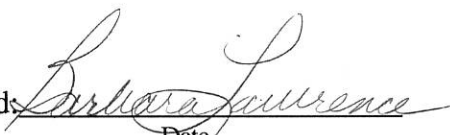


Approved: 
Date

MINUTES OF THE SENATE COMMITTEE ON EDUCATION

The meeting was called to order by Chairperson Barbara Lawrence at 9:00 a.m. on February 17, 1997 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Ben Barrett, Legislative Research Department
Carolyn Rampey, Legislative Research Department
Avis Swartzman, Revisor of Statutes
Jackie Breymeyer, Committee Secretary

Conferees appearing before the committee: Craig Grant, Kansas NEA
Christy Levings, President, Olathe, Kansas NEA
Ron Work, Science Teacher, Norwich High School
Claudette Johns, Kansas NEA
David Schauner, General Counsel, Kansas NEA

Others attending: See attached list

Chairperson Lawrence called the meeting to order.

SB 170-Teachers; hearings provided upon notice of nonrenewal or termination of contracts of employment

Chairperson Lawrence called on Craig Grant, Kansas NEA to begin. (Attachment 1) Mr. Grant stated that it is too bad so much energy has been spent on a bill which does not solve a problem. This issue has been with us since 1971. The first teacher due process law was passed in 1973. A number of incidents caused the Legislature to change the statute. What happened was that the due process hearing panels' decisions, advisory to the board, were most always ignored by the board if the decision was in favor of the teacher. When a unanimous decision was binding, this change was made in 1984, hearing panels seldom had unanimous decisions because the board would appoint a panel member who would not be inclined to vote against the board, so the board had little effect. Because of the facts (that teachers were not being fairly dealt with by the process), the Legislature changed the process to make the decision binding on both parties. That change was made in 1991 and a further change was made in 1992 to go to the officer.

Mr. Grant had survey results attached to the testimony that were provided by Dale Dennis, Deputy Commissioner of Education. There were 181 nonrenewals or terminations between 1991 and 1995. Of those 181, 31 hearings were held. That is only 17% of the total fired. Of the 31 hearings, 16 were decided in favor of the teacher. That is only 8.8% of the total fired. Nine of those decisions were appealed to the courts, indicating that the board was dissatisfied with the results. That is 4.9% of those fired.

Mr. Grant said what has been done is to change a procedure which was certainly a problem to many into a procedure which has caused less than 5% of the situations to enter our court system. Kansas NEA sees no reason to change the statute and that this current procedure which is fair to both sides should not be changed.

The Chairperson addressed Mr. Grant, commenting that his organization says there is no problem. On the other hand, those who are administrators say that there is a great problem. This is a very divergent opinion. That suggests to her there must be some middle ground for compromise. In meetings held with all three organizations, (Kansas NEA, KASB, and USA), there has been no effort to come to some kind of agreement. Is his organization willing to go again to the bargaining table, or is this a policy from which he will not retreat?

Mr. Grant's response was that his organization believes that it has made offers to the other side which in fact indicate a compromise. It will continue to be willing to look at other ways to deal with this situation. There are certain basic tenets to which both sides feel fairly strong.

The Chairperson called on Christy Levings, President of Olathe NEA. Ms. Levings brings to the Committee

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON EDUCATION, ROOM 123-S-Statehouse, at 9:00 a.m. on February 17, 1997.

The Chairperson called on Christy Levings, President of Olathe NEA. Ms. Levings brings to the Committee nearly 25 years of work as a teacher and as an Association President who works with teachers in the classroom virtually every day. Ms. Levings stated that she believes that the discussion of due process is the wrong discussion to have. There should and must be an independent fair process to insure that teachers who are employed by an elected board, have stability in their work to provide Kansas children with a quality education. This bill will not reduce the problem of the incompetent employee nor protect competent employees from small or big town politics. The bill does nothing to promote better evaluation and assistance. The idea of increasing the probationary period is wrong for Kansas children.

Ms. Levings stated that Olathe has not had a due process hearing in the last twenty-five years. This is because the school district, personnel department, Olathe NEA and KNEA professional staff have made a joint commitment to help teachers be successful and support them if they find they must make a decision whether teaching is the right job for them. KNEA staff persons have provided training and information to principals on how to assist teachers and get involved in the early stages of being worried about teacher performance. Their success will be aided by their recent selection by the National Foundation for the Improvement of Education, for a grant worth more than \$30,000 to do a three-year study which will align the appraisal process, staff development plan, and incorporate strong teacher assistance and mentoring model in both training and evaluation.

Ms. Levings has just completed over a year of work on a task force that studied many types of professional assessments for beginning teachers to send recommendations to the Standards Board for the fulfillment of the new two year conditional license. All agreed that a two year period is sufficient to observe and evaluate teaching for the granting of a professional license. Ms. Levings has provided training for more than 500 teachers in the last year using NEA professional materials. (Attachment 2)

Ms. Levings ended her testimony by stating that due process is not the goal. Enough discussion has taken place on a small legal process that is necessary only in extreme situations.

Ms. Levings was asked how many teachers have been counseled out of teaching. She replied three teachers over the last four years. When counseled they realized that teaching was not where they belonged. She also replied in the affirmative when asked if they were all tenured teachers. She also responded that she is not involved in the evaluation process. The number of non-tenured teachers in the district that have been non-renewed is very small; one to two a year.

When asked about mentoring, Ms. Levings responded that they have been working with new teachers on the concept of peer assistance and peer mentoring. The response has been that this is the number one thing that has made them better teachers.

Ms. Levings stated the goal is to maintain a high quality model for others. This is part of the grant responsibility; the evaluation of skills needed for staff development, assistance and mentoring. Her final response was that there are (at the present moment) 25 elementary, 6 Jr High and 6 high school in the district.

The Chairman entered opposing testimony a letter by Dr. Tim Rundus, Superintendent Wabaunsee East Unified School District #330. (Attachment 3)

Ron Work, a science teacher for 22 years at Norwich High School addressed the bill. Mr. Work lives in Argonia and has served on the local board of education for over 9 years. He feels that he knows both sides of the due process issue. He feels this bill would rob teachers of their right to due process and that the present due process law has worked well. School systems have more than enough authority to nonrenew or even terminate teachers who are not doing their job.

Mr. Work feels that the bill would set the clock back 20 years, and would damage public education. It is demeaning and demoralizing to teachers and could drive good teachers from the state, if not the profession. (Attachment 4)

The comment was made to Mr. Work that the Court of Appeals would be charged with determining if the school board had been arbitrary or capricious in its action. With this system a case would not go on for years. Mr. Work replied that it would not be good for teachers for a case to drag on for years. He then stated that on supplemental assignments a teacher does not have due process protection.

Mr. Work stated that before a person can become a teacher, there are numerous points of departure that begin when they are Freshmen and Sophomores in college. The entrance requirements are very significant. Many of the people chose not to go into education early on in their education career. It has been Mr. Work's experience that most teachers are working very hard; are trying and are very dedicated. If an administrator wants to get rid of a poor teacher, the existing law allows for that.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON EDUCATION, ROOM 123-S-Statehouse, at 9:00 a.m. on February 17, 1997.

Claudette Johns, KNEA, spoke to the Committee. In 1984 Ms. Johns was appointed to fill two years of an unexpired term on the Rose Hill Board of Education and was subsequently elected to a full term. She served two years as Board President.

Ms. Johns was present Wednesday and was surprised to hear a board member who said it was "too expensive to fire a teacher". She has always felt it is too expensive to keep on the job any incompetent person. As a board member, Ms. Johns always expected to be informed early if a staff member was in trouble. It was not the board's job to manage plans of assistance, but it was the board's job to evaluate the administrators who were involved with them. There was a clear procedure to be followed with the evaluation and it was on file with the state Department of Education.

As a field staff person for KNEA Ms. Johns works closely with teachers and superintendents. When a teacher is nonrenewed, she interviews that teacher, reviews the file and speaks with the administrator. According to current law they have 15 days to file for the due process hearing. Surviving a due process hearing is tough. The public scrutiny, embarrassment and financial burden can be overwhelming. Part of her job is to give the teacher an honest assessment of the case. This is the reason why many nonrenewals do not go to hearing.

Ms. Johns mentioned the reduction in force language that 166 school districts have in their contracts and 20 others are negotiating. She does not feel the reduction in force should be used as a design to target a teacher that the district needs to get rid of. (Attachment 5)

One of the Committee stated he agreed with Ms. Johns; reduction in force is not the way to do that, but that is not what this law is about. The hearing officer is the one whose procedures are being tested by the courts to say if they have been arbitrary, capricious or fraudulent. She was asked if this made sense to apply that standard to the hearing officer as opposed to the school board? That is what the legal test is aimed at - avoiding that kind of decision making. What sense does it make to apply that to the hearing officer.

Ms. Johns replied that she did not know.

David Schauner, General Counsel, KNEA, addressed the Committee. (Attachment 6)

Mr. Schauner believes that the present process is a very good and fair one for resolving the ultimate question of, does the Board have substantial evidence to support the non-renewal or termination of a tenured faculty member. In the Spring of 1996, he received calls from over 30 teachers indicating they had been nonrenewed/terminated for the 1996-97 school year. Of these calls, fewer than three requested and received a due process hearing. The others were withdrawn, negotiated by settlement and the teacher did not return to work.

Mr. Schauner said that if the goal of the bill is to promote a more efficient and less expensive process, he would suggest it will have the opposite effect. He believes there will be more teachers nonrenewed because boards will see it as a sign from the legislature that they can do what they want, when they want, with very little, if any, court review of their actions.

In summary, Mr. Schauner went over the five proposed major changes in the bill and stated that the bill attempts to correct a problem where none exists. The current system of delivering due process to educators in Kansas is one that should be used as a model rather than one held up to ridicule and proposed for change.

In response to a comment regarding the Wittmer case, Mr. Schauner stated that the district court did use the wrong standard because it did reweigh the evidence - that is not the court's job. It is not the trial court in this case, it is a review court. The same is true with the Court of Appeals in the same situation.

After a few other comments, due to time constraints, the Chairperson asked Barbara Cole, President, KNEA, if she could return to the Committee in the morning to testify on the bill.

The meeting was adjourned.

The next meeting is scheduled for February 18, 1997.

SENATE EDUCATION COMMITTEE GUEST LIST

DATE: February 17, 1997

NAME	REPRESENTING
GORDON MVERS	USD 434
HAROLD PITTS	USD 345-
Barbara Coe	KNEA
Ron Work	KNEA
Mike Gatche	KNEA
Tom Bunsynde	KNEA
Dan Kullend	KNEA
Jan Martens	KNEA
Herschel T. Marks, Jr	USD #500
Bruce Goeden	Kansas NEA
DAVID SCHAMMER	KANSAS NEA
Dad ANDERSON	EX KANSAS NEA
Lily Kober	Kansas NEA
Dellie Kowchuck	USD 434
Terry Schmitt	USD 434
Craig Grant	KNEA
Matt Truell	AP
Cynthia L. Campbell	USD 501
Claudette Johnson	KNEA

SENATE EDUCATION COMMITTEE GUEST LIST

DATE: Feb 17, 1997

NAME	REPRESENTING
J. Harvey Koehn	USD 385/Andover EA
Greg Brownfield	KNEA
BLAKE WEST	USD 229 / KNEA
Marylou MARYTT	KNEA
Hershel Rorer	LIT.
Cecilia Jaggard	USD 229 / KNEA
Shawn Kovacic	USD 229 / KNEA
Sharon Nelson	USD 229 / KNEA
Sherrellyn Smith	Blue Valley NEA / KNEA
Chapman Auer	NEA-SM / KNEA
Marleen W. Wall	NEA-SM / KNEA
MARILYN FLANNIGAN	NEA-SM / KNEA
Tim Thoraburg	NEA-SM / KNEA
Bob Vancrum	Blue Valley, USD 229
Jacque Oakes	SQE
Tom M ^s Birds	NEA-SM / Classroom Together
Deborah Rockefeller	LOWV
Karen Davidson	USD 394 / Rose Hill EA
Brenda J. Hoot	USD 394 / KNEA



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

Craig Grant Testimony before
Senate Education Committee
Monday, February 17, 1997

Thank you, Madame Chair. I am Craig Grant and I represent Kansas NEA. I appreciate this opportunity to speak to the committee in opposition to Senate Bill 170.

It is too bad that we have had to spend so much energy on a bill which does not solve a problem. This issue has been with us since I started to work for Kansas NEA in 1971. In fact, I was the field representative for Liberal, Kansas when the board fired the president, vice president, and another officer of the local teachers' association. The president and vice president chose to fight their terminations. Eleven years later, after the case had been to the U.S. Supreme Court a couple of times, the teachers won their case. It is too bad that one of the teachers passed away in the interim.

That case, and a couple of others, caused some action by the Legislature. The first teacher due process law was passed in 1973. Just like the Liberal case, a number of incidents caused the Legislature to change the statute. What happened was that the due process hearing panels' decisions, advisory to the board, were always ignored by the board if the decision was in favor of the teacher. ^{most}

Even when a unanimous decision was binding--a change made in 1984--hearing panels seldom had unanimous decisions because the board would appoint a panel member who would not be inclined to vote against the board. So the change had little effect.

Because of the facts (that teachers were not being fairly dealt with by the process), the Legislature changed the process to make the decision binding on both parties. That change was made in 1991 and a further change was made in 1992 to go to an officer.

So what has happened since the change? Dale Dennis provided this information to the interim committee in 1995. The results of the survey are attached to my testimony.

As you can see from my testimony, there were 181 nonrenewals or terminations between 1991 and 1995. Of those 181, 31 hearings were held. That is only 17% of the total fired. Of the 31 hearings, 16 were decided in favor of the teacher. That is only 8.8% of the total fired. 9 of those decisions were appealed to the courts, indicating that the board was dissatisfied with the results. That is 4.9% of those fired.

What we have done is change a procedure which was certainly a problem to many into a procedure which has caused less than 5% of the situations to enter our court system.

Kansas NEA believes we have no reason to change the statute and that this current procedure which is fair to both sides should not be changed. We oppose SB 170. Thank you for listening to our concerns.

*Senate Education
2-17-97
Attachment 1*

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	<u>55</u>
1992-93	<u>32</u>
1993-94	<u>45</u>
1994-95	<u>49</u> 191

 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?

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

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

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

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

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

U.S.D. No. _____

Signature of Chief School Administrator _____

Date _____

12-2
1-2

Thank you, Senator Lawrence and all members of the Senate Education Committee for giving me the opportunity to speak to you today about Senate Bill 170. I am Christy Levings, President of Olathe NEA and I do work for the Olathe District Schools under the title Community Liaison and Staff Support Services.

I listened last week as the proponents of this bill spoke to you and I want to share the knowledge and experiences I have had to help you in your deliberations. I bring with my words the professional knowledge gained from nearly 25 years of work as a teacher and as an Association President who works with teachers in the classroom virtually every day.

I have long believed that the perennial discussion of Due Process, a process that effects a minuscule amount of situations, is the wrong discussion to have. If in fact we want to improve classrooms for Kansas students, there should be and must be an independent fair process to insure that teachers who are employed by an elected board, and therefore subject to all the whims and problems of politics and flaws found in the democratic process, have stability in their work to provide Kansas children with a quality education.

*Senate Education
2-17-97
Attachment 2*

The bill, as it is proposed, will not reduce the problems of an "incompetent employee" nor will it protect highly competent employees from small or big town politics. The bill does nothing to promote better evaluation and assistance and the idea of increasing the probationary period is just plain wrong for Kansas children.

Olathe has not had a Due Process hearing in the last twenty-five years. This is not just by accident or good fortune but because all involved (the school district, the personnel department, Olathe NEA and the KNEA professional staff) have made a joint commitment to help teachers be successful or to support them if they find they must make a decision whether teaching is the right job for them. This does not occur without a great deal of communication and cooperation. It means my being in classrooms observing, giving feedback, demonstrating teaching techniques, and tracking down resources to assist that teacher so they can and will be successful. Our KNEA staff person and I have provided, at the request of the district, training and information to building principals on how to assist teachers and how to involve us in the early stages when supervisors are even remotely worried about teacher performance.

Olathe NEA believes we have a joint responsibility to promote excellent teaching and to provide in the classroom assistance to teachers. Our successes in this joint venture are shared by both the district and the Association. Our current year bargaining contains mutually desired discussion on expanding the availability of Association assistance.

This will be aided by our recent selection by the National Foundation for the Improvement Of Education, the educational foundation of the NEA, for a grant worth more than \$30,000 to do a three year study which will align our appraisal process, our staff development plan, and incorporate a strong teacher assistance and mentoring model in both training and evaluation. Olathe was one of 16 sites in the entire United States selected ,from a field of over 150 applicants, because of our successful joint involvement in teacher training and assistance in the past. These are the types of joint teacher appraisal processes we should be looking at.

I have recently completed over a year of work on a task force of public school teachers, principals, superintendents and university education professors. We studied many types of professional assessments for beginning teachers to send recommendations to the Standards Board for the fulfillment

of the new two year conditional license. All of those task force members, after careful study, agreed that a two year period is sufficient to observe and evaluate teaching for the granting of a professional license. I believe the components of this bill fly in the face of current research and the profession's recommendation for the continuation of good teachers in the classroom.

Kansas NEA provides a great deal of training and inservice for staff around the state. I have myself provided training for more than 500 teachers in the last year using NEA professional materials that will make a difference in how teachers work with children.

Henry Ford wrote *Obstacles are those frightful things you see when you take your eyes off your goal.* Due Process is not the goal. Enough discussion has taken place on a small legal process necessary only in extreme situations. Working to insure successful teachers in the classroom is the goal and we need to move our discussion to things that will help teachers teach.

Opposing Testimony - Senate Bill No. 170
Prepared by Dr. Tim Rundus, Superintendent
Wabaunsee East Unified School District #330
Eskridge, Kansas

To the Honorable Senator Lawrence, Chair and other members of the
Committee on Education

I speak as a seasoned Kansas school administrator with extensive experience in
public school employee relations.

My testimony today is heavily influenced by an unbelievable incident that
occurred this past year in the district I currently serve. Linda, my spouse, a
second year, third grade teacher that had tenure in two other school districts
with an outstanding record was given notice of suspension and nonrenewal by
the Eskridge board of education late in April, 1996. Parents of the previous
class and building administrators had high regard for the instructional
competence of the teacher.

Early in April the board began receiving intense criticism and pressure from
several school patrons about why some teachers in the district eligible for tenure
the following term were nonrenewed, and why others were being retained as
recommended by the administration. Toward the end of April, several patrons
started alleging "child abuse" and other serious misconduct by the third grade
teacher. Allegations reached their peak when the school board held a special
meeting where several patrons appeared led by the 'City Marshal' of Eskridge.
Board members were told by the city official in executive session that the
teacher was guilty of physical and other abuse of her students. The four board
members present were informed that warrants would be presented for the
teachers arrest if the Board did not take immediate action against the teacher.
The board was stampeded into suspending and nonrenewing the teacher without
any evidence of the allegations other than what some parents were saying.

The 'City Marshal' had no warrants nor ever obtained warrants for the teachers'
arrest. The matter was later investigated thoroughly by the school district
attorney and findings reported to the board and the county attorney. No charges
were ever filed or proven against the teacher. Teachers and the administrator
responsible for the school provided consistent testimony of the teachers
innocence throughout the ordeal.

This summary is presented to you as an example of why it is necessary for
teachers to have protection against the fraudulent, arbitrary, and capricious
behavior of a board of education. I believe the same can be said about the
capricious actions of some administrators and/or parents who become
disgruntled with the instructional process. Procedural due process for teachers

*Senate Education
2-17-97
Attachment 3*

would be fundamentally weakened by eliminating the neutrality of the selection of the hearing officer and by making the decision of the board final, subject only to judicial review. (Section 1a, Section 6b)

Most of all I do not feel that lay elected boards are appropriately equipped to fulfill the role that is asserted in Senate Bill No. 170. My direct experience with four different boards of education in Kansas leads me to believe that educators deserve a higher standard of professional review, especially in matters that relate to long term implications about their personal and professional wellbeing.

Section 7a of this bill would necessarily postpone decisions that can be adequately made in the current three year provision for teacher tenure.

I believe this bill goes too far in shifting the burden of proof for instructional competency on the teacher and it gives elected boards additional opportunity for capricious and arbitrary decision making.

Public school teachers need to work in an environment that provides greater incentives toward cooperation in improving programs and practices, one that is commensurate with current reward, and one that provides reasonable protection from the vicissitudes of political and personal reprisals. No teacher with or without tenure should be subject to the whims of vindictive and malicious conduct undertaken to dismiss a good teacher.

My name is Ron Work. I have taught science at Norwich High School for 22 years. I live in Argonia and I have served on the local board of education for over 9 years. I feel that I know both sides of the teacher due process issue.

It is my genuine belief that SB170 would rob teachers of their right to due process. SB170 will be detrimental to teachers and school districts.

I know that some in KASB have really pushed for this bill. Who stands to win? Not school districts that's for sure. They might see their legal costs sky rocket. Perhaps KASB stands to win when more turmoil causes more demand for KASB legal services. Perhaps KASB dues will go up when they need to hire more lawyers and staff. Perhaps KASB will have more justification for its existence. Perhaps it is KASB staff who have artificially inflated the need for this legislation.

The present due process law has worked. School systems have more than enough authority to non-renew, or even terminate, teachers who are not doing their job. If administrators will do their jobs, poor teachers can be eliminated. I've had superintendents tell me this.

SB 170 would set the clock back 20 years. If passed, teachers in every school district in the state would be at the mercy of vengeful school boards and administrators.

SB 170 would damage public education. Please stop and think about how teachers would feel about this. The whole mess is demeaning and degrading. Thousands and thousands of teachers go to work every day in Kansas and put in many hours beyond what is required.

SB 170 is demeaning and demoralizing to teachers. It will drive great teachers from the state if not the profession. It will force prospective teachers to reconsider and it might even further exacerbate the low teacher morale in this state.

In summary, please vote against any change in the present due process law for teachers. SB170 is bad legislation, it is detrimental to teachers and school districts, and it is very divisive.

*Senate Education
2-17-97
Attachment 4*

**For more information contact:
Claudette Johns
1513 Alvamar
Lawrence, KS 66047
(913) 841-1701 or
(913) 268-4005**

Chairperson Lawrence, Members of the Committee:

My name is Claudette Johns and I am currently employed by the Kansas National Education Association. In 1972 I began my teaching career in Rose Hill, Kansas. When I became a single mother of two daughters, I found I could no longer afford to remain in teaching but my interest in young people and our schools remained. In 1984 I was appointed to fill two years of an unexpired term on the Rose Hill Board of Education and subsequently was elected to a full term. I served two years as Board President. These were exciting years and I am proud of my service to the Rose Hill students and community.

I was present during the testimony on SB 170 last Wednesday and quite frankly I was surprised at the Board member who said, "It is too expensive to fire a teacher." Kansas education and Kansas children cannot afford this type of thinking. I always felt that it was too expensive to keep on the job any person I believed was incompetent.

As a Board member, I was expected to be informed early if a member of our staff was in trouble. Most of our members attended KASB sessions so we knew to ask pertinent questions. For instance, in the case of a teacher, has the person been provided a plan of assistance to help them improve? Periodically, and well before the deadline for notification of teacher non-renewals, Board members asked for progress reports. It was not our job as Board members to manage these plans of assistance but it was our job to evaluate the administrators who did. There was a clear procedure to be followed. This procedure was filed with the State Department

*Senate Education
2-17-97
Attachment 5*

of Education. The process itself did not force us to keep incompetent teachers - but the failure of the process or any step in the process did. We did not then - nor should any Board - be forced to keep incompetent teachers on their staff. However, unless the evaluation is law is followed and all appeals are heard - including the right to be heard before an impartial third party - how will I, as a Board member, or any other person know that a teacher is incompetent.

As a Board member, I knew first hand of the nightly phone calls about what did or did not happen at school, about being accosted at the grocery store and even lectured about a school-sponsored Sunday afternoon music concert from my church's pulpit. I knew as a Board member -- like you know as a legislator -- that every decision is a political one and the political pressure can be significant. The non-renewal of a teacher should not be left in that political arena.

As a staff person with KNEA, I work with teachers every day. I also work closely with Superintendents and personnel directors when we have a teacher in need of assistance.

I usually hear from a teacher when he or she receives a poor evaluation. We immediately request to meet with the administrator to work on a plan to address the deficiencies cited. If the evaluation contains inaccuracies, we work to correct them. If we need outside resources, we seek them.

The worst case scenario is when the call comes in and the teacher has been non-renewed with little or no notice. For first, second or third year teachers this can happen without even one evaluation. For more experienced teachers, a non-renewal is even more devastating.

The first step I take is to interview the teacher, review his/her file and attempt to talk with the administrator. We have 15 calendar days to request a hearing. Often I visit with the teacher's family members. Surviving a due process hearing is tough and not every teacher can stand the public scrutiny or

embarrassment. Sometimes the financial burden is too great. And sometimes the evidence is overwhelming. Along with excellent representation, our members also deserve an honest assessment of their case. This is one reason why many non-renewals do not go to a hearing.

During last Wednesday's testimony, I heard a conferee express an opinion that the law had to change because some schools were losing enrollment and her school district was being forced to keep teachers they could no longer afford. According to the 1994-95 KASB publication on negotiations, 166 school districts in Kansas had reduction in force (RIF) language in their contracts and 20 other districts do not negotiate it but have it. It is my understanding that KASB will prepare reduction in force language for Boards of Education to incorporate in their policy. If a Board does not have reduction in force language that they have either unilaterally or mutually agreed to, then it should be appropriately noticed and bargained. When a mechanism already exists for resolving an issue, it seems redundant to "fix" it.

If enrollment is declining, KNEA staff advise teachers to go back to school and to add as many endorsements to their certification as they are capable. In other words, become as employable as possible. When a school's growth is declining and people are losing their jobs, the community grieves. Reduction in force language was intended to soften the blow and was never intended and should not be used to terminate the contracts of teachers who are less than fit to be in the classroom. We have a procedure for that - the due process law.

David M. Schauner testimony before
Senate Education Committee
Monday, February 17, 1997

My name is David Schauner and I am the General Counsel for Kansas National Education Association. I am here to testify in opposition to Senate Bill 170.

Statutory due process for teachers was first created by the Kansas Legislature in 1974. It has been amended five times since then, the last time in 1992.

I submit to you that the issue of due process for nonprobationary (tenured) educators in Kansas is not contentious. To the contrary, I believe that in an overwhelming majority of Kansas Boards of Education have become more sophisticated in providing the measure of due process for Kansas educators that is required by K.S.A. 72-5438 and its successors. School districts under the current law that believe they are employing an incompetent teacher can and do avail themselves of the current statute to eliminate those teachers from their work force. In the Spring of 1996, my office received calls from over 30 members indicating that they had been nonrenewed/terminated for the 1996-97 school year. Of these calls, fewer than 3 of the teachers nonrenewed requested and received a due process hearing. The vast majority of these employment disputes were resolved informally through negotiation and compromise. In each of the cases that were settled through negotiation, the school districts incurred little in the way of legal expense and little in the way of time delay. The current law works well to protect school districts, teachers and students.

There are five major changes proposed by Senate Bill 170:

1. The probationary period is lengthened from 3 years to 4. This additional length of time is not only unnecessary in the general scheme of things, but the current Kansas State Board of Education licensure redesign process, requires that teachers show competence within the first two years of teaching, or lose their licenses. A teacher in Kansas without license will be unable to maintain their employment. Lengthening the probationary period is simply not necessary.

2. Only full time teachers would be able to achieve a nonprobationary (tenured) status under Senate Bill 170. This bill would return to at-will employee status all educators in Kansas who are not full time employees. Since school districts are able to determine unilaterally whether an individual they hire is full or part time, this change would give school districts

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complete and unbridled authority to remove from tenure track any of its employees hired after the effective date of this bill.

3. Senate Bill 170 eliminates the independent hearing officer from the due process scheme currently in effect. The Board of Education or a committee designated by it or a hearing officers designated by it would make only a recommendation to the full Board for its consideration. The net effect of this proposed change would be to remove the neutrality offered to both Boards and teachers in the current system. This is an essential feature of the current process that benefits all parties.

4. Senate Bill 170 changes dramatically the standard of review that an appeals court is permitted to use in reviewing the Board of Education decisions with respect to the nonrenewal or termination of its tenured employees. The bill at page 5, lines 35 through line 1 on page 6, specially sets forth the standard of review to be used by any court reviewing the Board of Education decision. In short, the standard of review would be that the Board of Education decision must be upheld so long as there was substantial evidence contained in the record as a whole, and the Board had not acted fraudulently, arbitrarily or capriciously. The Court of Appeals would be powerless to overturn the Board of Education decision. Under that standard of review, which was largely in effect from 1994 until 1991, Boards of Educations record with respect to the fair treatment of educators, was abysmal. The Boards of Education record for nearly 30 years was, in fact, the impetus for the change to a binding decision by first a committee and then a hearing officer in the legislative history of Kansas due process for educators. To return to an environment in which a Board of Education could again treat educators as they all too often were treated during the period 1974 until the hearing committee's decision was binding would be a step in the wrong direction.

5. Senate Bill 170 would eliminate the district court from the appeals of Board of Education decisions. This is done in the name of saving time and expediting the decisionmaking process. One of the more troubling aspects of this change is that in all likelihood the appeals would be prosecuted by the teacher. The cost of transcribing the record of the hearing, pursuant to Senate Bill 170, would be paid for by the requesting party (the teacher). Federal case law in the Tenth Circuit (in which Kansas is located) indicates that such a requirement is a denial of due process. Requesting the person who is at risk of losing their property, i.e. salary and contract, to

pay the costs of protecting their rights is a denial of procedural due process. I believe this provision of Senate Bill 170 would not withstand constitutional challenge.

In summary, Senate Bill 170 attempts to correct a problem when no problem exists. Jerry Henderson, Executive Director of the United School Administrators, told the Committee last week that he received no responses to a fax request for information from members of his organization about due process. It was not until he got on the phone and called the "four corners" of the state that he was able to solicit any input that would support the passage of Senate Bill 170. Due process is not a contentious issue among Boards of Education or administrators.

The current system works well for both Boards of Education and teachers. It provides a fair opportunity for Boards of Education to present their points of view and evidence with respect to a teacher's competence to a trained hearing officer. The teacher in turn is also treated fairly under the current system. Changes proposed by Senate Bill 170 will not promote higher quality education in Kansas. As we were reminded last week by proponents of this bill, Kansas educators do a great job of educating Kansas children. The current system of delivering due process to educators in Kansas is one that should be used as a model rather than one held up to ridicule and proposed for change.

I respectfully request that Senate Bill 170 not be passed out favorably for further consideration.