

Approved: March 26, 1992
Date

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Rick Bowden at 3:30 p.m. on March 23, 1992 in Room 519-S of the Capitol.

All members were present except:

Representative Sherman Jones - Excused
Representative Dorothy Flottman - Excused

Committee staff present:

Ben Barrett, Legislative Research
Avis Swartzman, Revisor of Statutes Office
Shirley Wilds, Secretary to the Committee

Conferees appearing before the Committee:

Cynthia Lutz Kelly, KASB
Craig Grant, KNEA

The meeting was called to order by Chairperson Rick Bowden.

Chairperson Bowden announced changes in this week's agenda. House Bill 3179 has been moved to Thursday and Dr. Jack Skillett will be here to share results of study of KATE. Also, tomorrow the committee will have action on SB 109.

Hearing on SB 109:

Cynthia Kelly. Ms. Kelly said SB 109 was originally introduced at the request of KNEA and represents a compromise between their association and KASB, stating both associations believe it will improve due process proceedings and that the laws meet constitutional requirements. (See Attachment #1.)

Craig Grant. Mr. Grant said KNEA and KASB worked together on SB 109 to change the three-person panel to a one-person hearing officer, worked out the cost situation for the hearing, the court reporter and transcription of the hearing. He believes the end result will cause many fewer due process decisions to be appealed to the court. (See Attachment #2.)

Chairperson Bowden reminded the committee HB 2922 is scheduled for hearing tomorrow.

Representative Reinhardt moved to approve March 19 minutes; seconded by Representative Blumenthal. Motion carried.

The next scheduled meeting is March 24, in Room 519-S Statehouse.

Upon completion of its business, the meeting adjourned at 3:55 p.m.



**Testimony on S.B. 109
before the
House Committee on Education**

by

**Cynthia Lutz Kelly
Deputy General Counsel
Kansas Association of School Boards**

March 23, 1992

Mr. Chairman, members of the committee, thank you for the opportunity to appear on behalf of our member school districts to speak in favor of Senate Bill 109. Senate Bill 109 represents a compromise between our association and KNEA which we believe will improve due process proceedings in our State and ensure that our law meets constitutional requirements.

Senate Bill 109 was originally introduced at the request of KNEA, after the Tenth Circuit Court of Appeals found that provisions of Oklahoma law which required a teacher to pay for one half of the cost of the hearing panel and one half of the cost of the transcript, even if the teacher did not request the transcript, were unconstitutional. Similar provisions in our current law are probably also unconstitutional. The amendments to Senate Bill 109 which were adopted

*Education
Attachment #1
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by the Senate cure the constitutionally suspect provisions in current law, and improve the fairness and efficiency of due process proceedings by replacing the three person hearing panel with a single, qualified hearing officer.

Section 1 of the bill addresses the constitutional issues. It requires the board to pay the cost of a single hearing officer at a per diem rate which should attract qualified persons, and ensures that an accurate record of the hearing will be made at the board's expense. The party requesting transcription of the transcript will bear the cost.

Section 2 establishes a procedure for selecting a single hearing officer. The procedure places control of the list of hearing officers in the Kansas State Department of Education, and attempts to ensure that hearing officers are qualified and selected in a manner which is fair to both parties. Under the current system, two of the parties are generally biased, and none of the panel must meet any qualification standards. Senate Bill 109 requires that hearing officers be attorneys with previous experience or training in this area of the law. Further, to ensure that there is less possibility of bias, attorneys who have represented either a teacher or a board in a due process hearing within the past five years are ineligible to be on the list. When a hearing officer is needed, the board will notify KSDE, and they will generate a list of nine, randomly selected hearing officers. KSDE will forward the list to the parties, and the parties will alternately strike names until only one name remains. That person will serve as the hearing officer. Alternatively, the parties may agree to obtain the services of an arbitrator through the American Arbitration Association. We believe that this proposed system will result in fairer and more efficient hearings.

Attach #1-2

The amendments in sections three through six are technical in nature, replacing references to the hearing panel with references to the hearing officer. The amendments in Section 6 also make it clear that either party can appeal from the hearing officer's decision.

The amendments in Section 7 simply clarify who should be entitled to due process procedures, and make it clear that a teacher must be entitled to the procedures under the act in one school district in order to qualify for the shorter probationary period in another school district.

The amendments in Section 8 clarify the responsibilities of a teacher who alleges an abridgment of a constitutional right. Current law does not set a time frame or indicate to whom the notice must be given. The remainder of the amendments in Section 8 are technical in nature.

We recommend your favorable consideration of Senate Bill 109.
Thank you for your time and consideration.

Attach # 1-3



KANSAS NATIONAL EDUCATION ASSOCIATION / 715 W. 10TH STREET / TOPEKA, KANSAS 66612-1686

Craig Grant Testimony Before
House Education Committee
Monday, March 23, 1992

Thank you, Mr. Chairman. I am Craig Grant and I represent Kansas-NEA. I appreciate this opportunity to speak to the committee in support of SB 109.

SB 109 was a bill introduced at our request to solve the due process hearing costs problem we saw in our bill. The courts had indicated that the cost sharing portion of the Oklahoma due process law--similar to ours--was not constitutional. The most recent court case on our particular law has also declared that cost sharing provision to be unconstitutional.

This year we were approached by KASB to try to work out a deal on this bill which would change the three-person panel to a one-person hearing officer. We also worked out the cost situation for the hearing, the court reporter, and the transcription of the hearing. The bill before you, SB 109, is the product of our agreement.

We support SB 109 as a bill which is a result of much work, sweat, give-and-take and hopefully will cause many fewer due process decisions to be appealed to court.

Thank you for listening to our concerns.