

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION K-12.

The meeting was called to order by Chairperson Kathe Decker at 9:00 a.m. on February 5, 2003 in Room 313-S of the Capitol.

All members were present

Committee staff present: Carolyn Rampey, Legislative Research Department  
Kathie Sparks, Legislative Research Department  
Jill Wolters, Office of the Revisor of Statutes  
Ann Deitcher, Committee Secretary

Conferees appearing before the committee: Pat Baker, KASB  
David Schauner, KNEA  
Dr. Reed Harrison, Andover School Board Member  
Robert Scheib, Supt. Of Schools, WaKeeney

Representative Ward Loyd introduced a bill that would lower the mandatory age for children to start school so that there's a requirement for all children to go to kindergarten.

Representative Horst moved that this bill be introduced as a committee bill. Representative Williams seconded the motion which passed on a voice vote.

Representative Bob Bethell offered a bill concerning charter schools and the staffing of those schools.

Representative Beggs moved that this bill be introduced as a committee bill. Representative Hutchins seconded the motion which passed on a voice vote.

Representative Mason offered a conceptual draft of a bill that would limit the use of tax money for those suits filed against the state.

A motion that this bill be introduced as a committee bill was made by Representative Mason and seconded by Representative Hutchins. The motion passed on a voice vote.

The Chair requested a bill that would offer an alternative teacher preparation program.

Representative Decker moved that this bill be introduced as a committee bill. Representative Mason seconded the motion which passed on a voice vote.

Representative Reardon requested a resolution that would encourage local boards of education that even in these difficult financial times to maintain their commitment to early childhood education.

It was moved by Representative Reardon that this be introduced as a committee resolution. The motion was seconded by Representative Storm and passed on a voice vote.

Representative Peterson request a bill that would change the manner in which early childhood programs for special education are handled in the public schools.

Representative Peterson moved that this bill be introduced as a committee bill and Representative Crow seconded the motion. The motion carried on a voice vote.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION K-12 at on February 5, 2003 in Room 313-S of the Capitol.

Representative Miller asked the Chair if he could incorporate **HB 2153** into **HB 2060** when **HB 2060** was worked by the committee on Friday, February 7. The Chair assured Representative Miller this would be possible.

**HB 2059 - Relating to teachers' contracts.**

Pat Baker appeared before the committee as a proponent of **HB 2059** and **HB 2060**. (Attachments 1 & 7).

Following a question and answer session, David Schauner testified in opposition of **HB 2059**. (Attachment 2).

**HB 2060 - Relating to non-renewal or termination of contracts.**

Dr. Reed Harrison spoke as a proponent of **HB 2060**. (Attachment 3).

Robert Scheib testified in favor of **HB 2060**. (Attachment 4).

Written testimony in support of **HB 2060** was distributed to the committee. This was submitted by Terry Collins, Special Education teacher from Pittsburg and Brilla Highfill Scott, Executive Director of United School Administrators. (Attachments 5 and 6).

The meeting was adjourned at 10:55 a.m. The next meeting is scheduled for Thursday, February 6, 2003.

KANSAS  
ASSOCIATION



OF  
SCHOOL  
BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024  
785-273-3600

Testimony on  
**HB 2059 – Employment Contracts After Budget Reductions**  
Before the  
**House Committee on Education**

By  
Pat Baker, Deputy Executive Director/General Counsel

February 5, 2003

Chairman Decker, Members of the Committee:

Thank you for the opportunity to appear today as a proponent of HB 2059, which the committee voted to introduce at our request.

HB 2059 amends K.S.A. 72-5412 to allow school boards to void employment contracts if they have insufficient funds because the Governor or Legislature has reduced funding. Currently, contracts may be voided for insufficient funds only until the school district holds its budget hearing in August. This was logical under the previous school finance system, when school boards set their budgets and raised most of their revenue from local mill levies. Since 1992, school budgets have been set by the state, and as the current year demonstrates, districts can face budget reductions after the budget is adopted. If employment contracts cannot be voided, contractual employees are protected and all reductions must be made in other parts of the budget. School boards must have the ability to balance the needs of every part of the district affected by the budget when dealing with reduced funding.

This testimony also reflects the position of Schools for Quality Education.

We urge you to recommend this bill favorably for passage. Thank you for your consideration.

House Education Committee  
Date: 2/5/03  
Attachment # 1-1

**HOUSE BILL No. 2059**

By Committee on Education

1-24

AN ACT concerning school districts; relating to teachers' contracts; amending K.S.A. 72-5412 and repealing the existing section.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 72-5412 is hereby amended to read as follows: 72-5412. (a) *Except as provided by subsections (b) and (c), all contracts shall be binding on both the teacher and board of education of the school district until the teacher has been legally discharged from such teacher's teaching position or until released by the board of education from such contract. Until such teacher has been discharged or released, such teacher shall not have authority to enter into a contract with the board of education of any school district for any period of time covered in the original contract. If upon written complaint, signed by 2/3 of the members of the board of education of the school district, any teacher who is reported to have entered into a contract with another school or board of education without having been released from such former contract, or for other reasons fails to fulfill the provisions of such contract, such teacher, upon being found guilty of such charge at a hearing held before the state board of education, shall have such teacher's certificate suspended for the remainder of the term for which such contract was made. The hearing before the state board shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Notwithstanding the foregoing provisions of this section,*

(b) Any contract of employment made by the board of education of any school district prior to the public hearing on the budget of such school district shall be voidable in case adequate funds are not available in such budget for the compensation provided for in such contracts.

(c) *In any year in which the board of education of any school district adopts a budget for the ensuing school year and subsequent to the adoption of such budget, the amount of general state aid which the district is entitled to receive for that school year is reduced by an act of the legislature or the governor, any contract of employment made by the board of education of any school district prior to such reduction in funding shall be voidable if adequate funds are not available in such budget for the compensation provided for in such contracts. The determination of which*

1 *contract or contracts of employment to be voided shall reside solely with*  
2 *the board of education and such action shall not be subject to the provi-*  
3 *sions of K.S.A. 72-5411, 72-5413 et seq., 72-5436 et seq. and 72-5452, and*  
4 *amendments thereto.*

5 Sec. 2. K.S.A. 72-5412 is hereby repealed.

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

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David Schauner, testimony  
House Education Committee  
February 5, 2003  
House Bill 2059  
House Bill 2060

Madam Chairman, members of the Committee, I want to thank you for the opportunity to appear before you today and express our concerns about these two bills – **HOUSE BILL 2059** and **HOUSE BILL 2060**.

I am addressing these bills together because I see them as two parts of a three part non-accountability agenda. It is disturbing in these days of increased accountability, that there is any attempt to make boards of education less accountable.

**HOUSE BILL 2060** is KASB's annual attempt to eliminate due process protections for teachers. In this ritual KASB will tell you how much money this bill will save. We will tell you that it won't save any money and that KASB is putting all of its energy into a bill that will impact a relative small portion of the educational community rather than focusing on improving teaching and learning.

In the past five years, Kansas NEA has introduced bills designed to improve professional development in reading and peer assistance and mentoring. We have testified in favor of full funding for the In-Service Education Act. We have worked to improve teacher participation in the National Board for Professional Teaching Standards Advanced Certification Program. In addition, we have developed support cadres for schools experiencing difficulties. During that same period of time KASB has focused its energy on eliminating due process for teachers.

I will not provide you with a litany of arguments, many of which you have heard each year for the past several years, but instead will focus on a good example of how these protections are needed in today's school environment.

Last spring, the Kansas House of Representatives passed a resolution honoring a Kansas teacher. You invited that teacher to speak on the floor of the House and as she came forward gave her a sustained standing ovation. You honored this teacher for her courage and her high ethical and professional standards.

She had discovered that a group of her students had committed plagiarism on a major biology project. She held them accountable to the school's cheating policy and she held them accountable to the grade weighting system that had been in place for years. As a result, she awarded failing grades to some of the students. The school board, upon the complaints from parents, met in private and the next day, the teacher was directed to alter the weighting system so

House Education Committee  
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Attachment # 2-1-

attorney, the individual school board members were required to pay a fine for violating the Open Meetings Act as a result of their earlier action in this matter.

The teacher could have insisted that the students be held accountable for their work and refuse to change the grades but she was a probationary teacher and not yet covered by the due process protections of state law. Had she refused to change those grades, who among us believes she would not have been non-renewed? Of course KASB might say "she can seek relief in court." Perhaps, and it would take untold months or years and untold legal expense for the teacher and the school board during which time there would be uncertainty for both parties. You know, I know, and KASB knows that she would probably have just hung her head and gone away. Unfortunately school boards too often count on that response from employees. This is not about saving money. This is a proposal about extending constitutional due process protection to those most in need. In the meantime, school boards tell you that they are not to be held accountable for their actions. They don't have to defend themselves. If this bill passes, you ought to go back and rescind the resolution given that brave teacher last year.

**HOUSE BILL 2059**, is an outrageous attempt by KASB to dishonor the bargains they have made with teachers across this state. This is the third part of the attempt to eliminate accountability for school boards.

**HOUSE BILL 2059** states in part "The determination of which contract or contracts of employment to be voided shall reside solely with the board of education and such action shall not be subject to the provisions of K.S.A. 72-5411, 72-5413 et seq, 72-5436 et seq, and 72-5452 and amendments thereto." In plain language, the school board would be able at its whim to pick and choose which contracts to void, which teachers to non-renew. Which teachers to deprive of due process. Which teachers whose vocal opposition to the last board election be fired. Which teachers who filed grievances last year would be terminated. Which teacher who refused to change the grades of students who violated the cheating policy be fired.

Please don't misunderstand, I don't think all school boards would do that. However, one school board doing that is one school board too many. One school board given the unchallengeable authority to fire at will when circumstances in the statute would permit is too many. Basic fairness requires accountability for all levels of government. The State Legislature, the State Executive branch and no less the local school board.

No one should be terrified of fairness. No one should fear being accountable for their actions. No one and no board should be above basic elements of fairness that are part of our democratic system.

Under this bill as written, boards of education are not accountable for fairness or for any other decision they make with respect to the non-renewal or termination of their employees. That is simply not right.

I view these bills as two parts of a three part non-accountability agenda. At a time when the State's budget is in crisis the KASB attempts to persuade you that the only way to save money and balance their budget is to remove all accountability from boards of education.

**HOUSE BILL 2061** even goes so far as to remove “misconduct in office” and “incompetence” from the list of four reasons that voters can use to mount a recall campaign against school board members. I find it curious that at the same time KASB asks you to give the school boards carte blanche in terminating teachers or voiding their contracts, they ask you to stop the voters of their districts from recalling them for incompetence or misconduct. The coincidence is too is too great to ignore.



**Points on Teacher Due Process – HB 2059**

Reed Harrison, Board Member USD 385

February 3, 2003

- I am a 16 year board member and 1966 graduate of USD 385 Andover.
- The current teacher due process system needs a radical change because it was never designed to promote excellence in teaching. It was designed to protect tenured teachers from arbitrary and capricious school board actions and to that end it has done an outstanding job. So good, in fact, that teachers now believe they would only be removed by a hearing officer if their conduct or performance were so poor as to become an embarrassment to the entire profession. This makes it difficult to encourage some faculty to reach toward excellence when they know mediocrity or less will guarantee their employment.
- The current state assessment system for student evaluation has done a very effective job of helping local boards focus on educational excellence for all students. It stands in stark contrast to an outdated teacher evaluation system which rewards mediocrity and penalizes only the extreme end of underperformance.
- One measure of teacher performance is the percentage of a teacher's students brought to mastery of their subject area. Right now, that number must slip quite drastically before administration and board will commit the time and money involved in a nonrenewal. If we believe all children can and should learn to mastery, then drastic slippage in teacher performance presents a situation necessitating a choice between unpleasant alternatives. If no child left behind is truly the law of the land, then the entire state inevitably will be faced with a legal dilemma.
- We could go back to the old system, and if that were the only alternative, I would prefer it over the present system. But, I don't think you can go back to the future. No, it's time the parties involved stop looking at each other as adversaries and start working together as partners to create a new system; a system focused on teaching excellence which truly does leave no child behind.

House Education Committee

Date: 2/5/03

Attachment # 3

**HOUSE BILL No. 2060**  
**By Committee on Education**

**TESTIMONY IN SUPPORT OF RESTORING LOCAL DECISION  
MAKING IN KANSAS DUE PROCESS PROCEDURE ACTION**

**Regular Session of 2003**  
**LEGISLATURE OF THE STATE OF KANSAS**

**By**

**USD 208 TREGO COUNTY SCHOOLS**  
**Georgia Abbott, Board Member**  
**Robert Scheib, Superintendent**  
**527 Russell Avenue WaKeeney, KS 67672**  
Voice: 785-743-2145 Fax: 785-743-2071 Email: [supt208@ruraltel](mailto:supt208@ruraltel)

House Education Committee  
Date: 2/5/03  
Attachment # 4-1

Chairperson Decker, Chairperson Beggs, and Honorable Members of the Legislature, I am Robert Scheib, Superintendent of the USD 208 school district located in WaKeeney. I would like to introduce Georgia Abbott a member of the Board of Education.

Our school district has experienced catastrophic declining enrollment for the last two years as we have fallen from 499 FTE to 390 FTE in that period. To compensate for this year we reduced certified staff by 4.5 certified teachers, a bus route, a food service position and a clerical position in addition to other large reductions in line items. These cuts totaled \$282,000 in one year and were greatly influenced by the current Due Process Procedure. Next year we are expecting an equal amount of reduction depending the actual student count on September 20, 2003 and on the financial support of the legislature.

The Board of Education supports this change in the Due Process Procedure on two main points that will have a direct affect on student achievement in our district.

First: The elimination of the appointment of an outside hearing officer will restore to the local elected Board of Education the same rights and responsibilities that it possesses in matters pertaining to student due process. Matters pertaining to student's educational futures and property rights are equal to the futures and property rights of certified employees. In both instances the Board of Education must seek to carry out action that is in the best interest of all student's in their charge. Good cause for removing a student from the educational community does not differ greatly in weight or complexity from an appropriate reason for teacher termination or non-renewal and should be a local decision not for the hearing officer system.

Second: New accountability requirements under the federal No Child Left Behind Act have put additional pressure on school districts to address the problem of incompetent teachers especially in small school districts. In a small school, one incompetent teacher will affect a much higher percentage of the student body than in a large district with multiple class sections and buildings. After a district has made appropriate remediation efforts and failed to produce the desired improvement, it is still almost impossible to dismiss an incompetent teacher under the current Kansas law. Hearing officers are left to decide if the employee is working effectively with children based on the paper documentation and compelling testimony generated by the district. Cash strapped districts must non-renew bright competent non-tenured teachers and reassign incompetent teachers simply because they cannot afford due process under the current law. They cannot afford to improve the educational opportunities for students, nor the time and risk with the odds stacked against them.


The Board of Education of USD 208 is not supporting this change in law as a window to conduct itself in personnel matters in an arbitrary, capricious or unreasonable manner. To the contrary, The Trego County Board wishes to keep expectations for staff at the same level as the expectations it has for students as our mission suggests: "To develop capable, responsible citizens". I leave you with this thought; no child should have to attend school in another district to avoid an incompetent teacher that cannot be removed.

Thank you for your support and for the opportunity to testify today. At this time, I would be happy to address any questions that you may have.

## Mail Message

Novell.

Close Previous Next Forward Reply to Sender Reply All Move Delete Read Later Properties

**From:** "Terry Collins" <tcollins@anwcoop.com>  
**To:** Kathe Decker  
**Date:** Tuesday - February 4, 2003 2:56 PM  
**Subject:** HB2060  
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Mime.822 (4910 bytes) [View](#) [Save As](#)

Submitted to House Committee on Education  
in regard to HB 2060

Dear Representative Decker,

My name is Terry Collins and I am Director of Special Education at ANW Education Cooperative Interlocal #603. It is my understanding that you are Chair of a committee regarding HB 2060. I would be very much in favor of changing the current teacher due process system. This system is inefficient and unduly expensive.

Currently, ANW is spending a great deal of time and money regarding due process for an employee whose performance, in my opinion, has been less than satisfactory for a number of years. A due process officer denied the employee a hearing after the employee was dismissed during a reduction in force. His ruling was challenged. We are now scheduled for district court. It is my understanding that we may have to pay thousands of dollars in back salary should the hearing officer's ruling be overturned. We would then proceed to a due process hearing and be required to prove that we are having financial difficulties. This seems to me to be a waste of resources in this time of financial crisis. Please consider allowing the school board to conduct a hearing or appoint a hearing officer. If the teacher believed the board acted unfairly, the decision could be appealed to the district court. I believe this would be fair and financially efficient.

Sincerely

Terry Collins  
Director, ANW



 Highfill Scott  
Executive Director  
bscott@usa-ks.org

M. Katharine Weickert  
Director of  
Administrator Services  
kweickert@usa-ks.org

Don Knowles  
Professional Development  
Coordinator  
knowlesfarms@umacs.net



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  
Career and Technical  
Education Administrators  
(KCCTEA)

Kansas School  
Public Relations  
Association  
(KanSPRA)

## HB 2060: Non-Renewal or Termination of Teacher Contracts

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

February 5, 2003

### Madam Chairman and Members of the House Education Committee:

United School Administrators of Kansas supports **HB 2060** 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 the 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.

I encourage you to approve **HB 2060** and return school personnel decision-making to local boards.





Testimony on  
**HB 2060 – Teacher Due Process**  
Before the  
**House Committee on Education**

By  
Pat Baker, Deputy Executive Director/General Counsel

February 5, 2003

Chairman Decker, Members of the Committee:

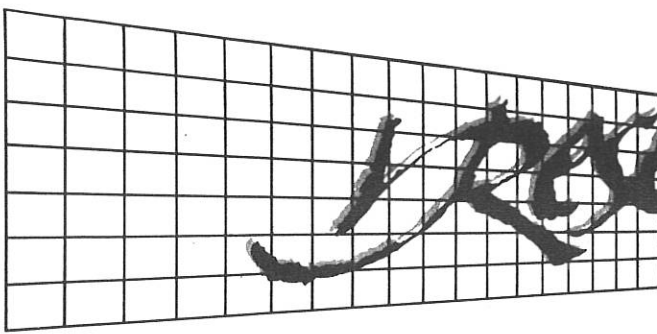
Thank you for the opportunity to appear today as a proponent of HB 2060, which the committee voted to introduce at our request. I will be discussing the points in support of this measure as outlined below:

- Teachers in Kansas acquire “due process” rights after three years (or two years if they have been previously employed in another district for three years).
- KASB believes tenured teachers should only be removed for good cause: for reasons that are related to the needs of an effective school system, are supported by evidence, and that are not arbitrary, capricious or unreasonable. For many years, school boards were allowed to determine if there was good cause to terminate or non-renew a teacher. Teachers were allowed to have the board’s decision reviewed to determine if it was appropriate.
- In the early 1990’s, the Legislature changed the teacher due process law. Under those changes and interpretations by the Kansas court system, school boards lost the right to determine good cause. Instead, an outside hearing officer now makes the decision.
- The hearing officer is not required to give any deference to the board’s duties as employer or its responsibilities for other interests of the district (students, taxpayers, other teachers and employees).
- Virtually any other employer is allowed to decide if an employee is working effectively, is competent to complete job tasks, or even if the employee’s position is necessary. Although school boards are accountable for the operation of public schools and student learning, the decision over whether a teacher should be removed is made by an independent hearing officer with no accountability to that school district, community, or to the state.
- KASB believes that teachers should be allowed to appeal whether a board’s decision was reasonable supported by evidence and not arbitrary or capricious. However, the hearing officer’s authority goes much further. The hearing officer may substitute his or her own judgment for the board’s decision, even if the board’s decision met the standard given above.

- By law, the hearing officer is an attorney. No knowledge of school operations, of student performance standards, or even of personnel evaluation is required.
- The hearing officer system has not worked to provide timely decisions. The hearing process can take months, even more than one year. If either the board or teacher appeals the decision, it can take several years. Although there are deadlines in the law, they may, in fact, be ignored by the hearing officer. There is no effective enforcement.
- There is a shortage of hearing officers. The state board of education has proposed increasing hearing officer pay and reducing the list of hearing officers that board and teachers choose from. This would, of course, tend to increase the cost of hearings and the difficulty in completing hearings in a timely fashion.
- The system is extremely expensive. A board frequently spends between \$30,000 and \$50,000 in legal fees and other expenses to go through this process. In effect, the board must pay the cost of employing a teacher for a year in order to remove a teacher.
- Because of the costs, time and uncertain standards a hearing officer may apply, school boards are discouraged from even attempting to go through a due process hearing. As an alternative, boards may spend tens of thousands of dollars to buy out a teacher's contract.
- HB 2060 eliminates the current hearing officer system. It allows a tenured teacher to appeal a dismissal at a hearing conducted by the school board, or by a committee or hearing officer appointed by the board. As a result, the responsibility for determining whether a teacher should be removed would be returned to the board that employs the teacher.
- The teacher *does not lose* due process rights. If the teacher disagrees with a board's decision, the teacher may appeal to the district court, court of appeals or supreme court. The judicial system would determine if the board's action is reasonable, supported by evidence, etc.
- The court would review whether or not the board acted appropriately in removing a teacher, and whether the teacher's rights were protected. This is the role of the court. The expensive, time-consuming "middle step" of an outside hearing officer is eliminated, but the teacher's rights are not.
- This change is vital because school boards will have increasing responsibilities to employ an effective teaching staff under the No Child Left Behind Act and State Board of Education standards. If school districts are to be held accountable for student performance, school employees must also be held accountable.
- This change is also vital because many more school districts will be required to reduce staff in the coming school years. This may have to include tenured teachers. Boards are continually asked to operate more efficiently. As boards face declining enrollment, changes in programs, closing schools and even consolidating districts, they must have authority to reduce staff without spending tens of thousands of dollars and waiting years for a decision.
- Current law discourages boards from trying to remove the small number of teachers who are not effective, or whose positions are no longer needed. The result is that less funding is available for other teachers and for student needs.

This testimony also reflects the position of Schools for Quality Education.

We urge you to recommend this bill favorably for passage. Thank you for your consideration.



# BULLETIN

PUBLISHED BY THE KANSAS ASSOCIATION OF SCHOOL BOARDS

## KASB Survey of Teacher Employment Relations

November, 2002

Research Bulletin No. 2

2001-02 KASB Survey	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03
<b>Termination</b>	12	6	6	8	10	14	21	12	
<b>Nonrenewal: Nontenured</b>	143	192	158	146	189	150	159	305	
<b>Tenured</b>	22	21	36	13	17	13	62	55	
<b>Resignation instead of non-renewal</b>	184	179	171	175	202	213	227	285	
<b>Requests for Contract Release</b>	293	357	359	406	336	363	534	435	378

KASB annually surveys school districts with questions on the workings of the teacher due process laws; these surveys gather data, not opinions. With consistent questions over a period of time, comparable characteristics of the data may be analyzed, as in the above table. The latest data shows terminations, nonrenewals and resignations which occurred during the 2001-02 school year and requests for release from contracts covering the 2002-03 year.

As the above table indicates, some of the data appears to fluctuate over time and other items are usually about the same. Perhaps due to competition for experienced teachers, requests for release from signed contracts seems to vary the most, and this year there were again significant numbers of these requests. Nonrenewals of nontenured teachers, about double the expected number this year, are perhaps increased by declining enrollment and uncertainty over the financial future of many districts.

### Teacher Terminations

There were 12 terminations during the 2001-02 school year in nine separate school districts. A "termination" is defined in our survey instrument as whenever a teacher is "...dismissed, discharged or fired by board action before the end of the contract term." Of these board actions, four teachers initially requested a hearing as the law provides they may, but only one hearing was eventually held. In the hearing held, the officer found for the board.

### Teacher Nonrenewals

The continuing contract law provides that, unless notified otherwise by the board of education before May 1, a teacher's contract is automatically renewed for the following year. Due process rights attach to the process of nonrenewal of a teacher contract, and those rights differ depending upon whether or not the teacher has taught for three years in the district: "tenure" is the term commonly used to describe the degree of protection afforded those teachers who have taught for more than three years.

**Nontenured:** Our survey shows that 305 nontenured teachers were nonrenewed by 97 separate boards last year. Of these, 179 (59%) were first year teachers, 88 (29%) were second year teachers and 38 (12%) were third year teachers. One of these teachers requested a hearing and in that case the hearing officer found for the board. Usually, one board reports a significant number of nonrenewals in a special

6-3



program for which funding is uncertain. That was the case this year as 35 of the 305 nonrenewals came from that district. Another 65 nonrenewals came from a large district facing enrollment declines and the closure of some buildings with the realignment of curriculum in others.

**Tenured:** The survey shows that 55 tenured teachers were nonrenewed by 25 separate boards last year. Of these, 21 teachers first requested a hearing but no hearings were eventually held. Most of these staff reductions appear to be in districts facing enrollment and financial constraints.

### Resignation Instead of Nonrenewal

As a practical matter, resignation of the teacher often happens when he or she is informed by the administration that nonrenewal is a probability. This circumstance is covered by our survey. 128 separate districts reported a total of 285 such resignations; 261 nontenured teachers and 24 tenured teachers. Declining enrollments and program cuts may play a part in these cases.

### Requests for Release from 2002-03 Contracts

Even though the continuing contract law binds the teacher and the board to employment obligations, each year a number of teachers request release from these contracts for a variety of reasons. This year's survey reveals a total of 378 such requests. Of the total 22 were subsequently withdrawn by the teacher, 13 were denied by the board and 352 were granted.

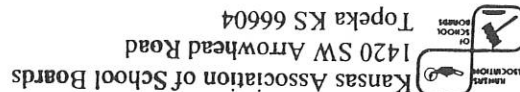
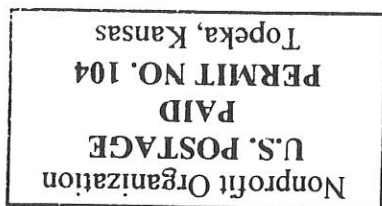
Of the 352 granted, only 83 included the assessment of liquidated damages, another 19 happened even though no replacement had been found, and 251 occurred when a suitable replacement was found. Of the 13 denied, three teachers returned to the district and ten left anyway. None of these ten cases were reported by the board of education to the State Board, seeking to have certification removed.

### Non-renewals, Terminations, and Finding New Jobs

We also asked districts to report the number of teachers who found new jobs in other districts, having been non-renewed, terminated, resigned from or released from their contract in their original district.

Of the 378 teachers requesting contract release, 115 (30%) were known by the releasing district to be headed for other employment in another Kansas USD. Of the 657 terminations, non-renewals and resignations reported, 197 (30%) were known by their districts to have found employment in another Kansas USD.

This bulletin is being sent to all board members, superintendents, clerks and board attorneys. For extra copies, or if you have questions, email Jim Hays at [research@kasb.org](mailto:research@kasb.org) or call 1-800-432-2471.



Return Service Requested

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**HOUSE BILL No. 2060**

By Committee on Education

1-24

AN ACT concerning school districts; relating to teachers; relating to non-renewal or termination of contracts; amending K.S.A. 72-5438, 72-5439, 72-5440, 72-5441, 72-5442, 72-5443 and 72-5446 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 72-5438 is hereby amended to read as follows: 72-5438. (a) Whenever a teacher is given written notice of intention by a board to not renew or to terminate the contract of the teacher as ~~provided in~~ *required by* K.S.A. 72-5437, and amendments thereto, the written notice of the proposed nonrenewal or termination shall include (1) a statement of the reasons for the proposed nonrenewal or termination, and (2) a statement that the teacher may have the matter heard by ~~a hearing officer the board, a committee of the board or a hearing officer appointed by the board~~ upon written request filed with the clerk of the board of education or the board of control or the secretary of the board of trustees within 15 calendar days from the date of such notice of nonrenewal or termination. *If the hearing is before the board or a committee of the board, the board shall designate one member of the committee to serve as chairperson for the purposes of the hearing.*

(b) Upon the filing of any written request of a teacher to be heard as provided in subsection (a), and within 10 calendar days thereafter, the board shall notify the ~~commissioner of education that a list of qualified hearing officers is required.~~ Such notice shall contain the mailing address of the teacher. ~~Within 10 days after receipt of notification from the board, the commissioner shall provide to the board and to the teacher, a list of nine randomly selected, qualified hearing officers~~ *teacher of the time and place where the hearing will be held and the name of the person who will serve as chairperson or hearing officer in the matter.*

~~(c) Within 5 days after receiving the list from the commissioner, each party shall eliminate four names from the list, and the remaining individual on the list shall serve as hearing officer. In the process of elimination, each party shall eliminate no more than one name at a time, the parties alternating after each name has been eliminated. The first name to be eliminated shall be chosen by the teacher, within 5 days after the teacher~~

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1 receives the list. The process of elimination shall be completed within 5  
2 days thereafter.

3 ~~—(d) Either party may request that one new list be provided within 5~~  
4 ~~days after receiving the list. If such a request is made, the party making~~  
5 ~~the request shall notify the commissioner and the other party, and the~~  
6 ~~commissioner shall generate a new list and distribute it to the parties in~~  
7 ~~the same manner as the original list.~~

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

18 ~~—(f) The commissioner of education shall compile and maintain a list~~  
19 ~~of hearing officers comprised of residents of this state who are attorneys~~  
20 ~~at law. Such list shall include a statement of the qualifications of each~~  
21 ~~hearing officer.~~

22 ~~—(g) Attorneys interested in serving as hearing officers under the pro-~~  
23 ~~visions of this act shall submit an application to the commissioner of ed-~~  
24 ~~ucation. The commissioner shall determine if the applicant is eligible to~~  
25 ~~serve as a hearing officer pursuant to the provisions of subsection (h).~~

26 ~~—(h) An attorney shall be eligible for appointment to the list if the~~  
27 ~~attorney has: (1) Completed a minimum of 10 hours of continuing legal~~  
28 ~~education credit in the area of education law, due process, administrative~~  
29 ~~law or employment law within the past five years, or (2) previously served~~  
30 ~~as the chairperson of a due process hearing committee prior to the ef-~~  
31 ~~fective date of this act. An attorney shall not be eligible for appointment~~  
32 ~~to the list if the attorney has been employed to represent a board or a~~  
33 ~~teacher in a due process hearing within the past five years.~~

34 Sec. 2. K.S.A. 72-5439 is hereby amended to read as follows: 72-  
35 5439. The hearing provided for under K.S.A. 72-5438, and amendments  
36 thereto, shall commence within 45 calendar days after the hearing officer  
37 is selected unless the hearing officer grants an extension of time *date of*  
38 *notice of intent to nonrenew or terminate required by K.S.A. 72-5438,*  
39 *and amendments thereto.* The hearing shall afford procedural due pro-  
40 cess, including the following:

41 (a) The right of each party to have counsel of such party's own choice  
42 present and to receive the advice of such counsel or other person whom  
43 such party may select;

1 (b) the right of each party or such party's counsel to cross-examine  
2 any person who provides information for the consideration of the hearing  
3 officer at the hearing, except those persons whose testimony is presented  
4 by affidavit;

5 (c) the right of each party to present such party's own witnesses in  
6 person, or their testimony by affidavit or deposition, except that testimony  
7 of a witness by affidavit may be presented only if such witness lives more  
8 than 100 miles from the location of the unified school district office, area  
9 vocational-technical school or community college, or is absent from the  
10 state, or is unable to appear because of age, illness, infirmity or impris-  
11 onment. When testimony is presented by affidavit the same shall be  
12 served upon the clerk of the board of education or the board of control,  
13 or the secretary of the board of trustees, or the agent of the board and  
14 upon the teacher in person or by first-class mail to the address of the  
15 teacher which is on file with the board not less than 10 calendar days  
16 prior to presentation to the hearing officer;

17 (d) the right of the teacher to testify in the teacher's own behalf and  
18 give reasons for the teacher's conduct, and the right of the board to pres-  
19 ent its testimony through such persons as the board may call to testify in  
20 its behalf and to give reasons for its actions, rulings or policies;

21 (e) the right of the parties to have an orderly hearing; and

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

24 Sec. 3. K.S.A. 72-5440 is hereby amended to read as follows: 72-  
25 5440. (a) For appearing before the hearing officer at a hearing, witnesses  
26 who are subpoenaed shall receive \$5 per day and mileage at the rate  
27 prescribed under K.S.A. 75-3203, and amendments thereto, for miles  
28 actually traveled in going to and returning from attendance at the hearing.  
29 The fees and mileage for the attendance of witnesses shall be paid by the  
30 party calling the witness, ~~except that~~. The fees and mileage of witnesses  
31 subpoenaed by the board, committee of the board or the hearing officer  
32 shall be paid by the board. Witnesses voluntarily appearing before the  
33 hearing officer shall not receive fees or mileage for attendance at the  
34 hearing.

35 ~~(b) The hearing officer shall be paid \$240 per diem compensation,~~  
36 ~~or a portion thereof, for each day of actual attendance at the hearing or~~  
37 ~~for any meeting held for the purpose of performing the hearing officer's~~  
38 ~~official duties. In addition to compensation, the hearing officer shall be~~  
39 ~~paid subsistence allowances, mileage, and other expenses as provided in~~  
40 ~~K.S.A. 75-3223, and amendments thereto. If the board appoints a hearing~~  
41 ~~officer to hear the case, the costs for the services of the hearing officer~~  
42 shall be paid by the board.

43 (c) Testimony at a hearing shall be recorded by a certified shorthand

1 reporter. The cost for the certified shorthand reporter's services shall be  
2 paid by the board. The ~~transcript testimony at the hearing~~ shall be tran-  
3 scribed if the decision of the ~~hearing officer~~ is appealed to the district  
4 court, or if either party requests transcription. The appellant or the party  
5 making the request shall pay for the cost of transcription. If both parties  
6 jointly request that the ~~transcript testimony~~ be transcribed at the hearing  
7 level, the parties ~~shall~~ each *shall* pay one-half of the cost of transcription.

8 (d) Each party shall be responsible for the payment of its own attor-  
9 ney fees.

10 (e) All costs of a hearing which are not ~~specifically~~ allocated *specifi-*  
11 *cally* in this section shall be paid by the board.

12 Sec. 4. K.S.A. 72-5441 is hereby amended to read as follows: 72-  
13 5441. When either party desires to present testimony by affidavit or by  
14 deposition, that party shall furnish to the *board, committee of the board*  
15 *or hearing officer* the date on which the testimony shall be taken. A copy  
16 of the affidavit or the deposition shall be furnished to the opposing party  
17 within 10 days following the taking of any such testimony, and no such  
18 testimony shall be presented at a hearing until the opposite party has had  
19 at least 10 days prior to the date upon which the testimony is to be  
20 presented to the *board, committee of the board or hearing officer* to rebut  
21 such testimony by affidavit or deposition or to submit interrogatories to  
22 the affiant or deponent to be answered under oath. Such ~~10-day~~ *ten-day*  
23 period, for good cause shown, may be extended by the ~~hearing officer~~  
24 *board, committee of the board or hearing officer. Neither party shall de-*  
25 *pose a witness who will be available to testify at the hearing.*

26 Sec. 5. K.S.A. 72-5442 is hereby amended to read as follows: 72-  
27 5442. The *board, chairperson of the committee or hearing officer* may:

28 (a) Administer oaths;

29 (b) issue subpoenas for the attendance and testimony of witnesses  
30 and the production of books, papers and documents relating to any matter  
31 under investigation;

32 (c) authorize depositions to be taken *if the witness will not be avail-*  
33 *able to testify at the hearing;*

34 (d) receive evidence and limit lines of questioning and testimony  
35 which are repetitive, cumulative or irrelevant;

36 (e) call and examine witnesses and introduce into the record docu-  
37 mentary and other evidence;

38 (f) regulate the course of the hearing and dispose of procedural re-  
39 quests, motions and similar matters; and

40 (g) take any other action necessary to make the hearing accord with  
41 administrative due process.

42 Hearings under this section shall not be bound by rules of evidence  
43 whether statutory, common law or adopted by the rules of court, ~~except~~

1 ~~that~~. The burden of proof shall initially *shall* rest upon the board in all  
2 instances other than when the allegation is that the teacher's contract has  
3 been terminated or nonrenewed by reason of the teacher having exercised  
4 a constitutional right. All relevant evidence shall be admissible, ~~except~~  
5 ~~that the hearing officer, in the hearing officer's discretion~~. *At the discre-*  
6 *tion of the chairperson of the board or the committee or the hearing*  
7 *officer, the chairperson or hearing officer may exclude any evidence if the*  
8 *chairperson or hearing officer believes that the probative value of such*  
9 *evidence is substantially outweighed substantially by the fact that its ad-*  
10 *mission will necessitate undue consumption of time.*

11 Sec. 6. K.S.A. 72-5443 is hereby amended to read as follows: 72-  
12 5443. (a) Unless otherwise agreed to by both the board and the teacher,  
13 the *board, committee of the board or hearing officer shall render a written*  
14 ~~opinion decision~~ not later than 30 days after the close of the hearing,  
15 setting forth the ~~hearing officer's~~ findings of fact and determination of  
16 the issues. *If the board has served as the hearing panel, the decision of*  
17 *the board shall be submitted to the teacher. If a committee of the board*  
18 *or a hearing officer has heard the matter, the committee of the board or*  
19 *hearing officer shall submit proposed findings of fact and a recommended*  
20 *resolution of the issue to the board and to the teacher. Within 30 days*  
21 *after receiving the recommendation, the board shall consider the recom-*  
22 *mendation, review the record of the hearing, hear oral arguments or re-*  
23 *ceive written briefs from the teacher and a representative of the board*  
24 *and decide whether the contract of the teacher shall be renewed or ter-*  
25 *minated. Not later than ten days after the close of oral argument or sub-*  
26 *mission of written briefs, the board shall submit its written decision, in-*  
27 *cluding findings of fact and a determination of the issues to the teacher.*  
28 The decision of the ~~hearing officer board~~ shall be submitted to the teacher  
29 and to the board.

30 (b) The decision of the ~~hearing officer board~~ shall be final, subject  
31 to appeal to the district court by either party as provided in K.S.A. 60-  
32 2101, and amendments thereto.

33 Sec. 7. K.S.A. 72-5446 is hereby amended to read as follows: 72-  
34 5446. ~~In the event~~ *If any teacher, as defined in K.S.A. 72-5436, and*  
35 *amendments thereto, alleges that the teacher's contract has been non-*  
36 *renewed by reason of the teacher having exercised a constitutional right,*  
37 *the following procedure shall be implemented:*

38 (a) The teacher alleging an abridgment by the board of a constitu-  
39 tionally protected right shall notify the board of the allegation within 15  
40 days after receiving the notice of intent to not renew or terminate the  
41 teacher's contract. Such notice shall specify the nature of the activity  
42 protected, and the times, dates, and places of such activity;

43 (b) the *board, committee of the board or hearing officer* provided for



1 by K.S.A. 72-5438, and amendments thereto, shall ~~thereupon~~ be selected  
2 and shall decide if there is substantial evidence to support the teacher's  
3 claim that the teacher's exercise of a constitutionally protected right was  
4 the reason for the nonrenewal;

5 (c) if *board, committee of the board* or the hearing officer determines  
6 that there is no substantial evidence to substantiate the teacher's claim of  
7 a violation of a constitutionally protected right, the board's decision to  
8 not renew the contract shall stand;

9 (d) if *board, committee of the board* or the hearing officer determines  
10 that there is substantial evidence to support the teacher's claim, the board  
11 shall be required to submit to the hearing officer any reasons which may  
12 have been involved in the nonrenewal;

13 (e) if the board presents any substantial evidence to support its rea-  
14 sons, the board's decision not to renew the contract shall be upheld.

15 Sec. 8. K.S.A. 72-5438, 72-5439, 72-5440, 72-5441, 72-5442, 72-  
16 5443 and 72-5446 are hereby repealed.

17 Sec. 9. This act shall take effect and be in force from and after its  
18 publication in the statute book.

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