

Approved: 3/6/96  
Date

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairman Bill Mason at 3:30 p.m. on February 14, 1996 in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Ben Barrett, Legislative Research Department  
Avis Swartzman, Revisor of Statutes  
Dale Dennis, Department of Education  
Beverly Renner, Committee Secretary

Conferees appearing before the committee: Senator Dave Kerr  
Representative Tony Powell  
Mark Tallman-Kansas Association of School Boards & United School Administrators  
Paul Lira, School Board Member-USD 434-Santa Fe Trail  
Shelly Garcia, School Boards Member-USD 402, Augusta  
Jan Collins, Superintendent-USD 425, Highland  
Fred Marten, Principal-Clearwater Middle School  
Dr. James "Chris" Christman, Superintendent-USD 499, Galena  
John Toland, Attorney-USD 445, Coffeyville  
Rosie Bosse, Parent-USD 322, Onaga

Others attending: See attached list

Chairman Mason opened the proponent hearing on **HB 2857**-concerning teachers, hearings provided upon nonrenewal or termination of contracts of employment.

Senator Dave Kerr spoke as a proponent for **HB 2857** (Attachment 1). He was able to give an historical perspective to this legislation and explained that the change from a hearing panel to a hearing officer was made to save money. This bill states that unless the hearing panel's decision is unanimous, it is not binding and the court is to review the board's decision. Direct appeal is to the Court of Appeals rather than to district court.

Representative Tony Powell appeared in support of **HB 2857** (Attachment 2). He stated the important changes this bill makes to the current law: 1) defines "good cause"; 2) restores the three person hearing panel and makes their decision binding, if unanimous; 3) the panel may not substitute its judgment for that of the board, but must decide whether the board acted with good cause; 4) in cases where the panel is not unanimous, the board may review the record and make its own findings of fact and determination of the issues; 5) direct appeal may be to the court of appeals and eliminates the step of going to the district court; and, 6) preserves the protection for teachers to not be treated in an arbitrary or capricious manner.

Mark Tallman, Kansas Association of School Boards spoke in favor of **HB 2857** (Attachment 3). He reviewed the history of board treatment of teachers. Since 1978-79, there were 628 cases where tenured teachers were given notice of termination of nonrenewal; in 24 of these cases a hearing committee or officer found that the teacher should be retained and in about half of these, the board then reversed itself. This leaves the impression that the hearing process has found that boards acted improperly in less than 2% of cases where teachers were removed.

Paul Lira, USD 434 School Board Member, appeared as a proponent for **HB 2857**. He stated his commitment to local control of elected members of the school community.

Shelley Garcia, USD 402 School Board Member, expressed approval of **HB 2857**. She related an experience of a well documented case that ended in a decision for reinstatement because all witnesses were judged lacking in credibility by the hearing officer.

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION, Room 519-S Statehouse, at 3:30 p.m. on February 14, 1996.

Jan Collins, USD 425 Superintendent, spoke in agreement with **HB 2857** (Attachment 4). He state that the present system gives the ability to make a decision on tenured teacher nonrenewal to a third party, not a member of the school district. Direct out-of-pocket expenses could exceed \$50,000, even in instances where hearings are not held. The reported increase of approximately 50% of non-tenured teacher nonrenewals could be a direct result of school board's fear of future difficulties in the process should they become tenured.

Fred Marten, Principal, Clearwater Middle School, spoke in support of **HB 2857** by relating a true story which can be used as a reason for the need of this House Bill. (Attachment 5)

Chris Christman, USD 499 Superintendent of Schools, appeared as a proponent of **HB 2857** in that it correct the problem of allowing a non-educator to decide the fate of a teacher and a school district (Attachment 6). The bill does not return to the local school districts and elected boards of education local control of personnel matters.

John Toland, Attorney for USD 445, related an experience in the Coffeyville school district supporting the need for **HB 2857** (Attachment 7).

Rosie Bosse, Parent from USD 322, Onaga, told of experiences of unpleasant happenings in a 20-year tenured teacher's class in support of **HB 2857**.

Chairman Mason closed the proponent hearing on **HB 2857**.

Representative O'Connor made a motion to approve minutes for January 29, 30, 31 and February 1st as distributed. Representative Wells seconded the motion. Motion carried.

The meeting was adjourned at 6:50 p.m.

The next meeting is scheduled for February 15, 1996.

# HOUSE EDUCATION COMMITTEE GUEST LIST

DATE: February 14, 1996

NAME	REPRESENTING
Don Brigham	Derby KNEA
Nebra Murray	Derby KNEA
<i>Kathleen Foster</i>	<i>LARNED, KNEA.</i>
Stacy Kennedy	Topoka, KNEA
Linda Sandell	Junction City KNEA
Tom Brunquardt	Junction City KNEA
Don Haffner	Junction City KNEA
Neal K. Mann	USD 293 QUINTER.
<del>Kristie Hargis</del>	CC - -
Charles Reitz	KNEA
Brad Martin	Clearwater, USA #264 - USA
Marilyn Richardson	Clearwater USD #264 - KNEB-USA
Sandy Hampton	Hudson, SD, NEA-KNEA
John R. Reese	BSKNEA BANNER SPRINGS
Bob Ritter	BSKNEA BANNER SPRINGS
Mike Fand	A CONCERNED PARENT
TERRY Schmiat	Santa Fe Trail USD 434, Sept
Sue A. Wall	USD 418 McPherson
Lowell Schmidt	USD 418 McPherson

# HOUSE EDUCATION COMMITTEE GUEST LIST

DATE: 2-14-96

NAME	REPRESENTING
Bob Shanahan	Myself
V.E. "Skip" Skipton	USD # 418
Herbert Baird	USD # 419
Lori Dohrmann	USD # 309
Larry Shotts	USD # 418
<del>Wassie Beckertson</del>	USD # 418
<del>Fred A. Berry</del>	USD # 434
<del>Bill Drives</del>	USD # 423
Jean Cavanaugh	USD # 425
Carole Wilson	USD # 252
Dell Culison	USD 209
Kathy Spicer	USD 489 Days
Brit Hall	USD 217 Rolla
Stanton Adam	USD 367 O'Fallon
Colan <del>Criss</del>	USD 470 Ark City
John Faber	USD 314 Brewster
<del>Jean Young</del>	NEA - Retired
Mattha Rogge	374 Sublette BOE
Nancy Moore	#371 BOE

BOE

# HOUSE EDUCATION COMMITTEE GUEST LIST

DATE: 2-14-96

NAME	REPRESENTING
Jim Weikelman	Omega USD 322
Jill Weikelman	" " "
Arlene Kohn	Sublette USD #374
JAMES Leon SEIMERS	Howard Ks. USD #282
Bar T Goering	USD 230 Spring Hill
Claudette Lewis	KNEA
Confer Dreyson	KNEA
Dr. Jurnbein	KNEA
Bruce Goeden	KANSAS NEA
Charles W. Johns	Kansas NEA
Shirley Smith	Blue Valley North
Ron Dinnmar	Olathe USD 233
Lowell MARTINE	" "
Robin Lehman	Olathe USD 233
Oran Burnett	USD 507
Christy Lewis	Olathe USD - Olathe NEA
Mollie A. Meier	Olathe USD - Olathe NEA
Anne Aquino	KNEA
Wesley Marti	KNEA

# HOUSE EDUCATION COMMITTEE GUEST LIST

DATE: 2/14/96

NAME	REPRESENTING
Lee Gombel	USD 512
Scott Brown	USD 347 - KASB
Bill Meek	USD 230 Springfield
Warren Black	USD 445 Coffeyville, KS
Steve Houghland	USD 233 OLATHE
Carol Wassieon	USD 442 Seneca
Bj Eichen	USD 320 Wamego
Brian Harris	USD 442 Seneca
Charles O. Jenkins	USD 422 Greensburg
Ken White	USD 450 Shawnee Heights
<del>Ann Hennings</del> Johnson	KASB
Sheldon DePue	USD 248
Paul Trip	USD #101
Peg Dunlap	Kansas NEA
Tom White	KNEA
Larry McCall	USD 490 Cl Doado
Robert E. Marshall	USD 424 BoE
Daniel L. Carbon	USD #400 BoE

# HOUSE EDUCATION COMMITTEE GUEST LIST

DATE: February 14, 1996

NAME	REPRESENTING
Dennis W. Wilson	USD 395 Supt.
Nancy Kelley	KASB
Tom Cow	USD 266 Clearwater
James P. Korman	USD 395 BOE
James P. Korman	USA 381 Supt
Shawn Brauk	USD 395 BOE <del>Traverse</del>
Alan Brauk	USD 403 BOE
Paul Lina	USD 434 BOE
Wayton Gausd	USD 210 BOE
Steve Turkins	USD 463 Supt.
Stephen Baker	USD 462 Supt.
Kathy Dale	USD 210 Supt.
Doug Lindahl	USD #473 BOE. Chaparral
Maurice Weiss	KASB USD 437 BOE

TESTIMONY ON HB 2857

MR. CHAIRMAN, MEMBERS OF THE HOUSE EDUCATION COMMITTEE:

I have asked to speak to you today on the important issue of due process for teachers. As one of the Legislature's "grey beards" perhaps I can lend a bit of historical perspective to the discussion.

For example, we are sometimes told we ought not alter a law that was carefully crafted to balance the interests of students, teachers, administrators, boards of education, et al just because the political landscape has changed somewhat. Actually, the key change which brought about present law was a House floor amendment to a Senate bill. The Senate chair put the bill into conference. Two days later, before the conference committee met, a surprise floor motion to concur with House amendments was successful. The date was April 5, 1991, during the only two years of Democrat control of the House in the last 15 years. Of course, the bill was signed by Governor Finney.

In the Senate at least, there were no hearings, no conferees, no real explanation of impact - just political chicanery - that's how the change was wrought.

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What was that change and what was its importance? That was when a two out of three votes on the hearing panel became binding. On the surface perhaps not a momentous event, but in fact the event that has led us to the unhappy state of affairs which will be well documented by other conferees.

The Court of Appeals, in its wisdom, has interpreted this provision as clear proof that the Legislature intended the hearing panel, not the school board, to be the primary fact finder.

- READ FROM PAGE 5, SYLLABUS BY THE COURT,  
*U.S.D. 434 vs. Hubbard*

But even the judges questioned the wisdom of the legislative action.

- READ FROM *McMillen vs. U.S.D. 380*

Once the courts had made this decision, the legislative change from a hearing panel to a hearing officer was made simply to save money.

HB 2857 corrects this problem. The bill makes it clear that unless the hearing panel's decision is unanimous, it is not binding and the court is to review the board's decision.

What else is wrong with present law? It is convoluted and it takes too long. It is a four step process which could be handled just as effectively in three or even two. HB 2857 chooses a three step process.

How serious is this problem of time? As you will hear from other conferees, the present law diverts lots of money and lots of time from the true purpose of our schools, the education of our children. How ridiculous to have a system which can take up to two years to reach a conclusion. This system is bad for schools, bad for administrators, bad for kids and yes - bad for teachers. What could be worse than having your career in limbo for two years. Even back pay and reinstatement cannot make up for two years of lost time. There is no reason a system cannot be designed that can be completed in no more than 60-90 days. This is not a matter of trying to "fire teachers on the cheap" as some have testified in the past; rather, it is a matter of common sense that all parties will be better off if the matter is resolved quickly and fairly. Fairness need not be slow.

The bill before you does not go as far as we could logically go to expedite these cases, but it would help by providing direct appeal to the Court of Appeals rather than to district court.

Finally Mr. Chairman, I want to emphasize that neither I nor the present bill seek to deny teachers their due process. If this bill becomes law, teachers will still have due process rights substantially in excess of Other professional or non professional employees. To suggest that those of us who advocate change want to see good teachers fired unfairly requires what the poet Wordsworth called "the suspension of disbelief".

We don't want anyone fired arbitrarily or capriciously. We merely want schools and teachers to be accountable for results from the \$2 billion in taxpayer money we annually transfer to them to educate our children. Present law is a significant impediment to that accountability.

STATE OF KANSAS  
HOUSE OF REPRESENTATIVES

TONY POWELL  
REPRESENTATIVE, 85TH DISTRICT  
SEDGWICK COUNTY  
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TOPEKA

COMMITTEE ASSIGNMENTS

EDUCATION  
RULES AND JOURNAL  
TAXATION  
TRANSPORTATION  
JOINT COMMITTEE ON  
SPECIAL CLAIMS  
AGAINST THE STATE

**BEFORE THE HOUSE EDUCATION COMMITTEE**

**TESTIMONY IN SUPPORT OF HB 2857**

**February 14, 1996**

Mr. Chairman and fellow colleagues on the House Education Committee, I am pleased to appear before you in support of HB 2857, legislation which will reform the current teacher due process system not abolish it. This legislation represents a hard fought compromise between those that wish to abolish due process and those who deny that there is any problem.

Before getting into the details of this bill, I want to give special praise to my colleague and friend, Deena Horst, who worked very hard with me on this bill, and who was willing to face considerable pressure from many of her friends who like her, are teachers and members of the KNEA. Thanks to her work and her support, I believe this bill stands an good chance of passing this year.

This bill is born out of the need to reform a due process system that has grown to virtually eliminate the right of local communities to set their own standards for academic excellence. It is born out of the need to return some balance to the due process system and allow local school boards to have the tools to improve academic excellence in their schools.

Under current law, an unelected and unaccountable hearing officer decides whether a teacher can be nonrenewed. If the Board disagrees with a hearing officer's decision, it faces the prospect of an uphill battle first in the district court, then the court of appeals, and finally the supreme court. Such appeals can take years and cost thousands of dollars. My bill will not only restore balance to this process, but will also shorten and reduce its cost.

My bill makes several important changes to the current law:

- (1) It defines "Good Cause" as any ground put forth by the Board with is not arbitrary and which is consistent with the board's task of building up and maintaining a quality school system;
- (2) It restores the three person hearing panel, and makes the decision of the panel binding if the decision is unanimous;

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- (3) It clearly states that the panel may not substitute its judgment for that of the Board, but is limited to deciding whether the Board acted with good cause;
- (4) It allows, in cases where the panel is not unanimous, for the Board to review the record *de novo* and make its own findings of fact and determination of the issues;
- (5) It allows for direct appeal to the court of appeals and eliminates the unnecessary step of going to the district court;
- (6) And finally, it preserves the protection for teachers to not be treated in an arbitrary or capricious manner.

The Interim Education Committee is on record as supporting some change in the due process law. This is one proposal that restores local control, shortens the process, and protects good teachers from arbitrary action. In my view, it meets all the tests for a responsible solution to this divisive issue.

I ask for your support for HB 2857. I'll be happy to stand for questions.



TO: House Committee on Education  
FROM: Mark Tallman, Director of Governmental Relations  
DATE: February 14, 1996

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear today as proponents of H.B. 2857. We hope to convince you by the end of the day that (1) the current teacher due process act goes beyond granting teachers protection against unfair treatment - it eliminates the ability of local boards to set standards of professional conduct and performance; (2) contrary to what you have heard and will probably continue to hear, this bill does not eliminate teacher due process protections; and (3) it is a reasonable compromise between the interests of school boards and the students, parents and taxpayers they represent, and the interests of classroom teachers.

I want to state at the outset that this bill does not give our association everything we might wish. If we were writing the bill it would look much different. But since this summer's interim committee action, we have been open to finding a compromise. We are therefore endorsing this bill. To the best of our knowledge, Kansas-NEA has refused to even acknowledge that there is a problem. In other words, we are "bargaining in good faith." But we feel like we are the only side doing so.

Mr. Chairman, I would first call to the committee's attention an attached position paper entitled "Due Process Issues: the Role of the Local School Board." The purpose of this paper is to show how we got to where we are today. In summary, the role of the due process hearing officer is now not simply to review whether a teacher has, in fact, received due process and whether the board had acted in a fair and reasonable manner. Instead, the hearing officer now decides whether or not a teacher should be removed based on whatever standards he or she wishes to apply. Moreover, the courts have established that any further legal review is limited to the "reasonableness" of the hearing officer's decision, not the board's case.

Second, I would like to explain why we feel that H.B. 2857 will address the problems created by the current situation. The bill makes the following changes:

1. It would define "good cause" for removing a tenured teacher as any ground put forth by the board in good faith and which is not arbitrary, capricious, irrational, unreasonable, or irrelevant to the board's task for building up and maintaining a quality school system. *This means that boards would again have the ability to remove teachers for any reason that is related to educational performance, but could not remove a teacher for arbitrary, capricious, irrational, unreasonable or irrelevant reasons. This is a carefully balanced standard.*

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2. It removes the single hearing officer for teachers who request a hearing and returns to a three-person panel: one member chosen by the teacher, one chosen by the board, and a chairperson in the same manner the single hearing officer is now chosen. *This means that the hearing would be conducted by a panel consisting of a lawyer as chairperson, and two individuals knowledgeable about schools and educational practices, representing both the teacher and the board. It is also clearly a compromise: we would prefer the hearing be conducted entirely by the board.*

3. The board has the burden of proving by a preponderance of evidence that it acted with good cause in nonrenewing or terminating the teacher. *This means the board has the burden of proof, not the teacher. This is also clearly a compromise: we would prefer the teacher have the burden of proof.*

4. The hearing committee shall not substitute its judgment for the board, but shall be limited to deciding whether the board acted with good cause. *This means the hearing committee shall determine if the teacher was treated fairly, not whether the committee would have reached the same decision as the board. This is appropriate because the board, not the hearing committee, must live with the consequences.*

5. If the committee is unanimous in its decision, the decision is final, subject to judicial review by the court of appeals. If the decision is not unanimous, the board must review the evidence of the hearing and make the final decision, subject to judicial review by the court of appeals. *This is also clearly a compromise: we would prefer the board to have the final decision in any case.*

Next, I would like to review the history of board treatment of teachers. K-NEA has argued in the past that boards cannot make fair due process decisions, and that they never reverse themselves if the hearing committee finds for the teacher. I have attached several items on this point.

The first item is a compilation of materials collected in an annual employee relations survey which KASB has conducted since 1978. Between 1978-79 and 1983-84, when hearing committees only made a recommendation to the school board, we reported committee decisions in five cases involving teacher termination. Two committees recommended termination, or agreed with the board. Three committees recommended reinstatement of the teacher. In two of those three cases, the board reversed its original decision, accepted the committee's recommendation and retained the teacher.

We also found 41 committee decisions in those years regarding nonrenewal of tenured teachers. Twenty-nine committees agreed with the board and recommended nonrenewal. In eleven cases, the committees recommended that the teacher be retained, and in four of those cases the boards honored that recommendation. (In one case, the board had not yet decided whether to accept the recommendation.) In other words, boards reversed themselves upon the advice of the hearing committee over 40% of the time.

In fact, since 1978-79, we found 628 cases where tenured teachers were given notice of termination or nonrenewal. In only 24 cases that were reported in this survey, or 3.8%, did a hearing committee or officer find that the teacher should be retained. As noted above, in about half of those cases, the board then reversed itself. This suggests that the hearing process has found that boards acted improperly is less than 2% of cases where teachers are removed.



The second item presents a table which reports on how the courts have dealt with these cases. These are cases related to competence or behavior prior to the amendments which made a hearing decision binding upon the board. In only two of eight cases did the final court decision reinstate the teacher. This table makes two points. First, courts have not found that most boards act in an arbitrary, capricious or unreasonable manner in removing tenured teachers. Second, teachers always have recourse to the courts if boards do act in such a manner.

Finally, I wish to address a contention which is frequently made in discussing this issue: that the major problem is not poor teachers, but administrators who do not document poor teaching through the evaluation process. We would remind the committee that both evaluation criteria and procedures are mandatorily negotiable items. If a district has a poor system of evaluation, the board cannot change it without the consent of the teachers' association. Our members have found great reluctance on the part of union negotiators to agree to any changes that would strengthen performance criteria or the evaluation process. If the committee believes that evaluation is the root of the problem in teacher termination, then we ask you to pass legislation which would remove evaluation from the negotiations process.

Thank your for your consideration.



## Due Process Issues The Role of the Local School Board

State and federal courts have established that certain public employees, including public school teachers, gain an expectation of continued employment and can only be removed for good cause. Before they are removed, these employees are entitled to "due process," which provides an opportunity to respond to the reasons at a fair hearing. *When* the employee is entitled to due process, *how* the process will be conducted, and *who* determines what constitutes good cause are determined by state law.

### KASB's Position

Local school boards should have the authority to determine good cause for removing a tenured teacher on a case by case basis from the evidence provided at a due process hearing.

### Traditional School Board Authority

Kansas has traditionally entrusted local school boards with the management of public schools. In the 1980 Kansas Supreme Court decision *Gillett v. U.S.D. No. 276*, the court said:

"We hold that under the Kansas due process statute, a tenured teacher may be terminated or nonrenewed only if good cause is shown, including any ground which is put forward by the school board in good faith and which is not arbitrary, irrational, unreasonable, or irrelevant to the school board's task for building up and maintaining an efficient school system."

This decision applied only to tenured teachers. Although state statutes do not actually use the term "tenure," it is commonly used to mean those teachers who are entitled to due process. (Under current law, teachers receive this entitlement after three years of employment, or two years if the teacher had previously received tenure in another district.) Over the years, the Legislature developed a due process hearing requirement. In *Gillett*, the court stated:

"The purpose of the due process hearing granted a teacher by statute is to develop the grounds that have induced the board to give the teacher notice of its desire to discontinue her services, and to afford the teacher an opportunity to test the good faith and sufficiency of the notice. The hearing must be fair and just, conducted in good faith, and dominated throughout by a sincere effort to ascertain whether good cause exists for the notice given."  
(*"Good cause" is defined by the citation above.*)

The purpose of the hearing was not to substitute for the school board's judgment, but to determine whether the school board had "good cause," which meant any ground put forward in good faith and not arbitrary, irrational, unreasonable or irrelevant.

### Changes in the Due Process Hearing

To review a local board's decision to remove a tenured teacher, the Legislature created a three person hearing panel. At first, the panel could only make a recommendation to the school board, and the board could review the record of the hearing and the recommendation and take final action. The law was then

amended to make the panel decision binding on the board if it was a unanimous decision. In 1991, the law was amended again to allow a majority panel decision to be binding. This action occurred as an amendment to a bill on the House floor and was approved by the Senate as part of a conference committee report.

The hearing panel was composed of one member chosen by the teacher, one member chosen by the school board, and a third member chosen by the first two. The cost of the hearing panel was split between the board and the teacher. Federal courts ruled in the early 1990's that employees could not be required to pay for their own due process. KASB supported an amendment to the due process law in 1992 that created a single hearing officer, instead of a panel, and required the board to pay the full cost of the hearing officer.

Changes in the due process law were proposed to ensure teachers had recourse against unfair, arbitrary actions by school boards. However, these amendments were never presented to change the authority of the hearing process—only its form. Nor was it suggested the authority of the school board would be changed—only the way its decision would be reviewed.

### The Hubbard Case

But in 1994, the Kansas Court of Appeals ruled that the Legislature did change the role of the school board. In *U.S.D. No. 434 v. Hubbard*, the court said:

“Before the 1991 amendment, the primary responsibility for determining “good cause” rested with the school board. Moreover, the decision of a school board on the question of whether a teacher’s contract should be renewed or terminated was final, subject to limited judicial review. The 1991 amendment, however, changed all that when the legislature decided to make the decision of the hearing committee (now hearing officer) final, subject to appeal to the district court by either party as provided in K.S.A. 1993 Supp. 60-2101. Therefore, in a teacher termination case, a due process hearing committee is the factfinder. Accordingly, a hearing committee must decide whether the reasons given by a school board in its decision to terminate or nonrenew a tenured teacher’s contract constitute good cause. Finally, the amendment clearly indicates that a hearing committee is the body best qualified to assume these quasi-judicial functions formerly performed by the school board.”  
(Emphasis added.)

Under the *Hubbard* decision, the school board no longer determines “good cause,” with a hearing panel to review whether or not the board acted in good faith. Instead, the hearing officer determines “good cause,” and the court can only review whether or not the hearing officer (or committee) acted in good faith. The *Hubbard* court said:

“We conclude that the standard of review outlined in *Butler* is still the appropriate standard to be applied by the district court and this court, except the 1991 amendment requires us now to apply our review to the decision of the hearing committee. Consequently, the standard of review of a due process hearing committee's decision is limited to deciding if: (1) the committee’s decision was within the scope of its authority; (2) the committee's decision was supported by substantial evidence; and (3) the committee did not act fraudulently, arbitrarily or capriciously.”

In other words, the court no longer considers whether or not the school board acted in good faith to terminate a teacher. It can only consider whether or not the hearing committee or officer acted in good faith.

### What This Means for School Boards

Under these court decisions, the local school board has lost the ability to apply its own standards, as the elected representatives of the community, in determining good cause based on "the school board's task of improving the quality of education and maintaining an efficient school system." Instead, this decision has been transferred to an unelected, unaccountable hearing process. There are accumulating examples of teachers who have been dismissed for violating professional and community standards, but have been reinstated by the hearing process.

- In the *Hubbard* case, the board terminated a teacher after viewing a video tape a teacher allowed students in his class to make. It showed students engaging in vulgar behavior, harassing other students, and a general lack of discipline in the classroom. The hearing committee concluded that the teacher "did not control the classroom in a manner which would be expected of him," but ordered reinstatement with back pay. The district court upheld the committee's action.
- In *U.S.D. 328 v. Whitmer*, a hearing found students testifying that a teacher used vulgar and demeaning language in reference to girls, blacks and other groups. The teacher admitted to using racial slurs in reference to blacks. The hearing panel, without making specific findings, simply concluded the board did not meet its burden of proof, and found termination improper. The district court sided with the school board. But the court of appeals, citing its own *Hubbard* decision, ruled that because the hearing committee acted in good faith, its decision should be upheld. The Kansas Supreme Court reversed in part and ordered the cases remanded to the hearing committee to make specific findings.
- In *Ames v. U.S.D. No. 264*, the hearing panel found that the teacher "probably had inadequate teaching and communication techniques," but concluded that nonrenewal was improper.
- In a recent case, testimony by five students indicated that they were either directed or pressured into performing activities prohibited by medical excuses in a physical education class. Students who were injured in the class and could not perform the activities were not allowed an opportunity to earn a grade. The hearing officer ordered the teacher reinstated.
- In other recent cases, hearing officers have found evidence that board policies or the reasonable standards set by the board were violated, but have concluded that dismissal is unwarranted.

Although the *Gillett* standard for good cause has not been overruled by the courts, given the current system and the standard of judicial review, it appears that it is the hearing officer, not the board, whose judgment determines good cause. Further, the hearing officer's decision cannot be overturned by a district court unless the decision was arbitrary or capricious, unsupported by substantial evidence, or beyond the scope of the hearing officer's authority. This limited standard of judicial review is applied even though the hearing officer is not part of an administrative body, and is not required to have any expertise in the efficient operation of a school district.

In addition to removing the ability of local school boards to remove teachers for good cause, the current due process system has major other disadvantages.

First, it is time-consuming and costly. To remove a tenured teacher, a school district must first build a "case" to demonstrate the reasons for removal. Then, if the teacher appeals to the hearing officer, the board must pay the entire cost of the hearing, as well as its own legal fees. The process will also certainly involve many hours of administrative time. If the decision is appealed, the process is repeated. Districts have experienced costs of \$40,000 to over \$100,000 for a single teacher nonrenewal. And, it can easily take several years and hours of administrative staff time to complete the entire process.

The resources required for these cases are taken from the operating budget of the district. The cost of removing a tenured teacher diverts time and money from all other staff and students. That certainly has a chilling effect on efforts to remove poorly performing teachers.

The system has a negative impact on new teachers as well. Many boards will nonrenew a marginal or questionable beginning teacher because they know how difficult it is to remove them after they have received tenure. Teachers that might improve with help do not get the chance. The board can't take the chance they will not improve knowing how difficult it is to terminate after they receive tenure.

#### **What Do School Boards Want From the Due Process System?**

The most important tool school boards want is the ability to establish and enforce employment standards for teachers, as well as every other district employee. If school boards are to be held accountable for school performance, they must have the ability to hold their own employees accountable, and make decisions on both hiring and firing.

State law must be changed to give local boards final authority to establish good cause for removing a tenured teacher—as long as the reasons are supported by evidence and not arbitrary, unreasonable or capricious. If a teacher believes a school board has failed to provide due process, the teacher has the opportunity to appeal to the District Court.

If the concept of an independent hearing officer is maintained, the role of the officer needs to be defined by statute. The role of the hearing officer is to review the evidence and determine whether the local school board acted in good faith and there is sufficient evidence which to support termination. The hearing officer does not have the role of substituting their judgment and ruling on what they would have done in an individual case.

## Due Process Cases Since 1974

*Source: KASB Annual Research Bulletin on Employee Relations*

\*=Examples of boards reversing termination or nonrenewal upon committee recommendation.

School Year	Teacher Termination	Tenured Teachers Nonrenewed
Due process law enacted with three-member hearing committee; school board made final decision.		
1974-75	32 termination notices. 3 hearings held; 1 recommended termination, 2 were not concluded. No additional information.	35 nonrenewal notices. 5 hearings requested. No additional information.
1976-77	53 termination notices. No additional information.	50 nonrenewal notices. No additional information.
1977-78*	16 termination notices. 4 hearings held; all 4 recommended termination.	69 nonrenewal notices. 9 hearings were requested and held. 5 recommended that the teacher be nonrenewed. 4 recommended that the teacher be retained. 1 board retained the teacher.
1978-79*	15 termination notices. 6 hearings requested; 4 were held. 1 committee recommended termination. 1 recommended the teacher be reinstated and the board reinstated the teacher. 1 decision was still pending. 1 teacher resigned before a decision.	53 nonrenewal notices. 14 hearings requested and 10 were held. 4 recommended that the teacher be nonrenewed. 4 recommended that the teacher be retained. 2 boards retained the teachers. 1 case was settled before a decision. 1 case was pending.
1979-80*	10 termination notices. 4 requested hearings; 2 were held. 1 recommended the teacher be reinstated and the board reinstated the teacher. 1 case was pending.	35 nonrenewal notices. 7 hearings were completed. 6 recommended that the teacher be nonrenewed. 1 recommended that the teacher be retained and the board retained the teacher.
1980-81	8 termination notices. 3 hearings requested; 2 were held. 1 recommended that the teacher be terminated. 1 recommended the teacher be reinstated but the board terminated.	37 nonrenewal notices. 10 hearings requested and 5 were held. 1 recommended the teacher be nonrenewed. 1 recommended the teacher be continued but the board nonrenewed. 3 were pending.
1981-82	5 termination notices. No hearings requested.	43 nonrenewal notices. 19 hearings requested and 14 were held. 9 recommended the teacher be nonrenewed. 3 recommended the teacher be continued, but all 3 boards nonrenewed. No information on the remaining 2.
1982-83	8 termination notices. 2 hearings requested; 1 withdrawn and 1 settled.	55 nonrenewal notices. 19 hearings requested; 12 were held. 4 recommended the teacher be nonrenewed. 1 recommended the teacher be retained but the board nonrenewed. 4 were pending. No information on the remaining 3.
1983-84*	3 termination notices. 3 hearings requested. 2 recommended termination; 1 request was dropped.	34 nonrenewal notices. 15 hearings requested; 11 were held. 5 recommended nonrenewal. 2 recommended the teacher be retained. 1 board retained the teacher and the other had not made a decision. The remaining 4 hearings were not complete.

Unanimous recommendation of the committee made binding on the board.		
1984-85	4 termination notices. 2 hearings requested; 1 was held and it recommended termination.	37 nonrenewal notices. 17 hearings requested; 3 were held. 2 recommended nonrenewal; 1 was not complete.
1985-86	3 termination notices (1 from a community college). 1 hearing was requested but dropped.	38 nonrenewal notices. 12 hearings requested; 5 were held. 2 recommended nonrenewal. 1 recommended the teacher be retained and the board retained the teacher. No information on the remaining 2.
1986-87*	5 termination notices. 2 hearings requested; 1 was held; results not available.	31 nonrenewal notices. 15 hearings requested; 11 were held. 4 recommended nonrenewal. 3 recommended the teacher be retained. 1 board retained the teacher; 2 boards nonrenewed.
1987-88	3 termination notices. 1 hearing was held and it recommended termination.	34 nonrenewal notices. (10 were from one district due to the transfer of a program to another institution.) Of the remaining 24, 6 hearings requested and 3 were held. 2 recommended nonrenewal. 1 recommended that the teacher be retained but the board nonrenewed.
1988-89	5 termination notices. 1 hearing requested but the request was later withdrawn.	14 nonrenewals. 3 hearings requested; 2 were held. Both recommended nonrenewal.
1989-90	7 termination notices. 2 hearings requested, but both requests were later withdrawn.	25 nonrenewal notices. 9 hearings requested; two were held. Both recommended nonrenewal.
1990-91	2 termination notices. No hearings requested.	23 nonrenewal notices. 10 hearings requested; 6 were held. All 6 recommended nonrenewal.
Majority committee recommendation made binding on the board.		
1991-92	9 termination notices. 7 hearings requested; 3 were held. 2 upheld termination, 1 reversed the board.	28 nonrenewal notices. 12 hearings requested; 4 hearings were held. 3 upheld nonrenewal; 1 reinstated the teacher..
Single hearing officer replaces committee.		
1992-93	7 termination notices. 2 hearings requested; both recommended termination.	10 nonrenewal notices. 4 hearings requested; none held.
1993-94	7 termination notices. 6 hearings requested; 5 were held. 2 upheld termination, 1 recommended reinstatement but the teacher eventually resigned, 2 were not completed.	16 nonrenewal notices. 3 hearings requested, 3 were held. 1 upheld nonrenewal, 1 reinstated the teacher, and 1 was not completed.

**TABLE 1**

**TEACHER DUE PROCESS CASES  
PRIOR TO THE AMENDMENTS WHICH MADE  
A DUE PROCESS HEARING DECISION BINDING ON THE BOARD**

**DISMISSAL FOR REASONS RELATED TO COMPETENCY OR BEHAVIOR**

<b>CASE NAME</b>	<b>HEARING COMMITTEE</b>	<b>BOARD ACTION</b>	<b>DISTRICT COURT</b>	<b>APPELLATE COURT</b>
Gillett v. U.S.D. No. 275, 227 Kan. 71 (Unprofessional conduct)	2-1 decision by hearing committee in favor of the teacher	Rejected recommendation	Found for the teacher	Found for the Board
Kelly v. Kansas City Kansas Community College, 231 Kan. 751 (Unprofessional conduct)	2-1 decision by the hearing committee in favor of the teachers	Rejected recommendation	Found for the Board	Found for the Board
Loewen v. U.S.D. No. 411, 15 Kan. App. 2d 612 (Incompetency)	2-1 decision by the hearing committee in favor of the teacher	Rejected recommendation	Found for the Board	Found for the teacher because of procedural violations, refused to order reinstatement because of evidence of lack of competency
U.S.D. No. 461 v. Dice, 228 Kan. 40 (Unprofessional conduct, etc.)	Recommended probationary renewal	Rejected recommendation	Found for the Board	Found for the Board
Haddock v. U.S.D. No. 462, 233 Kan. 66 (Competency and conduct)	2-1 decision by the hearing committee in favor of the teacher	Rejected recommendation	Found for the teacher	Found for the teacher
Leaming v. U.S.D. No. 214, 242 Kan. 743 (Insubordination)	Decision by the hearing committee in favor of the Board	Took no action	Found for the Board	Found for the Board
Unruh v. U.S.D. No. 306, 245 Kan. 35 (Competency and conduct)	2-1 decision by the hearing committee in favor of the Board	Accepted the recommendation	Found for the teacher	Found for the teacher
Gaylord v. U.S.D. No. 218, 14 Kan. App. 2d 462	2-1 decision by the hearing committee in favor of the Board	Accepted the recommendation	Found for the Board	Found for the Board

## TESTIMONY BEFORE THE HOUSE EDUCATION COMMITTEE

Wednesday, February 14, 1996, 3:30 PM

Jan Collins, superintendent  
Highland USD 425  
402 East Main, P. O. Box 8  
Highland, KS 66035

My name is Jan Collins. I am an educator, parent, active community member, and taxpayer just as many of you. Presently, I serve as the superintendent of schools in Highland USD 425, my home town community where I have spent my entire professional career (the majority of which was served as a classroom teacher). Thank you for allowing me to share a few short comments relative to my perspectives on teacher due process as it now exists in Kansas and the proposed House Bill 2857. This is the third time I have been asked to share my thoughts with a legislative committee on this important issue.

I stand before you as an advocate for the children of Kansas, for our schools and our communities, for everyone involved in the education of our youth (this essential democratic process). To be successful we must all work together to provide the necessary guidance, funding, and governance. We must strive to minimize parochial tendencies, so that we can remain focused on the most appropriate directions and in the proper balance so that we may advance in today's complex world toward tomorrow's unknown future. And in so doing we must accept that public schools exist to help students learn and grow! Our focus must always be that schools exist for student learning and growth.

While striving for improvement throughout our educational system we deal with many difficult issues. Some of the complex issues with which we must deal again in 1996, those complex issues of teacher rights and appropriate teacher due process, tend to blur our vision and make it difficult to focus on our mission. As we continue to study these issues should we not ask, "Do the present laws provide the most appropriate direction; or as with so many instances in human endeavors has that pendulum swung too far in one direction to take us out of balance?"

The present system essentially gives the ability to make a decision on tenured teacher non-renewal to a third party completely removed from the school district. Is this most appropriate? Does this third party have some magical power which allows them to make a superior decision? Or should this responsibility not be that of a local board of education? Should it not be their decision which is subject to further review and then to judicial scrutiny? Today's laws have allowed the present atmosphere to develop where lawyers recommend buyouts, often regardless of the circumstances and strength of the associated documentation; and an atmosphere where fellow educators who have been through the process do the same with gut wrenching testimony.

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Realistic safeguards are needed, and I support them; as well as appropriate punitive actions against local boards of education, administrators, or others who would abuse the rights of teachers. Then I always find myself asking, "Should these rights be limited to tenured teachers? Are similar protections not also reasonable for other educators? If tenured teachers are overly protected, could this have negative effects on non-tenured teachers? Could this have been part of the reason there has been a reported increase of approximately 50% of non-tenured teacher non-renewals during the last year? Is this the most appropriate balance?" As an educator who for over 25 years has put his heart and soul into his work, I see major problems and inequities with the interpretation of the present law. I believe the system is broken and it needs to be improved. House Bill 2857 seems to be a reasonable improvement.

The fiscal realities and implications also warrant your attention. It is my belief and experience that direct out-of-pocket expenses (which include buy-out agreements, lawyers fees, preliminary work, etc.) could easily and do exceed \$50,000 even in instances where hearings are not held. Yet, these direct out-of-pocket expenses can easily be overshadowed by the overall effects on schools and communities. These gut-wrenching decisions should never be easy, but a system which makes them more complicated and increases divisiveness among staff; is one which I suggest is of skewed priorities and is out of balance.

As present superintendent and life long resident of the community I serve, I strongly believe we must all work together. My motto has always been "Teamwork or Doesn't Work". We must provide the encouragement, the opportunities, and the support for teachers to continually learn and update their skills. Who should better exemplify life-long learners than educators? I believe that inherent within the word professional is the individual responsibility to continually learn and grow.

Needs change and educators must continually develop the necessary skills to best serve our children. Teachers who need to improve, when given the guidance and opportunities to develop the necessary skills, must improve. The profession can accept no less. And for that very small percentage who for whatever reason do not meet the necessary level of performance, local communities through their local boards of education must again be allowed to take the necessary steps to insure our children are receiving the most appropriate education we can provide.

I stand before you with passion and a high level of concern, because I do not believe that the present law is working as well as it should and must. I, also, do not believe that the present atmosphere is within the parameters of the original legislative intent when the law was changed to what exists today. Therefore, I encourage the legislature to take action, and House Bill 2857 seems to be a step in the right direction.

Thank you.

To: House Committee on Education  
From: Fred Marten, Principal  
Clearwater Middle School  
Date: February 14, 1996

Mr. Chairman and members of the committee:

My name is Fred Marten. I am the principal of Clearwater Middle School and I come to tell a story which speaks directly to the support of House Bill No. 2857. For the past eight years, I have been a building administrator for USD #264. My first year, I was the assistant principal at Clearwater High School. In early April of my first year, I was selected as the principal at Clearwater Middle School. I knew little about the staff at the middle school, but this changed. Shortly after my appointment, our district had an April inservice that took place in my new building. In the month after the inservice, I was visited by three different teachers from the high school. Each told me in their own words that a session of the inservice had been held in the room of a teacher named Everett Ames. I did not know Mr. Ames well at the time, but all the teachers knew him well and had taught with him. They each told me that there was a sign on the wall in Mr. Ames' room that stated, "Do not throw pencils or other ways to disturb others." Two of the teachers were English instructors and the other was a mathematics instructor. Each stated that Mr. Ames had taught in the high school for years and was a "terrible" teacher. Mr. Ames was a nice man, but he was a bad teacher. To quote one of the teachers, "Fred, you need to get rid of this guy."

Mr. Ames history was eventful in our district. On a regular basis when he taught at Clearwater High School, the students would grab his grade book and throw it out the window. Guilt would finally overcome a student and the gradebook would be retrieved. Three of the English teachers approached the principal and told him that Mr. Ames was incompetent, and he was giving the students incorrect information. For reasons that I cannot explain, the administration and the board of education let Mr. Ames become a tenured teacher. The high school students were very mean to Mr. Ames and it appeared that he did not realize the tricks they were playing on him.

After seven years at the high school, Mr. Ames was moved to the middle school because the board and superintendent thought that Mr. Ames might be able to control middle school students. Those who have been around the business know

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that if you can't interest and manage high school students, there is no way that you can control middle schoolers. The kids immediately began to do many of the same things to him. They would speak softly until Mr. Ames turned up his hearing aid. After the adjustment, the students would yell. I saw exactly the same thing when I became principal. Students would make fun of Mr. Ames and he would not even know it was going on.

Mr. Ames was on probation during the 1985-86 school year for poor teaching techniques, poor communications skills, and unacceptable classroom discipline. In 1987-88, Mr. Ames was given job targets for the same reasons. Unfortunately, Mr. Ames was given an acceptable evaluation after both years. I gave him a very poor evaluation based on the same weaknesses, and I recommended nonrenewal. After asking my superintendent and attorney about the case, we went to the board. The board supported the nonrenewal 7-0. The school attorney gave us the following reason: "Ineffective teaching techniques over a long period of time with basic resistance to change."

Mr. Ames was nonrenewed in April of 1990. There was not one person from the community or the teaching staff who attended the meeting. Mr. Ames informed me that he would fight the nonrenewal to the end, and that it would take three or four years and might cost the board over \$ 100,000. A statement on our evaluation form said that any teacher given an "Improvement Required" on his or her evaluation must receive a plan of assistance. The school attorney told us that a reasonable person would not expect me to give Mr. Ames a plan of assistance when we were going to nonrenew him. I followed the attorney's advice. Before the hearing could start, Mr. Ames' attorney deposed me for three and one half hours during the summer. Unfortunately, the first day of the due process hearing took place in September of 1991, 18 months after the official nonrenewal. The third day of the hearing took place in December of the same year. The reason that it was spread out was that the courtroom could not be secured for three straight days. In the spring of the 1992, the hearing committee returned the decision to support Mr. Ames. The vote was 3-0. In the decision, the committee stated that Mr. Ames appeared to be an incompetent teacher who had trouble relating to students, but they had a problem with the way that he had been evaluated. This was a concern because I did not write job targets for a man whom we were not going to hire back. The committee also found that Mr. Ames showed no resistance to change. The board was then instructed by the attorney that they had to vote to accept the hearing committee's position as their own. They followed the

direction and then appealed to the state district court. The district court overturned the decision of the committee by stating that the committee found that Mr. Ames was an incompetent teacher, and that was all the state law demanded. Mr. Ames appealed to the Kansas Court of Appeals. After several more months, the court returned a reversal of the district court. The court found that the board had accepted the decision of the committee as its own and that was the end of the case. The board and KASB appealed to the Kansas Supreme Court. The court refused to hear the case. Four and one half years after nonrenewing Mr. Ames, our board settled with Mr. Ames for \$ 110,000 and \$ 42,000 in attorney fees. Very shortly after the settlement, Mr. Ames was able to obtain a teaching position in another district.

The fallout of the failed nonrenewal is different and dramatic. Not one person in the community has complained to me about the decision and having their taxes raised to pay the settlement. Not one previous board member regrets the decision. Not one teacher or staff person has complained to me about the decision. There was, and remains, no support for Mr. Ames. I had many seasoned educational administrators tell me that I would probably lose my job if the district lost the case. I have been operating with a two year contract for the past four years. The disadvantage is that all the players are worried about trying it again. There is another possible nonrenewal in our district. Without giving a name or position, this teacher has been on job target for four straight years, received poor evaluations for five straight years, been on probation for three of the past four years, and yet our attorney feels that there might be only a "50% chance" of winning a due process hearing. He is basing this on the history of appealed cases over the past six years. He calls this case the best documented case he has ever seen, but he can't in good conscience recommend to the board that this teacher be nonrenewed. Pat Baker, the lead attorney for the Kansas Association of School Boards, stated in the 1994 law seminar, that she finally agreed with a great number of administrators who stated that it was almost impossible to get rid of an incompetent teacher.

House Bill No. 2857 does some things that I find helpful. Putting a limit of time on the parties involved to get to the hearing helps greatly. It was ridiculous that we had to wait 18 months to start a hearing. Including the board in the process again is a positive. The appeal process going directly to the Kansas Court of Appeals will also cut at least one year out of the confusion. I would ask the committee to go further. I feel that a district and a teacher should have a hearing

before the school year is out. The teacher should have access to all the records and thirty days should be plenty of time to prepare for a hearing. If the committee would find for the teacher, this would give the players time to work out a plan of assistance. If the committee finds for the board, the teacher could be allowed to resign and pursue other employment. When the hearing goes into the summer or beyond, it is extremely difficult to hold the position and not find a teacher. Further, the tenure laws must be reexamined. I am not against tenure, but it should not be a ticket to a lifetime appointment. Teachers, as well as administrators and staff members, must continually try to improve their trade.

USD # 264 Clearwater learned a very difficult lesson. The lesson may carry long-range effects if poor teachers cannot be replaced. I will gladly answer any questions.

HOUSE EDUCATION COMMITTEE

FEBRUARY 14, 1996

MY NAME IS CHRIS CHRISTMAN, SUPERINTENDENT OF SCHOOLS AT GALENA U.S.D. NO. 499.

THANK YOU FOR THE OPPORTUNITY TO SPEAK TO H.B. 2857.

UNDER CURRENT LAW, SCHOOL DISTRICTS DO NOT HAVE THE AUTHORITY LOCALLY TO MAKE CHANGES IN PERSONNEL IF THAT PERSON IS A TENURED TEACHER. THAT DECISION IS NOW LEFT TO A HEARING OFFICER FROM NOT ONLY OUTSIDE THE COMMUNITY, BUT THE FIELD OF EDUCATION. THE DECISION OF THAT PERSON WILL BE BASED, MOST LIKELY, ON CRITERIA OTHER THAN THAT WHICH WAS ORIGINALLY IDENTIFIED AS CAUSE FOR DISMISSAL. THE BOARD OF EDUCATION OF A SCHOOL DISTRICT MUST ACCEPT THE FINDING OF THE HEARING OFFICER AS THAT DECISION IS, UNDER CURRENT LAW BINDING ON THE BOARD OF EDUCATION.

SCHOOLS ARE CHANGING, STUDENTS ARE CHANGING, SOCIETY IS CHANGING, AND EXPECTATIONS OF SCHOOLS ARE CHANGING. SCHOOL DISTRICTS ARE IN A CONTINUOUS IMPROVEMENT MODE. THE PUBLIC IS DEMANDING MORE OF SCHOOLS, THE LEGISLATURE IS DEMANDING MORE OF SCHOOLS, THE STATE BOARD OF EDUCATION IS DEMANDING MORE OF SCHOOLS, AND THE COURTS ARE DEMANDING MORE OF SCHOOLS. IT IS UNREASONABLE AND UNREALISTIC TO HOLD SCHOOLS ACCOUNTABLE FOR ACADEMIC, SOCIAL, AND DISCIPLINARY STANDARDS IF THEY ARE NOT ALLOWED TO DISMISS TEACHERS THAT CONTINUALLY FAIL TO MEET THESE STANDARDS.

AT TIMES SCHOOL DISTRICTS ARE CALLED UPON TO MAKE DIFFICULT PERSONNEL DECISIONS. THESE DECISIONS ARE TAKEN VERY SERIOUSLY BY ADMINISTRATORS AND BOARD OF EDUCATION MEMBERS. HOWEVER DIFFICULT THESE DECISIONS ARE, WE MUST REMAIN VIGILANT TO OUR MISSION OF PROVIDING THE BEST EDUCATIONAL OPPORTUNITIES FOR OUR STUDENTS.

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TEACHERS, NOR ANYONE ELSE SHOULD BE TREATED UNFAIRLY. HOWEVER I DO BELIEVE THAT IN SOME INSTANCES, THE CHILDREN OF KANSAS ARE BEING TREATED UNFAIRLY BECAUSE OF INEFFECTIVE AND INEFFICIENT TEACHING. THIS IS UNFORTUNATE.

LOCAL SCHOOL DISTRICTS NEED TO HAVE THE AUTHORITY TO MAKE PERSONNEL CHANGES WITHOUT THE THREAT OF LENGTHY AND COSTLY LITIGATION. A STRONG COMMITMENT TO DUE PROCESS FOR ALL INDIVIDUALS SHOULD ALWAYS BE PARAMOUNT IN ANY PERSONNEL DECISION. HOWEVER, THE THREAT OF LITIGATION SHOULD NOT BE. THIS THREAT MAY PREVENT SOME SCHOOL DISTRICTS FROM MAKING EMPLOYMENT DECISIONS FOR TENURED TEACHERS THAT NEED TO BE MADE. BASED ON PERSONAL EXPERIENCE WITH A TEACHER NON-RENEWAL, IT IS THE STRATEGY OF THE TEACHER'S K.N.E.A. PAID ATTORNEYS TO MAKE THE PROCESS OF NON-RENEWING THE CONTRACT OF A TENURED TEACHER SO MONETARILY COSTLY, TIME CONSUMING, AND UNPLEASANT THAT FUTURE NON-RENEWALS WOULD NOT OCCUR. THIS POSITION GIVES NO CONSIDERATION FOR THE WELFARE THE STUDENTS. CONTINUED EMPLOYMENT OF THE TEACHER BECOMES THE CENTRAL THEME OF THE TEACHER'S LEGAL DEFENSE, NOT IF THEY WERE EFFECTIVE OR EFFICIENT IN THEIR INSTRUCTION OF YOUNG PEOPLE.

LET ME GIVE YOU A VERY REAL EXAMPLE OF WHAT OCCURS WHEN A SCHOOL DISTRICT MAKES A COMMITMENT TO PROVIDE QUALITY INSTRUCTION FOR THEIR STUDENTS AND NON-RENEW THE CONTRACT OF A TENURED TEACHER.

A TENURED TEACHER IN GALENA UNIFIED SCHOOL DISTRICT 499 WAS PLACED ON PROBATION FOR THE 1988-89 SCHOOL YEAR AND WHEN SUFFICIENT IMPROVEMENT HAD NOT OCCURRED THIS TEACHERS WAS PLACED ON PROBATION A SECOND TIME DURING THE 1989-90 SCHOOL YEAR. IN APRIL, 1990 THE BOARD OF EDUCATION ISSUED NOTICE OF INTENT TO NON-RENEW THE TEACHER'S CONTRACT FOR THE 1990-91 SCHOOL YEAR. THE TEACHER REQUESTED A DUE PROCESS HEARING IN APRIL, 1990 BEFORE A THREE PERSON HEARING PANEL. THE HEARING COMMITTEE HEARD TESTIMONY FOR THREE DAYS AND RENDERED A DECISION IN JANUARY, 1991 RECOMMENDING THE DECISION TO NON-RENEW BE UPHOLD WITH SUFFICIENT

EVIDENCE. DURING THE HEARING THE ATTORNEY FOR THE TEACHER REQUESTED THAT HE BE ALLOWED TO QUESTION BOARD OF EDUCATION MEMBERS ABOUT WHAT WAS DISCUSSED IN EXECUTIVE SESSION CONCERNING THIS TEACHER'S EVALUATIONS. THE HEARING PANEL DENIED THE REQUEST ON THE GROUNDS THAT INFORMATION DISCUSSED DURING EXECUTIVE SESSION WAS PRIVILEGED AND NOT OPEN TO PUBLIC REVIEW.

THE TEACHER APPEALED THE DECISION OF THE SCHOOL DISTRICT TO NON-RENEW THE CONTRACT TO THE DISTRICT COURT IN FEBRUARY, 1991. THE ISSUE REMAINED IN THE DISTRICT COURT FOR TWENTY TWO MONTHS.

THE DISTRICT COURT RENDERED A DECISION IN NOVEMBER, 1993 UPHOLDING THE HEARING COMMITTEE'S AND THE SCHOOL BOARD'S DECISION TO NON-RENEW THE TEACHER'S CONTRACT.

THE TEACHER APPEALED THE DISTRICT COURT'S DECISION TO THE COURT OF APPEALS WHICH RENDERED THEIR DECISION IN MARCH, 1995. THE COURT OF APPEALS HELD THAT THE TEACHER WAS DENIED DUE PROCESS BY THE THREE PERSON HEARING COMMITTEE WHEN THE HEARING COMMITTEE DENIED EVIDENCE CONCERNING DISCUSSIONS OF SCHOOL BOARD MEMBERS IN EXECUTIVE SESSION. THE APPELLATE COURT WENT ON TO SAY THE SCHOOL DISTRICT MAY HAVE HAD VALID REASONS FOR NOT RENEWING THE TEACHER'S CONTRACT. THE APPELLATE COURT FOUND IN FAVOR OF THE TEACHER NOT BECAUSE OF ANY WRONG DOING OF THE SCHOOL BOARD OR THE SCHOOL DISTRICT, BUT BECAUSE THE DUE PROCESS HEARING COMMITTEE EXCLUDED EVIDENCE FROM EXECUTIVE SESSIONS. THE SCHOOL DISTRICT APPEALED THE DECISION TO THE KANSAS SUPREME COURT WHO REFUSED TO HEAR THE CASE THEREBY LETTING THE APPELLATE COURT DECISION STAND.

BECAUSE THE ISSUE WAS BEFORE THE HEARING COMMITTEE FOR APPROXIMATELY NINE MONTHS AND REMAINED IN THE COURT SYSTEM THROUGH THE DISTRICT COURT, THE KANSAS COURT OF APPEALS, AND THE KANSAS SUPREME COURT FOR THE NEXT FOUR YEARS, THE TEACHER WAS



AWARDED BACK PAY PLUS INTEREST LESS ANY WAGES AND UNEMPLOYMENT BENEFITS RECEIVED FOR FIVE YEARS. THE SCHOOL DISTRICT'S ERRORS AND OMISSIONS INSURANCE POLICY DID NOT COVER ANY OF THE COST OF THE JUDGMENT BECAUSE THE SCHOOL DISTRICT WAS NOT FOUND TO HAVE ACTED WRONGLY. HAD THE TEACHER BEEN AWARDED PUNITIVE DAMAGES BECAUSE OF WRONG DOING ON THE PART OF THE SCHOOL DISTRICT THEY WOULD HAD PAID THE FULL AMOUNT. AS IT WAS THE TEACHER WAS AWARDED BACK PAY AND NOT DAMAGES

SINCE THE COURT ORDERED THE TEACHER REINSTATED, THE DISTRICT AND TEACHER REACHED AN AGREEMENT WHEREIN THE BOARD BOUGHT OUT HER TEACHING CONTRACT AND BOTH PARTIES EXECUTED A JOINT RELEASE WHICH BROUGHT THE MATTER TO A FINAL CONCLUSION IN AUGUST, 1995.

DURING THE FIVE YEARS OF LITIGATION, GALENA U.S.D. 499 HAS NOT WAVERED FROM IT'S COMMITMENT TO EXCELLENCE FOR OUR CHILDREN. THE TEACHER WAS AWARDED \$218,216.00 ( IN ORDER TO PREVENT THE REINSTATEMENT OF THIS TEACHER IN OUR SCHOOL SYSTEM, THE TEACHER WAS PAID THE EQUIVALENT OF ONE YEARS SALARY WHICH WAS APPROXIMATELY \$38,500) . WHEN THIS AMOUNT IS ADDED TO THE LEGAL EXPENSES INCURRED BY THE SCHOOL DISTRICT THE TOTAL EXCEEDS ONE-QUARTER OF A MILLION DOLLARS.

THE SCHOOL DISTRICT HAS EXPENDED THOUSANDS OF DOLLARS AND THOUSANDS OF MAN-HOURS WITH THIS CASE. RESOURCES WHICH COULD HAVE BEEN BETTER SPENT IN CONTINUING TO IMPROVE THE QUALITY OF EDUCATION THE STUDENTS, PARENTS, AND CITIZENS OF GALENA, KANSAS DESERVE AND HAVE COME TO EXPECT OF THEIR SCHOOL SYSTEM.

THE IMPACT ON THE SCHOOL DISTRICT FINANCIALLY HAS BEEN A BURDEN THIS YEAR. BUDGET CUTS HAVE BEEN MADE WHICH WILL HAVE THE LEAST DIRECT IMPACT ON THE STUDENTS ATTENDING OUR SCHOOLS.

H.B. 2857 DOES CORRECT THE PROBLEM OF ALLOWING A NON-EDUCATOR TO DECIDE THE FATE OF A TEACHER AND A SCHOOL DISTRICT.

HOWEVER, IT DOES NOT RETURN TO THE LOCAL SCHOOL DISTRICTS AND ELECTED BOARDS OF EDUCATION LOCAL CONTROL OF PERSONNEL MATTERS. AS IN THE CASE OF GALENA U.S.D.NO. 499 ACTIONS OF A HEARING PANEL OR A HEARING OFFICER CAN HAVE PROFOUND EFFECTS ON A SCHOOL DISTRICT. IN MY HUMBLE OPINION A HEARING OFFICER OR A HEARING PANEL IS NOT NECESSARY SINCE THE DECISION OF THE BOARD OF EDUCATION CAN BE APPEALED DIRECTLY INTO THE COURT SYSTEM.

AS THIS COMMITTEE CONSIDERS THESE MATTERS, PLEASE REMEMBER THE IMPORTANCE OF A QUALITY EDUCATION AND WHAT IT MEANS FOR THE CHILDREN OF KANSAS. THEY ARE OUR FUTURE.

IN RE: HB2857 - CONCERNING TEACHERS, HEARINGS PROVIDED  
UPON NON-RENEWAL OR TERMINATION OF CONTRACTS OF EMPLOYMENT

The Coffeyville U.S.D. #445 experience  
with the present teacher due process statute

On December 21, 1994, following a month long investigation by school authorities, the Coffeyville Board of Education adopted a resolution of its intent to terminate a tenured teacher's contract for sexual harassment and assault upon a student. The teacher was suspended with pay pending the due process hearing. After 15 months, the matter remains unresolved. A decision from the hearing officer is not expected until about March 10, 1996.

This process has been very expensive and time consuming. The teacher, the Board of Education, and the students all deserve a speedy resolution of such a matter. That has not occurred under the present procedure. In this era of tight budgets, this process has had a severe negative impact upon the Coffeyville district.

EXPENSES INCURRED BY THE SCHOOL DISTRICT

The Coffeyville school district has incurred these expenses to date:

Salary paid to date while the teacher has been suspended with pay (This continues at the rate of \$2,125.00 per month until this matter is resolved.)	\$29,500.00
Single premium health insurance coverage paid for the teacher	\$2,000.00
Employer's share of social security attributable to teacher's salary	\$2,300.00
Court Reporter's expense in connection with Kansas depositions and the eight days of formal hearings	\$6,915.18
Attorneys' fees and out-of-pocket expenses incurred to date by the Board of Education	\$34,072.98
TOTAL EXPENSES TO DATE:	\$74,788.16

Since the matter has not been completed, the School District will incur additional expense. In addition, the School District is also obligated to pay the compensation and expenses of the Hearing Officer for which it has not yet been billed.

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Attachment 7

TIME INVOLVED

Consider also the following statistics with respect to time spent on this matter:

1. Month long investigation conducted by principal and superintendent of schools prior to the Board adopting its resolution of intent to terminate the teacher's contract.
2. Thirteen (13) days of depositions in connection with the due process hearing, with depositions being taken not only in the State of Kansas but also Missouri, Oklahoma, and Texas.
3. Seven (7) days of hearings before the hearing officer in June 1995.
4. One subsequent hearing day in November 1995.
5. 373.1 hours of attorney time spent on behalf of the Board of Education in this matter.
6. Untold hours of administrative time and expense involved in this matter.
7. Fifteen (15) witnesses testified in person and four (4) testified by deposition on behalf of the Board of Education. Thirty-nine (39) witnesses testified in person and five (5) by deposition on behalf of the Teacher.

Respectfully submitted,

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House Education