



Testimony before the
House Committee on Education

on

HB 2483 – Due process for termination of certain teachers’ contracts.

by

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Wednesday, January 24, 2018

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to testify on [HB 2483](#). As we understand the bill, the intent is to restore the previous teacher due process system for teachers who achieved “tenured” status prior to the repeal of that law, but not for “new” teachers who were not at that position in 2014 or who have moved to a new district.

We appear as opponents based on the following policy adopted by our Delegate Assembly:

2. Teacher Due Process

KASB believes the final decision on teacher due process procedures should be made by the local board, subject to constitutional protections. KASB supports a cooperative effort with representatives of teachers and administrators to develop a due process system that protects the interests of all parties.

The previous due process system, which this bill would restore for previously “tenured” teachers, allowed an appeal to an independent hearing officer. That position was the “fact-finder.” Either the board or the teacher could appeal the hearing officer’s decision to the court system, but the court was required to give deference to the hearing officer, and that decision could be overturned only if the hearing officer was shown to have acted inappropriately (arbitrary, capricious, failure to consider evidence, etc.).

KASB’s position is that the local board, as both employer and elected representatives of the people of the district, should be the “fact-finder,” unless the board in those same roles agrees to another system. (In fact, many districts have negotiated due process procedures that go beyond state law.) We believe the board’s decision should be given deference UNLESS the teacher demonstrates the board has acted inappropriately, such as violating constitutional right. After hearings on this issue in this committee last session, KASB met with the Kansas National Educational Association to discuss a compromise position. While those meetings have found some common ground, our organizations appear to have basic philosophical differences we cannot resolve.

Over the interim, KASB also studied this issue with our Legislative Committee. We would like to share three areas of research with this committee.

First, we wanted to see how other states approach this issue. We located a report from the Education Commission of the States showing the hearing process each state uses for notification and hearings in teacher due process cases. We found a majority of states use a hearing conducted by the local board or a

committee or officer designated by or reporting to the local board. This means that the current law, not the previous system, is the most common. The full report is attached to this testimony.

Second, we wanted to see if there is any relationship between the method of hearing and student success. Table 1 shows the states ranked by KASB's Comparing Kansas report on 15 measures of student success. We found no consistent correlation between the type of hearing and student outcomes.

Third, we wanted to look at whether the change in state law has made a difference in the number of teachers non-renewed or terminated after the change in law. We reviewed school district surveys conducted by the KASB Research Department. (We continued to ask districts to report on teachers who have more than three years in the district, who would have had due process rights under the previous law.)

Based on districts responding to our survey, we compared the number of teachers non-renewed or terminated during the first three years after the law was changed compared to the same data from 1997 to 2014, and found the following:

- The average annual number of teachers in their first three years that were non-renewed between 2015 and 2017 was 46, compared to an average of 163.5 between 1997 and 2014.
- The average annual number of tenured teachers non-renewed under the new law was 10 compared to an average of 27.6 under the previous law.
- The average of number of teachers terminated in the middle of their contract was 6.3 per year under the new law, compared to 10.7 per year under the old law.
- The average number of teachers resigning in mid-year was 203.7 compared to 240.6.

Based on this data, it does not appear the Kansas is at competitive disadvantage compared to other states, or that school boards have begun to remove teachers in any greater numbers in under the previous law.

In discussing this issue at 10 Regional Meetings across the state, the strong consensus was that our members believe local boards, who are the employers and managers of the school system and are responsible for student achievement and management of district funds, should make the decision on removing teachers. We also support an appeal or recourse if boards make decisions that are arbitrary or capricious. However, we do not believe the previous system was the best way to achieve those two goals.

Finally, this bill represents a compromise between eliminating the hearing officer system for all teachers or restoring it for all teachers. As you would expect from a compromise, it is farther from our position than the first option and closer to our position than the second.

Thank you for your consideration.

Table 1

	KASB Report Card Rank	Local Board or Designee	State Board or Process	Third Party	Other
Massachusetts	1		X		
New Jersey	2		X		
Iowa	3	X			
New Hampshire	4				
Vermont	5	X			
Connecticut	6				X
Nebraska	7	X			
Illinois	8			X	
Wisconsin	9	X			
Kansas	10				
North Dakota	11			X	
Minnesota	12			X	
Rhode Island	13	X			
Missouri	14	X			
Maine	15	X			
Tennessee	16	X			
Virginia	17	X			
Maryland	18	X			
Pennsylvania	19	X			
Indiana	20	X			
Kentucky	21				X
New York	22				X
Utah	23	X			
Arkansas	24				X
Michigan	25			X	
Colorado	26			X	
Delaware	27	X			
North Carolina	28			X	
California	29		X		
South Dakota	30	X			
Texas	31	X			
Ohio	32	X			
West Virginia	33		X		
Washington	34			X	
Alabama	35	X			
Montana	36	X			
Hawaii	37				X
Wyoming	38	X			
Idaho	39	X			
South Carolina	40	X			
Oklahoma	41	X			
Oregon	42			X	
Georgia	43	X			
Florida	44				X
Mississippi	45	X			
Arizona	46	X			
Louisiana	47				X
Alaska	48	X			
New Mexico	49	X			
Nevada	50				X

Teacher Tenure - Notification of Nonrenewal and Hearing

May 2014

Notification of nonrenewal and hearing

Alabama	<p>Notice: On or before last day of the teacher's third consecutive complete school year of employment & within 10 days of a board decision</p> <p>Hearing: Governing board, at teacher's request</p>
Alaska	<p>Notice: May 15</p> <p>Hearing: Local board of education, at teacher's request</p>
Arizona	<p>Notice: Unclear/unspecified date certain</p> <p>If dismissal is for inadequacy in the classroom, at least 45 days notice and an opportunity to correct inadequacies is required.</p> <p>Hearing: Local board of education, at teacher's request. The governing board decides whether to hold the hearing or designate a hearing officer to hold the hearing, hear the evidence, prepare a record and issue a recommendation to the governing board for action.</p>
Arkansas	<p>Notice: May 1</p> <p>Hearing: District board of directors, at teacher's request, State Board of Education</p>
California	<p>Notice: March 15</p> <p>Hearing: Commission on Professional Competence, at teacher's request. The Commission on Professional Competence consists of one member selected by the employee, one member selected by the governing board (both of whom must be certified teachers with 5 years' experience) and an administrative law judge.</p>
Colorado	<p>Notice: Subject to local policy</p> <p>Hearing: For nonprobationary teachers, allows for appeal to the superintendent or designee (or collective bargaining agreement) of a second consecutive performance rating of "ineffective." Decision may be followed by a request for review by a mutually agreed-upon third party (decision is final).</p>
Connecticut	<p>Notice: At any time</p> <p>Hearing: Local board of education or subcommittee of the board, at teacher's request, or impartial hearing officer or panel. Panel consists of three members: 1 chosen by superintendent; 1 by the teacher; and those 2 members choose a third. If they can't agree, selection is done with assistance of the American Arbitration Association. If no agreement is reached, a hearing is held before the board of education or subcommittee of the board.</p> <p>When the reason for termination is incompetence or ineffectiveness, the hearing must address the question of whether the performance evaluation ratings of the teacher were determined in</p>

good faith and were reasonable in light of the evidence presented. The hearing is limited to 12 total hours of evidence and testimony, though the time period may be extended when good cause is shown.

Delaware	Notice: May 15 Hearing: Local board of education, at teacher's request. The board may designate a hearing officer to conduct hearing.
District of Columbia	Not addressed in statute.
Florida	Notice: for annual contracts – at any time, for continuing contract – April 1 Hearing: Annual contract teachers may request a hearing, which may be conducted by the district board or a subcommittee thereof. Professional Service Contract (PSC) teachers may request a hearing before the board of education or an administrative law judge. Hearing processes do not apply to continuing contract teachers, though a continuing contract teacher may appeal a district board dismissal decision through the district court of appeals.
Georgia	Notice: May 15 Hearing: Local board of education, at teacher's request Board may designate a tribunal to conduct the hearing. If a tribunal is selected to hear the case, it consists of not less than three nor more than five impartial persons with academic experience. Recommendations of the tribunal are submitted to the board, which renders the final decision.
Hawaii	Notice: Determined by collective bargaining negotiations Hearing: Determined by collective bargaining negotiations
Idaho	Notice: Effective July 1, 2014: May 25 Hearing: At teacher's request, informal review before the local board or the board's designee
Illinois	Notice: At least 45 days before the end of any school term (for those employed after 9/1/2012) Hearing: Hearing at teacher's request. May be before a mutually selected hearing officer, with the cost split evenly by the board and the teacher, or before a board-selected hearing officer, with the cost paid by the board
Indiana	Notice: Between May 1 and July 1 for reduction in force Hearing: Conference with superintendent, then governing body of school corporation at teacher's request but no arbitration or hearing for dismissals based on incompetence
Iowa	Notice: April 30 Hearing: Board of education, at teacher's request in private hearing
Kansas	n/a
Kentucky	Notice: May 15 Hearing: Chief state school officer appoints a tribunal, at teacher's request, consisting of 1 teacher, 1 administrator and 1 lay person, none of whom may be residents of the district in which the teacher was employed
Louisiana	Notice: 7 days before termination of contract Hearing: Hearing panel consisting of designees of the superintendent, the principal, and the teacher, at teacher's request

Maine	<p>Notice: At least 6 months before termination of contract</p> <p>Hearing: Local board of education, at teacher's request</p>
Maryland	<p>Notice: Unclear/Not specified</p> <p>Hearing: Local board of education, at teacher's request. In 7 counties and Baltimore the county board may have the hearing first heard by a hearing examiner.</p>
Massachusetts	<p>Notice: Not specified except for those without professional status: June 15</p> <p>Hearing: Teacher petitions commissioner of education, who in turn requests arbitration by the American Arbitration Association (AAA)</p>
Michigan	<p>Notice: Individualized development plan (requires teacher to make progress toward goals within a specified time period), not to exceed 180 days; board can act if goals not met</p> <p>Hearing: Administrative law judge</p>
Minnesota	<p>Notice: April 1</p> <p>Hearing: Local board of education or arbitrator, at teacher's request</p>
Mississippi	<p>Notice: April 15 or 10 days after governor approves appropriations bill</p> <p>Hearing: Local board of education, at teacher's request</p>
Missouri	<p>Notice: Unclear/Unspecified</p> <p>Hearing: Hearing officer appointed by the local board of education, at teacher's request</p>
Montana	<p>Notice: June 1</p> <p>Hearing: Required before the board of trustees unless waived by teacher</p>
Nebraska	<p>Notice: April 15</p> <p>Hearing: Local board of education, at teacher's request. In a Class IV or V school district, a school board or certified employee may require that hearings be conducted by a hearing officer. School board makes decision based on hearing officer's findings.</p>
Nevada	<p>Notice: May 1</p> <p>Hearing: For probationary and post-probationary, if notified of dismissal before completion of school year, employee can request expedited hearing pursuant to Expedited Labor Arbitration Procedures</p>
New Hampshire	<p>Notice: April 15 or within 15 days of legislature's adoption of district budget but no later than Friday following 2nd Tuesday in May</p> <p>Hearing: State board of education, at teacher's request; can request arbitration under terms of a collective bargaining agreement</p>
New Jersey	<p>Notice: Unclear</p> <p>Hearing: Arbitrator after review by state commissioner of education or person appointed by the commissioner</p> <p>The commissioner of education maintains a panel of 25 permanent arbitrators: 8 are designated by the New Jersey Education Association, 3 are designated by the American Federation of Teachers, 9 are designated by the New Jersey School Boards Association and 5 are designated by the New Jersey Principals and Supervisors Association.</p>

New Mexico	<p>Notice: On or before last day of school year of existing contract</p> <p>Hearing: Local board of education, at teacher's request</p>
New York	<p>Notice: May 15</p> <p>Hearing: Hearing officer (arbitrator), at teacher's request</p> <p>The teacher may elect to have disciplinary procedures conducted under statute or collective bargaining agreement. If charges against a teacher involve pedagogical incompetence, the teacher may elect to have a 3-person panel (consisting of the hearing officer, a member selected by the local board and a member selected by the employee) conduct the hearing.</p>
North Carolina	<p>For teachers with career status prior to August 1, 2013 (after August 1, 2013, career status is phased out over a 5-year period and all teachers are employed on contract): Notice: Unclear</p> <p>Hearing: Impartial hearing officer appointed by the superintendent of public instruction (per state board's list of hearing officers) prior to board decision, at teacher's request, or before the board if there is a failure to file the hearing report prior to a decision by the board</p>
North Dakota	<p>Notice: No earlier than March 1 and no later than April 15</p> <p>Hearing: Closed hearing determined and directed by administrative law judge appointed by director of administrative hearings</p>
Ohio	<p>Notice: June 1</p> <p>Hearing: Local board</p>
Oklahoma	<p>Notice: 1st Monday in June</p> <p>Hearing: Local board of education, conducted according to procedures established by the state board of education</p>
Oregon	<p>Notice: March 15</p> <p>Hearing: Hearing officer, at teacher's request, followed by fair dismissal appeals board</p> <p>Teachers may elect to pursue grievances through arbitration if agreed to by the district. Hearing officers or arbitrators are selected through lists retained by the employment relations board. State will reimburse boards for any appeal and dismissal costs.</p>
Pennsylvania	<p>Notice: Unclear</p> <p>Hearing: Required before the local board of education</p>
Rhode Island	<p>Notice: March 1; Statement of cause for dismissal: At least 1 month prior to the close of the school year</p> <p>Hearing: Local board of education, at teacher's request</p>
South Carolina	<p>Notice: April 15</p> <p>Hearing: Local board of trustees, at teacher's request</p>
South Dakota	<p>Notice: April 15</p> <p>Hearing: Local board of education, at teacher's request</p>
Tennessee	<p>Notice: June 15</p> <p>Hearing: Local board of education, at teacher's request</p>

Texas	<p>Notice: No later than 10 days before last day of instruction required under contract</p> <p>Hearing: Hearing examiner, at teacher's request, then local board or board subcommittee renders decision on hearing examiners recommendations</p>
Utah	<p>Notice: At least 30 days before the proposed date of termination</p> <p>Hearing: Board of education, at teacher's request, or board may appoint a hearing examiner to conduct hearing and delegate its authority to hearing examiner to make a decision that is binding</p>
Vermont	<p>Notice: April 15</p> <p>Hearing: Local board of education, at teacher's request</p>
Virginia	<p>Notice: June 15</p> <p>Hearing: Local board of education or board-appointed hearing officer, at teacher's request.</p>
Washington	<p>Notice: May 15</p> <p>Hearing: Hearing officer, at teacher's request</p>
West Virginia	<p>Notice: March 1</p> <p>Hearing: Private, informal conference with administrative law judge, at chief administrator's request. West Virginia Public Employees Grievance Board level-3 hearing with administrative law judge, at teacher's request</p> <p>Grievance procedural levels: Level 1: Conference and level-1hearing with chief administrator; Level 2: Alternative dispute resolution- mediation and arbitration; Level 3: Location of hearing and whether it is to be made public are at the discretion of the administrative law judge</p>
Wisconsin	<p>Notice: May 15</p> <p>Hearing: Private hearing before the local board, at teacher's request, after notice of consideration of non-renewal</p>
Wyoming	<p>Notice: April 15</p> <p>Hearing: Independent hearing officer, at teacher's request. Local board of education reviews finding and recommendations and renders decision.</p>