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Testimony IN SUPPORT of HB 2179
Before the House Committee on Education
Submitted by: Rebecca Proctor
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Chairman Aurand and Members of the Committee:

Thank you for allowing me to address you today. My name is Rebecca Proctor. I am the Executive Director of the Kansas Organization of State Employees (KOSE). KOSE is a public employee union representing over 8,000 executive branch state employees. We are urging you to support this bill, because due process provisions are important for all public employees.

Over the past few years, there has been a steady erosion of due process for Kansas teachers and public employees. Statutory provisions requiring teacher due process were revoked, and the Kansas Civil Service Act was modified to give agency heads discretion over which positions within their agencies will have due process rights. The loss of due process rights makes employees vulnerable to dismissal for non-merit reasons, such as political affiliation, sexual orientation, or a difference of opinion with a principal or supervisor.

So what happens in a due process hearing? The employer presents its evidence and witnesses demonstrating why dismissal is warranted. The employee presents evidence and witnesses demonstrating why dismissal is not warranted. Then, the decision maker (be it an agency head, a board, or an independent hearing officer) renders a decision about the dismissal. The most important aspect of a due process hearing is that it gives everyone, employee and employer alike, a chance to present and review all facts and circumstances.

It's frustrating to me when I hear people say due process "limits flexibility" or prevents an employer from "getting rid of bad employees." First, under the terms of this bill, the right to a due process hearing does not attach until the teacher is in his/her third year of employment. Essentially, the teacher is in what is more of less a probationary period for his/her first two years. This gives the district ample time to identify any performance deficiency. Second, it is incumbent on any employer to document employee performance through regular performance evaluations and feedback sessions. Most employers do so as a matter of legal necessity, as documenting performance

deficiencies can shield employers from claims that an employee was fired for an alternate, discriminatory reason such as sex or age. If an employer has documented poor performance, the employer can easily prevail at a due process proceeding.

It is important to note that under the terms of this bill, a due process hearing is not automatically conducted. There is only a hearing if the teacher so requests. Prior to joining KOSE as Executive Director, I represented teachers in due process hearings. In the district I worked with, the majority of dismissed teachers never requested a hearing. Despite what opponents may believe, most poor performers recognize they are poor performers and have no interest in hearing the details of their poor performance explained in a hearing.

In my practice, those teachers who did request hearings generally did so because their dismissals were not performance-related. The cases I took to hearing involved experienced teachers whose principals and/or administrators had changed during that school year. Most had ten to twenty years of service in the district, with a consistent history of excellent performance evaluations. Most were leaders in their buildings who spoke up on behalf of other teachers and on behalf of the broader school community. Their dismissals were usually related to a difference in opinion, personality, operating style or educational philosophy with their new principal/administrator. In these cases, the employer was unable to prove dismissal was warranted, and the teacher was returned to the classroom.

All of us should have the ability to advocate on behalf of our professions and those we serve without fear of retaliation or dismissal. Restoring due process for teachers allows teachers to do what they were hired to do: teach our children and advocate for our children. Teachers, like state employees, work long hours at difficult jobs with little appreciation. It's time to show teachers some respect and appreciation and restore their due process rights. Please support HB 2179.