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Testimony IN OPPOSITION of HB 2483

Before the House Education Committee

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Chairman Aurand and members of the committee:

My name is Lisa Ochs, the President of the American Federation of Teachers-Kansas, our organization represents State and local public employees, nurses, teachers, and public universities. Our representation covers workers in all Kansas counties. On behalf of all our members and the communities for which they care, thank you for the opportunity to submit testimony in opposition to HB 2483.

Protection against arbitrary and capricious firings is a bedrock union principal; AFT Kansas believes all public employees—teachers, social workers, lab technicians, account specialists, corrections officers, administrative professionals, custodians and environmental specialists—should have the right to notice and an opportunity to contest adverse employment actions. Experience tells us that when individual employees are each on their own, and can be fired or disciplined for any reason and with no due process, they're far less able to speak up on issues such as workplace safety, discrimination, harassment or the quality of the services the public receives.

What is meant by “due process”? Due process essentially means that if any agency or other public employer wants to fire a public employee, that employer must be able to give a good and defensible reason (also known as “just cause”) for such an action. Due process means that the employee is entitled to know why he or she is being fired—and has the right to tell his or her side of the story, often in the context of a hearing. Due process doesn’t mean “lifetime job security” or that a public employee can’t be fired. But the concepts of due process and just cause do protect employees from specific abuses, such as workplace rules being administered in ways that aren’t uniform or employees being fired before the charges against them are investigated or substantiated

Due process rights are particularly important for teachers. Teachers feel enormous pressure from parents, principals, and school board members to take actions that may not be in the best interests of students. Due process rights empower teachers to teach well and give teachers a voice to advocate for the education and resources their students need and for upholding the standards of the teaching profession (including academic freedom)—without fear of retribution. Due process rights also ensure that districts cannot target teachers for reasons having nothing to do with teaching, such as their age, their religion, or their political views. These rights are critical for not only K-12 teachers, but also higher education professionals.

Until 2014, Kansas teachers had due process rights under state statute that had been in place since the 1950s. The premise was simple: After three years of employment with a district, teacher contracts (with certain exceptions for teachers convicted of a felony or other serious crime) were “deemed to continue for the next succeeding school year” unless notice and an opportunity for an independent hearing were provided by a school district.¹ State law stipulated that “good cause” had to be shown by a local board of education to justify the dismissal or nonrenewal of a tenured teacher.²

Under the old state law, teachers who were threatened with dismissal or nonrenewal were entitled to:

- A statement of the reasons for nonrenewal or termination;³
- The right to a hearing before a hearing officer. (Rights afforded to each party in the hearing included: representation by counsel, the ability to present witnesses and cross-examine witnesses, that the hearing be “orderly,” and the “right of the teacher to a fair and impartial decision based on substantial evidence.”)⁴
- The right to a written opinion by the hearing officer that was appealable to the district court.⁵

These rights were taken away in an appropriations bill rushed through at the end of the 2014 legislative session. The result has been a wave of teacher retirements and resignations, lower teacher morale, and a court challenge. That challenge is currently before the Supreme Court, but only seeks a remedy for teachers that had earned due process prior to the bill’s passage.

¹ See Kan. Stat. Section 72-5437, See also Gillett v. U.S.D. No. 276, 605 P.2d 105, 110 (1980)

² Kan. Stat. Section 72-5445 (stipulating the requirements for tenure, repealed as applied to teachers in a school district in HB 2506), Kan. Stat. Section 72-5438-45 (laying out the type of notice and hearing required in order to terminate or not renew a tenured teacher’s contract, repealed as applied to teachers in a school districts in HB 2506).

³ Kan. Stat. Section 72-5438(a) (repealed as applied to teachers in a school district in HB 2506)

⁴ Kan. Stat. Section 72-5439 (repealed as applied to teachers in a school district in HB 2506)

⁵ Kan. Stat. Section 72-5443 (repealed as applied to teachers in a school district in HB 2506)

While HB 2483 may cure some of the unconstitutional deficiencies of the 2014 repeal, it still leaves a substantial number of teachers without fair due process protections. The bill excludes any teacher hired after 2014 as well as any teacher that has moved school districts since 2014. If passed, the state would find itself with the absurd outcome of some teachers not meeting the definition of “teacher” in state statute. Teachers working side by side would enjoy different levels of rights on the job. New teachers, those most willing to challenge the status quo and bring new ideas to the classroom, would see their entire career subjected to the whims of entrenched principals and superintendents.

KNEA and AFT-Kansas both report that teachers are voicing how disheartening and discouraging they find the lack of respect and professional dignity accorded to them by the Legislature. Both unions report that they are seeing a wave of teacher resignations and retirements, and predict that the Legislature’s anti-due process stance will only worsen the existing teacher shortage in urban and rural districts in Kansas.⁶

Due processes rights are essential to a high quality K-12 and higher education system. Without a comprehensive fix by the legislature, the state’s ability to attract and retain high quality educators will continue to suffer. Moreover, current educators jobs are put unnecessarily at risk. Lawmakers should reject this half-baked proposal and fully restore due process rights for all educators in the state.

⁶ <http://www.kshb.com/news/state/kansas/kansas-faces-another-round-of-teacher-shortages>