

Approved March 2, 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 Thursday, February 27, 1992 in room 123-S of the Capitol.

All members were present except:

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:

After calling the meeting to order, Chairman Joseph C. Harder announced that the purpose of today's meeting is to consider bills previously heard by the Committee. He then asked the Committee to turn its attention to SB 109, relating to the due process law.

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

He informed members that following Committee discussion on SB 109 at a previous meeting, representatives from the Kansas Association of School Boards and the Kansas National Education Association had combined efforts to arrive at some mutually acceptable amendments to SB 109. He called upon Ms. Cindy Kelly, Deputy General Counsel, Kansas Association of School Boards, to brief the Committee on the proposed amendments to SB 109. (Attachment 1)

Following Ms. Kelly's explanation, Senator Webb moved that the Committee adopt the amendments to SB 109 as proposed by Ms. Kelly on behalf of the Kansas Association of School Boards and the Kansas National Education Association. Senator Langworthy seconded the motion. The Chair ruled that the amendments were adopted.

Senator Frahm moved that SB 109, as amended, be recommended favorably for passage. Senator Langworthy seconded the motion.

When the Committee became aware that SB 109, introduced during the 1991 session, required some technical amendments to update it, by unanimous consent of the Committee, the motion to amend SB 109 was amended conceptually to include technical revision, as needed, by the revisor.

When the Chair called for the question to recommend SB 109, as amended, favorably for passage, he ruled that the motion had carried.

SB 596 - Community colleges, out-district tuition.

The Chair then reverted Committee attention to SB 596, relating to residency requirement for out-district tuition, and requested the revisor to review the bill for the Committee.

The revisor explained that SB 596 imposes a requirement for payment of out-district tuition by stating that a student must have lived in a county for at least twelve consecutive months prior to the student's enrollment at a community college for that county to be liable for payment of out-district tuition. She explained that although community colleges would lose money under this residency requirement, there is a provision through which this monetary loss would be "picked up" by the state.

Several Committee members expressed concerns regarding the absence of a

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON EDUCATION,
room 123-S Statehouse, at 1:30 ~~am~~/p.m. on Thursday, February 27, 1992

fiscal note and information relating to community college enrollment forms. The Chair announced there will be no action on the bill until additional information is provided to the Committee.

The Chair adjourned the meeting.

SENATE EDUCATION COMMITTEE

TIME: 1:30 p.m. PLACE: 123-S DATE: Thursday, February 27, 1992

GUEST LIST

<u>NAME</u>	<u>ADDRESS</u>	<u>ORGANIZATION</u>
Jeff Engstrom	J.C. Middle School	Page
Anna Kovalkova	Russia	Page
Beth Engholm	J.C.H.S.	page
Tiffany Lee	Junction City Middle school	page
John Marshall	Harris news Service	Topeka
Cindy Kelly		KASB
Mark Tallman	Topeka	KSTE
Ray Copes	Topeka	KNEA
Craig Grant	Topeka	KNEA
Gerald Henderson	Topeka	USA of KS
Conie Hesse	Topeka	SCSD f do
Lindy Sjolander	Ottawa	Chamber of Commerce / Ottawa
Barb Nelson	Ottawa	Leadership Class / "
Steven Hardy	Ottawa	Chamber / Ottawa
Nancy J. Schaffel	Ottawa	Off / Leadership '92
Vicki Cummings	Ottawa	Leadership Ottawa / Empire State University
Kenneth Woods	Harnett	USD #365
Robert K. Kambart		Rep # 500
Debbie C. Apt	Topeka	U.S.W # 500
Scott Bird	OTTAWA	Leadership OTTAWA 92
Marcia Magee	Ottawa	Leadership '92 Ottawa
Cheryl S. Hester	Ottawa	Leadership '92 Ottawa
Marilyn Berrich	Ottawa	Leadership '92 Ottawa K.
Ladislav M. Hernandez	Topeka	Gov. Office

SENATE EDUCATION COMMITTEE

TIME: 1:30 p.m. PLACE: 123-S DATE: Thursday, February 27, 1992

GUEST LIST

NAME

ADDRESS

ORGANIZATION

Kim Vickers

Topeka

Intern (Kans)

Robin Lickman

Sen. Winter's intern

Janice Hurler

Americus

SENATE BILL No. 109

By Committee on Education

2-1

EDUC
2/27/92
A1-1

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 if the decision of the hearing officer is appealed to the district court, or if either party requests its transcription. The appellant or the party making the request shall pay for the cost of transcription. If both parties jointly request that the transcript be transcribed at the hearing level, the parties shall each pay one-half of the cost of transcription.

(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.

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

(e)

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

EDUC
2/27/92
A1-2

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 with in 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.~~

the board shall notify the commissioner of education that a list of qualified hearing officers is required. Such notice shall contain the mailing address of the teacher. Within 10 days after the receipt of notification from the board, the commissioner shall provide to the board and to the teacher, a list of nine randomly selected, qualified hearing officers.

EDUC
2/27/92
A1-3

(c) Within 5 days after receiving the list from the commissioner, each party shall eliminate four 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) Either party may request that one new list be provided within 5 days after receiving the list. If such a request is made, the party making the request shall notify the commissioner and the other party, and the commissioner shall generate a new list and distribute it to the parties in the same manner as the original list.

(e) In lieu of using the process in subsection (b) and (c) of this section, if the parties agree, they may make a request to the American Arbitration Association for an arbitrator to serve as the hearing officer. Any party desiring to use this alternative procedure shall so notify the other party in the notice required under subsection (a) of this section. If the parties agree to use this procedure, the parties shall make a joint request to the American Arbitration Association for a hearing officer within 10 days after the teacher files a request for a hearing. If the parties choose to use this procedure, the parties shall each pay one-half of the cost of the arbitrator and of the arbitrator's expenses.

(f) 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.

(g) 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 (h).

(h) 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

EDUC
2/27/92
A1-4

law or employment law within the past five years; or (2) he or she has previously served as a chairperson of a due process hearing committee under the provisions of this act. An attorney shall not be eligible for appointment to the list if he or she has been employed to represent a board or a teacher in a due process hearing within the past five years.

EDUC
2/27/92
A1-5

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

EDUC
2/27/92
A1-6

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

EDUC
2/27/92
A1-7

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 oppos-
ing 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 interroga-
tories 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**.

EDUC.
2/27/92
A 1-8

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 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.

EDUC
2/27/92
A1-9

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.

(b) The decision of the hearing officer shall be final, subject to appeal to the district court by either party as provided in K.S.A. 60-2101, and amendments thereto.

~~(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.~~

EDUC
2/27/92
A1-10

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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) Teachers who have completed not less than three consecutive years of employment, and been offered a fourth contract, in the school district, area vocational-technical school or community college where they are currently employed; and (2) teachers who have completed not less than two consecutive years of employment, and been offered a third contract, 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 employment the teacher has completed the years of employment requirement of provision (1) in any school district, area vocational-technical school or community college in this state.

EDUC
2/27/92
A 1-11

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

EDUC.
2/27/92
A1-12

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.

EDUC
2/27/92
A1-13

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.

EDUC
2/27/92
A1-14