



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

January 15, 1976

ATTORNEY GENERAL OPINION NO. 76- 18

Harold L. Voth, Superintendent
Unified School District No. 312
Haven, Kansas 67543

Re: Schools--Teacher Contracts--Due Process Procedure;
Contract Termination

Synopsis: Under the due process procedure set out at K.S.A. 1974 Supp. 72-5436 et seq., as amended by Chapter 373 of the 1975 Session Laws, both the justification for and order of discharge of faculty members subject to the protection, absent a bargaining agreement stipulating otherwise, is left entirely to the sound discretion or policy guidelines of the school board.

* * *

Dear Superintendent Voth:

You have requested an opinion from this office concerning the discharge of a faculty member resulting from a declining enrollment which necessitates the combination of two grades into one classroom. Further, you ask whether the curtailment of a particular curriculum or course of study requires the school board to terminate the specific teacher or teachers assigned to that curriculum or, in the alternative, may the school board elect to retain these faculty members, and instead, terminate other faculty members who would then be replaced by the former.

The discharge or termination of a teacher is governed by the provisions of K.S.A. 1974 Supp. 72-5436 et seq., as amended by Chapter 373 of the 1975 Session Laws. The term "teacher" is defined by K.S.A. 1974 Supp. 72-5436 to mean:

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"any professional employee who is required to hold a teacher's certificate in any public school . . . except that 'teacher' shall not include supervisors, principals, superintendents or any person employed under the authority of K.S.A. 1973 Supp. 72-8202b, or amendments thereto".

The thrust of this legislative enactment is procedural in that it defines the steps the school board must employ when it wishes to terminate a faculty member subject to its protection. Noticeably absent is any elaboration on the factual circumstances for which discharge is appropriate or the criteria to employ in making that decision. Prior to its repeal by the 1975 Legislature, questions relative to the basis and order of priority for discharge or dismissal of faculty members were answered by the former K.S.A. 72-5406, which was applicable in those school districts with a population of more than 120,000. That section formerly prescribed permissible causes for discharge, demotion and mandatory retirement, and requires that dismissals due to declining enrollment should begin with those instructors with the least number of years of service.

Although it is not directly applicable to your school district, prior to its repeal, K.S.A. 72-5406 provided some guidance as to the acceptable causes for faculty dismissals.

K.S.A. 1974 Supp. 72-5436 et seq., as amended by Chapter 373 of the 1975 Session Laws, setting forth procedural steps to be followed in the termination of teachers, requires that a written notice of termination, which shall include a "statement of the reasons for the proposed non-renewal of termination." This latter act contains no suggestion that the "reasons" required to be stated are restricted to those enumerated in the statute now repealed. In other words, it now appears, absent a collective bargaining agreement to the contrary, that both the causes for and order of discharges are matters now vested in the sound discretion of the school board. As applied to your specific questions, declining enrollment necessitating a combination of grades would

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certainly be an appropriate justification for curtailment of a teacher position. As to which teacher should be dismissed in such a situation, the statutes, in my view, delegate to the school board the responsibility of making that decision. Under these statutes, the school board is free to make the decision on the basis of seniority, capability, quality of instruction or any other reasonable criteria.

Accordingly, it is my opinion that under the due process procedure for the termination of teacher contracts set out at K.S.A. 1974 Supp. 72-5436 et seq., as amended by Chapter 373 of the 1975 Session Laws, both the justification for and order of discharge of faculty members subject to the protection, absent a bargaining agreement stipulating otherwise, are left entirely to the sound discretion of policy guidelines of the school board. However, this does not alleviate or remove the school district's obligation to provide the discharged teacher a hearing and other rights reserved by K.S.A. 1974 Supp. 72-5436 et seq., as amended by Chapter 373 of the 1975 Session Laws, upon written notice requesting the same.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:HTW:bv