

Approved 2-5-90  
Date

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION

The meeting was called to order by Chairman Don E. Crumbaker at  
Chairperson

3:30 ~~xxxx~~ a.m./p.m. on January 31, 1990 in room 519-S of the Capitol.

All members were present except:  
All present

Committee staff present:

Avis Swartzman, Revisor of Statutes Office  
Ben Barrett, Legislative Research  
Dale Dennis, Department of Education  
Thelma Canaday, Secretary to the Committee

Conferees appearing before the committee:

Representative Wagnon  
Representative Hurt  
Mr. Craig Grant, Kansas National Education Association  
Mr. David Schauner, General Counsel, Kansas National Education Association  
Mr. Gerald Henderson, United Schools Administrators  
Ms. Pat Baker, Counsel for Kansas Association of School Boards

The meeting was called to order by Chairman Crumbaker.

The chairman opened hearings on HB 2308, concerning termination or nonrenewal of teachers contracts, hearing committee decisions final.

Representative Wagnon introduced HB 2308 by saying we've come a long way in terms of looking at grievances between teachers and boards of education in regard to renewing and termination of contracts but there are still problems. Representative Wagnon said the tradition of our country is for the majority to rule and this concept is basically presented in HB 2308.

Mr. Craig Grant testified in support of HB 2308. Mr. Grant feels making a 2-1 vote of the due process hearing committee binding on all parties is taking a step toward fairness for teachers who are involved in due process. (Attachment 1)

Mr. Grant referred to a letter from Barbara P. Cole that states the time has come to legitimize the Teacher Due Process Act by giving some real authority to the due process panel. (Attachment 2)

Mr. David Schauner spoke in favor of HB 2308. Mr. Schauner said the process we now have promotes hollow and false promises and many teachers decline to go through the due process hearing because of the time element. Mr. Schauner believes HB 2308 is an improvement over the present system and urged the committee to consider the bill for favorable passage. (Attachment 3)

Representative Hurt testified in favor of HB 2308. Representative Hurt supports the concept of making the hearing panel's decision binding. Representative Hurt pointed out qualified people are not eager to participate in the due process hearing when the ultimate product of their work stands a chance of being rendered meaningless. (Attachment 4)

Ms. Pat Baker spoke against HB 2308. Ms. Baker referred the committee to the Annual Survey on Teacher Employment Relations (Attachment 5) which showed a low number of tenured teachers who were nonrenewed. Ms. Baker pointed out very few hearings had been heard in the state. Ms. Baker acknowledged there are problems with the due process law and asked for time to solve the problem. Ms. Baker suggested the entire Act be reviewed and a fair and efficient system be worked out. (Attachment 6)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION,  
room 519-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on January 31, 1990

Mr. Gerald Henderson urged the committee to report HB 2308 unfavorably. Mr. Henderson said final decisions affecting the operation of Unified School Districts in Kansas must continue to lie with duly elected boards of education. (Attachment 7)

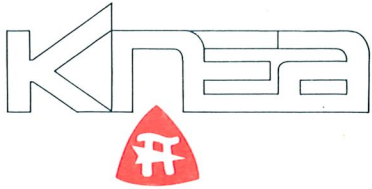
After a period of discussion the chairman declared hearings on HB 2308 closed.

Chairman Crumbaker recognized Mr. Dale Dennis who passed out a printout of the Governor's proposal for 1990-91 and answered questions from the members.

The meeting was adjourned by the chairman at 5:10 p.m.

The next meeting will be February 1, 1990 in Room 519-S at 3:30 p.m.





Craig Grant Testimony Before The  
House Education Committee  
Wednesday, January 31, 1990

Thank you, Mr. Chairman. My name is Craig Grant and I represent Kansas-NEA. I appreciate this opportunity to visit with the committee in support of HB 2308, the bill which would make a 2-1 vote of the due process hearing committee binding on all parties.

For twelve years I was a field representative for Kansas-NEA. My job had many responsibilities and I enjoyed most of them. However, one job responsibility which I was not fond of was my work with teachers who had received or were about to receive either a termination or non-renewal notice by the board of education. It was extremely stressful to me knowing that the future career of a teacher was at stake.

If it was stressful for me, you can imagine what it was like for the individual involved and his or her family. Many came to me with an offer from an administrator that the administrator would clean the teacher's file and give a good recommendation if the teacher would resign. (I was always quite disappointed with an administrator who operated that way.) Others had been blind sided with little or no prior knowledge that there was a problem with his or her work.

Probably 30% of the cases brought to my attention went to a due

*Attachment 1  
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process hearing. As I think back to those early hearings, I can imagine the stress that was placed upon the panelists as they decided the fate of that teacher. I believe most panelists came to the process wanting to do the best job they could and with a desire to be fair.

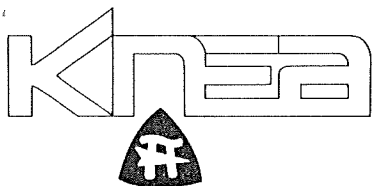
I can understand a hearing panel's anger--not to mention the teacher involved--when its thought-out decision was summarily rejected by the school board--the same group which had made the initial decision. That board, in its desire to save face, seldom if ever reversed its decision.

The legislature changed the law a few years ago to provide that a unanimous decision would be binding. Now what we see is that except in the most blatant of cases, there just is not any more 3-0 decisions in favor of the teacher. We need to take the next step toward fairness and make a 2-1 decision binding.

I have enclosed a copy of a letter to Chairman Crumbaker from our Kansas-NEA Vice President, Barbara Cole. Barbara has been appointed to serve on four due process panels and her insights are well-founded. I hope you will read her letter and if you have questions, I will direct them to her.

Kansas-NEA supports HB 2308 as the next step in providing true due process to the teachers of Kansas. Thank you for listening to the concerns of our members.

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January 29, 1990

Representative Don Crumbaker  
Statehouse  
Room 182-W  
Topeka, Kansas 66612

Dear Representative Crumbaker and  
House Education Committee Members:

I am unable to attend your January 31, 1990, Education Committee meeting to testify regarding House Bill 2308, however, I do want to share some thoughts with you about the Bill.

I have been appointed to serve on four due process panels in the past few years.

All four experiences have produced frustrations for all persons involved.

Finding someone to serve as the chairperson of these panels has been a problem in two of the cases due in large measure to the fact that a great deal of time, money and energy is spent (volunteered) by those appointed for no likely purpose other than making a "recommendation".

The composition of the panel - one member appointed by the board, one by the teacher, and a third member mutually selected by the first two - provides a check and balance system. However, if the committee's decision is binding, we should be able to attract competent and objective people to serve as the third member since the process would be for some legitimate worthwhile result. Committee members knowing that their work will produce a binding decision subject to judicial review is more likely to encourage neutrals to serve as members of the hearing process.

The costs in dollars and human terms of a due process proceeding can be better justified if the end product is more than a mere "recommendation".

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The time has come to legitimize the Teacher Due Process Act by giving some real authority to the due process panel who are the only individuals who have heard the live testimony of witnesses and can truly judge their credibility.

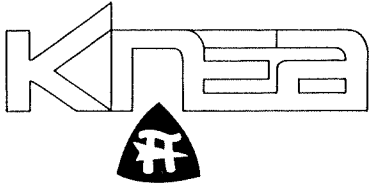
The time is now for the legislature to give meaning to the all too often hollow procedural due process afforded our teachers.

Sincerely,



Barbara R. Cole  
English Department Chairperson,  
McPherson Senior High School  
KNEA Vice-President

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January 31, 1990

Rep. Don Crumbaker  
Chairman  
House Education Committee  
Statehouse  
Room #182-W  
Topeka, KS 66612

Members House Education Committee  
Statehouse  
Topeka, KS 66612

Dear Rep. Crumbaker and Members:

Thank you Mr. Chairman for this opportunity to visit with the committee concerning House Bill 2308.

I am a practicing attorney employed by the Kansas-National Education Association as its General Counsel. I have held that position since 1979 and have been personally involved in representing teachers in due process hearings continuously since then.

I am personally and professionally frustrated by the false promise made to the teachers of Kansas by the Kansas Due Process Act for teachers (K.S.A. 72-5436 et seq.).

The current statutory scheme requires that the recommendations from the due process committee are mere recommendations, unless the committee is unanimous in its decision.

My experience shows that unanimity of committee recommendation is a rare event.

When the Kansas Legislature saw fit to statutorily structure the constitutionally required elements of procedural due process in 1974, it drafted and passed in essence the same procedure in use today.

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I believe the procedure is premised upon the belief that all parties to the procedure will act in good faith and will allow a weak procedure to successfully protect the rights of non-probationary professional educators.

Time and experience have shown me that the legislative hope of good faith is not well founded.

The legislature amended the process in 1984 when it passed legislation making unanimous hearing committee recommendations binding upon the Board of Education.

Since that time Boards of Education have regularly appointed persons to the due process committees who were by training, experience and employment certain not to vote for the teacher without regard to the evidence adduced at the hearing.

Like all generalizations, there are exceptions to this conclusion. In fact, I am aware of fewer than five unanimous decisions rendered by due process committees since 1984.

School district superintendents from neighboring districts to the board of education wishing to nonrenew the employment of a professional educator are regularly selected to serve as due process hearing committee members and in the vast majority of cases, these superintendents vote to recommend upholding the initial decision of the board of education.

This appointment of nominees by boards of education effectively sabotages the good intentions of the legislature's 1984 amendments.

I strongly urge that the committee favorably pass on House Bill 2308. The passage of this Bill is not without risk to the teachers of Kansas, since in every case the teacher would run the risk of being bound by a non-unanimous decision.

Appreciating the "two edged sword" nature of the proposed changes in House Bill 2308 I fully support this committees' favorably action on this matter.

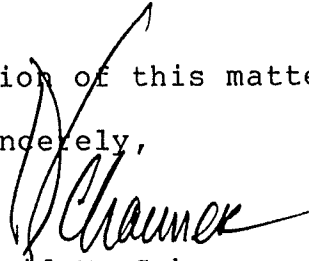
Failure to act in this matter will allow current and future generations of teachers to be given the false promise that their employment is secure from unreasonable discharge. The truth of the matter is that as long as boards of education hold the veto in due process recommendations, the board of education will continue to be able to exercise unreasonable, unwarranted and unnecessary power over the professional lives of the single largest group of employees in the State of Kansas.

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I appreciate your thorough consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Schauner". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

David M. Schauner

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House Ed.  
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TOPEKA

HOUSE OF  
REPRESENTATIVESCOMMITTEE ASSIGNED  
MEMBER: EDUCATION  
LOCAL GOVERNMENT  
PENSION, INVESTMENTS  
AND BENEFITS

THA CONNOR HURT  
REPRESENTATIVE, 66TH DISTRICT  
1921 ANDERSON AVE  
MANHATTAN, KANSAS 66502  
(913) 776-1075 HOME  
(913) 296-7699 CAPITOL OFFICE

TESTIMONY BEFORE THE HOUSE EDUCATION COMMITTEE  
ON HOUSE BILL 2308

January 31, 1990

I am testifying today as a former participant in due process hearings in support of the concept of making the hearing panel's decision binding.

I have served as a panel member twice and, as president of my local association, was deeply involved in the "inner workings" of a third hearing. In all three instances at least five people spent many hours preparing for the hearing, conducting it, and bringing forth a decision. Selecting panel members (with a neutral third party among them) and setting up a pre-hearing conference seem, on the surface, to be relatively simple tasks, but with the busy schedules which accompany our lifestyles, both processes are punctuated with long periods of "telephone tag" and numerous meeting postponements. Many times geographical distances which separate hearing participants add another complication. The hearings can last from one to three days, and then the hearing panel members must set another date on which to discuss the case and write the panel's report.

My point in describing this long and tedious process is to create in your minds the question, "Why would any busy person want to serve as a panel member for no pay?" Add to that question, "Why would any busy person want to serve as a hearing panel member for no pay when his/her decision carries no weight with the parties who requested his/her services?" and you have identified one of the major problems with the due process law as it now exists. Qualified, busy people simply are not eager to participate in a long, complicated process when the ultimate product of their work stands a good chance of being rendered meaningless.

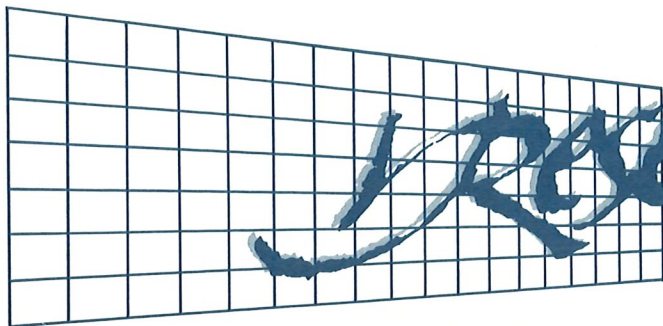
*Attachment 4  
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The second problem I see with a non-binding decision revolves around the question of protecting the integrity of the process. The due process hearing is patterned after courtroom procedures. I know of no case where a jury was asked for a verdict only to have it ignored or reversed by the judge.

I think that a binding decision, then, would accomplish the following things:

1. An increased ability to find capable and willing hearing panel members.
2. Verification of the process as a meaningful activity worthy of the time, effort, and compliance by everyone involved.
3. Greater effort on the part of both the administration and the teacher to foster communication and cooperation during the evaluation process so that employment problems are resolved before non-renewal or termination becomes an issue.

REPRESENTATIVE KATHA HURT  
66th DISTRICT



# BULLETIN

PUBLISHED BY THE KANSAS ASSOCIATION  
OF SCHOOL BOARDS

November 1989

Number 3

## ANNUAL SURVEY ON TEACHER EMPLOYMENT RELATIONS

Jim Hays, Research Director

1988-89 Information from Unified School Districts

	1983 -84	1984 -85	1985 -86	1986 -87	1987 -88	1988 -89	1989 -90
Teachers Terminated	3	3	2	5	3	5	
Nontenured Nonrenewed	118	111	111	108	100	101	
Tenured Nonrenewed	34	37	38	31	34	14	
Resignations instead of Nonrenewal	130	123	116	108	112	147	
Requests for Contract Release	319	442	425	386	421	356	326
Boards with Written Policy on Contract Release	233	237	221	223	196	216	194

In September 1989 KASB mailed to all superintendents a survey questionnaire concerning employment relations with teachers. This same survey has been conducted for a number of years and the results are quite helpful for KASB when the various aspects of the statutes governing this subject are discussed in the Legislature. Questions were asked about nonrenewal, termination, resignations in the face of nonrenewal, and requests for release from signed 1989-90 contracts. In addition, we asked for details about how districts with written policy on the subject of release from signed contracts handle this problem and whether or not these written policies contain provisions for liquidated damages. A total of 260 districts responded to the survey, a slight decrease from last year. If your district did not respond but would like to be included in our computer file, please contact the KASB Research Department.

*Attachment 5.  
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The above table shows the changes which have occurred in the past several years in the several categories of this information. Generally, the numbers of terminations, nonrenewals, and resignations in the face of nonrenewal have declined. A less predictable pattern occurs from year-to-year in the number of teachers who have requested release from contracts.

**TEACHER TERMINATIONS:** The responses to the survey indicated there were five teachers terminated during the 1988-89 school year, from five separate districts. These terminations were verified with a phone survey of districts to ensure that these do not include teachers who may have resigned when faced with termination. In only one case was a hearing requested; the request was later withdrawn. One teacher was terminated during the summer from, technically, a 1989-90 contract which had not yet begun to run. To date, this case is proceeding through the hearing committee process. It is not included in this data.

**NONTENURED TEACHERS NONRENEWED:** There were 101 nontenured teachers who were nonrenewed by 57 Kansas school boards last year. However 23 of these were reported by just two districts, apparently as a part of a perfunctory process in those districts in assessing program needs for the next year. Many of those 23 may have eventually been offered contracts. The remaining 78 teachers from 55 different districts included one teacher in each of thirty-six districts and 2 or more from twenty other districts. None of these nontenured teachers requested a hearing alleging a constitutional violation.

**TENURED TEACHERS NONRENEWED:** The 14 tenured teachers who were nonrenewed is a substantial decrease from the year before. However, the 1987-88 data included 10 teachers who were nonrenewed as a result of the move of one program in one district to another public institution. Of the 14 nonrenewals, 3 requested hearings and 2 hearings were actually held. In neither case was the nonrenewal reversed by the hearing committee.

**RESIGNATION INSTEAD OF TERMINATION OR NONRENEWAL:** The survey also requested information on resignations of teachers who were faced with the possibility of termination or nonrenewal. The results show a total of 147 such resignations from 81 districts. Of these, 81% were nontenured teachers and 19% (28 teachers) were tenured.

**RELEASE FROM 1989-90 CONTRACTS:** The responses to this part of the survey may be affected by the absence of one of the largest districts, because the number of teachers requesting contract release is obviously a factor of the number of teachers employed. Even so, this year 326 teachers were reported as requesting release from their 1989-90 contract. Boards denied 5 of these requests and teachers withdrew 14; the remainder were granted with 24% resulting in the assessment of liquidated damages against the teacher. If these reports of liquidated damages are correct, boards appear to be showing a greater tendency to enforce their liquidated damages provisions.

**WRITTEN POLICY ON CONTRACT RELEASE:** Of the responses to the survey, 75% (194 districts) reported having written policy on the subject of release from a signed contract. Of those reporting written policy, 43% include the language in their negotiated agreement, 11% include it in the teach-

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er's contract, 59% require that "a suitable replacement" be found before the teacher may be released, 91% require that release be formally approved by the board, and 69% provide for liquidated damages (an increase of over 10% from last year). Of those providing for liquidated damages, only 24% (identical to last year) indicate that paying the damage assessments automatically releases the teacher from the contract.

Liquidated damages provisions generally require increased amounts as the date of contract release approaches the beginning of the school year. There is no single model policy in use and some boards assess liquidated damages according to the actual cost of obtaining a replacement. A few use percentages of the value of the contract instead of flat dollar amounts.

Boards without written policy have indicated that they review each case on its own merits; that they usually grant a release when requested on the theory that they don't want to force someone to stay in an inconvenient or financially stressful situation (e.g. the spouse has been transferred in employment to another location); that the availability of a replacement is a key factor in the board decision; that the matter has not come up.

No reliable data exists to show how many of the requests for contract release result from another board offering the teacher a "better" job but this is undoubtedly a factor in this problem.

#### OTHER TEACHER EMPLOYMENT PROBLEMS

Superintendents were given the opportunity on the survey form to comment on any other significant problems they are facing in employment relations with teachers. Only three responses were received and all of these expressed general concern about the availability of teachers to assume supplemental duties such as coaching. This topic has received significant discussion in the past; generally, the level of concern appears to be declining as districts adjust to the changes brought about by court decisions in this area.

This bulletin is being sent to all board members, superintendents, clerks, and board attorneys. For extra copies, or if you have questions about this data call the KASB Research Department at 1-800-432-2471.



TESTIMONY ON H.B. 2308  
BEFORE THE HOUSE EDUCATION COMMITTEE

January 31, 1990

Patricia E. Baker, Associate Executive Director  
Kansas Association of School Boards

Thank you, Mr. Chairman, for the opportunity to speak on House Bill 2308 which would make the decision of a teacher due process hearing committee binding on the board of education.

I appear in opposition to the bill for several reasons:

1. We believe boards of education should retain the right to have the final decision regarding the number and quality of teachers in the school district. Local, state and national demands to "reform" and improve education mandates that boards of education also have the ability to enact improvements.

2. Teachers are fully protected under the current law. Unanimous decisions of a hearing committee are binding, and all decisions are appealable to district court. This protects against arbitrary and capricious decision making.

3. There is not a demonstrated need for a change based upon recent history under the Act.

*Attachment 6.  
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We do recognize that it may be time to look at the provisions of the Teacher Due Process Act. It is becoming apparent that in some instances the process is protracted and inefficient. There are so few hearings that the parties are forced not only to present their cases but to educate a lay committee. The time commitment for teachers, their representatives, administrators and hearing committee members is sometimes excessive. We would like to suggest that time be taken to review the entire Act and to make recommendations for changes. We would appreciate the opportunity to work with teacher association representatives, state agencies and this committee to ensure a fair and efficient system for nonrenewal and termination of tenured teachers.

Thank you for your attention.

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## HB 2308

Testimony presented before the House Committee on Education  
by Gerald W. Henderson, Executive Director  
United School Administrators of Kansas

January 31, 1990

Mister Chairman and Members of the Committee:

United School Administrators of Kansas is opposed to HB 2308 and similar issues based on one simple premise. Final decisions affecting the operation of Unified School Districts in Kansas must continue to lie with duly elected boards of education. To usurp the decision making role of local boards in the circumstance defined in this bill would be to invite erosion of board authority and responsibility in other areas.

As in all cases when an employee of a district or any citizen of this state is not satisfied with board decisions in matters involving due process, that employee can seek relief in the district court.

We would urge you to report HB 2308 unfavorably.

*Attachment 7  
House Education  
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