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 15, 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: Judge Patrick Brazil, Chief Judge of the Court of Appeals
Craig Grant-Kansas National Education Association
Barbara Cole-Kansas National Education Association
Skip McMillen, Teacher-USD 380, Frankfort
Kristy Kraisinger, Teacher-Great Bend
Dick Anderson, Attorney-Topeka
Christy Levings, Teacher-Olathe
David Schauner, General Counsel-Kansas National Education Association

Others attending: See attached list

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

Judge Patrick Brazil, Chief Judge of the Court of Appeals, spoke in opposition to **HB 2857** (Attachment 1). The bill provides for an appeal from the hearing committee or the school board directly to the Court of Appeals, bypassing the district court. The apparent reason being the assumption that it will reduce the time and expense of litigation. The reality would probably be an increase in both time and expense in most cases since the district court can hear and determine appeals faster than the Court of Appeals. It is expected that by this time next year, a typical appeal in the Court of Appeals will take 18 months to two years to conclude; conversely, the majority of appeals to the district court in teacher termination cases can be concluded in less than six months.

Craig Grant, Kansas National Education Association, appeared in opposition to **HB 2857** (Attachment 2). He showed survey results of teacher due process and charts to illustrate these findings. The entire purpose of the administrative hearing is to put a check and balance on the board of education and the administration. If reasons are valid and documentation shown, there is little to worry about in a hearing for boards and administrators.

Barbara Cole, Kansas National Education Association, spoke briefly in opposition to **HB 2857.** She explained the circumstances leading to hearing officer legislation, efforts to implement the "intern program" for mentoring and other negotiations for successful evaluation between the involved groups.

Skip McMillen, Teacher-Frankfort, related his experience of a due process hearing before a three-member panel that took three years to resolve in opposition to **HB 2857** (Attachment 3).

Kristi Kraisinger, Teacher-Great Bend, told of her thankfulness for due process in its present form and how it helped her, in opposition to **HB 2857** (Attachment 4). Any attempt to weaken or water down the due process protection that teachers now enjoy would be devastating.

Richard D. Anderson, Attorney, spoke as an opponent to **HB 2857** in his capacity as defense attorney of several teachers (Attachment 5). The present due process law provides teachers with a meaningful, fair and prompt due process hearing and decision; and school boards have a relatively efficient procedure for

dismissing incompetent teachers with a minimum of expense and delay. **HB 2857** would provide no worthwhile change, would be more expensive to all participants and would foster alternative or collateral litigation.

Christy Levings, President of Olathe NEA appeared in opposition to **HB 2857** (Attachment6). The process is not the problem; the people using the process need assistance. Improvements to the law are not needed to change the current process but the addition of the following requirements could make the process better; 1) require involvement by professional staff and representative organizations; 2) require more training for boards of education so they understand the process and can work cooperatively with everyone involved to resolve problems at the earliest stages; 3) require the involvement of master teachers with new staff; 4) require ongoing training for administrators in the area of evaluation and assistance; and, 5) work with the Regents' Institutions to require training and evaluation skills and training in the area of personnel for all administrative candidates.

David M. Schauner, General Counsel KNEA, stood in opposition to **HB 2857** (Attachment7). The current version of the Due Process Act does work as it provides protection to Boards of Education, students and Kansas teachers from unreasonable and unjust treatment. The 3-person hearing committee would provide an undue advantage to the school board by permitting one committee member to list and have the chairperson selected from a list of school board attorneys.

Two letters were submitted in opposition to **HB 2857**. They were written by Randall Fisher, Attorney from Wichita (Attachment8) and C.A. Menghini, Attorney from Pittsburg (Attachment9).

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

The meeting was adjourned at 6:11 p.m.

The next meeting is scheduled for February 19, 1996.

HOUSE EDUCATION COMMITTEE GUEST LIST

DATE: February 15, 1996

NAME	REPRESENTING
Randi Phillips	NEA - SM
Mary Johnson	NEA - SM
Marlee Watts	NEA - SM
Dave Kirkbride	South Central KS NEA
Nancy Hopkins	" " " "
Idna A Murray	South Central KS NEA
Downa Sublette	South Central Ks NEA
Sandra K Butler	KNEA - retired
Arien Burnett	USD 501 #
Bill Land	Blue Valley NEA
Barbara Cole	KNEA
Kristi Kraysinger	KNEA
Pat Biggs	Court of Appeals
David Schauner	KNEA
Staay Kennedy	KNEA
Tom Kubo	KNEA/KASB
Gene Neely	KNEA
Val DeFever	KASB
Chris Cordes	South Central NEA

HOUSE EDUCATION COMMITTEE GUEST LIST

DATE: February 15, 1996

NAME	REPRESENTING
David Unruh	Lawrence EA & KNEA
Brenda J. Graft	Rose Hill Schools teachers
Christy Lewings	Olathe NEA
Connaction Blackburn	USC - KNEA
Skip McMillen	Vermillion Valley Ed. Assoc. - KNEA
Sandi Jones	KNEA NEA
Kaye A Voodiee	K-NEA U.S.D 337
Lula Shirley	WTA - USD 320
Mabel Goehring	K-NEA - WTA USD # 320
Marlene Olsen	KNEA - Retired + SM NEA
Karen Davidson	Rose Hill
Donna Goehring	KNEA - WTA USD # 320
Jeanie Lowery	KNEA - WTA USD # 320
Kathy Hendricks	KNEA - WJA USD # 320
Tim A Schutt	KNEA
Shelley Rawlston	*
Lisa Gilpin	KNEA
Paul Shelby	OJA
Bob Gernon	Ct. of Appeals

Diane M Cline KNEA USD 202

Joan Sue Atwell (PARENT) Onaga, Ks.

HOUSE EDUCATION COMMITTEE GUEST LIST

DATE: February 15, 1996

NAME	REPRESENTING
David Knudson	Ct. of Appeals
Tom Schmidt	USD 434
Mike Gealerson	Kansas-NEA
Judy Kober	Kansas NEA
Bruce Lindskog	KNEA
Bob White	U.C.P.
Dr. Rick Moore	KSNEA
Mike Faul	A Concerned Parent
Fred Berry	A Concerned Parent
Tom McLaughlin	Teachers Citizens for Public Education - KNEA - Kids
Keith Welty	KNEA NEA-Wichita
Vern Jantz	KNEA NEA-Wichita
Bob Marley	KNEA Retired NEA-Wichita Teacher
Janice McIntyre, PhD	KNEA- Higher Ed Kansas City Kansas Community College
Charles W. Johns	Kansas-NEA

Remarks by Chief Judge J. Patrick Brazil, Kansas Court of Appeals

Before the House Education Committee
Thursday, February 15, 1996, Room 519S

Good afternoon. Thank you for this opportunity to express our concerns with HB 2857. I am here solely to address § 7 of the bill relating to appeals to the Court of Appeals.

As you know, § 7 provides for an appeal from the hearing committee or the school board directly to the Court of Appeals, bypassing the district court. Based on my review of Interim Committee Proposal # 15, the apparent reason for bypassing the district court and going directly to the Court of Appeals is the assumption that it will reduce the time and expense of litigation.

In my opinion, a direct appeal to our court will probably increase both the time and expense in most cases. Why? Because a local district court can hear and determine appeals faster than the Court of Appeals.

For reasons I will explain in a moment, by this time next year, a typical appeal in the Court of Appeals will take 18 months to 2 years to conclude. Conversely, I would guess that the majority of appeals to the district court in teacher termination cases can be concluded in less than 6 months.

Some might argue that as along as either party can appeal a district court decision to the Court of Appeals, why not go direct to the Court of Appeals? My answer to that is the majority of cases appealed to the district court go no further.

The Office of Judicial Administrator does not keep separate statistics for teacher termination cases; they are included with other types of civil cases. I am sure that the Association of School Boards or KNEA can, however, provide the figures to you.

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Attachment 1

If you will look at the number of appeals to the district court over the last several years, and then look at the appeals from the district court to the Court of Appeals, I will guess that it is less than 30%. Using that estimate, it would obviously be faster for that 30% of the cases to be appealed directly to the Court of Appeals. But for the other 70% of the cases, a direct appeal to the Court of Appeals would take much longer than an appeal to the local district court.

Second, please consider the potential impact on the Court of Appeals of taking 100% of the appeals, rather than 30%.

1. Generally, cases coming from a district court will have the issues more clearly defined than an appeal from a school board or a panel consisting of 1 lawyer and 2 laymen.
2. An appeal from the district court will be limited to the record presented to the district court. It is my understanding that many times under the present system, one party or the other asks to add to the record of the school board hearing or to take additional depositions. As an appellate court, we would have to remand it to the school board for taking additional evidence.
3. Most important, given our present growth of appeals and backlog of cases, an increase of appeals to the Court of Appeals would seriously impact our present problems.

Largely as a result of the Kansas Sentencing Guidelines enacted in July 1993, we have experienced a large increase in appeals and an even larger increase in our backlog of ready cases (those cases which have been briefed are ready for disposition). Appeals have increased 45% in just 2 years--from 1993 to 1995. And our backlog of ready cases increased 843% from January 1994 to January 1996. We experienced this backlog despite all the efforts of our judges and staff.

Our court was expanded in 1987 from 7 to 10 judges. In 1989, the first full year with 10 judges and additional staff, we disposed of 1264 cases. Last year, with no additional judges or staff, we disposed of 1729 cases, an increase in productivity of 37%.

You've heard the expression, "The faster I go, the behinder I get." That's the Court of Appeals.

This increase in backlog results in more delay in resolving appeals. As recently as 1993, we were able to put ready cases on a docket for disposition within 60 to 90 days. Today it is taking 8 to 9 months and the delay getting longer each month.

Last summer, the interim joint judiciary committee reviewed our caseload and recommended that the appropriate standing committees of the legislature consider giving us more judges and staff. It noted that several states' courts of appeals with similar caseloads have more judges and substantially larger staffs. For instance, Colorado has 16 court of appeals judges. Unfortunately, the Governor did not include our request for at least three more research attorneys and one assistant in his budget. Likewise, on Tuesday of this week, the House Appropriation Committee voted not to include our request in its proposals.

In view of our problems, and without additional help, I ask you not to do anything that would only increase our caseloads.

I should also recognize the possibility that someone may suggest that teacher cases be appealed to the Court of Appeals on an expedited basis--thus avoiding the delay that I have talked about. [See attached.]

In conclusion the present proposal to appeal directly to the Court of Appeals would not reduce the time or expense of teacher termination cases, and it would seriously add to our problems on the Court of Appeals.

Thank you. I will be happy to answer any questions and provide any information to your or your staff.

(From 1994 Training Manual)

EXPEDITED APPEALS

Certain appeals are expedited either based on statutory authority or because this court wants to treat them quickly. Following is a list of expedited appeals.

Appeals With Priority Over All Other Appeals:

NOTE: Inform the motions attorney about these appeals immediately.

1. Appeals by an interested party from any adjudication, disposition, or termination of parental rights or order of temporary custody in any proceedings pursuant to the Code for Care of Children. L. 1994, Ch. 301, § 10; K.S.A. 1994 Supp. 38-1591(a); (d).

2. Criminal interlocutory appeals. K.S.A. 22-3603; Rule 4.02.

3. Habeas corpus proceedings involving extradition to another state. K.S.A. 60-1505(e). The statute requires the district court to send the transcript of the hearing to this court within 20 days after the notice of appeal is filed. After review of the transcript, the court sets the time for filing of the record. After reviewing the record, the court sets deadlines for filing of briefs *if briefs are desired.*

Other Expedited Appeals:

1. Waiver of parental notification for minors seeking an abortion. K.S.A. 65-6705(g).

2. Orders authorizing prosecution of a juvenile as an adult. K.S.A. 38-1681(a), (c).

3. Utility rate cases by public utility challenging KCC decision. COA must decide within 120 days. K.S.A. 66-118g; Rule 9.02.

4. Board of Public Utilities cases on public utility water and electricity rates. K.S.A. 13-1228h. The COA has jurisdiction over these cases despite K.S.A. 1993 Supp. 60-2101.

5.

6. Any agency action of the state corporation commission arising from a rate hearing requested by a public utility or requested by the state corporation commission when a public utility is a necessary party. Proceedings from review of other action of the state corporation commission. K.S.A. 66-118d.

7. Any action of the water transfer hearing panel of the Kansas water authority. K.S.A. 82a-1505(c).

8. Civil interlocutory appeal. K.S.A. 1993 Supp. 60-2102(b); Rule 4.01.

9. Habeas Corpus. K.S.A. 60-1503. NOTE: Only applies to 1501's and not 1507's.

10. Remands for ineffective assistance of counsel. *State v. Van Cleave*, 239 Kan. 117, 716 P.2d 580 (1986).

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

Craig Grant Testimony Before
House Education Committee
Thursday, February 15, 1996

Thank you, Mr. Chairman. Members of the Committee, my name is Craig Grant and I represent Kansas NEA. I appreciate this opportunity to visit with the committee in opposition to HB 2857.

The legislative process in Kansas is one which could be described as a conservative process. The designers of our process did not make it easy for bills to become law. The extensive committee process in both Houses, calendar control in both Houses, and a conference process which allows a bill to be killed anywhere along the way is certainly a tenuous road for any bill.

I believe the process was designed this way to keep bills which do not address a real problem from being passed. I also believe that HB 2857 is one such bill.

Yesterday, KASB and USA paraded a group of conferees to convince you to change the process used to fire a teacher. We heard the whining and complaining about the time and expense it takes to fire a teacher. What we really are hearing from boards and administrators is that "we never make a bad decision" and "even if we make a bad decision, we are local officials and should never be challenged."

Now today it is our turn to testify before you to try and convince you that school boards and administrators must be taking the title page out of Berlinger & Biddles' book, Manufactured Crisis. In addition to myself, KNEA has asked five others to speak to you today. We hope you will find our statements compelling in our attempt to defeat this bill.

Actually, Dale Dennis presented enough facts this Fall to show that a change in the due process is not necessary. I have attached a copy of his survey which was completed last Fall. The survey of chief school administrators asked questions about the nonrenewal or termination of teachers since the law was changed in 1991. Those facts certainly reveal a great deal.

Since the 1991 change, there have been 181 teachers fired. Now if the KASB claim that a teacher could not be fired under the new process were true, the numbers of firings probably would be declining year after year. However, that is not the case. In fact, the number of firings has gone up the last two years.

I have provided a couple of charts to illustrate these numbers. The first chart shows the number of firings the last ~~two~~ four years. The second chart shows the percentage of fired teachers who initially requested a hearing. As

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Attachment 2

Telephone: (913) 232-8271 FAX: (913) 232-6012

you can see, the percentage has declined rapidly since the first year and continues to decline each year. The other teachers?--they accepted the board's decision and did not request a hearing.

More important than chart 2 is chart 3 which indicates the percentage of firings which resulted in an actual hearing. As you can see, very few cases even go to a hearing with the number last year at 8% or only four out of 49 fired teachers actually having a hearing.

Probably the most telling chart is number 4 which shows the percent of firings which actually end up in the court system. No one wants to go to court. The cases you have heard from administrators and boards are the ones which do end up in court. As you can see, after the first year of the act, the percentage is well below 5% with only 2% of the cases last year ending up in the court system.

Put another way, in 1994-95, one case out of 49 firings ended in court. Since 1991, when the law was changed, 9 cases out of 181 firings--less than 5%--ended up in our court system. Believe me, the percentage was much higher before the law was changed. This law works and the numbers show it.

Let us turn to the bill itself. HB 2857 will reverse a trend which we believe has worked to the advantage of both boards and teachers for the last four years. The entire purpose of the administrative hearing is to put a check and balance on the board of education and the administration. If reasons are valid and documentation shown, boards and administrators have little to worry about in a hearing. Frankly, if the administrators have done their job, the case will not get to a hearing as the numbers clearly show. We counsel many more teachers away from situations and the profession than we take cases to hearings.

In those cases which you have heard about from KASB--the "bad" cases, this is usually what happens. Boards of education hear part of the story--the part where either an administrator may have been negligent or where some patron or student levels a charge against the teacher. The board makes a decision based on this partial evidence. Like most human beings, they do not like to be challenged. If they are, they close their ranks and tend to close their minds to the facts. It becomes an emotional rather than a logical issue. The neutral hearing officer can then enter the picture. He or she can listen objectively, can look the witnesses in the eye, and can tell what really would be considered "good cause."

On the other side, a teacher may be caught up in the emotion of the issue. That teacher may also need a neutral third party to listen and rationally make a decision. As the numbers indicate, about half the time the teacher loses these hearings. As long as all the evidence was present, that is all the teacher can ask--for a fair hearing.

Others will follow to talk about some specific cases, about what really works, and about further problems with HB 2857.

I do not often take this long for testimony--and I apologize for that; however, there is no more important issue to the 24,000 members I represent. Someday administrators and boards in all districts will, hopefully, improve their performance so that evaluations are properly done and so that local politics and gossip do not play a part in the professional lives of our teachers. But those improvements will not take place if we pass HB 2857 and allow them to revert to their old ways. Kansas NEA asks this committee not to take administrators and boards off the hook--keep the pressure on them in the same way you are keeping the pressure on for teachers to improve their performance. Defeat HB 2857 and move to other issues which will improve education and not be divisive.

Thank you for listening to our concerns.

PLEASE RETURN TO: DALE M. DENNIS, ASSISTANT COMMISSIONER
DIVISION OF FISCAL SERVICES AND QUALITY CONTROL
120 EAST TENTH STREET
TOPEKA, KANSAS 66612-1182

DUE--SEPTEMBER 7, 1995

SURVEY
TEACHER DUE PROCESS

1. During each of the following years, how many tenured teachers (teachers with due process rights) were notified by your unified school district that they would be nonrenewed or terminated?

1991-92	55
1992-93	32
1993-94	45
1994-95	49

RESPONSES TO THE FOLLOWING QUESTIONS SHOULD BE SHOWN IN THE SAME YEAR IN WHICH THE NOTICE WAS GIVEN AND NOT THE YEAR SUBSEQUENT ACTION WAS TAKEN. FOR EXAMPLE, IF A NOTICE WAS GIVEN IN 1991-92 WITH THE HEARING CONDUCTED IN 1992-93 AND AN APPEAL TO THE COURTS IN 1993-94, RESPONSES SHOULD ALL BE RECORDED ON THE 1991-92 LINE FOR THE APPROPRIATE QUESTION.

2. How many due process hearings were requested/held as a result of these nonrenewal/termination notices?

	Requested	Held
1991-92	41	12
1992-93	11	6
1993-94	15	9
1994-95	16	4

3. How many hearing panel/officer recommendations favored the teacher/board of education?

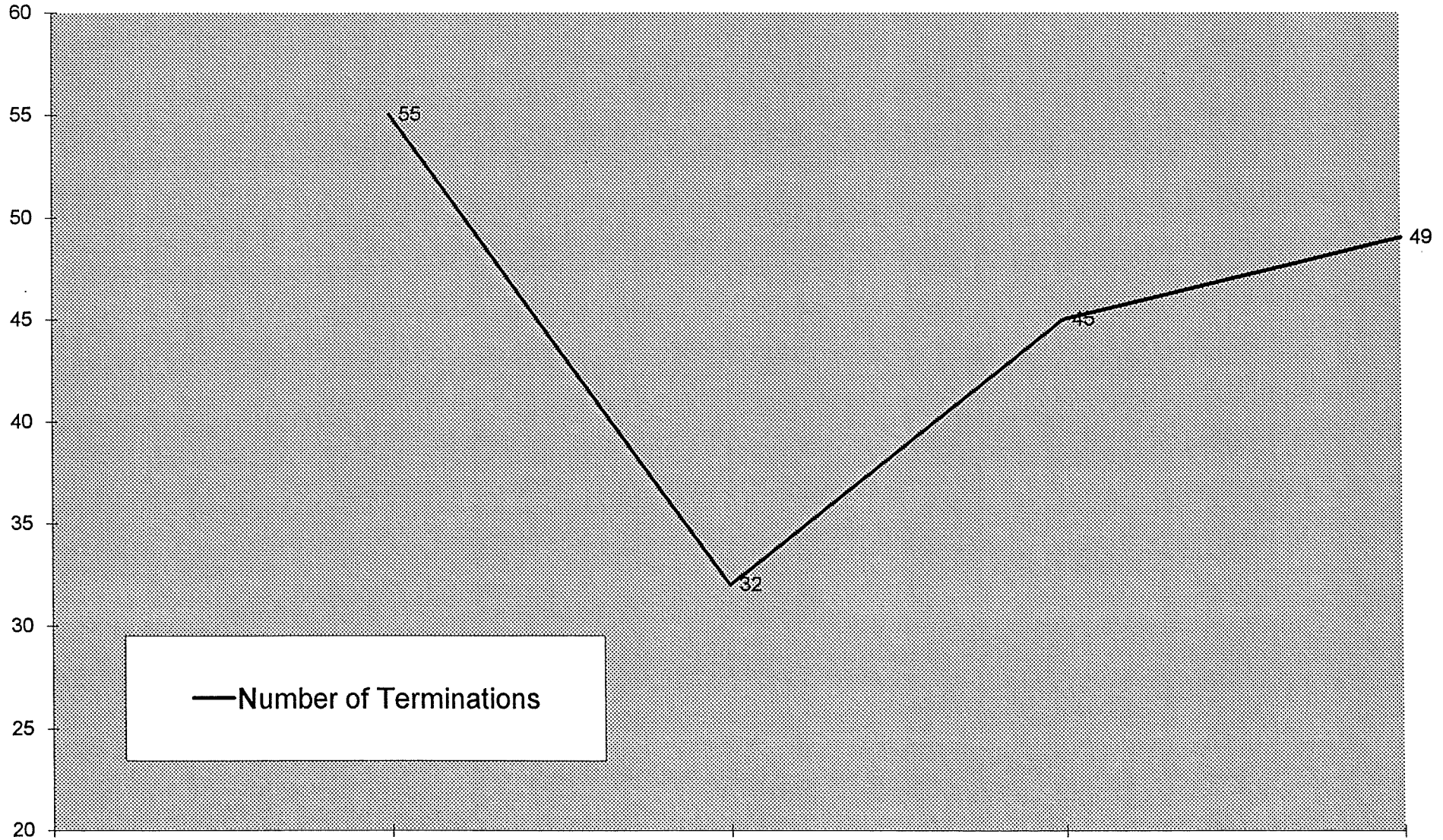
	Teacher	Board of Education
1991-92	7	5
1992-93	2	4
1993-94	4	3
1994-95	3	0

4. How many hearing panel/officer decision(s) were appealed to courts?

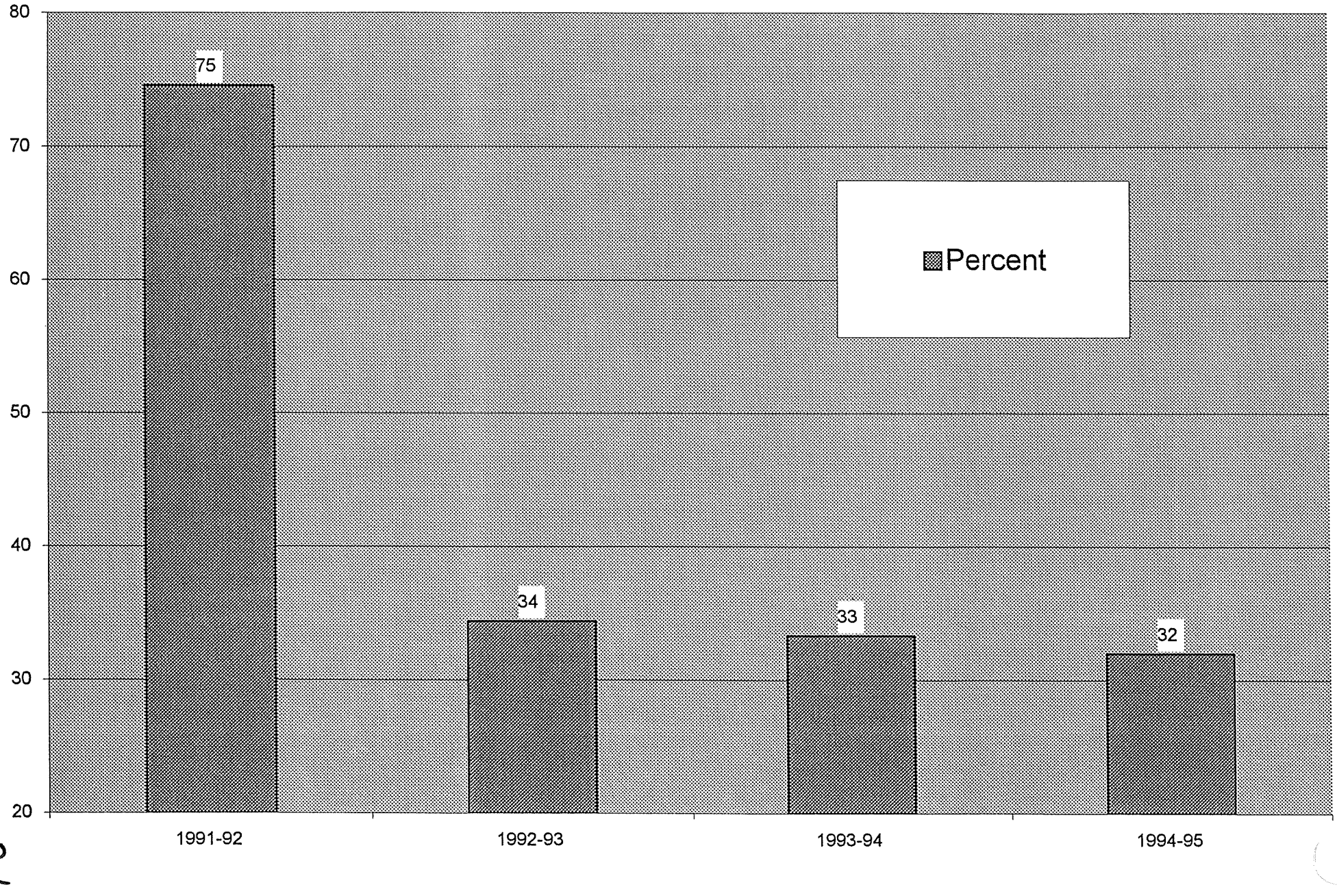
	District Court	Appellate Courts
1991-92	5	1
1992-93	1	1
1993-94	2	1
1994-95	1	1

U.S.D. No. _____ Signature of Chief School Administrator _____ Date _____

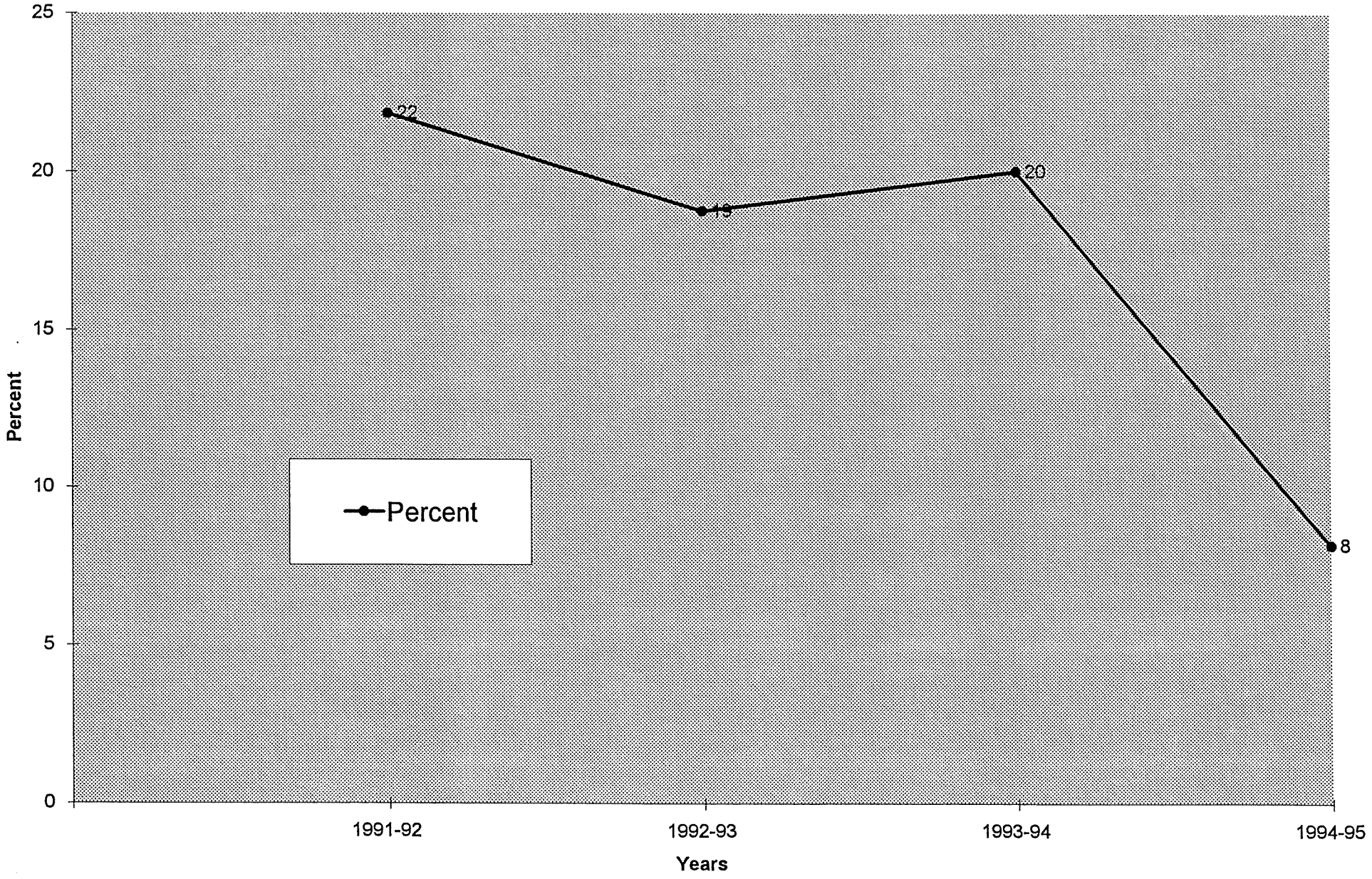
Number of Terminations and Nonrenewals of nonprobationary Teachers Since 1991



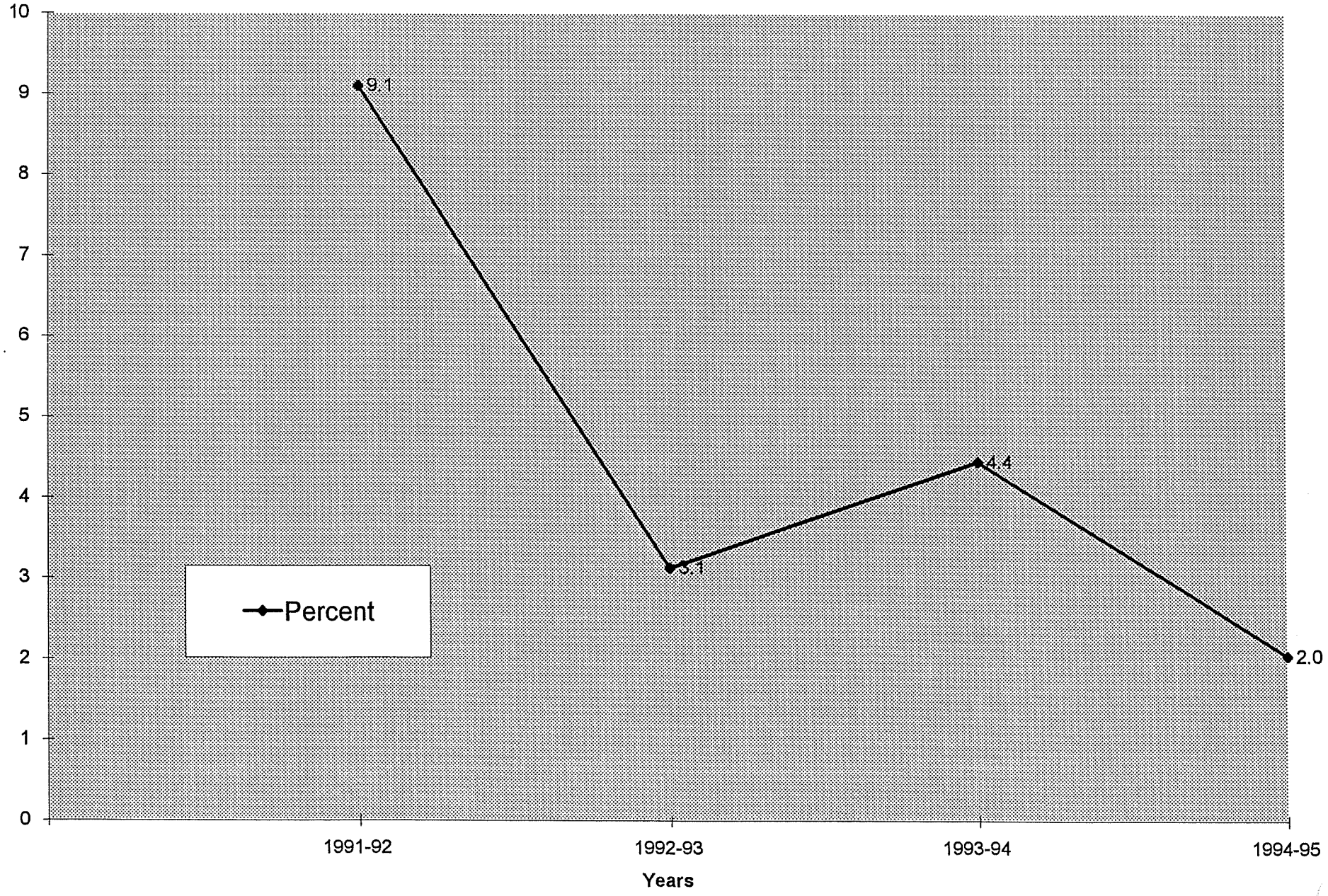
Percent of Nonrenewed Teachers Requesting Hearings



Hearings Held as a Percent of Nonrenewals and Terminations



Percent of Nonrenewals and Terminations That Went to Court



February 15, 1996
Testimony of Skip McMillen
House Education Committee

My name is Skip McMillen and I'm here to tell you I was non-renewed because I made an administrator and school board member angry and because I am a teacher and a student advocate. My non-renewal was NOT based on my ability as a teacher. That was never in question. I was the victim of trumped up charges and was treated in an arbitrary, capricious and unreasonable manner.

The current due process law helped re-store my precious reputation as a good teacher. The current law is fair to both school boards and teachers because it keeps the politics out of the classroom.

The changes proposed in this law, in essence, tell good teachers you'd better "get along...or get along".

I am a 17 year teaching veteran in the Frankfort Schools and have received outstanding or adequate evaluations since I started teaching. I had taught in Frankfort for 12 years when this occurred.

My ordeal began in August of 1990 with the first of 45 meetings with the principal of Frankfort High School. I was being put on a 3-month probation because I allowed students to put their feet on the rungs of the desks in front of them, I didn't stand in class and I allowed a student-assistant to do her work at my desk.

In February of 1991 I was told by the principal that I had successfully completed probation and that he would recommend my contract be renewed. In March of that year I was called to the office to meet with the principal and superintendent and told that it was the school board's intent to non-renew my contract.

I asked for and was granted a due process hearing in August 1991. The school board in its letter of intent to non-renew me cited 34 reasons for their actions. These reasons ranged from not standing while I had students in the room, not monitoring students during class passing periods, not locking my classroom door, letting students place their feet on the bottom rungs of the desks in front of them, not following a dress code for teachers, not attending a faculty meeting, to allowing a parent to monitor an after school club meeting while I was working the scorers table at a junior high ball game.

An additional twenty reasons were cited at the end of June to bring the total charges against me to 54. These charges included those I mentioned before plus a sexual and inappropriate touching of a female student charge.

This groundless charge was by far the most devastating to me, my reputation, and my family.

The August, 1991, due process hearing was held in front of a three-member panel. **None** of the 54 charges were substantiated by the school board, including the sexual and inappropriate touching charge. Neither the principal, the superintendent nor the school board president had any recollection of the person who was responsible for making the allegation.

The young woman whom I allegedly touched had not made the allegation. Ironically, the school board did not even call her to testify as a witness. In fact, she testified at the due process hearing for me. She hired an attorney and threatened to sue the school district because of the false allegation.

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Attachment 3

The principal, the superintendent and the president of the school board all said in testimony before the hearing committee that they did not believe the allegation was true. No one had interviewed me, the young woman, or her family before or after the allegations had been made. The administration and the board president all agreed that my teaching ability and classroom abilities were not in question and that I was and had been a good teacher.

In October, 1991, the hearing panel issued a 2 to 1 ruling that I should be reinstated to my teaching position. The school board, at their November 1991 meeting, voted to appeal the decision to district court. Two issues, determining the constitutionality of the law and salary, landed this case in the Kansas Supreme Court. The Supreme Court ruled in my favor and sent the case back to the district court.

In July, 1993, the district court ruled that the school board lacked the grounds to non-renew my teaching contract, and that I should be reinstated to my former teaching position with all the rights and privileges restored.

The most frustrating thing for me during those three years was the knowledge that charges were leveled against me, that those charges were of a spurious nature, and that charges were created to serve a motive of revenge on the part of an administrator and a school board member.

I believe that all this took place because I had made the superintendent angry during contract negotiations and because I did not letter a school board member's daughter during the daughter's freshman year of volleyball.

I have been back teaching now three years in my former position. My evaluation by a new principal was very good and I have my next performance evaluation in the Fall of 1996.

TO: HOUSE COMMITTEE ON EDUCATION
FROM: KRISTI KRAISINGER
DATE: FEBRUARY 15, 1996

In May of 1975 I received my Bachelor of Science Degree in Elementary Education from Fort Hays State University. I began my teaching career in August of 1975 teaching third grade. My first six years in the classroom were spent under the guidance of Principal Laverne Lessor and Superintendent Dr. Jack Bell. I had an excellent working relationship with these two administrators and received superior evaluations under their leadership. I gained the respect of students, parents, co-workers, and administrators and was given many leadership responsibilities. During this particular time I was nominated twice for Outstanding Young Educator and then received that award in 1981.

I AM A GOOD TEACHER!

While taking a leave of absence from my tenured position to stay home with my small children, I continued to stay abreast of student and teacher issues by substitute teaching, many of which were long term. In 1988 I returned to a part-time teaching position in a different school in the same district. Once again, I was involved in numerous leadership positions. I spearheaded a reading motivation program called Reach for the Super Stars, presented a booth at the Kansas Elementary Principal's Convention honoring our school as a Focus School, and co-chaired the district's Education Fair. Once again, I was extremely competent in and out of the classroom. The two different principals at the school were always very encouraging and gave me excellent evaluations. I had also gained the confidence of Superintendent Clay Guthmiller, students, parents and teachers.

I decided to leave my tenured position to teach in the school district that my children attended. During my stay, I received votes of confidence from students, parents, and teachers and once again the evaluations I received reflected my excellent competence in the teaching field; however, during the second semester of my second year, I received notice that my contract would not be renewed for the following school term. I was extremely shocked and dismayed at this turn of events. No reason for termination was provided. Teaching positions were available for the following school year.

Heartbroken that the career I had poured my life into was suddenly taken from me, I sought counsel from the local KNEA UniServ Director. I decided it was of my best interest to seek out the process of due process. I felt that the cause for termination stemmed from the board's position on Sex Education. Proper procedures were followed and a hearing officer heard

House Education
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Attachment 4

my case. I am happy to report that she ruled in my favor and though we are in appeal at this time, the opportunity for me to be able to teach again and to affect people's lives in a positive way is there.

I am so thankful that due process was available for me as a teacher. I never thought I would have to use this process, but it proved invaluable to my career. This process gave me the avenue to prove that I was still the competent citizen and teacher I always had been and always will be. I feel that the due process rights that were provided for me to use, allowed an excellent teacher to continue to seek after the love of her life. Any attempt to weaken or water down the due process protections that teachers now enjoy would be devastating to me and thousands of other dedicated professional educators!

I ask that you reject HB 2857 and its restrictions on the rights of Kansas teachers.

Thank you for having created a system that provided me a fair opportunity to challenge my dismissal. Please do not change the current due process system.

ANDERSON LAW OFFICES
534 S. KANSAS AVENUE
SUITE 810 • BANK IV TOWER
TOPEKA, KANSAS 66603-3436

RICHARD D. ANDERSON
BRENT C. MOERER
STEPHEN M. SCHUTTER

(913) 233-1082
FAX 233-1083

RICHARD D. ANDERSON TESTIMONY BEFORE THE COMMITTEE ON EDUCATION REGARDING HOUSE BILL 2857

Thank you Mr. Chairman. My name is Dick Anderson. I am a lawyer in private practice. In my employment law practice, I have represented both employers and employees. From time to time I have defended teachers who have been referred to me by the Kansas-NEA. I have also defended a number of teachers who were not affiliated with any teacher organization.

I appreciate this opportunity to comment in opposition to HB 2857.

The purpose of due process is to protect competent teachers from unjust dismissal. The current statutory provisions fulfill that legislative purpose and equally important, meet constitutional requirements. The present due process law provides teachers with a meaningful, fair and prompt due process hearing and decision. At the same time, boards of education have a relatively efficient procedure for dismissing incompetent teachers with a minimum of expense and delay.

My opposition to HB 2857 is based on my belief that it would provide no worthwhile change, would be more expensive to all participants and would foster alternative or collateral litigation.

The following issues should be considered.

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1. NON-UNANIMOUS DECISION

Since the original enactment, the due process laws have been amended several times. For the most part, the amendments have been well-directed and have acted to eliminate systemic problems. As one example, previous amendments providing for a binding decision, first by the hearing committee on a 2-1 vote, then by a hearing officer, have eliminated litigation over collateral constitutional claims of bias or prejudice in the decision-making process. HB 2857, as proposed, would eliminate the binding effect of a decision where the hearing committee members are not unanimous in their decision. This amendment would invite and again perpetuate the same type of litigation as that experienced when hearing committee decisions could be rejected by boards of education.

2. HEARING COMMITTEE

The quality of the decision-making process would not be enhanced in any material way by returning to a hearing committee format. At the same time, HB 2857 would substantially increase the cost of due process for all parties. The financial burden placed on the teacher may be constitutionally impermissible. Due process is constitutionally required. The proposed amendment requiring a teacher to pay a portion of the cost of the hearing committee member or arbitrator places a significant burden and open-ended penalty on the exercise of a constitutional right. A similar cost allocation statute in Oklahoma was declared unconstitutional by the

Tenth Circuit in Rankin v. Independent School District No. I-3 Noble County Oklahoma, 876 F.2d 838 (1989).

3. GOOD CAUSE

The present law requires that a board of education prove good cause in non-renewing or terminating the contract of a teacher. For this reason, the codification of the good cause requirement in HB 2857 is unnecessary. In addition, the provision stating that the hearing committee shall not substitute its judgment for the board is unnecessary. All a board of education is required to do under the current law is to allege its good cause and then prove it.

The existing due process procedures work quite well. Constitutional requirements are met. The parties have an efficient method of obtaining a decision in a contested case. It should be kept in mind that in most instances of non-renewal or termination, a teacher does not proceed with a due process hearing. It is only in those cases in which issues are contested that the due process procedures are invoked.

The quality of the due process procedures should not be measured by the success of either litigant. In every case there will be one disappointed party. Likewise, amendments should not be fashioned because any party is disappointed by a particular outcome. The proposed amendments, from the perspective of some teachers, particularly those having no benefit of membership in a teacher organization, unduly burden due process. If due process

procedures do not provide a viable method for deciding contested cases for teachers because of cost, alternative methods of litigation will be pursued out of necessity. The result will be to prolong disputes, and in the long run will likely result in higher liabilities for boards of education. The current system offers a cost effective, relatively speedy process for deciding contested cases.

Thank you and I would be glad to answer any questions.

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

Christy Levings Testimony Before
House Education Committee
Thursday, February 15, 1996

Thank you Representative Mason and other members of the committee for allowing me to speak with you today. I am Christy Levings, President of Olathe NEA , and I also do work for the school district under the title of Community Liaison and Staff Support Services. I would like to share with you why the current process works well for us and what I believe would be meaningful change in the area of Due Process.

In Olathe, all parties--the administration, Olathe NEA, and the Olathe Board of Education--made a conscious decision many years ago to work jointly for the betterment of our schools and our children. This means that we don't spend time talking about whose side an issue belongs to or what turf we need to protect. The needs of our students and our employees are best served by us working together. The current legal requirements give us the appropriate framework to proceed when necessary; but the success of what we do is what happens prior to moving into that process. A fair process is only as good as the people who work with it. Our success as we measure it comes from never having had a hearing. This is not to say employees have not been disciplined or dismissed because a very small percentage of unsuccessful employees have been in Olathe as they might exist in any business.

Our success is measured in the people processes that are involved with the employee every step of the way. Either Charles Johns, our Kansas NEA professional staff person, or I, is contacted and involved from the very early point in any problem situations. We work diligently to help the employee recognize the extent of the problem and to clarify all information the employee receives. It is our responsibility to protect the legal rights of the employee; but it is also our responsibility to help that employee be successful in their job. This is a time-consuming process but well worth it in the outcomes for employees, students, and schools. We may spend time in the classroom with that employee. We spend countless hours talking, supporting, and advising teachers, as well as providing professional resources.

When the premise is to make teachers successful on the job and to support them in a particularly stressful and sometimes political job, cooperation and trust are important factors. From my experience, the need is not for us to change the process but to require all who work under the process to involve all parties and to work with pure motivations. If you ask me, a veteran of twenty years, if I have seen evidence of the need for our current

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due process law I would say yes. I can share my horror stories as many teachers can. To those who would change the process, I would suggest the process is not the problem; it is the people using the process who need assistance. I believe meaningful improvements to the law would not be to change the current process but to add these requirements:

1. require involvement by professional staff and representative organizations;
2. require more training for boards of education so they understand the process and can work cooperatively with everyone involved to resolve problems at the earliest stages;
3. require the involvement of master teachers with new staff;
4. require ongoing training for administrators in the area of evaluation and assistance; and
5. work with the Regents' Institutions to require training and evaluation skills and training in the area of personnel for all administrative candidates.

If the motivation of this committee is to improve public schools and their functions, these recommendations will do more than change a process that affects less than 1% of the teachers in this state. Is the motivation to require less of boards of education, less of administrators, and push them further apart from educators and their professional organizations? If so, we need to be honest about the issue and state what we are about. I believe what we should be about here today is looking at what will really improve schools and make all educators a success.

Thank you for your time and I will be happy to answer any questions you might have.

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

TO: HOUSE COMMITTEE ON EDUCATION
FROM: DAVID M. SCHAUNER, KNEA GENERAL COUNSEL
DATE: FEBRUARY 15, 1996

Thank you for the opportunity to appear today as an opponent of HB 2857. Contrary to the testimony this committee heard yesterday, the current version of the Kansas Due Process Act does work. The current law does protect Boards of Education, students, and Kansas teachers from unreasonable and unjust treatment.

The current system has been in effect since 1991. It calls for an independent hearing officer to hear the charges lodged against the teacher and conduct a fair hearing allowing the Board of Education and the teacher to address the charges. The hearing officer, at the completion of that process, renders a decision which is binding on both the Board of Education and the teacher. This process is the mature result of nearly 20 years of legislative efforts to provide and guarantee due process to Kansas teachers.

The current system is not a perfect system. It is a human system. It is designed to protect competent employees from unjust dismissal of whatever kind - political, religious, economic, or racial. It is a system designed to prevent Boards of Education from exercising unrestrained power in the termination process. It is a system which has grownup out of the legislature's belief that Boards of Education, like all other human institutions, require a reasonable system of checks and balances in order to prevent abuse of their authority. The current system does not permit a Board of Education unfettered authority to nonrenew or terminate its nonprobationary teachers. It does require the Board of Education to permit an independent third party to test the sufficiency of the allegations lodged against the teacher. It further provides an opportunity for the teacher to test the credibility of those persons who bring allegations and accusations against either their competency as a teacher or personal behavior in the classroom.

Contrary to the testimony you heard yesterday from Mark Tallman, Director of Governmental Relations for the Kansas Association of School Boards, HB 2857 DOES eliminate any meaningful teacher due process protections contained in the current law. It is not a reasonable compromise between the interests of school boards and the students, parents and taxpayers they represent, and those of classroom teachers. It is not a compromise at all.

HB 2857 makes three major changes in the current law:

(1) A decision about what constitutes good faith is left solely to the discretion of the school board. This is a change from current law and, if allowed to become law, would in most

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respects make the need for a due process hearing unnecessary. The reason for a due process hearing is to determine whether good cause exists for termination or nonrenewal, and whether evidence exists to support that allegation. At a time when popular culture magazines write articles titled "Have You Ever Had An Affair With A Teacher," and the electronic media makes millions of dollars from advertisers promoting programs that misrepresent what is happening in America's schools, it is both unreasonable and unsound public policy to permit a political body to make and unalterably define what good cause is. The purpose of a due process hearing is in part to determine what good cause was in this circumstance. The legislature and its committees are also inappropriate places for the trial of teachers or anyone else. A committee setting is not one that provides sufficient time or opportunity to make serious charges against individual teachers and provide the teacher an opportunity to rebut those career damaging allegations.

(2) Pursuant to HB 2857 the hearing officer would be replaced by a 3-person hearing committee. This committee would be made up by each party selecting a committee member, and the third being selected from a list maintained by the Commissioner of Education. The current list maintained by the Commissioner of individuals qualified to serve as a hearing officer is largely populated by attorneys who, though they have not represented a school district in a teacher nonrenewal hearing in the past five years, do represent Boards of Education on a regular basis. It is my belief that any hearing committee comprised as proposed by HB 2857 would provide an undue advantage to the Board of Education by permitting one committee member to list and have the chairperson selected from a list of school board attorneys.

Further, as Mr. Anderson testified earlier, the requirement that 1/3 of the hearing committee's costs be born by the teacher is arguably unconstitutional. HB 2857 proposes that the committee's decision is only a nonbinding recommendation unless it is unanimous. Under the scheme proposed by HB 2857, it is unlikely the committee will ever be unanimous in their decision. Permitting the Board of Education to reject nonunanimous recommendations and substitute their judgment of the matter from only a review of the written transcript of the proceedings, deprives the teacher of an opportunity to have the complaining witnesses testify directly to the finder-of-fact.

In essence, the proposal before you makes a mockery of the hearing committee's work. A review of the Table I attachment to Mr. Tallman's testimony relating to due process cases prior to the amendments which made a due process hearing decision binding on the Board, clearly demonstrates that of the eight cases listed, the Board of Education rejected every decision rendered by a hearing committee in favor of the teacher. The Board of Education accepted the recommendation of only two cases, and they were ones in which by a 2-to-1 decision the hearing committee voted in favor of the Board. It was this experience with the Due Process Act that prompted the legislature to make decisions of the hearing committee and later the hearing officer binding on the Board of Education. The legislature knew that a check and balance system needed to be put in place in order to avoid granting unfettered authority to Boards of Education.

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(3) The scope of review of a Board of Education decision which rejects the nonunanimous recommendation of the hearing committee is unacceptable. Skipping the district court and moving directly to the Kansas Court of Appeals has the affect of denying teachers and Boards of Education an opportunity to review the transcript and focus the issues for the district court's review. The Kansas Court of Appeals is not a court designed to conduct the types of activity which are often necessary in these matters. It is also my belief that moving directly to the Court of Appeals will not substantially reduce the amount of time it takes to litigate these cases.

Mr. Tallman suggests that school boards view HB 2857 as a compromise. I can find no compromise in this Bill. Boards of Education regain the authority to reject independent fact-finder's nonunanimous recommendations. Boards of Education gain the right to determine, without review, what constitutes good cause. Boards of Education gain the right to have their decisions rejecting hearing committee's recommendations which substantially limit the ability of the reviewing court to do more than determine whether the Board of Education acted arbitrarily, capriciously, irrationally, unreasonably or fraudulently in the nonrenewal of the teacher.

It is my belief that HB 2857 is an insult to the vast majority of the 304 school districts in Kansas the majority of which work hard teaching children and protecting competent staffs. The due process question has been addressed before this and other committees in the legislature for the past several years. It is ironic and informative that KASB continues to present the same cases as support for their contention that these changes are necessary. The showing of the Hubbard video, over and over and over, is done not to inform the legislature, but to inflame it. The names Whitmer, Ames, and Walker are repeated as examples of a failed system. The truth is that they are examples of a Board of Education's decision that was not supported by the evidence. The system worked and put these teachers back to work. The existence of allegations against a teacher does not mean any wrongdoing occurred. The purpose of the due process system is to determine whether good cause exists to fire the teacher and evidence to support the cause.

I urge you to reject HB 2857 and retain the current due process system.

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KNEA

7-3

RANDALL E. FISHER

ATTORNEY AT LAW

MARKET CENTRE SUITE 501
155 NORTH MARKET
WICHITA, KANSAS 67202-1816

VOICE 316-269-2006
FAX 316-269-0437

August 22, 1995

Representative Barbara Lawrence
State Capitol Building
Topeka, Kansas 66603

RE: *Professional Educator's Due Process Legislation*

Dear Representative Lawrence:

I understand hearings are being held on various legislative ideas concerning professional educator's due process legislation on August 23, 1995. Other business obligations require me to be out of the state on that date; therefore, I wanted to submit my position in writing.

I have been familiar with the due process legislation since its very beginning nearly twenty years ago. I recall the progression of due process legislation from that time to the present. I can only say that the present state of the law is far better than past systems and needs to be preserved.

I do not agree that due process requirements have created a haven so that incompetent teachers cannot be removed from the system. While I do agree that going through the procedure may take some time, that is a small price to pay to see that such removals occur in a proper manner. Terminating or nonrenewing a professional can have devastating effects on a teacher's career. In some circumstances, that process can effectively destroy a person's career. In any event, such events can certainly place a black mark on a career that may be difficult to overcome. Such sever action should be taken with caution and with reasonable due process.

When I first became familiar with the due process system in Kansas, many professionals were terminated or nonrenewed for reasons that were partially or wholly specious. Not only were the actions of some administrators arbitrary, the "due process system" that followed was often just as arbitrary. I recall instances where school boards refused to follow the recommendations of the due process panel even when the panel unanimously found in favor of the teacher and there was no credible evidence to support the action of the school administration. I can even recall one instance where a school board tried to name its own board members as the hearing officers on the due process panel. That is not what I would characterize as "due process."

The system eventually evolved to the point that we had three-member panels that were binding in certain circumstances. The selection process allowed the school board to name

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one member, the teacher named one member and they named the third member. I recall on several instances where panel members made statements that they were there to uphold the position of the person who named them. Many of them could not understand that they were there to hear the evidence and render a fair and impartial decision. I can remember other occasions were a hearing officer felt he/she was to actually become an advocate for the party naming them to the position.
The impartial neutral hearing officer system we presently have is a vast improvement over past procedures. I feel as though it streamlines the hearing process over that when three members conducted the hearings. In addition, the appointment system eliminates any bias which resulted from the manner in which the hearing examiner was appointed. In my experience, the hearing process moves much more quickly than before and is far more impartial. I also feel it is extremely important that the decision be binding, subject to certain rights of appeal, rather than merely advisory to the school board. There is little point in having a due process hearing system if the school board can arbitrarily accept or reject the decision. In past days when the decision was advisory, it seemed the school board always rejected any adverse decision.

In my opinion, the legislature has done a good job of looking at the due process issues over a course of many years. I feel it would be a mistake to scrap the present system and go back to a system which seemed to be inherently unable to provide a fair and impartial hearing and decision for both parties within a reasonable time.

Thank you for letting me express my position on this subject.

Very Truly Yours,

Randall E. Fisher

MENGHINI & MENGHINI
ATTORNEYS AT LAW
316 NATIONAL BANK BUILDING
PITTSBURG, KANSAS 66762

AREA CODE 316
TELEPHONE 231-6030

CHARLES MENGHINI
C. A. MENGHINI
HENRY C. MENGHINI
John G. Mazurek

October 18, 1995

Senator David Kerr
72 Willowbrook
Hutchinson, KS 67502

Dear Senator Kerr:

I have just had an opportunity to read the prepared testimony presented to the Interim Special Committee on Education by Chris Christman on either August 23rd or 24th, 1995. Mr. Christman is the Superintendent of Schools for USD No. 499 at Galena, Kansas.

I am the attorney who represented the Galena teacher he mentioned in his testimony. I have represented her since May, 1990, in opposition to Galena's intent to nonrenew her teaching contract. From what I have read, I believe Mr. Christman provided inaccurate information and neglected to mention many important facts and circumstances.

This letter is an attempt to set the record straight and present the teacher's perspective as viewed through the eyes of her attorney.

First, each of you should be aware that the law in place at all applicable times relating to her case has been repealed. In 1990, the teacher due process law provided that a unanimous decision by a three (3) person hearing committee was binding on both the Board of Education and the teacher. If the decision was 2-1, as in her situation, the Board was required to reconsider its intent to nonrenew and then decide whether to terminate the Teacher. Further, the law at the time required the District Court Judge to appoint the third member of the due process hearing committee if requested by the parties. That is what occurred and a local attorney was appointed. In

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1990 there was no criteria or standard by which to predetermine whether this person had the background or training necessary to serve on the committee, especially as chairperson.

Second, as the teacher and I discussed the matter, it became clear that the deck appeared to be stacked against her. The Board selection to the hearing committee was the Superintendent of a neighboring district and one of the attorneys for the Board was also the attorney for the neighboring district. Plus, the person who evaluated her for the 1989-90 school year was very articulate and well spoken. This person had created a detailed and involved paper trail which - ostensibly - documented her many deficiencies. As a contrast, she was a music teacher who was not particularly articulate and was extremely anxious and nervous about the proceedings and testifying at the hearing. In view of the above and following an educated guess that the best possible hearing result would be a 2-1 vote in her favor, we decided to submit a settlement proposal to the Board's attorneys (In addition to the regular Board attorney, Fred Rausch from Topeka had been hired by the Board). Several weeks prior to the hearing my client offered to resign her teaching contract if the Board would pay her $15,000.00; approximately one-half of her yearly salary. The offer was rejected and a hearing held in Galena on July 30, 31, and August 1, 1990. In view of the Board's rejection of the teacher's reasonable offer of compromise, it is disingenuous for Mr. Christman to now complain about the amounts paid by the Board to its attorneys and the teacher. I should also add that prior to the Board voting to nonrenew the teacher she had requested that a team of music professionals be allowed to observe her

classroom, note her deficiencies, if any, demonstrate other methods of teaching, and offer suggestions for improvement. This request was rejected by Mr. Christman.

Third, although Mr. Christman lamented the hearing process, he neglected to tell you that the hearing committee registered a strong complaint concerning the approach taken by the Board. The committee chastised the Board for taking a "smorgasbord approach to reasons for not renewing the teacher's contract for the 1990-91 school year", finding that "many of the allegations contained in said resolution are unfounded and in many instances not one scintilla of evidence was offered by the school board to support the many allegations." In short, the committee found there was insufficient evidence to support approximately 75% of the many charges made against her by the Board.

Fourth, Mr. Christman told you the district's liability was the result of an error by the hearing committee in denying my request to question administrators and several board members regarding comments made about the teacher during executive sessions. This issue arose a couple of weeks prior to the hearing when I deposed the sole evaluator of the teacher (Assistant Superintendent) for the 1989-90 school year. He related that certain discussions were held during executive sessions of the Board about supposed deficiencies of the teacher. On advice of the Board's counsel, the Assistant Superintendent refused to answer any questions regarding what was said during executive sessions. Before the taking of any testimony at the hearing, I presented a memorandum to the hearing committee setting forth our analysis as

to why inquiry should be allowed into discussions during executive sessions. The Board's attorneys vehemently opposed my announced intentions, even though the teacher had expressly waived her right to privacy which is the basis for the personnel exception to the Open Meetings Act. The Board's attorneys went so far as to claim that the Board members had a right to privacy and they had not waived their right. The committee mistakenly believed that everything said in Executive Session had to be kept confidential and denied our intended line of inquiry. The committee knew at the time, as did the Board representatives, that it was our contention an agreement had been made prior to the 1989 school year to non-renew the teacher and a new procedure promulgated so as to gather sufficient documentation to form the basis for nonrenewal. Obviously, if such an agreement could be proven it would shed serious doubt upon the fairness and objectiveness of the teacher's evaluation for the 1989-90 school year. Certainly, if the Board and its attorneys had not strongly opposed testimony as to what was said in executive session, the hearing committee would not have denied our request. To now allege the Board was an innocent bystander and the error was solely that of the committee is the height of hypocrisy.

Fifth, Mr. Christman failed to relate many relevant facts. A brief summary as developed during the hearing process is as follows:

1. The teacher was hired in 1984 to work in the Galena school district. She had a masters degree plus additional hours. Prior to the 1987-88 school year her evaluations were all good ones.

2. She spent approximately 85% of her time in music classes at the

elementary level, servicing two different school buildings. The remaining 15% was at another school building where she taught Junior High students.

3. The Junior High Principal told her on February 10, 1988, it was not his turn to evaluate her for that school year. Although she and he had obvious personality differences prior to that date, there had never been any serious problems between them. On February 10, 1988 or the day after, the teacher suggested changes in the music and related programs that could have increased the number of students in one of the classes taught by the Junior High Principal. A few days later - on February 15, 1988 - he reversed his decision and told her that he would be evaluating her for that school year. Despite the fact both Galena Board policies and the Kansas Evaluation Statute require an evaluation to be completed by February 15th of the school year, this is the date that the Junior High Principal started the evaluation process. He observed three of her classes between February 15th and March 4, 1988 when he gave her an evaluation. This evaluation now found certain "serious" deficiencies in the Junior High music program. As a result, she was placed on probation for the 1988-89 school year even though she had received excellent evaluations from the two Elementary Principals that same year.

4. The first year of probation (1988-89 school year) her class schedule remained basically the same and the Elementary Principals continued to give her good evaluations. The Junior High Principal followed the same tact as the previous year; giving her a bad evaluation and suggesting

that she not be a teacher at the Junior High level for the following year.

5. She was again placed on probation for the following year by a Board decision made in the Spring of 1989. In March, 1989, the Board consulted and hired Fred Rausch, a Topeka attorney, to assist it with its predicament regarding this teacher. The Board's predicament was that she continued to receive good evaluations from the Elementary Principals; with approximately 85% of her classes being at the Elementary level. After retaining Mr. Rausch a significant change was made in the evaluation process for this teacher and - supposedly - all others who reported to more than one building and were being evaluated by more than one Principal. Therefore, for her second year of probation the new process required that she was to be evaluated by the Superintendent or his designee. Mr. Christman appointed the Assistant Superintendent to evaluate her, even though he had never before evaluated anyone. He had just received his Administrator's Certificate. And, although the new Board policy required that all teachers reporting to more than one Principal were to be evaluated by one person, two of the teachers (Chapter One Teacher and Elementary Physical Education Instructor) continued to be evaluated as before. The Elementary Principals were thereby elim-inated from the teacher's evaluation loop, despite the fact both of them had many years experience evaluating teachers for the Galena district.

6. On May 26, 1989, her newly designated and sole evaluator for the next

year authored and sent a letter complaining about her Elementary music teaching even though she had never been found to be deficient at those grade levels by anyone.

7. Following the chastisement by the hearing committee that there was little or no evidence to support 75% of the charges leveled against her, the Board - after reviewing the hearing transcript and exhibits as well as the hearing committee decision - found that each and every charge it initially made against her was supported by substantial evidence. This action, in and of itself, should convince an objective observer that the Board did exactly what the teacher thought, i.e. made an agreement prior to the start of the 1989-90 school year to terminate the teacher's contract by devising a system that would generate sufficient documentation to justify her non-renewal. In short, the Board adopted a policy knowing what the end result would be and anticipating that sufficient documentation eventually would exist to accomplish the intended purpose. With respect to the finding by the Board that all the charges were supported by the evidence, the trial judge expressly found that such findings were arbitrary, capricious, and without basis in fact.

8. After the trial judge ruled that teacher's counsel should have been allowed to question board members and administrators as to what was said about the teacher during executive sessions, their depositions were taken. During the depositions, the testimony elicited was scant. Basically, the Board members and administrators deposed could recall nothing that had been said or heard. The Kansas Court of Appeals termed

this lack of recollection "collective amnesia" (see Walker v. U.S.D. #499, Slip Opinion in Case No. 70,918 decided March 10, 1995). Under the circumstances the teacher was denied a fair, objective evaluation and the hearing committee, at the Board's insistence, denied her a fair hearing.

In closing, I note Mr. Christman also told you that Galena's sad tale is an example of what can happen when a school district makes a commitment to provide quality instruction for its students. I submit that what happened in this case is a prime example of what can occur when a Board of Education decides to non-renew a teacher and then sets in motion a procedure to justify the decision.

I hope you take this summary into consideration as you discuss possible changes to the Kansas Teacher Due Process law.

Thank you for reading this letter and your service to the citizens of the State of Kansas.

Very truly yours,

C. A. Menghini

cc: Phil Martin
Tim Shallenburger
Ed McKechnie
Dee Yoh

bcc: David Schauner