

Approved March 19, 1991
Date

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION

The meeting was called to order by Representative Rick Bowden at
Chairperson

3:30 XXX
a.m./p.m. on February 19, 1991 in room 519-S of the Capitol.

All members were present except:
Rep. Larkin - Excused

Committee staff present:
Avis Swartzman, Revisor of Statutes Office
Ben Barrett, Legislative Research
Dale Dennis, State Department of Education
Donna Lutjohann, Secretary to the Committee

Conferees appearing before the committee:
HB 2120 - Craig Grant, K-NEA HB 2081 - Rep. Love
HB 2120 - Warren Sager, Teacher, Hays HB 2081 - Charles Stuart, USA
HB 2120 - Pat Baker, KASB HB 2081 - Dr. Stephen McClure, Supt.
HB 2120 - Gerald Henderson, USA HB 2081 - Pat Baker - KASB

The meeting was called to order by Chairman Bowden.

The hearing for HB 2120 was opened and proponent Craig Grant, KNEA testified in favor of passing HB 2120 which would change the due process procedures for teachers to provide that if a panel reached a 2-1 decision, then that decision would be binding upon both parties. (Attachment 1).

Warren Sager, a teacher who was not renewed last year, and a proponent of the bill. He explained what happened to him and his family. (Attachment 2).

Pat Baker, KASB, stated that Mr. Sager was offered his job back and that he did not accept it. Ms. Baker is an opponent of HB 2120. (Attachment 3)

Opponent, Gerald Henderson, USA stated that there were only two hearings held the 1989-90 school year and that the statute does not warrant a change. He also said that the locally elected boards of education must retain the right to make final decisions regarding their personnel. (Attachment 4).

Chairman Bowden closed hearings on HB 2120 and opened hearings on HB 2081. Rep. Love, proponent of the bill spoke in favor of funding for summer programs especially in the reading curriculums. He emphasized that Kansas City schools are in need of reading programs. He also favored funding only the districts that needed it. (Attachment 5)

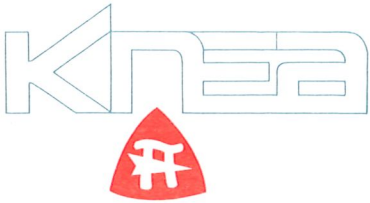
The second conferee, Charles Stuart, USA was also a proponent of HB 2081. He suggested amending the program dates, possibly having more than one session available. (Attachment 6).

Dr. Stephan McClure, Superintendent Shawnee Heights School District, also testified in favor of HB 2081. He wanted to clarify three points brought up in the previous hearing of February 14, 1991. (Attachment 7).

Pat Baker, KASB, offered comments regarding the bill. She stated that if there were adequate funding for the regular year and summer 'hool then they would be in favor of the bill. She did not want to jeopardize the regular school year for summer school.

Chairman Bowden closed the hearings on HB 2081.

The meeting was adjourned at 4:40 p.m. with the next meeting scheduled for Wednesday, February 20, 1991 at 3:30 p.m. in Room 519-S.



Attachment #1

Craig Grant Testimony Before The
House Education Committee
Tuesday, February 19, 1991

Thank you, Mr. Chairman. I am Craig Grant and I represent Kansas-NEA. I appreciate this opportunity to visit with the committee about HB 2120.

Kansas-NEA supports HB 2120 and thanks the committee for introducing it on our behalf. HB 2120 would change the due process procedures for teachers to provide that if a panel reached a 2-1 decision, then that decision would be binding upon both parties. Presently, as you are aware, unanimous decisions are binding.

There probably is not a more important policy decision that we will bring before you this or any year. We will talk about negotiations, money for salaries, tax policies and a myriad of other items; however, the chance to teach without that chance being denied by arbitrary or capricious reasons is a policy near and dear to the hearts of the members I represent. It does not affect many--but when it does, it hits home dramatically.

Let's step back and take a look at what happens when this statute is utilized. On or before April 10, a board of education, usually on the recommendation of an administrator, votes to nonrenew a teacher for the following year and notifies the teacher of such decision. (As an aside, a few times decisions are made to terminate a contract in the middle of the year. The same process would apply). If the teacher is in the first three years of employment (or in the first two years of employment in the district after completing a probationary period somewhere else in Kansas), the board is not required to give any reasons for the nonrenewal.

If the teacher is a nonprobationary teacher, the board must give reasons for the nonrenewal of the contract. The teacher may request a hearing before a due process hearing committee by notifying the board in

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writing and naming one person to serve on the committee. The board of education names one person to serve on the committee. Those two hearing committee members meet to select a third person who becomes the chair of the committee. (If the two cannot decide, they go to the district judge for assistance in the appointment of the third member.)

A hearing is held. In our scenario with a nonprobationary teacher, evidence is presented by the board (administration) as to why the reasons for nonrenewal are not arbitrary. The teacher will present evidence that the reasons are not proper and should be thrown out. A hearing will last anywhere between one and three days normally. After the hearing is completed, the due process panel has 30 days (unless both sides agree to longer) to render a written opinion, setting forth its findings of fact and recommendation as to the determination of the issue.

Presently if the opinion is 3-0 or unanimous, the opinion is binding upon both parties, subject to the limited appeal to the district court. If the opinion is a 2-1 or a majority vote, the board of education considers the situation and then decides whether the contract shall be renewed or nonrenewed. That decision has a limited appeal to the district court.

A word about the 3-0 decision being binding. A few years ago, an agreement was struck with the legislature to extend the probationary period to three years (from two) in exchange for a 3-0 binding vote. At that time we had an intern year program and the agreement was made that the intern year plus two years would be the probationary period. Within two years after that agreement was struck, the internship program was eliminated causing three full year teaching years as probationary. That agreement then seems to favor the board's side now.

That is the official procedure. Now let's talk about reality. When teachers are deemed unacceptable by the administration, many are "counselled" into resigning. In fact, personnel files are often "cleaned up" if the person resigns. Of the teachers who do not resign, many let the nonrenewal stand. Very, very few of the instances actually go to a hearing. Settlements are made with the teacher even after the hearing starts. So it is true that we do not have many hearings in this state.

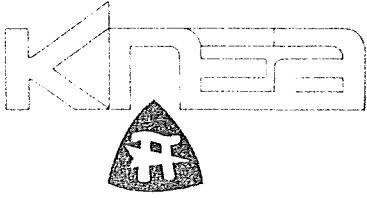
We do have 3-0 decisions. In fact, of the five hearings Kansas-NEA was involved in last year, two of them were 3-0 decisions (7 since 1986). Those cases are often the ones which are rather obvious as to which side is correct. On the other hand, the "sticky" cases are ones in which there are 2-1 decisions. Last year we had two 2-1 decisions in favor of the board. Not surprisingly, the board accepted the panel's decision as they do in all the cases decided in their favor. There have been 12 such cases since 1986. One case last year was decided in the teacher's favor. Not surprisingly, the board overturned the panel's decision and nonrenewed the teacher as they have in all 2-1 decisions in favor of the teacher. Five out of five 2-1 decisions in favor of the teacher have been overturned since 1986. So the score card since 1986 is seven 3-0 cases, 12 2-1 cases in favor of the board and accepted by the board, and five 2-1 cases in favor of the teacher all rejected by the board.

It makes some sense as to why they might do so. If the board has already made a decision to nonrenew, it does not want to be told to overturn their previous decision. That is why boards have a tendency to appoint hearing members who are inclined to vote their way. Probably the teacher has a tendency to appoint friendly panel members. Thus only the obvious cases are decided 3-0. (We have one person, a current

superintendent, who has been appointed as the board member on at least 12 panels in the last few years. He has yet to vote for the teacher.)

That is why we ask you to pass HB 2120. This change will provide true due process to the small number of teachers who utilize the procedure. This will not keep bad teachers in our schools, but rather will insure that there are justifiable reasons to force someone out of his or her chance to teach. It is the proper public policy for this legislature to institute. It is, simply, the right thing to do.

Thank you for listening to the concerns of our members.



Warren Sager Testimony Before The
House Education Committee
Tuesday, February 19, 1991

My name is Warren Sager. I have been a teacher and coach in the State of Kansas for over 22 years. I am currently a student at Fort Hays State University working on a masters degree, specializing in the area of academic advising in college athletic departments. Last year I was a teacher and coach in Unified School District No. 412 at Hoxie, Kansas, when I received notice of my nonrenewal. Having had first hand experience with the Teacher Due Process Law, I am here to ask you to vote in favor of making a 2-1 due process panel decision binding on a Board of Education and to share with you my feelings and frustrations with the process as it currently stands.

It is a travesty that teachers are expected to accept a process that does not follow the basic concepts of democracy. The simple principle that the majority opinion must be adhered to is the basis of the democratic process.

Currently the teacher due process law requires all members of the due process panel to agree before the Board of Education is required to follow its recommendation. The credibility of the panel is placed under a cloud of suspicion since the Board, as does the teacher, appoints one member of the hearing panel. Each needs only one vote in their favor in order to vindicate the original action of termination.

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Realizing the uphill battle I faced, I decided to continue with the hearing because it was the only way to keep my job and I honestly believe my position is legally correct. My due process hearing was on September 4, 1990. The hearing panel issued its 2-1 decision in my favor on October 30, 1990. The Board voted not to accept the panel's decision on January 7, 1991. I am appealing the Board's decision in district court at this time.

I am very frustrated with a process that does not treat a teacher as an important part of this society. Students have better due process than I do as a teacher. I am frustrated with the lip service that publicizes the importance of a quality education yet neglects the people who are to provide for this quality education.

The due process hearing panel who heard all of the evidence and reviewed the law believes that I was the wrong person to nonrenew. Convincing the due process hearing panel, however, did not help me at all. As far as I am concerned, the process was an exercise in futility. I believe that Boards of Education view teacher due process as a legal charade which must be carried out as a matter of law. I believe that the courts will agree with me and the hearing panel at some point, and the Board will be ordered to reinstate me. Think of the cost to me and to other teachers and to the Board that could have been saved through early resolution.

When I received my notice of nonrenewal in April 1990, I was completing my tenth year of teaching physical education and coaching for the Hoxie Community Schools. I had a daughter who was to be married in Hoxie in December 1990 and a son who was finishing his Sophomore year in high school. My family and I hoped that Hoxie would be our permanent home. Immediately after receiving the notice of nonrenewal and realizing the implications, I began searching for a new job. Although the hearing panel could have reinstated me to my teaching position before the beginning of the 1990-91 school year, I knew this was unlikely because of the Board's power to reject the panel's decision if the Board's appointee voted in its favor.

After an unsuccessful job search, my family and I decided that it was best for me to go back to school full-time to obtain my Master's Degree. In order to meet our financial obligations, it was necessary for me to withdraw all of my retirement funds from KPERS, apply for a \$7000 student loan and ask my wife to work full time to help with our living expenses while I attended school. My son left the only school system and friends he has ever known; and he has had to reestablish himself at a new high school with two years left. We can never regain the financial loss or change the emotional upheaval of my family's forced move.

Could a different due process system have prevented this? I believe so. In the first place, knowing that the hearing would be binding on the Board would have changed how we approached the problem. My nonrenewal would

have been considered temporary. I would have been reinstated with back pay in October 1990, and a move would not have been necessary.

The most important consideration, however, is one of fundamental fairness. The Board of Education ignored the laws of Kansas and made no attempt to rectify the situation when told by the majority of the hearing panel that it had done so. When an adverse 2-1 vote is not binding on a Board of Education, the minority controls. Yes, it can be overturned by the courts, but at what cost. The teacher will loose even if eventually proven correct.

My parents and my wife's parents have instilled in both of us the important of honor, respect, discipline and honesty in living our lives. I believe this is the kind of teacher that you would want your children to be associated with. I believe that within a student's mind lies the capability to display these basic characteristics provided we allow them to express them in their own cognitive process. I know that unless you stand up and give Kansas teachers the respect that most of them deserve, you will lose the positive role models that parents respect. The most effective way to lose teachers is to take away their dignity; their pride; their enthusiasm; and their will to explore and make a difference.

The superintendent and Board of Education have ignored previous case law and, as of this time, have made no real attempt to rectify a situation that

the majority of the hearing panel members found to be unlawful concerning the merits of my particular case.

It's time, as legislators, to stand up for the basic ideals of human rights and give to teachers the constitutional heritage of "majority rule."

I ask that you vote for the legislation before you. The 2-1 decision of a hearing panel is a fair and democratic way to deal with the issue of teacher due process. This legislation allows teachers to be treated in a more reasonable manner.

Thank you for your consideration of this matter.

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS



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

Testimony on H.B. 2120
before the
House Committee on Education

by

Patricia E. Baker
KASB Associate Executive Director/General Counsel

on behalf of the
Kansas Association of School Boards
Unified School District No. 512 (Shawnee Mission)
USD 229 (Blue Valley-Stanley)

February 19, 1991

Mr. Chairman, Committee members, thank you for the opportunity to speak on House Bill 2120 which amends the Teacher Due Process Act.

Due process for public school teachers was never intended to be a guarantee of lifetime employment. Rather, the concept originated to protect teachers from arbitrary and capricious actions by employing school boards. Preventing firing due to a change in the political or philosophical make-up of school boards or administrations is a positive protection for public employees. That protection must always be balanced with the need for districts to offer the best and most appropriate educational opportunities for all students.

At a time when demands are increasing for school improvement and accountability, it is inopportune to further restrict school boards in attempts to meet those demands. School board members are elected officials and are responsible under the Constitution and the laws of Kansas for providing public education. To restrict the authority of

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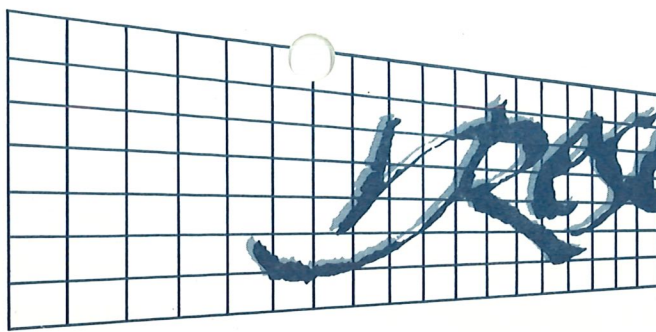
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locally elected boards to determine staffing needs flies in the fact of "school reform."

The current law provides protection for Kansas teachers by making 3-0 hearing committee decisions binding and by providing for judicial review of 2-1 decisions. This protection allows teachers who feel that board actions are arbitrary or capricious to argue their case to an impartial court.

House Bill 2120 goes beyond protecting teachers from arbitrary and capricious actions of school boards. It allows non-elected, third party hearing committees to substitute their judgment for that of elected officials. The provisions of this bill allow policy decisions by parties who cannot be held accountable.

I ask you to reject the inference that non-renewals are simply an employment decision. They are an educational policy decision. In the last few years several non-renewals of tenured teachers have been due to reduction in staff or to reorganization for school improvement. A binding hearing committee decision sets the educational and financial priorities for a school district. We hope that you will not take that priority setting out of the hands of those who are accountable. Thank you.



BULLETIN

PUBLISHED BY THE KANSAS ASSOCIATION
OF SCHOOL BOARDS

November 1990

Number 3

ANNUAL SURVEY ON TEACHER EMPLOYMENT RELATIONS

Jim Hays, Research Director

1989-90 Information from Unified School Districts

	1984 -85	1985 -86	1986 -87	1987 -88	1988 -89	1989 -90	1990 -91
Teachers Terminated	3	2	5	3	5	7	
Nontenured Nonrenewed	111	111	108	100	101	102	
Tenured Nonrenewed	37	38	31	34	14	25	
Resignations instead of Nonrenewal	123	116	108	112	147	126	
Requests for Contract Release	442	425	386	421	356	326	402
Boards with Written Policy on Contract Release	237	221	223	196	216	194	201

In September 1990 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 1990-91 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 256 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.

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 or stayed about the same. 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 seven teachers terminated during the 1989-90 school year, from seven separate districts. These terminations were verified with a phone survey of the districts reporting terminations. In only two cases were hearings requested; the requests were later withdrawn.

NONTENURED TEACHERS NONRENEWED: There were 102 nontenured teachers who were nonrenewed by 67 Kansas school boards last year. These 102 teachers included one in each of thirty-eight districts and 2 or more from twenty-nine other districts. Two of these nontenured teachers requested a hearing alleging a constitutional violation, but these requests were later withdrawn and no hearings held.

TENURED TEACHERS NONRENEWED: The 25 tenured teachers who were nonrenewed is a return to a more conventional number of these cases, after a significant decline in the year before. Of the 25 nonrenewals, 9 requested hearings and 2 hearings were actually held. In neither case was the nonrenewal reversed by the hearing committee.

RESIGNATION INSTEAD OF NONRENEWAL: The survey also requested information on resignations of teachers who were faced with the possibility, or perhaps the certainty, of nonrenewal. The results show a total of 126 such resignations from 61 districts. Of these, 79% were nontenured teachers and 21% (25 teachers) were tenured.

RELEASE FROM 1990-91 CONTRACTS: This year 402 teachers were reported as requesting release from their 1990-91 contract. Boards denied 14 of these requests and teachers withdrew 4; the remainder were granted with 24% resulting in the assessment of liquidated damages against the teacher. It appears that this level of liquidated damages enforcement is consistent with boards' actions in prior years.

WRITTEN POLICY ON CONTRACT RELEASE: Of the responses to the survey, 79% (201 districts) reported having written policy on the subject of release from a signed contract. Of those reporting written policy, 48% include the language in their negotiated agreement, 17% include it in the teacher's contract, 64% require that "a suitable replacement" be found before the teacher may be released, 95% require that release be formally approved by the board, and 65% provide for liquidated damages. Of those providing for liquidated damages, only 25% (24% 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. Several responses were received and many of these expressed general concern about the availability of teachers to assume supplemental duties such as coaching and activity sponsorship. This topic has received significant discussion in the past; generally, the level of concern reflects districts' adjustments 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.



HB 2120

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

Mister Chairman and members of the committee. United School Administrators of Kansas opposes **HB 2120** for two primary reasons. One, we fail to see any significant problem in the current circumstances which would warrant a change in statute. The data presented by KASB certainly does not reveal an overwhelming number of teacher due process hearings in the state. Only two hearings were held during the 1989-90 school year.

Secondly, we continue to believe that locally elected boards of education must retain the right to make final decisions regarding personnel. Employees who believe that boards have not made good faith decisions are free to seek redress in the courts.

We would urge the committee to report **HB 2120** unfavorably.

HB2120/gwh

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TOPEKA

HOUSE OF
REPRESENTATIVES

RESPONSIBILITY

The original Kansas Constitution required the Kansas Legislature to establish a statewide system of free public education. Since the writing of the constitution this state responsibility for education has been delegated by statute to local Boards of Education with oversight by a State Board of Education. Education however remains a state responsibility.

The level of educational achievement plays a significant role in the income of Kansas residents. It also partially determines who will be on welfare or in our penal institutions, and thus wards of the state.

The level of educational achievement influences the decisions of industrial leaders as they decide where to locate. Industrial leaders want a high quality worker and good schools for children of the executives and other employees who will come to Kansas.

Not all communities have the same financial resources to set up a system of free public education. Most children are neither educated nor do they live out their lives in the community in which they are born.

The education of every pupil has an effect upon the total welfare of Kansas. Therefore, it is in the best interest of the state to provide the best educational opportunity for every



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House Bill 2243 is an act concerning Summer Reading Programs in Unified School District No. 500.

The purpose of this program is to improve the educational system of this school district by providing remedial reading for grades one through three.

There will be a pupil-teacher ratio of seven to one and the program must be approved by the State Board as a valid method for remediation of the deficiencies of pupils in reading.

This board will also provide transportation.

The State Board shall prescribe criteria and procedures for assessment and approval of the summer program. Approval by the State Board of the summer program is prerequisite to payment of state aid under this act to the board.

Amounts deposited in the summer program operations shall supplement remedial funding and shall be used exclusively for the payment of expenses.

State Board shall evaluate the results to determine whether pupils who participated in the program when compared to those who did not improve. State Board shall make a recommendation to the Governor and the legislature with regard to continuation or termination of the program.



HB 2081

February 19, 1991

Testimony presented before the House Committee on Education
by Charles L. "Chuck" Stuart, Legislative Liaison
United School Administrators of Kansas

Mr. Chairman and members of the committee, United School Administrators of Kansas appreciates the opportunity to support HB 2081. Counting summer schools for state aid through the SDEA formula is a logical change and may allow some districts to increase offerings.

We would ask that you look at the July 10 enrollment count date as provided in the bill. Many districts have a four or five week summer program which is concluded before July 10.

Setting an enrollment date to coincide with a specific week of the summer course might provide greater flexibility and allow some districts to have more than one session of summer school.

HB2081/bsm

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SHAWNEE HEIGHTS
UNIFIED SCHOOL DISTRICT NO. 450

Central Services Facility
4401 S.E. Shawnee Heights Road
Tecumseh, Kansas 66542-9799 (913) 379-0584

Dr. Stephen G. McClure, Superintendent of Schools
Robert H. Ragan, Assistant Superintendent
Rebecca L. Lisher, Curriculum Director

Testimony to the
House Education Committee
On Bill #2081

by Dr. Stephen G. McClure

Shawnee Heights U.S.D. #450

I wanted to clarify three questions that was brought up in the previous hearing on this bill:

1. What would be this bill's cost to the state?

48,978 - Students take part in 1990 summer school (other than driver's education and Chapter I)

6,427 F.T.E. - was generated by 1990 summer school

x \$4,144 - average budget per pupil
\$20,720,000 - Total summer school cost

44% average state aid

\$9,116,800 - Total state cost

2. How do local districts handle the need for air-conditioned facilities?

The same way local districts handle the need for additional technology. The legislature authorizes local districts to levy their entire four mill capital outlay levy.

3. At what rate will this legislation stimulate a growth in summer school offerings and enrollment?

This is permissive legislation, and as such, most closely parallels the Inservice Act. The Inservice Act resulted in increase in educational entities involved over eight years.

FY 1984 - 5 entities	FY 1988 - 151 entities	HOUSE EDUCATION Attachment 7 February 19, 1991
FY 1985 - 21 entities	FY 1989 - 180 entities	
FY 1986 - 71 entities	FY 1990 - 212 entities	
FY 1987 - 110 entities	FY 1991 - 249 entities	

Local ownership of inservice education is greater because each of these entities choose to become involved.