved in many due process hearings over the past five and one-half years as general counsel for the Kansas-NEA.

All-too-often the primary thrust of the hearing is "how quickly can we finish" because of other considerations in the lives of those people who are serving on the panel.

In some areas of the state it has become increasingly difficult, if not impossible, to find a person to serve as the chairperson of the committee. I was personally involved in a case arising out of Belle Plain, Kansas, where it took the local district court judge over twelve months to find a person willing to serve on the panel.

I believe that this particular case is an extreme example, but points out the inherent weakness in the volunteer system currently employed in selecting third-party neutrals to serve as chairpersons of these committees.

Due process for teachers is a concern for the entire state and a trained and knowledgeable third party chairperson would make visible that commitment.

I appreciate your willingness to consider this matter.

Thank you Mr. Chairman and members of the Committee for giving this matter your thoughtful consideration.





# UNITED SCHOOL ADMINISTRATORS OF KANSAS

1906 EAST 29TH

TOPEKA, KANSAS 66605

913-267-1471

**JERRY O. SCHREINER**  
EXECUTIVE DIRECTOR

**M.D. "MAC" MCKENNEY**  
ASSOCIATE EXECUTIVE DIRECTOR

TO: House Education Committee

FROM: M. D. McKenney, Acting Executive Director  
United School Administrators

DATE: February 25, 1985

SUBJECT: HB 2266

Thank you, Mr. Chairman and members of the committee. I am M. D. McKenney, Acting Executive Director of the United School Administrators of Kansas, speaking in opposition to this bill.

We believe the provisions in the present law adequately address the need for selection of the third member of hearing committees. There is often a need for that member to be versed in school law and we believe the present system would more likely result in the third person's effectiveness in the hearing process.

We ask that you report this bill adversely.

ATTACHMENT 4

2-25-85

House Education Committee



# UNITED SCHOOL ADMINISTRATORS OF KANSAS

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TOPEKA, KANSAS 66605

913-267-1471

**JERRY O. SCHREINER**  
EXECUTIVE DIRECTOR

**M.D. "MAC" McKENNEY**  
ASSOCIATE EXECUTIVE DIRECTOR

TO: House Education Committee

FROM: M. D. McKenney, Acting Executive Director  
United School Administrators

DATE: February 25, 1985

SUBJECT: HB 2115

Thank you, Mr. Chairman and members of the committee. I am M. D. McKenney, Acting Executive Director of the United School Administrators of Kansas, speaking in behalf of this bill because of the clarity it brings to the intent of existing statute.

ATTACHMENT 5

2-25-85

House Education Committee

KANSAS  
ASSOCIATION



OF  
SCHOOL  
BOARDS



5401 S. W. 7th Avenue Topeka, Kansas 66606  
913-273-3600

TESTIMONY ON H.B. 2116

by

Bill Curtis, Assistant Executive Director  
Kansas Association of School Boards

February 25, 1985

Mr. Chairman and members of the committee, we appreciate the opportunity to testify today on behalf of the 300 member boards of the Kansas Association of School Boards. H.B. 2116 was introduced by this committee at our request. It would change the notification date for discontinuation of contracts.

As many of you will recall, this issue was debated before you last year. The result of that debate was a compromise agreement which established the current law as April 10th and May 10th. As a result of the change enacted last year, the KASB staff proposed that the policy seeking a May 1st date be eliminated from the legislative policies of the association. However, the Legislative Committee, those board members who propose KASB policies, and the Delegate Assembly, those board members who approve KASB policies, both voted overwhelmingly to again ask you to change the last notification date to May 1st. Board members and administrators find the recruiting process much more satisfactory if it can be accomplished while students seeking teaching positions are still on campus. Most colleges and universities are not in session by the middle of May. Moving the last date back to May 1st would afford boards and administrators more time while the students are still easily located.

H.B. 2116 also seeks to amend the notification dates for administrators. Current law requires the board to notify by April 15th. We would request that you change that date to April 10th to conform with the notification date for teachers. Thank you for allowing us the time to present our views.



TESTIMONY ON H.B. 2114

by

Richard Funk, Assistant Executive Director  
Kansas Association of School Boards

House Education Committee  
February 25, 1985

Mr. Chairman and members of the Committee, I am appearing before you today as a proponent to H.B. 2114 that was requested by KASB.

This bill is an attempt at preventive litigation. At issue is whether it is a conflict of interest for an employee of a board of education to also serve on that same board as an officer. If this bill is successfully passed, it will clarify a legal issue that has been confusing to a number of people for the past six years. Let me review briefly the issue at hand.

1975 - Then Sen. Richard Rogers asked then Attorney General Curt Schneider "...whether a teacher under contract to Unified School District No. 383 may run for office as a member of the board of education of that district, and serve if elected..." In opinion 75-52, Attorney General Schneider opined: "...the individual in question in the position of a teacher is not an officer of the school district, but an employee thereof...applying the standards set forth in Clawson v School Committee of Lyons 275 Mass. 258, 175 N.E. 634 (Mass., 1931), the positions of board member and teacher employed by the same district are incompatible...the statutory general conflict of interest law K.S.A. 75-4304(a),

does not disqualify the individual from being a candidate and accepting the office if elected...he is disqualified, in our judgment, from receiving compensation from the district for his services as a teacher should he be elected to and accept the office of a member of the board of education thereof."

1979 - Then Commissioner of Education Merle Bolton asked Attorney General Robert Stephen whether a bus driver, employed by Unified School District No. 101, can also serve as a board member of that district.

On March 21, 1979, the Governmental Ethics Commission opined (72-12): "...the fact that you are employed by the school district on whose board you would serve as a member does not present any conflict of interest which prohibits you from serving on the board," under K.S.A. 75-4304 and 75-4305.

These appear to be opinions in direct conflict with one another. The Attorney General then opined in (79-108): "...we are unable, as a matter of law, to conclude that a bus driver may not hold the office of school board member, even though he or she is employed by the school district. Common law doctrine of incompatibility of offices is not applicable. If some other matter of public policy prevents the holding of these two positions, it is for the courts or the legislature to so declare."

Research reveals that case law is decidedly straightforward on this conflict of interest issue. The Attorney General's opinion notwithstanding, the dual position of teacher and board member in the same school district is incompatible.

Our legal staff researched this topic and the short brief is presented to you on the last two pages of this testimony. To summarize the brief; the criteria that the courts have used to determine whether an individual's employment position conflicts with board membership are:

- a) whether the individual is employed by the board;

- b) whether the individual presently performs teaching services for the board;
- c) whether the individual receives compensation from the school district; and
- d) whether the individual is under contract of the board of education.

The Courts have held that if this test is met in the affirmative there is no constitutionally protected right to hold incompatible offices or employment.

We have only to look as near as our own statutes to see that, in the past, our legislature has already established statutory differences between incompatibility of offices and conflict of interest. Kansas Statutes Annotated 19-205 is an excellent example of what the legislature is pointing out as an example of incompatibility of offices:

"No person holding any state, county, township, or city office shall be eligible to the office of county commissioner in any county in this state."

This is a clear message from the legislature that it has been concerned with the conflict of interest aspect between employment and office. Kansas Statutes Annotated 75-2953(2) applies to state classified workers:

"Any officer or employee in the state classified service shall resign from the service upon filing as a candidate for an elective office, unless the elective office filed for is a county elective office..."

The educational community in Kansas has been guided by statutes that would prevent a conflict of interest between employment and offices. Kansas Statutes Annotated 25-1904:

"No state, school district or community college officer or employee shall be a member of the state board of education."

and K.S.A. 71-1403 very clearly and straightforwardly illustrates that the

legislature did not want a conflict of interest between community college board members and the employees:

"The governing body of a community college is and shall be a board of trustees composed of six (6) members, none of whom shall be an employee of the community college."

Mr. Chairman and members of the Committee, we are asking, in H.B. 2114, for the same structure and guidelines that are found in the community college conflict of interest statute, nothing more.

By voting for H.B. 2114 you will not prohibit a school district employee from running for a school board position, an employee will not be prohibited from accepting the position if that employee wins the election, school district employees who are presently serving on their local boards will not be removed from office, nor will successful passage of this bill disrupt the present election or the winners.

What you will be doing by successfully passing H.B. 2114 is amending a statute that will: (a) clear up confusion that currently exists in the state due to contradictory opinions from state agencies, and (b) prevent costly litigation that may arise because of opinions that differ from case law. Thank you.





## TEACHER AS BOARD MEMBER

ISSUE: Employment as a teacher and the holding of office as a board of education member within the same school district is incompatible within the meaning and intent of the common law rule providing that a person cannot hold incompatible and inconsistent offices or positions, one of which is subordinate to the other.

ANALYSIS: Attorney's General opinions notwithstanding, the dual position of teacher and board member in the same school district is incompatible. Haskins v. State, 516 P.2d 1171 (Wy. 1973). Haskins held that it is inimical to the public interest and the best interests of the school district to have a teacher from that district also serve on the board of education. Furthermore, this conflict of interest cannot be avoided by mere abstention as to financial issues. The teacher's conflict of interest extends to conflicts between employer and employee, negotiation, evaluation, arbitration, etc.

The criteria used to determine whether an individual's position conflicts with board of education membership is whether the individual (1) is an employee of the board, (2) presently performs teaching services for that board, (3) receives compensation from the school district, and (4) is under the control of the board of education. Wright v. State, 389 So. 2d 662 (Fla. 1980). See also Otradovec v. City of Green Bay, 347 N.W. 2d 614, 616 (Wisc. 1984); Coyne v. State, 597 P.2d 970, 973 (Wy. 1979); Tarpo v. Bowman School District, 232 N.W. 2d 67, 71 (N.D. 1975); Visotcky v. Garfield, 273 A.2d 597 (N.J. 1971); Day v. Andrews, 389 So. 2d 662 (Ala. 1966); 70 ALR3d 1188. Common sense, common law, and virtually all case law are in agreement that employment as a teacher and office as member of a board of education in the same school district is incompatible. Haskins, supra.

Cases have held that where a statute expressly makes the doctrine of incompatibility inapplicable, the teacher can hold a board position in the same district. Columbia City Administrative School District v. Prichard, 585 P.2d 701 (Ore. 1978). Such a statute does not exist in Kansas. It has also been held that a teacher can be employed by one school district and a board of education member in another school district. Doebler v. Mincemoyer, 285 A.2d 159 (Pa. 1971). Furthermore, a teacher on leave of absence without pay from a school district may hold the position of board member in that district as long as the four criteria previously cited are met. Wright, supra.

It is clear that a teacher can run for the board position in the same district, but if elected the teacher must choose between the positions. Tarpo, supra. Other courts have held that incompatibility operates to vacate such person's office as board of education member rather than vacating the position as school teacher. Regardless of the remedy, the situation cannot be allowed to exist, and there is no constitutionally protected right to hold incompatible offices or employments.

Attorney General Opinion 79-108 has been widely cited for the position that teachers (employees) can be board members in their school districts of employment. The opinion stated: "Although some courts have now enlarged this doctrine to include both public offices and public employment, the majority of states follow the traditional rule." Volume 70 3d 1188 of the American Law Report and 63 Am Jur 2d Public Officers and Employees Section 64 are cited in support of this position. It has been concluded that this is the "traditional common law rule." However, 70 A.L.R. 3d 1188 begins with a discussion in section two that emphatically states that all cases throughout the country dealing with a teacher holding board membership in the same school district have held that this is a conflict of interest, is incompatible, and should not be allowed. Indeed, 63A Am Jur 2d Public Officers and Employees Section 78 states "two offices or positions are incompatible if there are many potential conflicts of interest between the two, such as salary negotiations, supervision and control of duties, and obligations to the public to exercise independent judgment." Following this statement 63A Am Jur 2d cites the Tarpo decision as authority. Tarpo held that a teacher holding board membership in the same district is incompatible. The article in 63A Am Jur 2d also cites approvingly Coyne and Haskins. The very authority used in the opinion to support the conclusion that the dual role of the teacher-board member is valid, states precisely the opposite conclusion. See also 68 Am Jur 2d Schools Section 40 and Section 40 (1984 Supp.).



# UNITED SCHOOL ADMINISTRATORS OF KANSAS

1906 EAST 29TH

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913-267-1471

**JERRY O. SCHREINER**  
EXECUTIVE DIRECTOR

**M.D. "MAC" McKENNEY**  
ASSOCIATE EXECUTIVE DIRECTOR

TO: House Education Committee

FROM: M. D. McKenney, Acting Executive Director  
United School Administrators

DATE: February 25, 1985

SUBJECT: HB 2114

Thank you, Mr. Chairman and members of the committee. I am M. D. McKenney, Acting Executive Director of the United School Administrators of Kansas, speaking in support of this bill.

We feel that responsibilities for decisions related to the operation of schools should reside with members not associated with the district by reason of their employment. We continue to believe that teachers, administrators, and classified employees of a school district should have input to the members of the board, but that policy decisions should be made by lay people and communicated to staff with administrators having the responsibility to see that they are implemented.

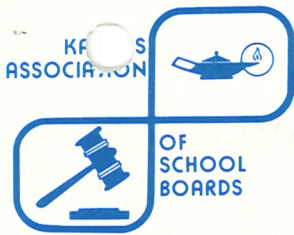
It is likely there are presently some boards which now have some members which this bill would exclude. We support the "grandfather" clause contained in the bill.

We also support the clarification made in Section 3.

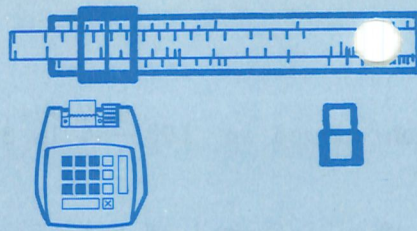
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2-25-85

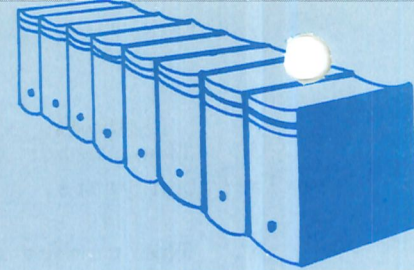
House Education Committee



5401 S. W. 7TH AVENUE  
TOPEKA, KANSAS 66606



4



# RESEARCH BULLETIN

November, 1984

Number 6

ANNUAL SURVEY ON TEACHER EMPLOYMENT RELATIONS  
by  
Gordon Nelson, Director of Research

SUMMARY AND GENERAL CONCLUSIONS FOR DATA FROM USD'S

	1979 1980	1980 1981	1981 1982	1982 1983	1983 1984	1984 1985
1. VERIFIED TEACHER TERMINATIONS	10	8	5	8	3	
2. NONTENURED TEACHERS NONRENEWED	185	162	177	135	118	
3. TENURED TEACHERS NONRENEWED	35	37	43	55	34	
4. TEACHER RESIGNATIONS IN FACE OF NONRENEWAL	nr	193	157	197	130	
5. TEACHERS REQUESTING CONTRACT RELEASE	614	614	376	255	319	442
6. WRITTEN BOARD POLICY ON RELEASE	186	198	203	213	233	237

nr - Not Reported

Statistics continue to show a marked reduction in adversative positions in employment relations, both in the number of board actions to sever employment relations and challenged board decisions and appeals to the courts. A statistical comparison of three items for 1979-80 through 1983-84, of two items for 1979-80 through 1984-85, and one item for 1980-81 through 1983-84 shows the following trends.

1. The three teachers terminated in the 1983-84 contract year is the lowest in ten years of reporting. This data is corroborated by using a telephone inquiry to those USD's reporting terminations. It was found after a high of 53 in 1976-77 that many were not solely termination actions by the board, but included resignations by teachers facing the possibility of termination. Subsequent yearly surveys have attempted to limit the data reported to actual terminations by board action.

2. The number of nontenured teachers nonrenewed in 1983-84, 118 teachers, shows a steady decline for the past six years, except for 1981-82.

3. The number of tenured teachers nonrenewed in 1983-84 is 34, the lowest number in the last ten years.

3. The number of tenured teachers nonrenewed in 1983-84 is 34, the lowest number in the last ten years.

4. The number of teachers resigning when informed of the possibility of a nonrenewal for 1983-84 was 130, the lowest in the four year period of reporting such data.

5. The number of teachers (442) requesting release from a signed contract is still below the average for the six-year period, although it is higher than last year's data.

6. The number of local boards of education having written board policy on teacher requests for release from signed contracts is 237, continuing the dramatic increase from 68 for 1977-78, an increase of almost 250%.

#### THE REPORT

In September, 1984, KASB mailed to the chief school administrators the survey questionnaire regarding teacher employment relations: terminations during and nonrenewals at the end of the 1983-84 school year, resignations, requests for release from 1984-85 contracts, and written board policy on release. The survey data are summarized below:

	Type of School	USD's	Inter-	Community	AVTS
	Number Reporting	304	locals	colleges	
	Percent Reporting	100%	67%	63%	67%
1. NUMBER OF TEACHERS TERMINATED (discharged during the term of contract) DURING THE 1983-84 SCHOOL YEAR	3		1		
2. NUMBER OF NONTENURED (probationary) TEACHERS NONRENEWED FOR 1984-85 DURING 1983-84	118		8	3	1
3. NUMBER OF TENURED TEACHERS NONRENEWED FOR 1984-85 DURING 1983-84	34		2	1	1
4. NUMBER OF TEACHERS RESIGNED DURING 1983-84 WHEN INFORMED OF THE POSSIBILITY OF NONRENEWAL	130		8	2	
5. NUMBER OF TEACHERS SIGNING 1984-85 CONTRACTS AND SUBSEQUENTLY ASKING FOR A RELEASE FROM CONTRACT	442		12	1	
6. NUMBER OF BOARDS WITH WRITTEN POLICY ON RELEASE FROM A SIGNED CONTRACT	237		7	7	1

The above table reports the survey data from all USD's, 12 interlocal cooperatives, 12 community colleges, and two of three AVTS's that are interlocal in governance. This is the third year that a sufficient number of interlocals and community colleges have reported to warrant tabulation and discussion here. It is, perhaps, indicative of the general interest and concern about these topics. This report will first discuss the data for USD's and later give a brief summary of the interlocals, community colleges, and AVTS's.

1. The number of teachers terminated during the term of their contracts for 1983-84 was three. Three districts were involved in the three terminations. Teachers who were not actually terminated, but who chose to resign rather than face termination action by the board are not included here. Those statistics are reported in section #5.

None of these terminations proceeded to a court status. Two hearing recommendations were for termination and were confirmed by the board; the other request was dropped.

2. The 118 nontenured (probationary) teachers nonrenewed for 1984-85 during the 1983-84 school year represented 69 school districts. Twenty-nine school districts reported nonrenewal of more than one such teacher; the range for this group ran from two to six such teachers in a single school district. Two nontenured teachers requested hearings, alleging a violation of constitutional rights, the only statutory hearing basis for nontenured teachers, but neither pursued the request. One of the two has filed a complaint with the Office of Civil Rights, and it is pending. A nonrenewal case from 1981-1982 is now pending in federal court after the teacher lost it in the district court.

3. The 34 tenured (continuing contract) teachers nonrenewed for 1984-85 during the 1983-84 school year represent 24 school districts. Five districts reported nonrenewal of two, and three districts reported three such teachers. Fifteen teachers requested hearings, but only 11 continued that process. One of the four who dropped the request moved out of the community. Two of the four who dropped the request did so because of monetary settlements, \$12,500 and \$7,000. Four hearings are not completed as yet, two of which are not even scheduled as of this writing. Five hearings resulted in recommendations to nonrenew and were confirmed by the boards. One of these board decisions is being contested in district court. Two hearings resulted in recommendations to retain. One recommendation was confirmed by the board; the other has no board action to date.

4. The survey also requested data on resignations of teachers who are faced with the possibility of a termination or nonrenewal. The data show a total of 130 such resignations in a total of 85 districts. Of the total resignations, 93 (72%) involved a nontenured teacher; 37 (28%) a tenured teacher. Sixty-six districts (65% of the 85) were involved in the nontenured teacher resignations; 20 (24% of the 85) in the tenured teacher resignations; and 10 (12% of the 85) were involved in the both types of resignations. The 1983-84 figure is the lowest of the four years for which these data were reported.

5. The number of teachers who signed 1984-85 contracts and subsequently asked for release totaled 442. This number does not include 33 teachers who opted for early retirement in one district's program. Two of those positions were still not filled as of this writing. The instances involved about 36% of the public school districts in Kansas. One superintendent termed this problem the most crucial problem facing public education. This practice makes teacher contracting a one-way street in employment relations since the board's refusal to grant a release results either in having an unhappy employee for the length of the contract or in having a contract broken by the teacher. The possibility of having a teaching certificate revoked as a penalty for breaching a contract does not become a factor in cases of a teacher's leaving elementary and secondary school employment, taking college or university employment, a husband's employment move, or in some cases moving to teacher employment in another state where reciprocity is not recognized in the Interstate Compact governing teacher certification.

Of the 442 requests for release from signed contracts, 96% were granted by the boards of education; 3% were denied; and 0.5% were dropped after being made. The number of cases in which the school board granted the release without the assessment of liquidated damages indicates that boards of education exhibit a rather magnanimous attitude toward the teacher requesting a release from a signed and legal contract.

In the process of granting release from a signed contract, boards of education found suitable replacements for 382 teachers (90%); made no assessment of liquidated damages, even without a suitable replacement, for 23 teachers (5.4%); and assessed liquidated damages in granting the release to 18 teachers (4.2%).

Of thirteen instances in which boards denied the requests, nine teachers remained with the school districts, and four teachers left the districts breaching the contract. To date, no districts have filed an action to cancel the certification of a teacher who breached a signed contract with the district.

6. Two hundred and thirty-seven local boards of education (78%) have written policy on requests for release from signed contracts. Sixty-five USD's have no such written policy. Of those that have written only 28% also include it in the teacher's contract, 72% do not; 18% have it in a negotiated agreement, 82% do not; and 72% require a suitable replacement before considering the release.

Thirty-three boards in the state have written policies which set a flat amount for liquidated damages. That amount ranges from \$50.00 to \$500.00 with the median (the midpoint of the range) being \$250.00. Seventy boards have policy which schedules amounts of liquidated damages increasing as they approach the beginning of the school year. The dollar amounts in these schedules start with \$50.00 in late May and reach a high of \$1,200.00 in early September. No model for dates and amounts can be determined, but the KASB model written board policy or a slight variation thereof is by far the most frequent pattern. Nineteen school districts utilize the KASB model policy of \$400.00 before August 1 with \$75.00 per month added for each month, or part of a month, remaining on the contract. The list of some 70 patterns is available on request to the KASB Research Department. Nine boards assess liquidated damages in the amount of the actual cost of a replacement. Two board uses a percentage of the value of the contract as liquidated damages (4% and 10%), and four have increasing schedules of percentages instead of dollars.

KAR 91-22-7 provides that a complaint against a teacher for breaching a contract may be filed with the State Board of Education and referred to the Professional Practices Commission. It should be noted here that this regulation contains this language:

If the investigation reveals a settlement provision or liquidation damage (sic) clause in local board policy or in the contract of the employee, so that the employee could make a financial settlement to the local district governing authority or be relieved of contractual commitment by other agreed means, the commission shall dismiss the case.

This language was amended into KAR 91-22-7 on May 1, 1979, and was opposed by the KASB, but to no avail. KASB has some doubts that this provision is within the statutory rights of the Professional Practices Commission, but that will have to be decided in the legislature or in the courts.

Already determined by the courts is the validity and enforceability of liquidated damages in contract employment relations. In USD 315 (Colby, KS) vs. DeWerff, 6 Kan App 77, April 24, 1981, the Appellate Court said, "Liquidated damages provisions, if otherwise valid, are generally enforceable for the employee's wrongful termination of employment." The case involved the negotiated agreement of a penalty for breach of contract. The agreement was upheld in the district court when the word "penalty" was construed to mean liquidated damages.

There was one other legal action on liquidated damages in Kansas USD's. The court action involved a \$1,000.00 provision of liquidated damages at the time of breach of contract, but it was settled out of court for \$750.00.

Despite these legal precedents, one superintendent commented that there seems to exist, both in the public's mind and among the teachers, the theory that the teacher has an "inherent right" to ask for contract release at any time and that the board should grant such a release with impunity.

Boards without policy have indicated that they largely review each case on its own merits; that they usually grant a release when requested on the theory "If you don't want to be here, we don't want you here."; that the availability of a replacement is a key factor in board decision; that the matter is always handled by an attorney; that they seek revocation of the certificate if a teacher leaves without board approval. The indications are listed in order of frequency of response.

Seventy-one percent of the boards with policy for the assessment of liquidated damages do not have policy language which automatically grants release from contract on payment of liquidated damages; 29% do. Such release should be subject to board approval regardless of the presence of a liquidated damages clause until the matter can be clarified by statute or by further case law.

#### PROBLEMS RELATING TO EMPLOYMENT

Problems, other than those discussed above, listed by superintendents responding to the questionnaire are worthy of note.

By far, the most frequent problem cited by superintendents was the supplemental contract area as affected by the Kansas Court of Appeals--that supplemental duties cannot be made a part of a teacher's primary contract of employment. See Swager V. USD 412 (Hoxie), Docket No. 56,092 as discussed in the KASB Legal Assistance Fund School Law Newsletter, Vol. 18, No. 6, August, 1984.

The next most frequently cited problem was the need for a definite time structure for hearings on nonrenewals and terminations. The hearings should be held without undue delay in order to be fair to both the teacher and the board. Justice is denied when unnecessary delays obstruct the process for holding a hearing.

Current opportunities for delay are:

- Selection of each party's representative;
- Selection of third party representative;
- Selection by court of third party representative;
- Setting a committee meeting date;
- Holding the hearing;
- Conveying a committee hearing decision to the board.

Items which were only mentioned once included the following.

1. Placing a staff reduction qualifier in the nonrenewal portions of this survey.
2. Dissatisfaction with collective bargaining.
3. Possible unionization of other than certificated employees.
4. Possible compromising of board policy (to give no reasons for nonrenewal of nontenured teachers) by requirements of unemployment compensation hearings to discuss reasons.
5. The need for documentation standards for nonrenewals.
6. The negotiability of a mandatory retirement age and its legality.
7. The need for boards to realize the importance of a decision to nonrenew a teacher's contract.



8. The need for a May 1st date for the teacher to give notice of not returning.
9. The possibility of a similar survey on administrator employment relations.

#### SUMMARY AND CONCLUSIONS FOR DATA FROM INTERLOCALS AND COMMUNITY COLLEGES

The data reported on page two largely reflect that the interlocals and community colleges face similar situations as do the USD's of the State of Kansas. Only one hearing was requested and ended with a recommendation to retain which the board reversed. As a result, there is a pending suit in district court. The one termination was due to the lack of proper certification.

Eight resignations when faced with board action to nonrenew occurred in the interlocals; only two in community colleges.

Eleven requests for release from a signed contract were granted by interlocal boards. One other teacher left after being denied release by the board. Revocation proceedings are pending. Of these requests for release, none involved the payment of assessed liquidated damages.

Slightly over half of these schools have written board policy on releasing a teacher from a signed contract. Most of the schools with written policy require board approval for requests for release. Liquidated damages policy is present in only one interlocal and three colleges. The colleges use \$500.00 or 6% of the contract, and one interlocal uses a progressive time schedule from \$100.00 to \$500.00. All schools without policy tend to handle such requests on an individual basis subject to board approval, and about half usually honor the request and require a suitable replacement.

#### A CONCLUDING STATEMENT

The significance of the results of this survey, at least from the school boards' point of view, is that the teacher tenure law is a fairly effective tool for ensuring that those probationary year teachers who should not be in the classroom can be removed. Whether the 1984 changes in the teacher tenure law are more effective in allowing school boards either to improve the competency of probationary teachers or to remove tenured teachers who have proved to be incompetent, ineffective, or of doubtful productivity is yet to be determined. Experience has shown past procedures to be lengthy, expensive, and complicated legal matters.

A section of the survey dealt with the names and occupations of hearing committee members appointed by the boards and by the teachers and the third committee member selected by the board and teacher representatives or by the district court. This information does not readily lend itself to statistical analysis but was requested in order to have it on file and available from the KASB Research Department on request by local school districts.

One final word of caution should be made for those schools with patterns of liquidated damages progressing from a small amount in late May to a large amount in late August. The wording of such policy statements or negotiated agreements may leave isolated days on which no provision applies. For example, the statement may read "\$100.00 before August 1st and \$200.00 after August 1st." August 1st then becomes an open date on which neither provision applies. An examination and redraft of the policy or agreement may prove advantageous to good understanding and employment relations.