

Approved February 18, 1992
Date

MINUTES OF THE SENATE COMMITTEE ON EDUCATION

The meeting was called to order by SENATOR JOSEPH C. HARDER at
Chairperson

1:30 ~~xxx~~ p.m. on Wednesday, February 12, 1992 in room 123-S of the Capitol.

All members were present except:

Senator Jim Ward, excused

Committee staff present:

Mr. Ben Barrett, Legislative Research Department

Ms. Avis Swartzman, Revisor of Statutes

Mrs. Millie Randell, Committee Secretary

Conferees appearing before the committee:

SB 109 - Teachers, costs of hearings provided upon nonrenewal or termination of contracts of employment.

Proponents:

Ms. Cindy Kelly, Deputy General Counsel, Kansas Association of School Boards

Mr. Craig Grant, Director of Governmental Relations, Kansas National Education Association

Following a call to order by Chairman Joseph C. Harder, Senator Frahm moved that minutes of the Committee meetings of Wednesday, February 5 and Thursday, February 6 be approved. The motion was seconded by Senator Karr, and the minutes were approved.

The Chairman informed the Committee that SB 109 is a carry-over bill from the 1991 session, and he then recognized the first conferee.

Ms. Cindy Kelly, Deputy General Counsel, Kansas Association of School Boards, testified that although KASB supports the concepts contained in SB 109 she would like to offer amendments to the bill which "would cure the constitutionally suspect provisions in current law in a manner which is less costly for boards of education; replace the three-person hearing panel with a single, qualified hearing officer; change the standard of review at the district court level; and lengthen the probationary period of teachers who begin teaching after this year". (Attachment 1)

Ms. Kelly, explaining how a single hearing officer would be obtained, said that the Commissioner of Education would solicit applications from people who would wish to serve as hearing officers and then compile a list of those people deemed to be qualified to serve as hearing officers under the provisions of Section 2. The procedure, she explained, would be initiated when a teacher should request a due process hearing. The board, she said, would request from the Commissioner of Education a list of seven prospective officers whose names would then be stricken alternately by each interested party until one person's name should remain on the list; that person would be the hearing officer.

Replying to another question, Ms. Kelly estimated that the average cost of a transcript is between \$700-\$1000; a copy would cost \$200 to \$400. Hearings, she said, usually last from one to three days. Replying to another question, Ms. Kelly stated that SB 109 would correct constitutional deficiencies but in a way which is extremely costly for boards of education.

Ms. Kelly further responded that in the majority of states due process hearings are performed before boards of education. Procedures in Kansas, she said, are quite extensive compared to procedures used in other states.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON EDUCATION,

room 123-S, Statehouse, at 1:30 ~~xxx~~/p.m. on Wednesday, February 12, 1992

The Chair then recognized Mr. Craig Grant, Director of Governmental Relations, Kansas National Education Association.

Mr. Grant stated that his organization supports SB 109 in its present form and requests that no substantive changes, as suggested by KASB, be made to the bill. (Attachment 2)

Ms. Kelly, responding to another question, replied that although KASB would prefer that all of the issues they presented be addressed, they believe the bill as submitted is necessary. She requested that the Committee at least consider KASB's amendments affecting costs as found under Section 1. of SB 109.

Following a call for additional questions, the Chair announced that SB 109 would be taken under advisement.

The Chair adjourned the meeting.

SENATE EDUCATION COMMITTEE

TIME: 1:30 p.m. PLACE: 123-S DATE: Wednesday, February 12, 1992

GUEST LIST

<u>NAME</u>	<u>ADDRESS</u>	<u>ORGANIZATION</u>
Kelle Brooks	Sacred Heart School Emporia Ks	
Aaron Ball	Sacred Heart School Emporia Ks	
Amy Jackson	Sacred Heart School Emporia K.S.	
Lorie Wagner	Sacred Heart School Emporia K.S.	
Jacque Dates	Topeka Ks	SIFE
Steve Kaufman	Moundridge, Ks	USD 423
Tony Schmidt	Moundridge, Ks	USD 423
Ladislav M. Hermann	Topeka	Gov. Office
Wm J. Meixner	P.O. Box 267, Merida	USD 340
Robert Frauchs	P.O. Box, Winchester	USD 339
Esther Steichen	Manhattan	KSU Doctoral Pract.
Kay Cole	Topeka	KNEA
Craig Grant	Topeka	KNEA
Chuck Tilman	Topeka	KNEA
Bob Johnson	3308 Douglas Hill	Turner 202
Robert HALE	1800 South 55th, RR, Ks	TURNER USD 202
Kim Vickers	Topeka	Intern (Karr)
<i>Dindy Kelly</i>	<i>Topeka</i>	<i>KASB</i>
Deanne Aft	Topeka	USD # 500
Linda Titman	McPherson	USD # 418
Tony Shott	McPherson	USD # 418
Sue Gamble	USD 512 Shawnee Miss	USD # 512
Dennis Ridge	Inman	USD # 448

SENATE EDUCATION COMMITTEE

TIME: 1:30 p.m. PLACE: 123-S DATE: Wednesday, February 12, 199

GUEST LIST

<u>NAME</u>	<u>ADDRESS</u>	<u>ORGANIZATION</u>
Jack Martin	307 N. Vine	Page
Lawrence Harding	810 N. 2nd	Page
Josh Umbrich	909 N. W 2nd	Page
Joel Groninger	404 NW 5th	Page
Jay Olsen	Box 189 Elkhart KS	USD 218 BOE
Berky Parker	P.O. Box 786 ELKHART, KS	USD 218 BOE
Opyle C. Porter	2037 Park Ave, Sacred Heart School	Emporia, KS
Isabell Aldred	Sacred Heart School	Emporia, KS
Jenny Garcia	" Sacred Heart School, Emporia "	" KS
Bryan Cook	"	"
Veronica Mendez	"	"
Judd W. Moore	300 N. 1st, Emporia	USD 319
Katharine Wickert	Jopka	USA
Jack D. Parker	Buhler	USD 313
Bill Hiles	LARNED	USD 495
Blaine Ammitte	Ellinwood	USD # 355
Howard Hawley	Herington	USD # 487
Thomas W. Kern	HERINGTON	USD # 487
Kelly Burenkiode	Sacred Heart School	S.H.S.
Angie Fakhman	"	"
Andrea Orsich	Sacred Heart School,	Emporia KS,
Dean Hansen	"	"
Tyler Basiljevov	"	" Emporia KS,
Sheila	"	" Emporia KS.



Testimony on S.B. 109
before the
Senate Committee on Education

by

Cynthia Lutz Kelly
Deputy General Counsel
Kansas Association of School Boards

February 12, 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 the concepts contained in Senate Bill 109, and to offer amendments to the bill which we believe will improve the due process procedures employed and ensure that our law meets constitutional requirements.

The provisions of Kansas law which require a teacher to pay half the cost of the hearing committee and half the cost of the transcript are constitutionally suspect in light of the Tenth Circuit opinion in 1989 which concluded that similar provisions in Oklahoma's due process law were unconstitutional. Senate Bill 109 attempts to cure these constitutional infirmities, but in a way which results in excessive costs to a board of education.

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While we agree with the concepts contained in Senate Bill 109, we are proposing several amendments to the bill to address the constitutional problems in a prudent manner, and to improve the overall efficiency and fairness of the process. These amendments would cure the constitutionally suspect provisions in current law in a manner which is less costly for boards of education, replace the three person hearing panel with a single, qualified hearing officer, change the standard of review at the district court level, and lengthen the probationary period teachers who begin teaching after this year.

The proposed amendments to the original bill require the board to pay the cost of a single hearing officer at a per diem rate which should attract qualified persons, and ensure that an accurate record of the hearing will be made at the board's expense. Because there is no constitutional right to have a transcript of a due process hearing, and because the transcript is unnecessary at the hearing level, the amendment proposes that the transcript should be transcribed only if it is necessary for an appeal, and that the appellant should bear the cost.

The proposed amendments in Section 2 establish a procedure for selecting a 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 there is no method of ensuring that any of the hearing officers have any qualifications. We believe that this proposed system will result in fairer and more efficient hearings.

The proposed amendments in Section 6 make it clear that either party can appeal from the hearing officer's decision and allow for de novo review at the district court level. Boards of education believe

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that the district court should be allowed to reweigh the evidence in cases like this where the decision involved may have a significant impact on the lives of hundreds of children.

The proposed amendments in Section 7 address the issue of who should be entitled to due process procedures. We recommend that starting with the 1993-94 school year only full-time teachers who have worked a probationary period of five years, and been offered a sixth contract, be covered by the Act. As we embark on school improvement with performance based education, everyone must look forward to some changes. Different skills and enhanced skills are going to be required of all of our personnel. There are going to be changes in curriculum; changes in emphasis of programs; changes in accountability standards. To make school improvement work, schools and employees must be given the flexibility to meet the expectations of the public and the legislature. These amendments would allow boards the flexibility that they need in making personnel decisions.

The remainder of the proposed amendments simply reflect the change to a single hearing officer and do not substantively change the law.

With the proposed amendments we recommend favorable consideration of Senate Bill 109. Thank you for your time and consideration.

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PROPOSED AMENDMENTS TO SB109

SECTION

EXPLANATION OF THE CHANGE

Section 1

Amends K.S.A. 1991 Supp. 72-5440 to require the board to pay the majority of the costs of the hearing. In Rankin v. Independent School Dist. No. I-3, 876 F.2d 838 (10th Cir. 1989), the Tenth Circuit found that the Oklahoma teacher due process statutes which required that the teacher pay for half the costs of the hearing committee and half the costs of the transcript, whether or not the teacher was the party requesting that the transcript be transcribed, was unconstitutional because those provisions infringed on the teacher's right to be afforded due process. In light of the court's decision in Rankin, KASB agrees that current provisions of our due process law should be amended to correct the potential constitutional deficiencies.

Sub. (a) In section 2 of the amendments it is recommended that the current three person hearing committee be replaced with a single hearing officer. The amendments in subsection (a) reflect this change.

Sub. (b) Current law limits compensation for members of the hearing committee to \$35 per day plus expenses. At this rate of pay it has become increasingly difficult to get qualified people to serve as chairpersons of the committee. The amendment would require that the hearing officer be given a per diem compensation of \$240 plus expenses, and that the board be responsible for the cost.

Sub. (c) Current law requires that testimony at a hearing be taken by a certified shorthand reporter if either party requests it. In practice, such a record is always requested. Current law also requires that the parties split the cost of the recording and preparing of the transcript. Because an accurate record is necessary for appellate purposes, the amendment requires that the board pay for the cost of making the record. The hearing officer or committee has heard the evidence first hand, and does not need a transcript in order to render a decision in the case. Therefore, the amendment suggests that the record should be transcribed only if the case is appealed and that it is the appellant who should bear the cost. Constitutional due process rights do not require that a transcript be prepared. While the board is willing to bear the cost of ensuring that an accurate record is made, it should not be required to bear unnecessary costs.

Sub. (d) This amendment is simply to clarify that attorney fees are not included in costs.

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- Section 2. The amendments in section 2 eliminate the current three person hearing committee, and establish a procedure for selecting one hearing officer.
- Sub. (a) Requires that the notification to the teacher notify him or her of the right to a hearing before a hearing officer.
- Sub. (b) Requires the board to notify the commissioner that a list of seven qualified hearing officers is needed.
Requires the commissioner to generate a list, from the "master" list required in subsection (d), of seven hearing officers in a random manner and forward the list to the board.
KASB believes that the Department of Education is the appropriate state agency to keep the list of qualified hearing officers and to respond to a board's request for a list for a hearing.
- Sub. (c) Requires the board to forward the list to the teacher and for the parties, beginning with the teacher, to alternately strike a name until only one name remains. This person will serve as the hearing officer.
This procedure ensures that in any hearing officer selection each party will have a chance to eliminate three of the potential candidates that they find unacceptable. It is an attempt to ensure that the hearing officer will be impartial and acceptable to both parties. Because it is the board that is required to afford due process, it is the board that should have the final selection in the striking process.
- Sub. (d) Requires the commissioner to compile and maintain a list of qualified hearing officers.
Requires that hearing officers be attorneys.
The requirement that hearing officers be attorneys is an attempt to ensure that the officers will understand the legal concepts and arguments presented in the case.
- Sub. (e) Requires attorneys to submit an application to the commissioner if they desire to be hearing officers, and requires the commissioner to determine if the applicant is eligible.
- Sub. (f) Establishes qualifications for hearing officers.
This is an attempt to ensure that those people who apply to be hearing officers have an interest or expertise in this area of the law.
- Section 3. Amendments reflect the change from a hearing committee to a hearing officer.
- Section 4. Amendments reflect the change from a hearing committee to a hearing officer.

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Section 5. Amendments reflect the change from a hearing committee to a hearing officer.

Section 6.
Sub. (a) Amendments reflect the change from a hearing committee to a hearing officer, and make it clear that either party can appeal from the hearing officer's decision.

Sub. (b) The language of current subsection (b) is deleted. Boards do not believe that they should be required to adopt the decision of the hearing committee or officer as their decision when they do not agree with the decision and choose to appeal from the decision.

The new language in subsection (b) creates a procedure for appealing from the decision of the hearing officer, and changes the standard of review from the current standard under K.S.A. 60-2101, to a standard of *de novo* review.

Section 7. Changes the years employment necessary to entitle a teacher to the protections of the act from three years to five years, but grandfathers in anyone who begins teaching before the new provisions become effective.

Changes the application of the act to apply to full time teachers only.

Clarifies that a teacher must be eligible for the protections of the act in another district (by requiring the offer of a fourth or sixth contract) in order to qualify for the shorter probationary period in a new district.

Section 8. Clarifies the notice provisions. Current law does not contain any time limits for notification, nor does it specify to whom the notice must be provided.

Other amendments reflect the change from a hearing committee to a hearing officer.

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SENATE BILL No. 109

By Committee on Education

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8 AN ACT concerning teachers; relating to the costs of hearings pro-
9 vided upon notice of nonrenewal or termination of contracts of
10 employment; amending K.S.A. 1990 Supp. 72-5440 and repealing
11 the existing section.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 1990 Supp. 72-5440 is hereby amended to read
15 as follows: 72-5440. (a) For ~~attending~~ *appearing* before the hearing
16 committee at a hearing, witnesses who are subpoenaed shall receive
17 \$5 per day and mileage at the rate prescribed under K.S.A. 75-
18 3203, and amendments thereto, for miles actually traveled in going
19 to and returning from attendance at the hearing. The fees and mile-
20 age for the attendance of witnesses shall be ~~borne~~ *paid* by the party
21 calling the witness, except that fees and mileage of witnesses sub-
22 poenaed by the hearing ~~committee~~ shall be ~~borne~~ *equally paid* by
23 the ~~parties board~~. Witnesses voluntarily ~~attending~~ *appearing* before
24 the hearing ~~committee~~ shall not receive fees or mileage for attend-
25 ance at the hearing.

26 ~~(b) Each member of the hearing committee shall be paid per~~
27 ~~diem compensation, of \$150 for each day of actual attendance at~~
28 ~~the hearing or at any meeting of the hearing committee held for the~~
29 ~~purpose of performing the hearing committee's official duties. In~~
30 ~~addition to compensation, each member of the hearing committee~~
31 ~~shall be paid subsistence allowances, mileage and other expenses as~~
32 ~~provided in K.S.A. 75-3223, and amendments thereto. The costs for~~
33 ~~the services of members of the hearing committee shall be borne~~
34 ~~by the parties as follows: (1) For each member who is desig-~~
35 ~~nated by a party, the party designating the member; and (2)~~
36 ~~for the third member, by the parties equally paid by the board.~~

37 (c) Testimony at a hearing may, and upon the request of either
38 party shall, be taken by a certified shorthand reporter or ~~electron-~~
39 ~~ically recorded, and shall be transcribed upon request of either~~
40 ~~party or upon direction by a court. The costs for transcription shall~~
41 ~~be paid by the board. The teacher shall be provided with a copy~~
42 ~~of the transcript upon request and the cost shall be paid by the~~
43 ~~board.~~

officer

officer

(b) The hearing officer shall be paid \$240 per diem compensation, or a portion thereof, for each day of actual attendance at the hearing or for any meeting held for the purpose of performing his or her official duties. In addition to compensation, the hearing officer shall be paid subsistence allowances, mileage, and other expenses as provided in K.S.A. 75-3223, and amendments thereto. The costs for the services of the hearing officer shall be paid by the board.

(c) Testimony at a hearing shall be recorded by a certified shorthand reporter. The cost for the certified shorthand reporter's services shall be paid by the board. The transcript shall be transcribed only if the decision of the hearing officer is appealed to the district court. The appellant shall pay for the cost of transcription.

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(d) Each party shall be responsible for the payment of its own attorney fees.

1 ~~(d)~~ All costs of a hearing which are not specifically allocated in
2 this section shall be borne equally by the parties paid by the
3 board.

(e)

4 ~~Sec. 2. K.S.A. 1990 Supp. 72-5440 is hereby repealed.~~

5 ~~Sec. 3. This act shall take effect and be in force from and after~~
6 ~~its publication in the statute book.~~



Section 2. K.S.A. 1991 Supp. 72-5438 is hereby amended to read as follows: 72-5438. (a) Whenever a teacher is given written notice of intention by a board to not renew or to terminate the contract of the teacher as provided in K.S.A. 72-5437, and amendments thereto, the written notice of the proposed nonrenewal or termination shall include (1) a statement of the reasons for the proposed nonrenewal or termination, and (2) a statement that the teacher may have the matter heard by a hearing ~~committee officer~~, upon written request, filed with the clerk of the board of education or the board of control, or the secretary of the board of trustees within 15 days from the date of such notice or nonrenewal or termination. ~~The written request of the teacher to be heard shall include therein a designation of one hearing committee member.~~

(b) Upon the filing of any such request, the board shall designate, within ~~15~~ 10 days thereafter, ~~one hearing committee member.~~ ~~The two hearing committee members shall designate a third hearing committee member who shall be the chairperson and who shall in all cases be a resident of the state of Kansas. In the event that the two hearing committee members are unable to agree upon a third hearing committee member within five days after the designation of the second hearing committee member, a district judge of the home county of the school district, area vocational technical school or community college shall appoint, upon application of the teacher, the board, or either of the first two hearing committee members, the third hearing committee member. Such appointment may be made by the district judge from a list, which shall be compiled and maintained by the commissioner of education, or impartial persons who are representative of the public and who are qualified to serve as hearing committee members.~~

notify the commissioner of education that a list of qualified hearing officers is required. Within 10 days after the receipt of notification from the board, the commissioner shall provide to the board a list of seven randomly selected, qualified hearing officers.

(c) Within 5 days after receiving the list from the commissioner, the board shall forward a copy of the list to the teacher. Thereafter,

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each party shall eliminate three names from the list, and the remaining individual on the list shall serve as hearing officer. In the process of elimination, each party shall eliminate no more than one name at a time, the parties alternating after each name has been eliminated. The first name to be eliminated shall be chosen by the teacher, within 5 days after the teacher receives the list. The process of elimination shall be completed within 5 days thereafter.

(d) The commissioner of education shall compile and maintain a list of hearing officers comprised of residents of this state who are attorneys at law. Such list shall include a statement of the qualifications of each hearing officer.

(e) Attorneys interested in serving as hearing officers under the provisions of this act shall submit an application to the commissioner of education. The commissioner shall determine if the applicant is eligible to serve as a hearing officer pursuant to the provisions of subsection (f).

(f) An attorney shall be eligible for appointment to the list if: (1) he or she has completed a minimum of 10 hours of continuing legal education credit in the area of education law, due process, administrative law or employment law within the past five years; or (2) he or she has previously served as a member of a due process hearing committee under the provisions of this act; or (3) he or she is currently a member of the employment law or administrative law sections of the Kansas Bar Association.

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Section 3. K.S.A. 1991 Supp. 72-5439 is hereby amended to read as follows: 72-5439. The hearing provided for under K.S.A. 72-5438, and amendments thereto, shall commence within 45 calendar days after ~~the designation or appointment of the third hearing committee member unless the committee votes for an extension of time.~~ **the hearing officer is selected unless the hearing officer grants an extension of time.** The hearing shall afford procedural due process, including the following:

(a) The right of each party to have counsel of such party's own choice present and to receive the advice of such counsel or other person whom such party may select;

(b) the right of each party or such party's counsel to cross-examine any person who provides information for the consideration of the hearing ~~committee~~ **officer**, except those persons whose testimony is presented by affidavit;

(c) the right of each party to present such party's own witnesses in person, or their testimony by affidavit or deposition, except that testimony of a witness by affidavit may be presented only if such witness lives more than 100 miles from the location of the unified school district office, area vocational-technical school or community college, or is absent from the state, or is unable to appear because of age, illness, infirmity or imprisonment. When testimony is presented by affidavit the same shall be served upon the clerk of the board of education or the board of control, or the secretary of the board of trustees, or the agent of the board and upon the teacher in person or by first class mail to the address of the teacher which is on file with the board not less than 10 calendar days prior to presentation to the hearing committee;

(d) the right of the teacher to testify in the teacher's own behalf and give reasons for the teacher's conduct, and the right of the board to present its testimony through such persons as it may call to testify in its behalf and to give reasons for its actions, rulings or policies;

(e) the right of the parties to have an orderly hearing; and

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(f) the right of the teacher to a fair and impartial decision based on substantial evidence.

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Section 4. K.S.A. 72-5441 is hereby amended to read as follows:
72-5441. When either party desires to present testimony by affidavit or by deposition, that party shall furnish to the hearing ~~committee~~ **officer** the date on which the testimony shall be taken. A copy of the affidavit or the deposition shall be furnished to the opposing party within ten (10) days following the taking of any such testimony, and no such testimony shall be presented at a hearing until the opposing party has had at least ten (10) days prior to the date upon which the testimony is to be presented to the hearing ~~committee~~ **officer** to rebut such testimony by affidavit or deposition or to submit interrogatories to the affiant or deponent to be answered under oath. Such ten (10) day period may, for good cause shown, be extended by the chairman of the hearing ~~committee~~ **officer**.

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Section 5. K.S.A. 72-5442 is hereby amended to read as follows:

72-5442. ~~At any meeting of a hearing committee, when authorized by a majority of the committee, any member thereof may:~~ **The hearing officer may:**

- (a) Administer oaths;
- (b) issue subpoenas for the attendance and testimony of witnesses and the production of books, papers, and documents relating to any matter under investigation;
- (c) authorize depositions to be taken;
- (d) receive evidence and limit lines of questioning and testimony which are repetitive, cumulative or irrelevant;
- (e) call and examine witnesses and introduce into the record documentary and other evidence;
- (f) regulate the course of the hearing and dispose of procedural requests, motions and similar matters; and
- (g) take any other action necessary to make the hearing accord with administrative due process.

Hearings hereunder shall not be bound by rules of evidence whether statutory, common law or adopted by the rules of court: Provided, however, That the burden of proof shall initially rest upon the board in all instances other than when the allegation is that the teacher's contract has been terminated or nonrenewed by reason of the teacher having exercised a constitutional right. All relevant evidence shall be admissible, except that the hearing ~~committee officer~~ **officer** may in ~~its~~ **his or her** discretion exclude any evidence if ~~it~~ **he or she** believes that its probative value is substantially outweighed by the fact that its admission will necessitate undue consumption of time.

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Section 6. K.S.A. 1991 Supp. 72-5443 is hereby amended to read as follows: 72-5443. (a) Unless otherwise agreed to by both the board and the teacher, the hearing ~~committee~~ officer shall render a written opinion not later than 30 days after the close of the hearing, setting forth ~~its~~ his or her findings of fact and determination of the issues. ~~The opinion of the hearing committee decision of the hearing officer~~ shall be submitted to the teacher and to the board. ~~The decision of the hearing officer shall be final, subject to appeal to the district court by either party as provided in this section.~~

~~(b) Upon receiving the written opinion of the hearing committee, the board shall adopt the opinion as its decision in the matter and such decision shall be final, subject to appeal to the district court as provided in K.S.A. 60-2101, and amendments thereto.~~

(b) The board or the teacher may obtain a review of the decision of the hearing officer in the district court, in the judicial district where the principal offices of the board are located, by filing in such court a petition praying that the decision of the hearing officer be modified or set aside. Such petition shall be filed within 30 days after the date of the hearing officer's decision and thereupon the party filing the petition shall file in the court the record in the proceeding.

The court shall hear the appeal by trial de novo, without a jury, and the court may, in its discretion, permit either party to submit additional evidence on any issue. After the hearing, the court may affirm, set aside, or modify, in whole or in part, the decision of the hearing officer, or the court may remand the proceedings to the hearing officer for further disposition in accordance with the order of the court.

The jurisdiction of the district court shall be exclusive and its final order or decree shall be subject to review in the same manner as other appeals from the district court in civil cases.

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Section 7. K.S.A. 72-5445 is hereby amended to read as follows:

72-5445. (a) Subject to the provisions of K.S.A. 72-5446, the provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, apply only to: ~~(1) Teachers who have completed not less than two consecutive years of employment, prior to the effective date of this act, in the school district, area vocational-technical school or community college by which the teacher is currently employed; and (2) teachers who have completed one year of employment, prior to the effective date of this act and, consecutively thereto, one year of employment, after the effective date of this act, in the school district, area vocational-technical school or community college by which the teacher is currently employed; and (3) teachers who have completed not less than three consecutive years of employment, after the effective date of this act, in the school district, area vocational-technical school or community college by which the teacher is currently employed; and (4) teachers who have completed not less than two consecutive years of employment, after the effective date of this act, in the school district, area vocational-technical school or community college by which the teacher is currently employed if at any time prior to the current years of employment requirement of provision (1), (2) or (3) in any school district, area vocational-technical school or community college in this state.~~

(1) Full-time teachers who began teaching at any time prior to the beginning of the 1993-94 school year, completed not less than three consecutive years of employment and were offered a fourth contract in the school district, area vocational technical school or community college where they are currently employed; (2) full-time teachers who begin teaching at the beginning of the 1993-94 school year, or any time thereafter, who complete not less than 5 consecutive years of employment, and are offered a sixth contract in the school district, area vocational technical school or community college in which they are employed; (3) full-time teachers who complete not less than two consecutive years of employment in the school district, area vocational technical school or community college in which the teacher is currently em-

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employed, if at any time prior to the current employment the teacher has completed the requirements of provisions (1) or (2) in any school district, area vocational technical school or community college in this state.

(b) For the purposes of this section the term "full-time teacher" means any teacher who:

(1) is currently teaching on at least a .75 time contract for the full school year, or (2) is currently teaching on a less than .75 time contract, but has previously taught on at least a .75 time contract for not less than two years in the school district, area vocational technical school or community college in which the teacher is currently employed.

~~(b)~~(c) Any board may waive, at any time, the years of employment requirements of subsection (a) for any teachers employed by it.

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Section 8. K.S.A. 72-5446 is hereby amended to read as follows:

72-5446. (a) In the event that any teacher, as defined in K.S.A. 72-5436, and amendments thereto, alleges that the teacher's contract has been nonrenewed by reason of the teacher having exercised a constitutional right, the following procedure shall be implemented:

(1) The teacher alleging an abridgement by the board of a constitutionally protected right shall **notify the board of the allegation within 15 days after receiving the notice of intent to not renew or terminate the teacher's contract.** Such notice shall specify the nature of the activity protected, and the times, dates, and places of such activity;

(2) the hearing ~~committee~~ **officer** provided for by K.S.A. 72-5438 shall thereupon be constituted and shall decide if there is substantial evidence to support the teacher's claim that the teacher's exercise of a constitutionally protected right was the reason for the nonrenewal;

(3) if the hearing ~~committee~~ **officer** shall determine that there is no substantial evidence to substantiate the teacher's claim of a violation of a constitutionally protected right, ~~the hearing committee shall dissolve, and the board's decision to not renew the contract shall stand;~~

(4) if the hearing ~~committee~~ **officer** shall determine that there is substantial evidence to support the teacher's claim, the board shall be required to submit to the ~~committee~~ **officer** any reasons which may have been involved in the nonrenewal;

(5) if the board ~~has~~ **presents** any substantial evidence to support its reasons, the board's decision not to renew the contract shall be upheld.

(b) The provisions of this section shall be supplemental to the provisions of K.S.A. 72-5436 to 72-5445, inclusive, and any amendments thereto.

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Section 9. K.S.A. 1991 Supp. 72-5438; K.S.A. 1991 Supp. 72-5439; K.S.A. 1991 Supp. 72-5440; K.S.A. 72-5441; K.S.A. 72-5442; K.S.A. 1991 Supp. 72-5443; K.S.A. 72-5445; and K.S.A. 72-5446 are hereby repealed.

Section 10. This act shall take effect and be in force from and after its publication in the statute book.

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

Craig Grant Testimony Before
Senate Education Committee
Wednesday, February 12, 1992

Thank you, Mr. Chairman. I am Craig Grant and I represent Kansas-NEA. I appreciate this opportunity to visit with the committee about SB 109.

I had to go back to the files and to the committee minutes of 1991 to learn all the history of SB 109. The bill was originally introduced by this committee at our request. Hearings were held on March 6, 1991, and action was taken in early April. If you remember, we had a good deal of discussion on the amount to pay the hearing committee, what the transcript costs might be, and who should pay for the copies. We also had a motion to extend the probationary period for teachers to five years, which was rejected by the committee. We appreciate that rejection by the committee and now believe that the bill is in good shape as far as the policy decisions are concerned.

Now I guess the Kansas Association of School Boards is wanting to change the bill in a major way. The KASB wants to change the three-person panel to a one-person officer, wants to allow a trial de novo on the results, and also wants to extend the probationary period to five years (already rejected by the committee).

Kansas-NEA does not support the proposed changes in the bill. Our Association has yet to take an official position on whether a single officer or panel is most appropriate. We are studying the issue and believe that more time is needed. With the changes made last year, we think it is premature to decide on this fundamental change this session. More thought and study is necessary by the interested parties before this major change in process is made. We certainly have concerns about what the qualifications of the officer would be.

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Secondly, we would certainly oppose strongly a trial de novo after the panel has made a decision. I believe that one of the strongest arguments we used in selling the 2-1 decision being binding was that we would then keep these cases out of court. If a trial de novo were granted, the administrative hearing route would be unnecessary. The board would not need to devote much attention to the due process hearing knowing that we would start all over again. A judicial review of any obvious bias or prejudice in the process is much preferable. Protracted delays in the court process could once again leave the teacher "hanging out there" without a job even though the panel has rendered a decision in his or her favor. We want a speedy final decision as it is now rather than a long process that only makes money for attorneys.

Thirdly, we have stated before and this committee has agreed with us that lengthening the probationary period is not necessary. Good administrators who do their job can evaluate the performance and potential of a teacher adequately in a three year period. All that is needed following probation is for the administration and Board to have valid reasons for the nonrenewal and be able to substantiate them before a due process panel. It is not too much to ask. In fact, this Senate passed a bill last year which would have provided reasons to all nonrenewed teachers-probationary included-as to why the action was taken.

For the above reason, Kansas-NEA hopes that you will not make any of the substantive changes suggested by KASB. We ask that you pass SB 109 favorably without amending it further.

Thank you for listening to our concerns.

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