Approved: April 10, 1999
Date

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Ralph Tanner at 9:00 a.m. on February 15, 1999 in Room 313-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
Darrell McNeil, Revisor of Statutes
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Patricia Baker - KASB
Doug Conwell, USD #320, Wamego Supt. of Schools
Bob Fessler, USD #321, Kaw Valley Supt. of Schools
Richard Doll, USD #323, Rock Creek Supt. of Schools
Kim Mertz, USD #320, Wamego Board Member
Susan Watt. USD #320, Wamego Board Member
Marsha Bone, USD #497, Lawrence
John Toland, Iola
Milt Dougherty, USD #444, Little River Supt. of Schools
Brilla Scott, Executive Director, United School Administrators
Gary Reynolds, USD #450, Shawnee Heights Supt. of Schools
Jerry Fuqua, USD #336, Holton Supt. of Schools
Kristi Kraisinger

Others attending: See attached list

Hearings on **HB 2211- Teachers, hearings upon contract termination or renewal** were opened.

Patricia Baker, General Counsel Kansas Association of School Boards, appeared before the committee as a proponent of the bill. This bill deals with two very simple issues, who should decide if good cause exists to remove a tenured teacher and who should decide if the teacher was treated fairly. Under current law, both decisions are made by an outside hearing officer who has no accountability to the school community and no responsibility for results of his or her decision, and is not required to have any particular understanding of teaching, learning, school management or children's needs. There is no standard that the hearing officer must follow. The courts must defer to the hearing officer is not required to defer to the decision of the teacher's employer (the local school board) or supervisor (the building or district administrator). (Attachment 1)

Doug Conwell, Superintendent of Wamego Public Schools, appeared before the committee as a proponent of the bill. He stated that the criteria that have been established as reasons for termination falls far short of what it takes to turn around the average or below average performance of a school system. Either public schools must change or a whole new system will emerge to meet the demands of the consumers, which is our public. Yet the present law we have will not allow for the change that is necessary to a have significant impact on our current public school institution. (Attachment 2)

Dr. Robert Fessler, Superintendent Kaw Valley, appeared before the committee as a proponent of the bill. He stated the issues we are supporting are local control of education and the authority of the local Board of Education to set acceptable standards of conduct and appropriate levels of performance. At present, the Board can do this for administrative staff, they cannot for their teaching staff. When a tenured teacher is removed by the Board, the Board does not determine "good cause," the hearing officer does. This is a negation of local control. Our Board needs the ability to set its own standards for all district employees, and we respectfully request the legislature to give our local board the authority to determine good cause for eliminating tenured teachers. (Attachment 3)

Rick Doll, Superintendent Rock Creek, appeared before the committee as a proponent of the bill. He stated that it was reasoned, that by protecting a teacher's contract, that teacher would be more free to teach effectively and select a subject matter that was appropriate for students. During the last 20 years, accountability has become a major part of the educational process. The critical component of the school improvement process is the component that the local school board has the least control over, the classroom teacher. The most important aspect of schools is no longer the academic freedom of the instructor, it is whether students are learning. Please assist local school boards in their efforts by untying their hands in dealing with ineffective teachers and pass this bill. (Attachment 4)

Kim Mertz, Wamego Board Member, appeared before the committee as a proponent for the bill. She stated that under the existing law it is true a tenured teacher can be removed from the classroom. The impact on a students learning, administrators, competent teachers, patrons and the school district's budget makes the current process a very expensive and painful solution and, in reality, a significant deterrent to school improvement. She supports abolishing tenure for teachers in the state of Kansas. (Attachment 5)

Susan Watt, Wamego Board Member, appeared before the committee as a proponent for the bill. She stated that the single most important factor influencing a students learning, is the quality of the teacher. But under the current system, firing an ineffective teacher places undue burdens upon good teachers, administrators, BOE members, and has a negative impact on school atmosphere and student learning. (Attachment 6)

Marcia Bone, Director of Human Resources, Lawrence Public Schools, appeared before the committee as a proponent of the bill. She stated that it is very difficult and expensive to remove a tenured teacher. Under current law, an outside hearing officer determines if good cause exists to terminate or non-renew a tenured teacher. The courts then must defer to the hearing officer's decision and as he stated previously, is not accountable to the local community. Teachers carry much of the burden when school districts are unable to remove poor teachers. But shamefully, most of the burden of our inability to remove poor teachers rests on the backs of our children. (Attachment 7)

John Toland, appeared before the committee as a proponent of the bill. He stated that as an attorney he represented Coffeyville in a due process hearing involving the successful termination of a tenured teacher. This process was very expensive and time consuming. The teacher, the Board of Education, and the students all deserved a speedy resolution (Attachment 8)

Mitt Dougherty, Superintendent Little River, appeared as a proponent on the bill. He stated that the current system for attempting to deal with poor teachers is overly cumbersome, creates financial dilemmas for school districts, and leaves a void in the process of attempting to bring accountability to education.(Attachment 9)

Brilla Scott, United School Administrators, appeared as a proponent on the bill. She stated the way the statute now reads the hearing officer makes the final decision. The only thing the court does is to review the process and not the incident or the compelling case, which might have occurred. We believe that educators must be protected against arbitrary, capricious or fraudulent action by supervisors and local boards of education. The present law leaves local elected officials out of the process. This bill would allow appeal to the district court by either party. (Attachment 10)

Gary Reynolds, Superintendent Shawnee Heights, appeared before the committee as a proponent of the bill. He stated in 1990 while serving as the superintendent in Clearwater, the board took action to non-renew the contract of a tenured teacher. This process took 2 1/2 years from hearing panel to district court decision. Then another two years for the school district to settle with the teacher. Anything that can be done to expedite the process will benefit the teacher involved, the board of education, the administrators, the students, and the general public. He supports the bill, which eliminates the hearing officer step from the teacher due process requirements of non-renewal. (Attachment 11)

Jerry Fuqua, Superintendent Holton, appeared before the committee as a proponent of the bill. His concern about the current system of due process is that it is almost impossible for boards of education to remove teachers that do not meet performance standards or do not accept the responsibility of being an active participant in the school improvement process. Under current law, an outside hearing officer determines whether the school board had good reason to remove the teacher. The hearing officer is not bound by the boards decision and is not accountable to anyone. (Attachment 12)

Marceta Reilly, Superintendent Royal Valley and Dan Stockstill, North Jackson, submitted written testimony in support of **HB 2211**. (Attachment 13 and 14)

Kristi Kraisinger, appeared before the committee as an opponent of the bill. She stated that she is a good teacher and had been given superior evaluation at different times in her teaching career. However, the second semester in her second year of teaching in her home town school she received notice that her contract would not be renewed for the upcoming school year, no reason had to be given and with no teaching positions available for the next school year. She sought consule from the local KNEA, who she felt had her best interest to seek out teacher due process as it currently stands. She asked that **HB 2211** be rejected. (Attachment 15)

Ronald Lantaff, South Brown County Unified School District #430, submitted written testimony in support of HB 2211. (Attachment 16)

The hearing on **HB 221**1 was suspended until February 16, 1999. The meeting was adjourned at 10:57 a.m.

HOUSE EDUCATION COMMITTEE
GUEST LIST
DATE: February 15, 1999

NAME	REPRESENTING
Suzanne K. Lloyd	Observer - teacher USD 457
Mitt Dougherty	Supervising teacher USD 444
Marcia Bone	Dir of HR USD 497
PAT BAKER	KASB
Stacey Farmer	KASB
John R. Toland	school attorney, Salina
Chris Palazzola	intern / McClure
GARY REYNOLDS	USD #450 SHAWNEE HEIGHTS
Kay White	USD #450 Shawnee Heights
Brilla Scott	USA
Jerry K. Fuqua	USD 336 Holton
Robert Fessler	USD 321 Kaw Valley
Randall Olander	USD 444 Little River
Mike Raleigh	USD 444 Little River
John D'Alois Jr.	Senator Pugh
Tom Matson	USD 380 Vermillion
Ed Pugh	Senator 1st District
Rick Dahl	USD 323
Doug Conwell	USD 320
Lyzan Wood	USD 320
Kim Metz	USD 320
Greg Brownfield	KNEA
Mark Desetti	KNEA
DAVID M. SCHAUNER	KNEA
Kristi Krasinger	KNEA
Craig Grant	KNEA

KANSAS ASSOCIATION OF SCHOOL BOARDS

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Testimony on H.B. 2211
before the
House Education Committee
February 15, 1999

by
Patricia E. Baker
Deputy Executive Director/General Counsel
Kansas Association of School Boards

Mr. Chairman, committee members, thank you for the opportunity to appear in support of H.B. 2211.

This bill deals with two very simple issues: who should decide if good cause exists to remove a tenured teacher and who should decide if the teacher was treated fairly.

Under current law, both decisions are made by an outside hearing officer who has no accountability to the school community and no responsibility for results of his or her decision; and is not required to have any particular understanding of teaching, learning, school management or children's needs. There is no standard that the hearing officer must follow. The courts must defer to the hearing officer's decision, but the hearing officer is not required to defer to the decision of the teacher's employer (the local school board) or supervisor (the building or district administrator).

These are not our opinions. These are the plain facts of law and judicial opinions, which we can discuss if you wish. The question is: does this system support educational performance and accountability?

H.B. 2211 is simple. It would allow the school board to determine good cause exists to remove a tenured teacher. It would return Kansas law to the situation before the current tenure law was enacted in 1991. Teachers could be removed by local school boards only for causes that are reasonably related to the goals of maintaining an efficient school system; that are supported by evidence; and that are not arbitrary or capricious. School boards could not remove teachers for reasons unrelated to the educational mission, reasons unsupported by evidence, or for political motives. The teacher would have a right to a hearing before the school board, or a hearing officer or committee appointed by the board.

If a teacher believes the board acted unfairly or in bad faith, the teacher would have the right to appeal to district court. The courts are the institutions best suited to determine if an individual has been treated fairly. The courts would hold local boards accountable for acting in good faith.

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Reasons for supporting this change in law.

- It would return employment decisions to the employer.
- It would reduce the time and cost of teacher due process by eliminating the hearing officer stage.
- It would enhance the teaching profession. The National Commission on Teaching for America's Future calls for removing incompetent teachers. Under current law, even if a board demonstrates that a teacher is incompetent, the hearing officer is not required to remove the teacher.
- It would improve public perception of public schools and teachers. Most people do not understand the current system; do not understand why local school boards cannot take action against poor teachers. This perception is strengthened by media accounts of the tenure problem.
- It would benefit the vast majority of teachers who are effective, dedicated professionals. Good teachers must pick up the slack for poor teachers. Good teachers will continue to be protected from dismissal without good cause.
- It would benefit students. If a teacher is fired, he or she can seek employment in another area. A student only gets one chance. Retaining poor teachers harms students, not administrators or school board members.
- It would increase accountability of teachers in the educational system. Schools are accountable to the State Board through accreditation. School board member are accountable to the voters of the community. School administrators are accountable to school board. But teachers have extraordinary protection. Their employment is controlled by outside hearing officers who are not accountable to anyone.

February 15, 1999

Presentation to the House Education Committee
Doug Conwell, Superintendent of Wamego Public Schools

Thank you for allowing me the opportunity to speak with you this morning. I want to speak to you about the present due process system but to get there I need to begin with a discussion about our State's school improvement process. Through my eighteen years as an educator I have formed a very heart felt philosophy about how to improve education for our students. The bottom line to this philosophy is this: Hire quality people who care about children and about their own educational growth, train (or re-train) them in research proven instructional practices, create a content specific curriculum for all grade levels and subject matter, implement a testing system which addresses this curriculum for each grade level and then hold people accountable for the results of their efforts.

As much as I want to dialogue with you today about this philosophy and how our present system in Kansas falls short of this philosophy, I realize that we are here to discuss due process reform. So let me focus on the inadequacies of this system. First, the criteria that has been established as reasons for termination fall far short of what it takes to turn around the average or below average performance of a school system. School systems contain many people who are neither incompetent, immoral, or insubordinate. When it comes to school improvement efforts or change they are simply unwilling or complacent. They are average people who are average teachers who produce very average results. Witness your State test results. All they really want is to remain in their classrooms teaching students the same way they have taught for years and getting the same results. And why not, there is little accountability for the product they produce because they can effectively point out the failings of the State testing system or the unfairness of national norm tests. This is why so few school districts have any reference to test scores as a part of their evaluation instrument.

While school administrators are successful at convincing some of these unwilling or complacent people to change the fact remain that most of these people sit on the sidelines of the school improvement process or they enter to become detractors or saboteurs to the process. When you think of the tremendous amount of time and effort it

takes to initiate and create change it becomes easy to see why those employees who do not want to change can influence others in the schools. Yet it is extremely hard to show to a hearing officer the impact that these people have on an organization. A hearing officer, who has no knowledge of the local community or its school system's attempt to improve, will come in and pass judgement on whether a person simply meets the criteria as defined by law.

There is not a successful business in this country that would keep an employee who will not change as the company needs them to change in order to ensure its survival. Yet this is exactly what is happening in our public schools. Businesses that do not change and grow will in time lose their profitability and soon go out of business. Personally I believe that this is just exactly what is happening with the charter movement. Either public schools must change or a whole new system will emerge to meet the demands of the consumers, which is our public. Yet the presently laws that we have will not allow for the type of change necessary to have a significant impact on our current public school institution. Changing the due process law will be a start in the right direction.

Dr. Robert Fessler, Superintendent
Kaw Valley Unified School District #321
St. Marys, Kansas 66536

My name is Robert Fessler. I am superintendent of schools in the Kaw Valley USD 321 School District with district office located in St. Marys, Kansas. Thank you for allowing me the opportunity to be heard in support of HB 2211.

The issue we are supporting is local control of education and the authority of the local Board of Education to set acceptable standards of conduct and appropriate levels of performance. At present, the Board can do this for administrative staff. They cannot for their teaching staff.

Whether or not a tenured teacher the board desires to remove can remain with the district depends on the standards of conduct or levels of performance an outside arbitrator deems acceptable, and this arbitrator is not required to have any level of expertise in the operation of a school district.

When a tenured teacher is removed by the Board, the Board does not determine "good cause," the hearing officer does. This is a negation of local control. The board has the responsibility for providing a quality education for the district's students, and they are being denied a very important tool needed to reach that goal: they are being limited in their choice of teachers to reach the student body.

In addition, an appeal of an arbitrator's decision can not include defects in the application of standards of conduct or acceptable performance levels. An arbitrator's judgment can only be overturned by a district court if the decision can be shown to be arbitrary or capricious, unsupported by substantial evidence or beyond the scope of the hearing officer's authority.

Our board needs the ability to set its own standards for all district employees, and we respectfully request the legislature give our local board the authority to determine good cause for eliminating tenured teachers.

Thank you for your attention.

I will try to respond to any questions you may have.

Presentation by Rick Doll, superintendent of school's Rock Creek U.S.D. 323, before the House Committee on Education in support of House Bill No. 2211.

The protection of the contracts of teachers, whether it be by tenure or with the current law which gives a hearing officer great power in determining contract status, is the result of the centuries' old dilemma of meeting the needs of students while protecting the academic freedom of the teacher. Once upon a time it was reasoned, that by protecting a teacher's contract, that teacher would be more free to teach effectively and select a subject matter that was appropriate for students. This logic is no longer true.

In my brief comments today I would like to point out that the current law which gives extraordinary power to a hearing officer is archaic, the product of another time, and has not kept up with the significant changes in education over the past 20 years.

During these past 20 years, accountability has become a major part of the educational process. School districts in Kansas are required to participate in an accountability process called Quality Performance Accreditation. Under this process school districts must identify goals for improvement within a framework of guidelines provided by the Kansas State Board of Education. Everything that happens in schools must be targeted to achieve the goals set by the local district. Though the local district continues to have much leeway in determining how to achieve these goals, the goals must address the issue of improving students performance in key areas, particularly reading and mathematics. State curriculum guidelines are developed by the state and given to the local school district. Assessments are written from these curriculum guidelines and schools are judged depending upon their scores on these assessments. Failure to improve scores can result in loss of accreditation, the stiffest penalty possible for a school.

Many factors contribute to the school's ability to improve assessment scores. Facilities, resources and a good school improvement plan are important components to this improvement process. But, undeniably, the most important component to improving test scores, and thus maintaining accreditation, is the individual in the classroom who works with students on a daily basis. The most critical component of the school improvement process is the component that the local school board has the least control over, the classroom teacher. It is relatively easy to develop a plan, or provide resources, but it is next to impossible to non-renew a tenured teacher under the current law. If you do not think that it is next to impossible to non-renew a tenured teacher, look at how often it happens; very, very rarely. Does this mean that all tenured teachers are therefore productive teachers that are helping schools meet their school improvement goals? Unfortunately no, this is not true. What it means is that the non-renewal of tenured teachers is so cumbersome and so expensive that administrators and boards of education choose instead to continue to employ these teachers, minimizing their effect on students by transferring them to meaningless jobs or to schools where parents won't complain. Unfortunately, this only drains the limited resources that schools have to educate children and places the poorest teachers with students that need the best.

Speaking from experience, school boards are reluctant to non-renew a tenured teacher's contract

and it has nothing to do with their ability, or the administrations ability to determine if that teacher is an effective teacher. It has everything to do with the fact that they will have to navigate through an expensive, cumbersome process only to have their decision second guessed by a hearing officer who is not even an educator. So the risks are great. Months of work by the administration, thousands of dollars in legal expenses only to have a well documented case over ruled by a third party who's closest connection to the field of education being that they were once a students in our schools. Typically, these hearing officers have very fond memories of their teachers.

Historically the contracts of tenured professor's at the university level needed to be protected because of local pressures to outlaw or ban certain topics from being taught. This is the issue of academic freedom that I spoke about earlier. But in today's schools in this state, curriculum is determined, if not mandated, by the assessments that all school must take. Tenured teachers' jobs would not under attack become of academic freedom issues, they would be under attack because of their inability to teach students. Accountability placed on the schools by this legislature requires that all schools improve, but this legislature has chosen to tie the hands of the local school board by imposing unrealistic and expensive roadblocks when that local board determines that a tenured teacher is performing at a level that is not helping the school improve. You can't have it both ways.

Opponents to House Bill 2211 will point out that the rights of teachers will be trampled if the hearing officer provision is removed. The tenure law will still exist in Kansas. Reasons for non-renewal must be given, the right to counsel if guaranteed, the right to call and cross examine witnesses is guaranteed. The teacher, by statute, is guaranteed the right to a fair and impartial decision based on substantial evidence; and the teacher may appeal the decision of the school board to the court system if the board acts in an arbitrary manner, or if constitutional rights were violated. These are the same rights enjoyed by any other citizen of this country.

The excessive protection of a teacher's contract as provided by current law is no longer needed. The paradigm has shifted. The most important aspect of schools is no longer the academic freedom of the instructor, it is whether students are learning. Local school boards are entrusted with the all important job of educating our youth. Please assist local school boards in their efforts by untying their hands in dealing with ineffective teachers. A vote for house bill 2211 is a vote for students.

Members of the House Educa. Committee,

Thank you for this opportunity to share my thoughts with you regarding HB2211. My name is Kim Mertz and I spoke with some of you in Salina about the need to amend the current due process law. I am a parent of four school aged children, a business owner, and a school board member. In the next few minutes, I hope to offer several compelling reasons to seriously consider this bill as a **necessary component** of the statewide school improvement effort underway in Kansas. The students and the competent and committed employees in our schools need and deserve our collective consideration of this issue.

While it is true a tenured teacher can be removed from the classroom under the existing law, my question to this committee is **at what cost?** Under the existing law, the impact on student learning, administrators, competent teachers, patrons and the school district's budget makes the current process a very expensive and painful solution and, in reality, a significant deterrent to school improvement.

Impact on student learning
To progress toward academic excellence, school boards must have a law that allows them to remove teachers who are not committed to excellence or who do not share the board's educational philosophies. Failure to strive for academic excellence or absence of vision is not enough to warrant teacher dismissal, but it should be because we all know, and research confirms the profound influence a teacher's vision, passion, and desire for excellence have on student learning. By the time an administrator has compiled three to five years of useable documentation on a teacher, that teacher has negatively impacted hundreds of children. An impact that will be felt long after these children leave the classroom. This ought to be an intolerable proposition for all of us! Our children deserve to be taught by the most competent and committed teachers our society can produce. Why do we allow these teachers to remain so long in the classroom? Part of the answer is because of the existing due process law.

Impact on administration's time and energy
Consider carefully the amount of time spent by one administrator working with or compiling documentation on one ineffective teacher who may or may not see a need to improve. Administrators are valuable resources whose time must be spent supporting the majority of teachers who are committed to improving and who are personally invested in the success of their students. Do you realize how much of our administrators' time, not to mention limited inservice dollars are spent trying to improve teachers who are NOT interested in improving? Why are we doing this? Because under the existing law, we are told that we must make every effort to help these teachers improve. I am perplexed and completely frustrated by the notion that we owe these college educated professionals years of expensive opportunities to improve.

Impact on faculty
Consider the emotional cost to an entire faculty. In some cases, an entire faculty must listen to a teacher complain about the administration **for years** while the necessary documentation is compiled to satisfy a due process hearing. Meanwhile, the atmosphere in the building becomes so negatively charged that good teachers struggle to remain positive and focused on their jobs. Our very best teachers deserve to be surrounded by colleagues who are their professional equals!

Impact on patrons
To further compound the frustration, under the existing law, we are told we need parental documentation concerning a teacher being considered for nonrenewal. Fair enough, until I realized that parents are scared to the point of paralysis. Nobody can realistically promise parents their children will not be the recipient of retaliation from a teacher if they decide to document. In the absence of concrete guarantees, the idea that the situation could get worse will stop most parents. Yes, I know they should document, but that is not the reality.

Impact on school budgets
Because of the **inherent uncertainty of the outcome of a due process hearing**, school boards are reluctant to risk **thousands of dollars** pursuing one dismissal. It is the inherent uncertainty that is the crux of the problem. Under the existing law, the decision to dismiss or retain is made by a hearing officer who is not familiar with all the intricate details and history of a particular situation; who does not know what a community knows about a teacher; who does not live with the day to day consequences of negative and unprofessional behavior of the teacher in question; who may or may not embrace the same educational standards and expectations that a community has established for teachers and children. Given the length of time required to compile documentation, the enormous

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osts, and the uncertainty of the outcome, a due process hearing becomes too risky and therefore not a viable option. Our only other option is to spend years trying to improve a teacher with no guarantee of that outcome. We are in a "no win" situation. Meanwhile, ineffective teachers remain in the classroom day after day and year after year. **Please do not underestimate the negative impact of a single teacher on a single child, a small school improvement committee, a small faculty, or a small community.**

For all the above reasons, I support abolishing tenure for teachers in the state of Kansas. In the absence of that, I support returning the final authority and decision for dismissal of a tenured teacher to the local school boards. HB2211 will remove or at least minimize the inherent risk and cost involved in dismissing teachers that is present under the current law. I believe local school boards can best establish good cause for removing a tenured teachers. If the state is going to hold a school district accountable for school performance (as well it should), we must have the ability to hold our employees accountable, including being able to terminate for good cause in a timely and cost effective manner. Successful school improvement will not happen, regardless of the large amounts of money spent, until school boards can remove those teachers who are not meeting expectations for student performance, or who hold in contempt the school improvement process, or who make little effort to grow professionally. The single most important action the legislature can take to help school districts reach their school improvement goals is to return the final authority for dismissal to the local school boards. I ask for your full support for HB2211.
Thank you for your commitment to public service as legislators and for your time and attention regarding this issue.

Kim Mertz
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February 15, 1999
Testimony before the House of Representatives Education Committee regarding House Bill No. 2211.

Chairman Tanner and other members of the House Education Committee, good morning, and thank you for the opportunity to address this committee.

I come before you as a parent and as a member of the Board of Education (BOE) of USD 320, Wamego, to express my support for House Bill 2211.

The amount of time, effort and money devoted to curriculum development, standardized testing, Quality Performance Accreditation, school improvement plans, discipline plans, review and purchase of textbooks, computer software and hardware, establishment of policy, building improvements, and administrative salaries is wasted if classroom teachers are ineffective. Logic and research tell us the single most important factor influencing student learning is the quality of the teacher.

I would like to see Kansas eliminate teacher tenure for K-12 teachers. Absent that, I support House Bill No. 2211 because it begins to return to local Boards of Education the final authority to terminate, for good cause, a due-process-eligible teacher's employment. It seems to me this is where the authority should lie, rather than with a hearing officer who is neither elected by the district patrons nor ultimately responsible for the quality of education students receive. *How can local boards reasonably be held responsible for the quality of student education when they do not have the final authority to control the single most important factor affecting student learning?* Leaders of successful enterprises have the authority to hold their employees accountable and make the ultimate decisions about both hiring and firing.

I want to point out that **this legislation costs the taxpayer nothing**. On the other hand, failure to allow local boards the authority to remove ineffective teachers costs everyone, especially our children. The current process perpetuates the employment of teachers whose performance ranges from merely mediocre to consistently ineffective. It seems only the worst of the worst are removed. Under the current system, firing an ineffective teacher places undue burdens upon good teachers, administrators, BOE members, and has a negative impact on school atmosphere and student learning.

Please remember, the school children of Kansas do not have the power and influence of a union to represent their interests. They have no professional lobbyists to argue their cause. As you listen to comments regarding this legislation, I hope you will carefully consider the underlying motivations of those opposing it and those supporting it.

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Testimony on H.B. 2211
Before the
House Education Committee
February 15, 1999

By
Marcia R. Bone Ed.D
Director of Human Resources
Lawrence Public Schools

Mr. Chairman, committee members, thank you for the opportunity to appear in support of H.B. 2211.

I am here to discuss the positive impact of this bill for school districts in Kansas and the children that they educate. I would like to highlight my support of this bill with an example from the Lawrence Public Schools. I have been the director of human resources in Lawrence for three years. I spent the first two years of my career in Lawrence immersed in the process of removing one tenured teacher. The teacher to whom I refer is no longer employed by our school district. However, it took two years and approximately $100,000 for this to be true. This was not a case of school administrators not doing a good job of addressing concerns or documenting poor performance. We had boxes of documentation that resulting in over a $1000 in copying costs alone. Administrators had been documenting concerns about this teacher for many years. To put the cost associated with this non-renewal in perspective for you, $100,000 would roughly pay for the employment of three experienced teachers for one year in Lawrence.

As school administrators, we are faced with this dilemma: do we sacrifice part of the educational career of some of our 10,000 students a teacher that is denying them their constitutional right to an education so we can pay for other human resources that we need or do we spend the money to remove one tenured teacher?

In Lawrence, we have the advantage of having an excellent relationship with the teachers'association. We have worked with the association to develop the Basic Expectations that we believe are essential for all teachers in our district. We have developed a process by which we believe teachers are given every opportunity to correct deficiencies in those Basic Expectations before the process of removing a tenured teacher begins. However, the current law, even with these processes in place, makes it very expensive and time consuming to do.

It is very difficult when I am in public forums to hear members of the public tell me that if administrators would just do their jobs and get rid of bad teachers, we could make dramatic improvements in public education. In addition to the fact that the general public has very little knowledge of what it takes to remove a poor performing tenured teacher, they certainly have no idea of the power that a hearing officer with no particular standards to follow and no accountability to the local community has in this process.

Under current law, an outside hearing officer determines if good cause exists to terminate or non-renew a tenured teacher. The courts then must defer to the hearing officer's decision and as I stated previously is not accountable to the local community.

H.B. 2211 allows local school boards to determine if good cause exists to remove a tenured teacher while at the same time allows protection of constitutional rights by the courts. This bill returns the standards of employment to the local school board elected by the people it represents. The local school

board determines if just cause exists to remove a tenured teacher. Teachers could be removed only for causes supported by evidence that are related to effectively educating children and are not arbitrary, capricious, or for political motivations. Following a hearing by the local school board, the teacher retains the right to appeal to the district court if he or she believes that the school board or the hearing officer appointed by the board has acted unfairly or in bad faith. The courts would hold school boards accountable for acting in good faith.

Teachers carry much of the burden when school districts are unable to remove poor teachers. But shamefully, most of the burden of our inability to remove poor teachers rests on the backs of our children.

TESTIMONY ON H. B. 2211
BEFORE THE
HOUSE EDUCATION COMMITTEE
FEBRUARY 15, 1999

by
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INTRODUCTION

Mr. Chairman and Committee Members, thank you for this opportunity to speak in support of H. B. 2211.

I, as attorney for Coffeyville U.S.D. #445, represented the school district in a extraordinary lengthy and expensive due process hearing involving the successful termination of a tenured teacher.

THE COFFEYVILLE U.S.D. #445 EXPERIENCE WITH THE PRESENT TEACHER DUE PROCESS STATUTE

On December 21, 1994, following a month long investigation by school authorities, the Coffeyville Board of Education adopted a resolution of its intent to terminate a tenured teacher's contract for sexual harassment and assault upon a student. The teacher was suspended with pay until April 11, 1996, the date he appealed the Hearing Officer's decision.

On March 13, 1996---more than 15 months after the process began---the Hearing Officer rendered his decision finding that the Board of Education had good cause to terminate the teacher's contract.

The teacher appealed the decision to the District Court of Montgomery County, Kansas, which upheld the decision of the hearing officer. The teacher did not appeal the matter further.

Attached are copies of the decisions of both the Hearing Officer and the District Court of Montgomery County, Kansas. Both decisions enumerate strong and compelling reasons for the teacher's termination.

This process was very expensive and time consuming. The teacher, the Board of Education, and the students all deserved a speedy resolution of such a matter. That did not happen under the present procedure. In this era of tight budgets, this process had

a severe negative impact upon the Coffeyville district.

The case involved the testimony of both present and former high school and junior high students. Many of these students had to give their testimony on four different occasions---(1) first, before the Principal charged with the initial investigation of the matter; (2) then before the School Superintendent of Schools and School Attorney; (3) in prehearing depositions; and (4) finally, before the Hearing Officer.

EXPENSES INCURRED BY THE SCHOOL DISTRICT

The Coffeyville School District incurred these expenses, which were not covered by insurance, in this due process matter:

Salary paid while the teacher was suspended with pay awaiting the decision of the Hearing Officer and final termination of his contract	$33,750.00 est.
Single premium health insurance coverage paid for the teacher	2,266.67 est.
Employer's share of social security attributable to teacher's salary	2,625.15 est.
Court Reporter's expense in connection with Kansas depositions and the eight days of formal hearings	6,915.18
Attorneys' fees and out-of-pocket expenses incurred to date by the Board of Education	34,801.32
Compensation and Expenses of the Hearing Officer:	2,651.08
TOTAL EXPENSES:	$83,009.40 est.

TIME INVOLVED

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

1. Month long investigation conducted by principal and superintendent of schools prior to the Board adopting its resolution of intent to terminate the teacher's contract.

2. Thirteen (13) days of depositions in connection with the due process hearing, with depositions being taken not only in the State

of Kansas but also in Missouri, Oklahoma, and Texas.

3. Seven (7) days of hearings before the hearing officer in June 1995.

4. One subsequent hearing day in November 1995.

5. 380.8 hours of attorney time spent on behalf of the Board of Education in this matter. This does not include the time spent by insurance defense counsel who defended this matter on appeal before the District Court of Montgomery County, Kansas.

6. Untold hours of administrative time and expense involved in this matter.

7. Fifteen (15) witnesses testified in person and four (4) testified by deposition on behalf of the Board of Education. Thirty-nine (39) witnesses testified in person and five (5) by deposition on behalf of the Teacher.

CONCLUSION

The hearing process spanned the better part of two school years during which no one knew whether or not the teacher would be terminated. The uncertainty, the long period of time involved, the extraordinary expense, and the vast commitment of school district resources all speak compellingly as to why the process should be changed.

BEFORE THE DUE PROCESS HEARING OFFICER

IN THE MATTER OF THE DUE PROCESS)
)
HEARING OF ROY GAGE)
)
)

MEMORANDUM OF DECISION

The above matter convened at 9 a.m. on June 20, 1995, at the Coffeyville Community College in Coffeyville, Kansas, before Philip L. Bowman, Hearing Officer. The Board of Education, U.S.D. #445, (Board) appeared by its Superintendent, Larry Thomas and Richard Maier, Principal of Field Kindley Memorial High School and its attorney, John R. Toland. Mr. Gage, appeared in person and by his attorney, C. A. Menghini. Evidence was received on June 20, 21, 22, 26, 27, 28 and 29 and on November 13, 1995. On February 12, 1996 final written arguments were received and the record was closed.

FINDINGS OF FACT

1. Roy Gage is a tenured teacher, employed by U.S.D. No. 445 at Field Kindley Memorial High School.

2. On December 21, 1994, the Board resolved to terminate Mr. Gage's contract for the following stated reasons:

A. During the period of time from August 1991 to the present, Roy Gage, during the school day at various times and dates, did sexually harass various school students by making unwelcome sexual advances to these students, creating an intimidating, hostile, and offensive academic environment in violation of board policy.

B. During the period of time from August 1991 to the present, Roy Gage, during the school day at various times and dates, did sexually harass various students by requesting sexual favors from them creating an intimidating, hostile, and offensive academic environment in violation of board policy.

C. During the period of time from August 1991 to the present, Roy Gage, during the school day at various times and dates, did sexually harass various students by means of inappropriate oral, written, and physical conduct of a sexual nature, creating an intimidating, hostile, and offensive academic environment in violation of board policy.

D. During the 1994 fall semester Roy Gage did strike a student.

3. Mr. Gage received timely notice of the resolution of intent to terminate his contract and requested a hearing as provided by law.

4. The factual bases asserted at the hearing as supporting the reasons for termination A, B, and C can be summarized as making inappropriate remarks to female students, inquiring of them about their sex life, touching them, hugging them, kissing them, asking them to hug and kiss him.

5. Mr. Gage (a) denies that he made any inappropriate remarks, comments or inquiries (b) contends that the allegation regarding the alleged striking of a student did not justify

termination and (c) argues that the Board's motivation in seeking to terminate his contract is due to labor related disputes between himself and the Board.

6. Many witnesses were called in the proceeding. As the trier of fact, the Hearing Officer must judge the credibility of the witness in arriving at factual determinations. In this case most of the factual issues are strenuously disputed.

7. Complaining Witnesses. These witnesses were, at one time or another, assigned to Mr. Gage's class--In School Suspension (ISS) for disciplinary reasons.

(a) Brandy Gillen testified to feeling weird about comments made to her by Mr. Gage. She says that he asked her about her sex life (whether she had one, who with and the frequency of sexual activity), whether she had a sexual disease and made remarks about her appearance. He said she was his "Queen" and he was "King Gage." It was her complaint that started the investigation that led to the present proceeding. Prior to that time there had been no complaint by anyone of this type to the school officials about Mr. Gage.

(b) Johanna Felts testified that Mr. Gage said and did inappropriate things to her--asked about her sex life; said that he loved her; touched her on her arms and hands; remarked on her appearance, saying she had a perfect body, beautiful eyes and nice lips. He gave her a greeting-type card showing a couple in love walking hand in hand, that inside asked the question: "Could we ever be together?" He hugged her occasionally. Once

he refused to hug her and told Johanna her wouldn't because he wanted "all or nothing." She interpreted that to mean he wanted to have sex with her.

On an earlier occasion, when she was upset about a personal matter and he invited her to go into an adjacent room where they could be alone. There he hugged her and told her had something to give and told her to close her eyes. She did so and he kissed her. She described it: "Oh, he just put his lips over mine and stuck his tongue into my mouth." She was upset by this and pulled her head back and left. Several times he asked her to kiss him. When she refused he asked whether she was prejudiced.

Once he said he would like to "wake up beside me in the morning and to be with me."

(c) Helen Smith DeMaris said that Mr. Gage wrote notes on little pieces of paper saying he loved her. He asked whether she was sexually active which angered her. He asked whether she ever went out with a black man and when she said no he asked whether she was racist. She talked to the school administration, but it is not clear that she told them about these occurrences.

(d) Melodie McDaniel described her experience when she was sent to ISS. Mr. Gage asked her whether she had ever dated anyone of different race; whether she was sexually active and told her if she needed help in getting "protection" she could come to him for help--he would give her money for getting protection. This arose as a result of her overhearing Mr. Gage discussing another female student's pregnancy with her and asking

her why she hadn't come to him for help. On occasion he gave her hugs and that started to make her feel uncomfortable. In retrospect she feels the questions about her sexual experience were offensive and improper.

(e) Kristin Palmer was asked personal questions by Mr. Gage, such as whether she was sexually active. She thought it was kind of funny. He "blew" her kisses and winked at her. He told her she was pretty and sometimes rubbed and patted her back. At the time it didn't bother her but in retrospect she has become concerned about it.

(f) Natalie Hodges testified that Mr. Gage asked her about her sexual preferences--did she like men or women? Sometimes when she walked by he would make noises like "humm, humm." He asked her whether she had a sexual relationship with her boy friend and whether it was "bad" sex or "good" sex. He called her his girl friend and "honey." He once tried to scoot her in a chair into the room adjacent to the ISS room. That scared her. Sometimes he would stare at her legs or buttocks. Later on Mr. Gage told her that she should be quiet about these events, because she could get in trouble if she told anybody about them.

(g) Sonya Walters testified about the incident that is the basis of the fourth charge--the assault allegation. Mr. Gage was asking her questions. She became rude. Then they were joking around. Then Ms. Walters unplugged the TV. Mr. Gage hit her in the back with the blunt end of a pair of scissors. Ms. Walters struck Mr. Gage with a plaque and he retaliated, hitting her hard

in the shoulder blades with the blunt end of the scissors. Then she hit him hard and Mr. Gage chased her down the corridor. She was laughing at the time but became concerned when she saw an angry look on Mr. Gage's face. There was no evidence that any injury was sustained by Ms. Walters or Mr. Gage.

Ms. Walters also recounted an earlier pattern of comments and inquiries by Mr. Gage about her sexual interest, whether she used birth control, suggesting that she should date black students and asking whether she would like to go out with older men. Eventually he told her that he wished he "could do it all over again and he'd divorce his wife and wake up with me every day naked." Mr. Gage hugged her and attempted to kiss her, put his hand on her knee and commented on her physical attributes (her body and lips).

(h) Amanda Ellis testified that Mr. Gage told her she was pretty and gave her notes that said "to Amanda with love, from coach"; and that made her feel uncomfortable. He touched her on her shoulders and stared at her shirt one day; the shirt had some animals and characters printed on it. Mr. Gage's conduct didn't scare her.

(i) Keri Crockett had been assigned to the ISS room as a proctor in her senior year. However, she had also been an ISS "student." On some of these occasions Mr. Gage would question her about her boy friends, tell her they weren't good enough for her and that she should find someone better. She felt he was thinking about himself. That angered her. He sometimes hugged

her in the hallways and she felt it was inappropriate for him to do so. Once he suggested she go with him to watch his daughter play in a basketball game. He said they could spend the night in a motel room. Another time, he asked her to kiss him. He said things that made her feel he wanted to have intercourse with her. His conduct was upsetting to her.

(j) Charlotte Stevens testified (by deposition) that Mr. Gage asked her about using birth control devices, whether she would date someone older--maybe in their thirties or forties; that he gave her a note asking whether she would go out with him and demanded an answer. When she refused to answer, he demanded that she return the note. She felt uncomfortable about the incident.

8. There seems to be little dispute about the "assault" allegation, only the intensity of the situation and the proper response by the board. Having heard the evidence, the Hearing Officer is of the opinion that the incident should not have happened and that Mr. Gage was provoked into conduct he probably regrets. It is an isolated incident and did not constitute good cause for termination.

9. The Board also presented evidence on its sexual harassment policy and testimony that teachers should not touch student. Mr. Gage denies having ever been given any training on sexual harassment. Furthermore the board's position on "no touching" was questioned greatly by its own teaching staff. Apparently

there is a wide gulf between policy and practice. However, few would condone "full body" hugging of students.

10. Mr. Gage steadfastly denies ever initiating any questions about the students' sexual experience. Sometimes the students would come to him with problems that involved them telling him about such matters, e.g. Robin Pursley's pregnancy. He also denies ever expressing any romantic interest in the complaining witnesses, kissing or trying to kiss them. He admits giving them hugs, touching them on the shoulders etc., but denies it was ever done in an offensive manner. None of them ever indicated to him that they were offended. He testified that it was part of his upbringing to hug people and tell them that you loved them.

11. Mr. Gage also argues that the conduct that was described by the complaining witnesses does not constitute sexual harassment. However, he agrees that it would be improper to kiss students or ask them to kiss him. And, it would be wrong to ever initiate inquiries into the sexual interests of his female students. But he disputes the testimony to the effect that he engaged in such conduct.

12. The Hearing Officer finds that the conduct described by the complaining witnesses that Mr. Gage questioned them about their sexual experiences, interests, etc; that he attempted to kiss them; that he did kiss one of them; that he expressed romantic interest in them, if true constitute sexual harassment even though there was no complaint about it at the time. A

teacher is a fiduciary and cannot be heard to say that children in his trust must speak out against improper conduct or be barred from complaining later. This conduct would constitute just cause for termination.

13. Mr. Gage's argument that the Board's decision to seek his termination is motivated by reasons other that the charges themselves is not substantiated by any evidence that convinces the Hearing Officer. It is suggested, but not proven. The Board had no choice but to investigate the allegations that were made.

14. Mr. Gage also suggests that the testimony of the students was made up or "scripted" and fostered by the school nurse (mother of one of the complaining witnesses) in conspiracy with one or more of the complaining witnesses. There is a common thread found in much of the testimony. This could be seen as "made-up" stories, told to one another by impressionable youngsters until they believed things that had not really happened. It could also be viewed as a course of conduct by a person in authority using that position to seek sexual gratification from young girls.

15. While the testimony of the complaining witnesses was challenged on details (time, place, etc.), none of them ever recanted their allegations of improper conduct by Mr. Gage.

16. Mr. Gage testified in his own defense and presented many witnesses to his good character and caring attitude toward his students. There was also testimony by those who might have observed improper conduct (if it occurred) that they never saw

any. But conduct of the type complained of was not said to have been committed in open view, nor would it likely have been.

17. As is probably typical with these types of allegations, the only witnesses to the alleged conduct are the accuser and the accused. Sexual harassment is not usually done in a crowd. Thus, the Hearing Officer is confronted with deciding whose testimony should be believed.

18. Mr. Gage had previously taught in Tulsa, Oklahoma. Testimony of his principal there indicates that problems arose concerning Mr. Gage and a female student. There was no proceeding to terminate his employment and no determination as to the truth of the allegations.

19. A civil action was instituted against Mr. Gage by the mother of the Tulsa student. The court records reflect that the proceeding ended without any determination as to the truth of the allegations. In themselves, the pleadings do not establish wrongdoing by Mr. Gage.

20. Mr. Gage denies that anything improper occurred between him and Melody Smith, the Tulsa student. He also denies knowing of the filing of the civil suit. Exhibit 111 is an authenticated copy of the proceeding, entitled Teresa D. Smith, next friend and natural mother of M.S., a minor v. Roy C. Gage, Case No. CJ-88-06022, in the District Court of Tulsa County, Oklahoma. The essence of the suit is that Mr. Gage sexually harassed one of his students, for whom he was also basketball coach - specifically, that he was having a sexual relationship with her. The record of

the case included a return of service of the summons, petition and a restraining order upon Mr. Gage, by leaving it with his wife at 1724 West Haskell Place, Tulsa, Oklahoma. Mr. Gage resided at that address at the time. Pleadings appear to have been filed on behalf of Mr. Gage seeking to dismiss the suit. Mr. Gage denies ever knowing the case was filed or that the attorney was representing him.

21. Attached to the petition is a letter by Mr. Gage to the parents of Melody Smith. In it he states that he had resigned his employment with the Tulsa School District. One of the reasons for resigning was to avoid further contact with Melody. In the letter he agreed to never, in any way, have further contact with Melody. In return, the parents agreed not to prosecute Mr. Gage. The parents signed the letter. The letter recites that all have consulted with counsel and have signed freely and voluntarily. Mr. Gage admits signing the letter, but denies that his resignation had anything to do with the allegations concerning Ms. Smith.

22. The Hearing Officer cannot and does not make any finding as to the truth of the Tulsa allegations. However, the denials by Mr. Gage of any knowledge of the lawsuit are not credible. Likewise, his testimony that his resignation was not related to Melody Smith is not believable. The resignation and the letter to Melody's parents are dated the same date and appear to have been typed on the same typewriter and are remarkably similar in content. They were both signed by Mr. Gage. Mr.

Gage's denials adversely affect his credibility regarding his denials of the allegations by the complaining witnesses.

23. The Hearing Officer finds that Mr. Gage acted improperly toward a number of female students in his charge while a teacher with U.S.D 445. That conduct consisted of making inquiries of their sexual orientation and experience; commenting with a sexual connotation on their physical attributes, suggesting that they might be interested in having sexual relations with older men, men of his age; kissing one student; asking students to kiss him and talking about his interest in having a relationship with them. Such conduct is unacceptable.

C O N C L U S I O N S

1. The burden of proof is on the Board to establish by substantial evidence that there was good cause for terminating Mr. Gage's contract.

2. There was substantial evidence that good cause existed for terminating Mr. Gage's contract.

Philip L. Bowman, Hearing Officer
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316/265-8591

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above Memorandum of Decision was mailed to the following persons on the day of 13th day of March, 1996:

Mr. John R. Toland
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Philip L. Bowman

Philip L. Bowman

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IN THE DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS
FOURTEENTH JUDICIAL DISTRICT
SITTING AT INDEPENDENCE

ROY C. GAGE,
Plaintiff,

vs.

BOARD OF EDUCATION,
UNIFIED SCHOOL DISTRICT No. 445,
MONTGOMERY COUNTY, KANSAS,
Defendant.

Case No. 96C-40 I

MEMORANDUM DECISION

I.
INTRODUCTION

This is a tenured teacher's (Gage's) appeal of a Hearing Officer's (HO) K.S.A. 72-5438 ruling that U.S.D. #445, Coffeyville, Kansas, (Board) had good cause to terminate Gage's contract.[1] K.S.A. 72-5443 gives the HO authority to make the final good cause determination. *U.S.D. No. 500 v. Robinson*, _____ Kan. ____ (#74,943 May 30, 1997). Review is not *de novo,* but is limited to determining whether:

1) the decision of the HO was within his scope of authority;

[1] The purpose of a due process hearing is to develop the grounds that have induced the Board to give notice of termination to the teacher and to afford the teacher an opportunity to test the good faith and sufficiency of the notice. *Coats v. U.S.D. No. 355*, 233 Kan. 394, 403 (1983). The burden of proof rests upon the school board. The reason for termination must constitute good cause. The termination decision must be supported by substantial evidence. *Gillett v. U.S.D. No. 276*, 227 Kan. 71, 77 (1980).

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2) the decision was substantially supported by the evidence;

3) the HO avoided acting fraudulently, arbitrarily or capriciously in reaching his decision. *U.S.D. No. 434 v. Hubbard*, 19 Kan. Ap. 2d 323, 326 (1994).

Presently, the Court understands Gage's appeal to allege that:

1) the HO acted arbitrarily and capriciously by receiving into evidence Exhibits 67, 68, 69 and 97.

2) Pivotal findings of the HO lacked substantial evidence;

3) the HO acted outside the scope of his review by holding Gage to a different standard of conduct than the acts specified in the Board's December 21, 1994, resolution to terminate Gage's contract.

Counsel for both parties have exhaustively asserted and reasserted their respective positions throughout this procedure. Oral argument is not necessary for the Court to have a complete understanding of each parties' arguments.

II.
FACTS

In 1989, Gage was hired by the Board to run the In School Suspension (ISS) Room for the middle and high schools. The ISS Room is an alternative classroom where the school administration can place students who have been tardy, skipped school, broken school rules, had discipline problems, disrupted the regular classroom or been involved in other activity needing punishment. It is an isolated room where students are separated while working on assignments from their regular classrooms. Five days is the maximum consecutive time a student can be assigned to ISS by an administrator.

On December 21, 1994, the Board adopted a Resolution of Intent to Terminate

Gage. The Resolution specified in part:

A) Roy Gage, during the school day at various times and dates, did sexually harass various school students by making unwelcome advances to these students, creating an intimidating, hostile, and offensive academic environment in violation of board policy;

B) Roy Gage, during the school day at various times and dates, did sexually harass various students by requesting sexual favors from them, creating an intimidating, hostile, and offensive academic environment in violation of board policy;

C) Roy Gage, during the school day at various times and dates, did sexually harass various students by means of inappropriate oral, written, and physical conduct of a sexual nature, creating an intimidating, hostile, and offensive academic environment in violation of board policy.

Conflicting evidence was heard by the HO regarding Gage's conduct and comments and the context they occurred in. Former ISS female students accused Gage of improper conduct. Gage denied any such conduct and offered evidence to show how some of his conduct might have been misinterpreted. He asserted that the accusations lacked credibility and were a ruse for the Board's real motivation to terminate his contract, which he claimed was his EEOC complaint, and lawsuit against the Board over a contractual pay dispute.

Other facts will be interspersed throughout this Memorandum Decision as relevant.

III.
WAS HO'S ADMISSION OF 67, 68, 69 & 97, ARBITRARY AND CAPRICIOUS?

A. Background

Gage had been employed by the Tulsa Oklahoma School District at East Central

High School from 1982-1988, as a history instructor and coach. The principal was Dr. John Darland. Gage resigned that position on April 29, 1988. The Board, over Gage's objection, conducted discovery regarding Gage's 1988 resignation from the Tulsa Oklahoma School District.

At the close of its case in chief, the Board offered Dr. Darland's deposition (Exhibit 67) to show that Darland had 1) at orientation given Gage, along with other new teachers, general advice about what teachers can do to avoid being placed in a situation from which accusations of improper conduct can arise, and 2) on a later occasion delivered a specific verbal warning to Gage only regarding alleged conduct toward a particular student.

At the same time, the Board offered Frank Zeigler's[2] deposition (Exhibit 68) and a letter signed by Gage (included in Exhibit 69) to show Gage had prior knowledge and warnings of a sufficient nature to show that he knew or should have known certain conduct was open to misinterpretation and could afford the basis for allegations of improper conduct.

Upon Gage's objection, the Board's counsel offered redacted versions (Exhibits 71 and 72) of the exhibits. The HO admitted pages 4-14 and portions of pages 36 and 37 of Exhibit 71 (read into the record by Gage's counsel). A new exhibit embodying these extracts of Darland's deposition was created and admitted without objection as Exhibit 76. Exhibit 71 was not admitted at that time.

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[2] Frank Zeigler was the attorney for the mother of an East Central High student. The mother had complained to Dr. Darland of an unhealthy relationship between Gage and her daughter.

Gage's objection to Exhibit 72 (extracts from Zeigler's deposition) was sustained and it was not admitted at that time.

At the beginning of its rebuttal case, the Board offered Exhibit 97, the deposition of Beth Nave. The purpose of this exhibit was to show a particular instance of Gage's conduct outside of school in the summer of 1994, which was inconsistent with testimony offered by Gage's witnesses concerning his conduct outside school during the same time frame. Exhibit 97 was admitted over Gage's objection.

Also at the beginning of its rebuttal case, the Board re-offered Exhibits 67, 68, 69, and extracts therefrom (Exhibits 71, & 72). The record before the HO is not precise as to what specific testimony or evidence in Gage's case these exhibits were offered to rebut. The HO took their admission under advisement. In a July 14, 1995, letter, the HO restated his opinion that the contested exhibits should not be admitted. But he deferred ruling and invited briefs.

The Board timely submitted a brief, seven pages of which consisted of Board's synopsis of the exhibits under advisement. Gage asked the HO not to read those seven pages claiming that it would inject the evidence into HO's mind even if the HO denied its admission. The HO on August 6, 1995, admitted all the exhibits subject to Gage's hearsay objections, which were substantially overruled.

B. Exhibits 67, 68 and 69.

The comment to PIK Criminal 3rd, 52.06 is helpful.

> "In recognition of the probable prejudice resulting from the admission of independent offenses, the Kansas Supreme Court has taken a very restrictive stance and has announced that the rule (K.S.A. 60-455) is to be strictly enforced and that

> evidence of other offenses is not to be admitted without a good and sound reason. (Cites omitted) Such evidence may not be admitted for the purpose of proving the defendant's inclination, tendency, attitude, propensity, or disposition to commit crime." (P. 69)

In this light, language[3] from the HO's August 6, 1995, Order is troubling. Equally troublesome is the Board's reference to inflammatory material[4] that it knew it could not produce. The latter undoubtedly played a vital role in reversing the HO's admissibility ruling. However, it is the Court's judgment that neither the Board's indiscretion nor the HO's language automatically disqualifies admission of Exhibits 67, 68 and 69.

The comment to PIK Criminal 3rd, 52.06, continues on Page 77.

> "There are several instances where evidence of prior crimes or civil wrongs may be introduced into evidence independently of K.S.A. 60-455, pursuant either to express statutory provisions or Kansas case law.
> ...
> (10) The State may introduce evidence of other crimes to specifically rebut the incorrect testimony of a witness tending to establish a defense. *State v. Burnett,* 221 Kan. 40, 42-43, (1976); *State v. Faulkner,* 220 Kan. 153, 158-159 (1976). The use and extent of rebuttal rests in the sound discretion of the trial court. *State v. Burnett,* 221 Kan. at 43.

While we are not dealing with prior convictions or proven civil wrongs[5] the analogy nevertheless applies. Gage's defense to the accusations was that no

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[3] "I agree with the Board that Teacher has made his character an issue and that evidence of bad conduct in the past of a nature similar to that which is charged now is relevant."

[4] The Board's brief referred to nude photos of Gage allegedly produced at an investigatory hearing of the Tulsa School Board by the Tulsa student's mother and a tape recording of a phone conversation purportedly between Gage and the Tulsa student.

[5] To be admissible under K.S.A. 60-455, it is not necessary for the state to show that the defendant was actually convicted of the other offense. (Cites omitted) PIK Criminal 3rd, P.75 comment to 52.06.

improper conduct occurred and that any conduct that did occur was innocent and misinterpreted by his accusers. In support of this defense, Gage testified that his family is a very touching family from Louisiana where such touching is a way of life and that he had never had this kind of problem or complaint in the past. Exhibit 67 contains evidence that Gage indeed had previously experienced a complaint similar to that he was facing in Coffeyville. Regardless of the outcome or validity of the prior accusations, their existence is admissible to contradict Gage's defense. Furthermore, the April 29, 1988, letter from Gage to the Smiths (see Exhibit 110) which was part of Exhibit 69, suggests that said complaint, arguably, was a contributing factor to Gage's decision to resign his Tulsa teaching position. Inasmuch as it contradicts Gage's assertions otherwise, the letter is admissible.

Gage's November 13, 1995, testimony denying that his resignation from the Tulsa School District was due to anything other than his extraordinary large class sizes and his being passed over for coaching promotions opened the door for the HO to receive evidence of his suspension at Tulsa and the initiation of dismissal proceedings against him (even though by agreement they were later withdrawn and purged from Gage's file per Exhibit 118.) These events, in and of themselves, prove nothing about the validity of the accusations. They do tend to show, contrary to Gage's testimony, that other reasons, beyond those offered by Gage, surrounded his Tulsa resignation. To that extent, evidence of their existence as contained in Exhibits 67 and 69 are admissible to contradict Gage's testimony on that point.

The Court records in Exhibit 69 and related portions of Zeigler's deposition

(Exhibit 68) concern a lawsuit in October 1988, to enforce the provisions of Exhibit 110. Whether they rebut any Gage defense is arguable. Their relevance arose to contradict Gage's claims that he had no knowledge of their existence. Arguably, that facet of Gage's November 13, 1995, surrebuttal testimony would not have arisen had the HO's August 5, 1995, Order denied admission of Exhibit 68 and the Court records in Exhibit 69. Nevertheless, the effect is merely cumulative to the lethal damage inflicted on Gage's credibility by the proper admission of Exhibit 67 and the April 29, 1988, letter to the Smiths.

Having found the exhibits admissible for a limited purpose (rebutting Gage's testimony tending to establish a defense) the question arises: did the HO rely on the evidence for more than that limited purpose? To do so would, in the Court's judgment, be arbitrary and capricious, thus reversible error. A close reading of the record as a whole, and particularly the HO's Memorandum of Decision, satisfies this Court that regardless of the HO's troubling language (see Footnote 4), the HO disregarded any implication of improper conduct from the Tulsa dismissal hearings, and the Tulsa lawsuit, and he properly relied on the exhibits for the limited purpose of contradicting Gage's evidence that he had never had prior problems with his conduct being misinterpreted, that his Tulsa resignation was unrelated to such problems, and that he had no knowledge of any legal claims that arose in a Tulsa lawsuit which was eventually dismissed.

The Court is unpersuaded by Gage's argument that once the trier of fact was tainted with the Board's references to the sensational photos and tape recordings, it

became impossible to indifferently consider the contested exhibits for a limited purpose. Were this trial to a jury, K.S.A. 60-406 would have required a PIK Civil 3rd 102.40 limiting instruction. The admission of the contested exhibits for the limited purposes set out in the instruction would be sustained. *Kearny v. Kansas Public Service Co.*, 223 Kan. 492, 498 (1983).

C. Exhibit 97

Part of Gage's defense was that he builds kids up and doesn't tear them down. In support thereof, he offered extensive testimony from participants in his summer basketball program. Exhibit 97 is Nave's deposition of an encounter she had with Gage in the Summer of 1994, which could be interpreted to rebut this defense. She appeared before the HO on November 13, 1995, for further questioning. Given the Court's discussion regarding Exhibits 67, 68 and 69, the Court cannot say admission of Exhibit 97 was improper. It qualifies as rebuttal to testimony that tends to establish a defense.

D. Conclusions Regarding Admissibility of Exhibits 67, 68, 69 and 97

The admission of such evidence to rebut Gage's testimony tending to establish a defense is fair and just. It was received in good faith and applied for a limited purpose with a sincere effort to ascertain whether good cause for termination existed. The HO's Memorandum of Decision did not rely on the exhibits for the purpose of proving Gage's inclination, tendency, attitude, propensity or disposition to harass female students. Rather, the Memorandum of Decision relied on the contested exhibits only to weigh the credibility of Gage's own testimony in order to make a determination as to whom to

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believe.

Whether probative value outweighs prejudicial effect is within the sound discretion of the Judge. *State v. Wasinger,* 220 Kan. 599, 602 (1976). The standard of review for abuse of discretion is when no reasonable person would take the view adopted by the jurist. *State v. Lumbrera,* 257 Kan. 144, 148 (1995). This Court cannot say that is the case herein.

The HO did not act fraudulently, arbitrarily or capriciously in admitting these exhibits or consequently in reaching his decision.

IV.
IS THE HO'S DECISION SUBSTANTIALLY SUPPORTED BY THE EVIDENCE?

Substantial evidence is such legal and relevant evidence a reasonable person might accept as being sufficient to support a conclusion. *Williams Telecommunications Co. v. Gregg,* 242 Kan. 675, 676 (1988).

Like almost any litigated factual case, this record contains substantial evidence to support a finding for either side. Certainly the credibility of Gage's accusers was highly vulnerable to attack. Gage's counsel legitimately hammered it.

Likewise, the explanations for every comment or conduct complained of were part of a defense that had been effectively compromised by contradicting evidence.

It is for the trier of fact to determine the weight and credit to be given to the testimony of each witness. He has a right to use common knowledge and experience in regard to the matter about which a witness has testified. In finding No. 17, of his decision, the HO set forth his dilemma, the decision as to whose version should be

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believed. After acknowledging the caution with which testimony from juvenile high school victims should be received, he concluded that

> "Gage acted inappropriately toward a number of female students in his charge while a teacher with U.S.D. No. 445. That conduct consisted of making inquiries of their sexual orientation and experience; commenting with a sexual connotation on their physical attributes, suggesting that they might be interested in having sexual relations with older men, men of his age; kissing one student; asking students to kiss him and talking about his interest in having a relationship with them";
>
> and
>
> "there was substantial evidence that good cause existed for terminating Mr. Gage's contract."

Gage complains the following findings by the HO are not supported by substantial evidence:

1) Gage's denials of any knowledge of the Tulsa lawsuit are not credible;

2) Gage's testimony that his Tulsa resignation from his Tulsa teaching position was not related to Melody Smith is not believable;

3) Gage kissed J.F.;

4) the Board adopted a "no touch" policy;

5) the Board's sexual harassment policy was violated[6];

6) sexual harassment is usually not done in a crowd;

7) conduct complained of was not said to have been committed in open view nor would it likely have been.

In addition, Gage complains that the HO failed to indicate with particularity which allegation(s) of which female student(s) he found to be proven by a preponderance of

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[6] Inherent therein, Gage's comments and conduct was unwelcome and created a hostile and offensive environment.

the evidence. Regarding this complaint, HO's finding No. 23 appears sufficient to this Court to support his ultimate conclusion that good cause existed for termination of Gage's contract.

Regarding points 1 and 2, it is not unreasonable to infer from Exhibit 110 that Gage was aware of potential legal claims against him by the mother of Melody Smith, and that he resigned his Tulsa teaching position primarily to deter pursuit of those claims through the Tulsa School Board and the Oklahoma courts. Gage's arguments to the contrary diminish his credibility and his case as a whole.

Regarding 3, 4 and 5, see Section V of this opinion.

Regarding 6 and 7, the Court's interpretation is that these are not findings of fact but simply the HO's explanations as to why he was not bothered by the lack of eyewitnesses to specific acts of Gage's improper conduct.

The HO observed the witnesses, considered the strengths and shortcomings of their testimony, and made judgments about the weight to be afforded it. The purpose of judicial review is not for the Court to reweigh the evidence or substitute its judgment concerning the witnesses' credibility for that of the HO's, and this Court specifically declines Gage's invitation to do so. (See *U.S.D. No. 434 v. Hubbard*, 19 Kan. Ap. 2d 323, 328 (1994).

The HO's determination that good cause existed for terminating Gage's contract for reasons included in the Board's Resolution is supported by substantial evidence.

V.
DID THE HO ACT OUTSIDE THE SCOPE OF HIS AUTHORITY?

Gage contends that good cause is to be determined solely on the reasons enunciated in the Board's December 21, 1994, Resolution giving Gage notice to terminate his contract and that the HO based his good cause finding on grounds other than those in the notice. For example, Gage complains that even if he kissed a student in 1991, it occurred before the Board adopted its sexual harassment policy in 1993, and therefore the kiss is not available to support the Resolution. Were the kiss the only conduct relied on by the Board or HO, this technicality might merit consideration. Such is not the case. The HO found much more to Gage's conduct than kissing a student in 1991, and much of the conduct occurred after enactment of the Board's sexual harassment policy.

Gage complains the HO held him to a "no touch" standard by finding that the Board had adopted such, when in fact, the Board had not. This assertion by Gage is inaccurate. Nowhere in the HO's findings does he state that the Board adopted a "no touch" policy. His finding was that the Board's position on no touching was questioned greatly by its' own teaching staff and *if* such was the policy, there was a wide gulf between policy and practice (emphasis added). Thus, a reasonable conclusion to be drawn is that the HO was not holding Gage to a "no touch" policy even if the Board had adopted one.

Finally, the Court understands Gage to complain that sexual harassment defies definition and cannot exist without proving the intent of the accused and further,

regardless of motive, violates Board policy (and thus affords a basis for termination) only if it is unwelcome and even if unwelcome, it must create a hostile and offensive academic environment. He asserts the HO did not make these specific findings and could not do so as no evidence was adduced to support such the same. Conduct by an adult of the nature found by the HO in Finding No. 23, or simply conduct admitted to by Gage[7] is inappropriate regardless of Board policy. Such conduct is inherently unwelcome by the Board and by society, regardless of the students' sentiments. Even the most mentally stable minors (and ISS students were the farthest in the school from that standard) are, in the eyes of the law, adolescents and not adults, and therefore not ready for, nor expected to be ready for the full panoply of adult privileges and responsibilities. Such minors are likewise not capable of consenting to, or welcoming, such conduct as the HO found. Asserting as a legitimate defense to such conduct that the student welcomed it, or that it should be assumed to be welcomed until a student would pull away or give an indication that he or she did not want to be touched or spoken to in such a manner strains rational thought.

Such conduct automatically creates a hostile and offensive (perhaps unhealthy would be a more accurate phrase) academic environment. Granted, the HO could have been more precise connecting his good cause finding to the assertions of the December 21,1994, Resolution; however inherent in such finding is that the good cause supporting the termination is embodied in A, B, and C of said Resolution.

---

[7] Gage, by his own admission, engaged in discussion with some female students concerning the students' level of sexual activity, use of birth control, and worthiness of particular boyfriends. He admits putting his arm around female students' shoulders and waists.

8-30

The decision of the HO was within the scope of his authority.

VI.

OBITER DICTA

Having spent numerous hours thoroughly reviewing this voluminous record, the Court cannot close without making this observation. Assuming Gage's conduct was only that admitted to in his brief (see footnote 7), his arguments that it is only through hindsight that he now recognizes he should have been more careful with his language and conduct, that these mistakes of judgment could not have been foreseen to cause such problems for the students, for him or the Board, and that in such a context these mistakes do not rise to the standard of substantial evidence to justify termination, are not persuasive. Gage's Tulsa resignation in the face of dismissal proceedings, and potential litigation,[8] should have taught him that any conduct "within the ambiguous arena" (to use the language of his brief) carried great risks of being misinterpreted and should be avoided. Even though it arguably was not Board policy, Gage should have held himself to the same standard he required of his students, "NO TOUCHING OTHERS". Failing to do so, displays either an appalling lack of insight or a disturbing inability to control his impulses, possibly both. Either is inexcusable, and coupled with the conduct he acknowledges, would have afforded good cause for termination separate from the reasons enumerated by the Board's Resolution and relied on by the HO.

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[8] Not to mention Dr. Darland's general and specific warnings and Mr. Childress's warnings not to touch the students.

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VII.
PAY AND BENEFITS BETWEEN TERMINATION AND APPEAL

Suspending Gage with pay was an appropriate step while the due process hearing went forward. That pay, including benefits, must continue until the appeal of the HO decision was filed in the District Court on April 11, 1996.

McMillen v. U.S.D. No. 383 253 Kan. 259, 272 (1983).

VIII.
ORDERS

For the reasons set forth herein,

1. The decision of the HO is affirmed.
2. Gage shall have judgment for pay and benefits through April 11, 1996.
3. This Memorandum Decision mailed this 10th day of October, 1997, to:

Fred W. Rausch, Jr.
Attorney at Law
Ambassador Building, Suite 201
220 Southwest 33rd Street
Topeka, Kansas 66611

C.A. Menghini
Attorney at Law
316 National Bank Building
Pittsburg, Kansas 66762

is the Journal Entry and appeal time runs from this date.

R.D. Canaday, District Judge

cc: Phil Bowman
John Toland

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UNIFIED SCHOOL DISTRICT 444
Little River and Windom
Milt Dougherty, Superintendent
455 Prairie, P.O. Box 218
Little River, Kansas 67457
mdougher@midusa.net
316-897-6325

February 15, 1999

To: House of Representatives Education Committee
From: Milt Dougherty
RE: H.B. 2211

First, I want to thank you for allowing me this opportunity to present testimony in support of House Bill 2211. I believe no other issue is as important to education right now as we raise the expectations of all involved in the education of our youth.

It is important to me that this committee realize I consider myself foremost an educator, not simply an administrator. I am confident the vast majority of teachers I've worked with and for would unequivocally agree that I am very much a supporter of classroom teachers. Unfortunately in our business, like any business, there is a small minority who simply don't meet the expectations of the position. It is for those situations that H.B. 2211 must be very seriously considered, and in the best interest of students, be enacted into law.

Anyone who spends much time in a school setting realizes it is the teachers who get the job done. It is those on the front lines, working with kids every day, who have by far the most impact on the formal education of a student. Research supports this claim. For this very reason, it is imperative that we have only well-qualified, highly competent teachers working with our kids. The current system for attempting to deal with poor teachers is overly cumbersome, creates financial dilemmas for school districts, and leaves a void in the process of attempting to bring accountability to education.

The current teacher due process procedure is time-consuming and is overly burdensome for school administrators and school boards. Every minute spent going through the current lengthy process is a minute which isn't used to educate kids. Restoring personnel decisions to local school boards not only makes sense, it reduces the time and effort required to deal with an ineffective teaching employee. An outside hearing officer does not have the investment into the entire educational process that local educators have. Unfortunately, the extra red tape of bringing in an outside party just adds more time to the process, while distancing the issue from the very people who should make decisions on who should and should not be teaching kids.

Supporters of the current procedure for removing ineffective teachers point to the low number of termination proceedings as proof that the system works. What this ignores is the number of cases that are not addressed due to financial reasons, as well as those where a "buy-out" has been utilized. A school district is unlike a company who is willing to accept the expenses involved in litigation because a school, unlike a business, is unable to pass those expenses onto the consumer. Working within a fixed budget means every dollar spent for lawyers or in a buyout is one less dollar for books, or computers, or teacher salaries. Too often, a school district accepts the fact that it will be cheaper and create much less duress for the school and community to agree to a buy-out. This concept, though often better than leaving fate to the decision of lone hearing officer, is an outrage to have to accept. House Bill 2211 would allow the protection a teacher deserves, yet also allow districts a more reasonable process for dealing with poor teachers.

By far the strongest reason H.B. 2211 should be adopted is that without a change in the process, the accountability movement in education is like a bridge which fails to meet in the middle. True accountability,something everyone should embrace, involves school boards, administrators, teachers and students. Currently, school boards are accountable to local voters, administrators are accountable to local voters and elected officials, and students are accountable to policy makers and administrators as well as teachers. The missing group, the group most important to the education of kids, is the one group which has managed to avoid much accountability, and what little accountability the current process provides is

accountability to a person with absolutely no connection to the local education process. The lack of a logical explanation for this travesty should alone be reason enough to support H.B. 2211.

More important than the base state aid per pupil, more important than facilities, more important than technology, good teachers are the reasons Kansas students are scoring better on all forms of measurement. Adopting H.B. 2211 will help insure that our students have only the quality teachers they deserve.

...ers are saying

Cyprus Daily 1-29-98

Teachers next target of school reform

By David S. Awbrey

If dozens of convicts escaped from state prisons, wardens and top managers of the state Corrections Department likely would be forced to resign.

If a state office building collapsed, the architects and contractors would face huge lawsuits and professional sanctions. If social workers ignored abuse in a home that led to a child's death, they would be disciplined and welfare officials would be asked to explain how the tragedy happened.

Almost every agency of state government has some form of accountability. The lone exceptions -- the only state employees who have no serious oversight, who suffer no harsh consequences for professional failure -- are Kansas public school teachers.

Although teachers receive the single largest share of state tax resources, they are not beholden to credible oversight. After a short apprenticeship, teachers are granted tenure which virtually assures them that -- short of heinously illegal or immoral conduct -- they will never lose their job. Indeed, the legal hassles and financial costs of firing even the most demonstrably inept teacher are so great that only a handful of cases are filed annually.

Yet no one can argue persuasively that Kansas schools meet academic standards ensuring that the state's young people get an education adequate to the 21st century. Although state educators correctly cite that Kansas schools are superior to those in other states, they ignore that American schools score embarrassingly low on international achievement tests. A recent report by the Paris-based Organization for Economic Cooperation and Development, for example, noted that the lowest scoring math students among Japanese and Koreans still did better than the average U.S. student.

It is small comfort to Kansas parents that their children are merely less poorly educated than other American kids.

In his State of the Union address last week, President Clinton proposed linking federal school aid to improvements in educational performance. While many Kansans resist a greater federal role in education, the president was right to target teacher training and accountability as areas especially in need of reform.

The typical education program in Kansas colleges is not a test of academic excellence, but of enduring the most banal, intellectually bankrupt curriculum conceivable -- years of mind-numbing theory and pedagogy courses cloaked by inane psychobabble.

The Kansas State Board of Education and the Board of Regents should abolish the undergraduate major in education and require that prospective teachers major in an intellectually legitimate discipline, such as history, literature or sciences. After receiving their bachelor's degree, aspiring teachers should spend a year in practical training and classroom management to receive state certification.

In his education plan, Gov. Bill Graves should tie state school spending to merit pay for teachers. No Kansas district should receive a penny above an inflation allowance unless it has a detailed program to remove poor teachers, retrain borderline instructors and reward outstanding performers.

Furthermore, tenure rules need a thorough overhaul. Unlike medical, legal and other professional organizations that seek to weed out bungling members, the Kansas National Education Association has become a protection racket for mediocre and incompetent teachers. The union has twisted tenure policies designed to prevent abuse of teacher rights into lifelong job security regardless of ability.

Over the past few years, the state school board and the legislature have sought higher scholastic standards for young Kansans. To encourage students to take their studies more seriously, state officials have introduced assessment tests and set minimal requirements for admission to the regents universities.

Yet similar demands have not been imposed on the teaching profession, even though no improvement program can work without solid professionals in the schools.

Graves, the legislature, the state school board, the regents and local education leaders must realize that true reform starts at the head of the classroom.

Just Thinking

Cyprus Daily 9-14-98

Teachers key to quality education

By Jack Wempe

Education is always a political issue. Any area which commands two-thirds of the state budget will always be so. And there will always be those who believe their particular favored modification will result in significant improvement.

Some would simply apply greater funding to the current system. Some favor tenure reform, or alternative certification, or fewer students in the classroom. Some favor more prayer in school, or tougher discipline, or enhanced standards. And, more recently, vouchers, competition, and technology have found favor among reformers.

But there is little disagreement in the belief that the teacher is the key to a quality educational product. Almost intuitively, perhaps as our own school experience is recalled, an understanding that teacher quality is of utmost importance seems to loom large as we seek to improve education.

If good teaching is agreed upon as the key to quality, why can't we agree upon positive steps for the improvement of schools? Cannot consensus be found for positive action? Why can't change occur on a broad front? Cannot we understand that no single change will be the long-sought panacea for the alleged failure of public schools?

In a recent published article, Sen. John F. Kerry (D-Mass) outlines a broad agenda for school reform. He recognizes that good teachers are certainly a key to restoring public support for public education. And he suggests a number of initiatives to address the issue.

His first suggestion is designed to attract more qualified candidates to the profession. He states low salaries, limited opportunities for advancement and poor working conditions are a problem. He targets higher salaries, signing bonuses, and increased student loan forgiveness as measures to be taken. He suggests college scholarships for talented high school students in return for a commitment to teach. This has long been done in the medical field with notable success.

He also recommends expanding the teacher pool by including liberal arts graduates with a streamlined system of certification. Businessmen and women are another source of teaching talent perhaps with a teaching corps made up of midcareer professionals.

Kerry strongly emphasizes the keeping of quality teachers in the profession noting that nearly 40 percent of new teachers quit during the first four years. He alleges that crumbling buildings and increasing crime rates are driving away young teachers. He proposes to advance entrepreneurial, innovative teachers by encouraging them to develop curricula, work collaboratively with education technology firms and even take year-long sabbaticals. He recognizes that ambitious teachers often feel advancement is possible only outside the profession or by entering administration.

And lastly he suggests developing the courage to approach the issue of teacher tenure. He supports a fair dismissal policy, but he notes that exorbitant legal bills and years in court should not be required to dismiss a teacher who cannot or will not empower our children to succeed.

Kansas has long been blessed with a strong teaching profession. That profession should be most interested in ridding itself of the few who are not effective. A teacher shortage looms in the future. A reasonable alternative certification process is not a threat. The trade-off is increased support for teaching, both financially and in terms of public stature. This state has long been supportive of public education. It has repeatedly shown a willingness to make considerable sacrifice for the enhancement of public education. But if common-sense changes are not forthcoming, those who would severely damage public education by instituting a voucher system will carry the day.

Sen. John Kerry has it right. We ought to take note.

Senior Center, school menus

9-3

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UNITED SCHOOL ADMINISTRATORS

Kansas Association of Elementary School Principals (KAESP)

Kansas Association of Middle School Administrators (KAMSA)

Kansas Association of School Administrators (KASA)

Kansas Association of School Business Officials (KASBO)

Kansas Association for Supervision and Curriculum Development (KASCD)

Kansas Association of Special Education Administrators (KASEA)

Kansas Association of Secondary School Principals (KASSP)

Kansas Council of Vocational Administrators (KCVA)

Kansas School Public Relations Association (KanSPRA)

HB 2211: Due Process Hearings for Teachers

Testimony presented before the House Education Committee
by
Brilla Highfill Scott, Executive Director
United School Administrators of Kansas

February 15, 1999

Mister Chairman and Members of the House Education Committee:

United School Administrators of Kansas supports **HB 2211** which would allow the Board of Education, as representatives of the local community, to make decisions about educators who work with the children in their district.

Under current law, a tenured teacher is notified by the Board of Education of an intent to terminate or non-renew a contract. The teacher then has a right to have the matter heard by a hearing officer. The hearing officer's decision is binding on the Board, subject to review in the district court.

The decision of the hearing officer is actually the **final** decision, because the judiciary reviews only the process. Presently the hearing officer is one who has little or no connection to the community where the conflict occurs. The hearing officer's process is reviewed, rather than the termination rationale determined by those who are responsible for a community's schools.

USA believes that educators must be protected against arbitrary, capricious or fraudulent action by supervisors and local boards of education. The present due process statutes leave local people out of the ultimate decision-making process. This bill would allow appeal to the district court by either party.

I have asked two superintendents to present testimony to you today: Dr. Gary Reynolds, superintendent of Shawnee Heights USD 450, and Jerry Fuqua, superintendent of Holton USD 336, will discuss their concerns for the present due process procedures and their support for this bill.

I encourage you to approve **HB 2211** and return school personnel decision-making to local boards, subject to judicial appeal.

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HOUSE BILL No. 2211
House Education Committee
1999 Session

Mr. Chairman and members of the House Education Committee, my name is Gary Reynolds and I am superintendent of schools for the Shawnee Heights School District. I am here representing United School Administrators, which is an umbrella organization of 9 associations supported by 1400 school administrators state-wide. Today I would like to present testimony in support of House Bill 2211.

In April of 1990, while serving as superintendent of schools in the Clearwater School District, the board took action to non-renew the contract of a tenured teacher. In September 1990 the hearing panel met but it was not until June of 1992 (22 months later) that the hearing panel found in favor of the teacher. The school district appealed the hearing panel's decision to the district court where the hearing panel's decision was reversed (Feb 93) in favor of the school district (almost 2 1/2 years from hearing panel to district court decision). The teacher then appealed to the Kansas Court of Appeals who again found in favor of the teacher(Dec 93). The school district then appealed to the Kansas Supreme Court and in February of 1994 the court refused to hear the appeal.

In September 1994, almost 4 and 1/2 years since the process began in April of 1990, the Clearwater School District settled with the teacher for $110,000 of back-pay and paid $42,903 in attorney's fees for a total of $152,903. Had this process taken a reasonable amount of time, possibly one (1) year or less, the settlement and attorney fees could have been one-fourth of the actual amount paid.

Anything that can be done to expedite the process will benefit the teacher involved, the board of education, the administrators, the students, and the general public. Whoever loses at the hearing panel level will appeal to the district court. Thus, I support House Bill 2211 which eliminates the hearing officer step from the teacher due process requirements of non-renewal.

Should you have any questions, I would be happy to respond.

HOUSE EDUCATION
Attachment 11
2-15-99

Home of

the Wildcats

UNIFIED SCHOOL DISTRICT 336
515 Pennsylvania
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Jerry K. Fuqua, Superintendent
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THE EDUCA AL,
HISTORICAL AND
INDUSTRIAL CORNER
OF KANSAS

February 15, 1999

House Chair on Education
Representative Ralph Tanner, Chairman

Thank you for allowing me to express my support of H.B. 2211 on teacher tenure reform. I have been an educator for 33 years, 5 of those years as a teacher, 10 as a principal, and 18 as a school superintendent. During that time period, I have witnessed an erosion of local control by boards of education while at the same time they have had to absorb the responsibility of implementing a continual increase of mandates by the state and federal government in both regular and special education programs. These mandates range from social issues of society to major changes in the way schools are accredited. All of these changes require the total support of teachers, administrators and boards of education. Commitment for and accountability to making mandated changes and the school improvement process work, inevitably rests with the classroom teacher. Most teachers accept the responsibility of doing what is needed to help make the school improvement process work.

My concern about the current system of due process is that it is almost impossible for boards of education to remove teachers that do not meet performance standards or do not accept the responsibility of being an active participant in the school improvement process. Change has been mandated and schools are to be held accountable through the improvement process of Quality Performance Accreditation. Change is a difficult process to accomplish unless all parties are committed. School boards must have return of local control over employment decisions for all staff including tenured teachers or the change process as mandated will not reach its potential effectiveness for student educational growth. It is my belief that those tenured teachers who do not meet performance standards would be more responsive to personal growth and change if boards had more authority over their employment.

Boards of education have to field much of the parent and community criticism when a tenured teacher does not perform his/her teaching responsibilities at an acceptable level. Boards have the background knowledge of evaluations by administrators, personal observations and parent input about the teaching staff that needs to be present when making a decision concerning what is best for students. It just makes sense that boards should be allowed to make decisions when it comes to a hearing on teacher dismissal. Boards of education are allowed to be the hearing body for all staff except tenured teachers. I believe seven board members who have been elected by and held accountable by their local constituents will use sound judgment in hearings requested by a tenured teacher. If the tenured teacher felt the board acted unfairly, the teacher could appeal to the district court. The court then would determine whether the board acted appropriately.

Under current law, an outside hearing officer determines whether the school board had good reasons for removing the teacher. There is no "standard of removal," so even if the board makes a compelling case, the hearing officer is not bound by the boards decision. The "outside" hearing officer is not accountable to anyone.

I urge you to pass H.B. 2211. I believe it supports fair and equitable due process for all certified staff and provides for a more accountable review of the facts in an appeals procedure.

Jerry K. Fuqua

Jerry K Fuqua, Superintendent
Holton USD 336

Royal Valley USD #337

OFFICE OF SUPERINTENDENT
128 E. Main
Mayetta, Kansas 66509
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FAX (785) 966-2490

Educating for the Future

February 11, 1999

MEMO

To: Rep. Ralph Tanner, Chair
House Committee on Education

Fr: Marceta Reilly, Superintendent
U.S.D. #337, Royal Valley

RE: HB 2211

Under the current tenure law, it is extremely difficult to terminate poor teachers. An OUTSIDE HEARING OFFICER determines whether the school board had good reasons for removing the teacher. There is no "standard for removal" for this outside hearing officer to follow. Even when a board makes a compelling case, a hearing officer is not bound by the board's decision. Alternate and compromised decisions HAVE FREQUENTLY BEEN MADE by these hearing officers.

As I understand it, the proposed bill would eliminate the outside hearing officer. Teachers would retain the right to a hearing before the school board, or before a hearing officer or committee appointed by the board. If the teacher felt the board did not act fairly, the teacher could appeal to the district court. The court would determine whether or not the board acted appropriately.

Teachers need due process rights and a procedure to use when boards act capriciously. But boards of education need to be able to make justified employement decisions without an outside hearing officer overturning or meddling in their decisions. Only a court of law should have the right to overturn a board's decision. And vindictive or arbitrary boards should have to answer to a court of law not an outside hearing officer.

This bill is an important change to the current law and I urge you to give it serious consideration.

HOUSE EDUCATION
Attachment 13
2-15-99

SERVING COMMUNITIES OF:
CIRCLEVILLE
NETAWAKA
SOLDIER
WHITING

North Jackson USD 335

12692 266th Road
HOLTON, KANSAS 66436
DAN STOCKSTILL, Superintendent
Phone 364-2101

SCHOOLS:
JACKSON HEIGHTS
HIGH SCHOOL
JACKSON HEIGHTS
ELEMENTARY SCHOOL

February 12, 1999

To: House Chair on Education, Representative Ralph Tanner
From: Dan Stockstill
Subject: House Bill 2211

Representative Tanner;

Thank you for the invitation to express my support of H.B. 2211. I have served twenty-three years as a school administrator in Kansas, three years as a building principal and the past twenty years as a Superintendent of Schools. Over this period of time I have observed an erosion of local control from tax payers and local boards of education. The public school system has been saddled with more and more mandates from the state and federal government as well as having to assume various social issues that belong outside the school. Accountability, for all that is expected, is the watch word that has rightfully become the focus on the public school system.

It can be extremely difficult to enact the necessary change in a school system without the total support of the teaching staff. This change calls for a commitment from teachers and an accountability for their duty to the classroom and the students and parents they serve. Under the current system of due process it is nearly impossible for the local school boards to set standards and expectations of teachers that would result in termination if performance standards are not met.

Due process officers currently must decide if the school board has presented good reasons for the removal of a tenure teacher, yet there is no standard of removal. This results in arbitrary decisions made by hearing officers that binds local school boards to a standard set by the hearing officer.

HOUSE EDUCATION
Attachment 14
2-15-99

I strongly support fair and equitable due process for all certified staff. I believe that House Bill 2211 is a step in the right direction in allowing local school boards to deal with educators that do not meet district expectations and provide for a more objective, and accountable review of the facts in an appeals proceedure.

TO: HOUSE COMMITTEE ON EDUCATION
FROM: KRISTI KRAISINGER
DATE: FEBRUARY 15, 1999

For as long as I can remember, I wanted to be a teacher. I wanted to be a good role model that my students could aspire to. I wanted to be the integral piece in the process of life long learning. I desired the tremendous satisfaction that comes when a student finds success and so, my dream came true when I graduated from Fort Hays State University in 1975.

The first six years of my teaching career were spent in third grade under the principalship of respected educator, Laverne Lessor. I had an excellent working relationship with Principal Lessor and received superior evaluations under his leadership. While at Lincoln Elementary School, I gained the respect of students, parents, co-workers, and administrators and was given many leadership roles. I was nominated for the Great Bend Jaycees Outstanding Young Educator award and I was thrilled to accept that honor in 1981.

I AM A GOOD TEACHER!

I returned to teaching in 1988 after taking a leave of absence while my children were young. I was asked to teach again in the same school district that gave me my start. I was excited to be back, making a difference in children's and parent's lives. I received many votes of confidence from students, parents, and teachers which reflected their approval in my teaching abilities. While at Eisenhower School, I developed a reading motivation program entitled "Reach For The Super Stars:, presented our school as a focus School at the Kansas Elementary Principal's Convention, and co-chaired the district's Education Fair. I WAS A GOOD TEACHER and the evaluations by my administrator continued to support that.

I decided to leave my tenured position and seek employment in the school district where we resided and where my children attended school. Once again, I was successful in my chosen field and continued to make a difference. Teachers, students, and their parents placed their confidence in my abilities. My principal provided evaluations that would make any teacher proud. However, during the second semester of my second year in that school district, I received notice that my contract would not be renewed for the upcoming school year. No rhyme, no reason, and no teaching positions were available for the next school year.

I AM A GOOD TEACHER.

I was extremely dismayed over the sudden unexpected turn of events! This unfortunate situation caused myself and my entire family much dispair and emotional trauma. I WAS A GOOD TEACHER and the unthinkable happened to me! Heartbroken, I sought counsel from the local KNEA UniServe Director. I decided that it was of my best interest to seek out teacher due process as it currently stands now! I felt that the cause for my dismissal revolved around the violation of my Constitutional Rights, namely Freedom of Speech, regarding my stand on Sex Education. Proper procedures were followed and the hearing officer ruled in my favor and though we are in appeal at this time, the opportunity for me to be able to teach again is still there.

I AM A GOOD TEACHER and I was so grateful that due process was there for me. This process provided me the opportunity to prove that I was still the role model and competent teacher I had longed to be. The rights of due process allowed a good teacher to continue pursuing her dreams. Please carefully consider HB 2211 concerning teacher due process rights. Consider leaving due process the way it stands now. Changing the teacher due process procedure would jeopardize many teaching careers.

I ask that you reject HB 2211 and its restrictions on the rights of Kansas teachers like myself. I ask that you do not change the current due process system - a system created out of fairness. Remember, that this process may protect your children of your grandchildren and allow them the opportunity to follow their dreams.

SOUTH BROWN COUNTY
UNIFIED SCHOOL DISTRICT 430

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February 12, 1999

Representative Ralph Tanner
Chair, House Education Committee

Sir:

I would like to voice my support for the passage of House Bill 2211, which amends the statute on teacher due process. As an employer, the board of education should be accountable for the maintenance of due process and fair play within the district. They are in a more favorable position to understand the situation than a hearing officer is.

Boards of education are increasingly being held accountable for increased performance. It is only right that they hold their employees accountable and be responsible for the assurance of due process.

Leaving the possibility that the board's decision can be appealed provides the best situation for all.

Warm regards,

Ronald J. Lantaff, Superintendent
South Brown County USD #430

HOUSE EDUCATION
Attachment 16
2-15-99