

# A Review of Personnel Dismissals by Knox County Schools During May and June 2015

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research and analysis by

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This report is dedicated to the Knox County School staff who have been dismissed without good reason, and to the parents and community members who rose up in 2015 to protest what they believed were unjustified dismissals of school staff.

# **A Review of Personnel Dismissals by Knox County Schools During May and June 2015**

Lance McCold, Jennifer Owen and Amanda Sanders

## **Summary**

After community members complained, in June and July 2015, that the Knox County Board of Education policies for terminating teachers were inconsistent and unfair, we reviewed 72 redacted personnel files of KCS staff who were terminated during May and June, 2015. Forty-one of those files were teachers, 18 belonged to teaching assistants, and the others were custodians, maintenance personnel, security guards and an accountant.

We reviewed redacted personnel files for evidence of possible performance problems, evidence that the supervisor had worked with the employee to correct problems, evidence that the Human Resources (HR) department had vetted proposed dismissals to assure Board policies were being followed, and evidence that the superintendent reviewed proposed dismissals to assure that they complied with Board policies.

Of 41 teachers who were non-renewed, we found just five with evidence of a possible performance issue. Of the five with performance issues, just three files show evidence that the supervisor had worked with the employee to correct the problem. We found no evidence in any teacher file that either the HR department or the superintendent had attempted to confirm that the teacher warranted dismissal.

Personnel files of classified staff show inconsistencies throughout, though they were much more likely to contain information regarding reasons for dismissal. Some dismissals seemed warranted and others had no evidence of performance problems.

The "Termination" dismissal category is used inconsistently, as is the "Not Recommended for Continued Employment" category. The latter seems to be used in some cases where problems indicate prompt termination would be more appropriate. The use of "Administrative Leave" is another area of inconsistency, but is not addressed in Board policy.

The Board of Education is badly in need of a capacity for audit and review of personnel and other practices in the schools that is independent of the superintendent.

## **Background**

In June 2015 parents and community members became aware of a process for terminating employees called "Non-Renewal" after a popular and effective teacher was non-renewed. Subsequently, the community discovered that maintenance workers, educational assistants and other staff were being dismissed in an identical manner with a process called, "Not Recommended for Continued Employment." Teachers and other KCS staff reported that they were blindsided by the dismissal, having not received complaints about their performance until they were told they were being dismissed, and often not even then.

Board of Education policies state, “Efforts shall be made to correct problems which might lead to the dismissal of school personnel,” (GBNA and GBNB<sup>1</sup>). If teachers are being blindsided by being non-renewed, it can only mean that the principal has not made efforts to correct problems. Policy GBG, regarding non-tenured teachers, spoke directly to the responsibility of the principal, “The principal is responsible for discussing deficiencies with the non-tenured teacher and providing assistance for overcoming these deficiencies.”<sup>2</sup>

Board policies place the full authority and responsibility for deciding whether or not to terminate an employee with the superintendent (Director of Schools). As such, it is the superintendent's responsibility to assure that principals are discussing deficiencies with teachers and providing assistance for overcoming deficiencies.

On June 29, 2015, Cassie Watters made a public records request of Knox County Schools for “a list of all employees whose service was terminated by Knox County Schools/KCS by any method during the months of May and June of 2015, including job title or assignment, location she/he served before termination, the name of the supervisor who recommended she/he for dismissal, how the employee was terminated (non-renewal, dismissed for cause, dismissed without cause as an at-will employee, or any other category the school system uses), the number of years she/he served KCS, age, and race of terminated employees.”

Melissa Ogden fulfilled the request on August 7, 2015. The KCS response included the names and other information for 73 terminated staff members.

It has since been discovered that the list of 73 dismissed personnel Ms. Ogden provided to Ms. Watters in June, 2015 was incomplete. Media reports gave the number of non-renewed teachers at 45, but the list included only 41 non-renewed teachers. In reviewing the list we were aware of two KCS staff members (including one of us, Sanders) who were dismissed by reduction in force (RIF), but the list includes not a single RIF.<sup>3</sup> In an email dated April 5, 2016, we requested a list of names that were left off the June 2015 list.

On September 15, Lance McCold requested to review the personnel files of the 73 people named in the fulfilled request. On January 8, 2016, Ms. Ogden notified him that the files had been redacted and were ready for review. The redacted files were reviewed by Mr. McCold, Amanda Sanders and Jennifer Owen on January 12, April 7, and April 21. Due to an oversight, the file of one terminated security guard was not reviewed, and the results discussed below are for the 72 files that were reviewed.

## **Review process**

The review was intended to answer four questions:

1. Was there evidence that the employee had a performance problem?
2. Was there evidence that the supervisor worked with the employee to correct the performance problem?

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1 These policies have been renumbered G-380 and G-381.

2 The current policy, G-331, reads, “The principal shall discuss deficiencies as part of the evaluation process with the non-tenured teacher and shall provide assistance for overcoming these deficiencies.”

3 While the list provided on August 7, 2015 did not identify any staff dismissed by RIF, review of the 72 personnel files revealed one maintenance worker who was dismissed by RIF. Also, the list of terminations included two teachers for whom the termination code was “non-renew staffing reduction loss”. Because the personnel files for these two teachers did not indicate a RIF, we treated these two as the same as “non-renew.”

3. Was there evidence that the HR department reviewed termination recommendations to determine that the termination complied with Board policy before advancing them to the superintendent for approval?
4. Was there evidence that the superintendent had access to information that would allow him to distinguish between justified and unjustified terminations?

To address the question of whether terminated employees had a performance problem, we looked for documentation of poor performance or inappropriate behavior. Such documentation might include dated notes to file, correspondence with the employee, or documentation of a meeting with the employee. If no documentation was found, we considered there to be no basis for concluding that the employee was terminated because of poor performance or inappropriate behavior.

Readers should be aware that we chose to consider any documented concern, disagreement or complaint during the preceding year to indicate a “performance problem.” In most cases the employee did not have a rebuttal in the file. Where the employee had a response to the complaint, we did not try to decide who was right—we continued to count it as a performance issue. Just because a principal has an issue with an employee, does not necessarily mean the employee should be dismissed.

To address the question of whether supervisors were making efforts to correct problems, we looked for two things:

1. Was there was evidence in the file that clearly articulated performance problems or other issues had been brought to the attention of the employee? (If a supervisor fails to inform the employee of his or her failings and what changes are needed, there is no reason to expect the employee to change behaviors.)
2. Was there evidence that supervisors communicating performance issues soon enough to allow the employee time to demonstrate that he or she had corrected the problem, rather than being dismissed? (Holding criticism until a month or less before the employee is terminated is inconsistent with Board policy.)

To address the question of whether HR staff vetted termination recommendations, we looked for documentation supplied to HR staff from the supervisor recommending the termination. (If HR doesn't verify that proposed terminations are warranted, and that supervisors are working with employees to correct problems before terminating them, it is not doing its duty in implementing Board policy.)

To address the question of whether the superintendent adequately informed himself about proposed terminations, we looked for documentation or correspondence sent to the superintendent from the HR department or from the supervisor explaining why the termination was appropriate. (The Board of Education counts on the superintendent to implement its policies. The superintendent's signature on the termination letter should signify that he has performed his duty fully.)

## Results

Of the 72 personnel files reviewed, 40 teachers and one guidance counselor were *non-renewed*.<sup>4</sup> Seventeen educational assistants were *not recommended for continued employment*; one was terminated. Of the 13 other classified staff; custodians, maintenance workers, security guards and one accountant; four were terminated, eight were not recommended for continued employment and one maintenance worker was the victim of a reduction in force. See Figure 1.

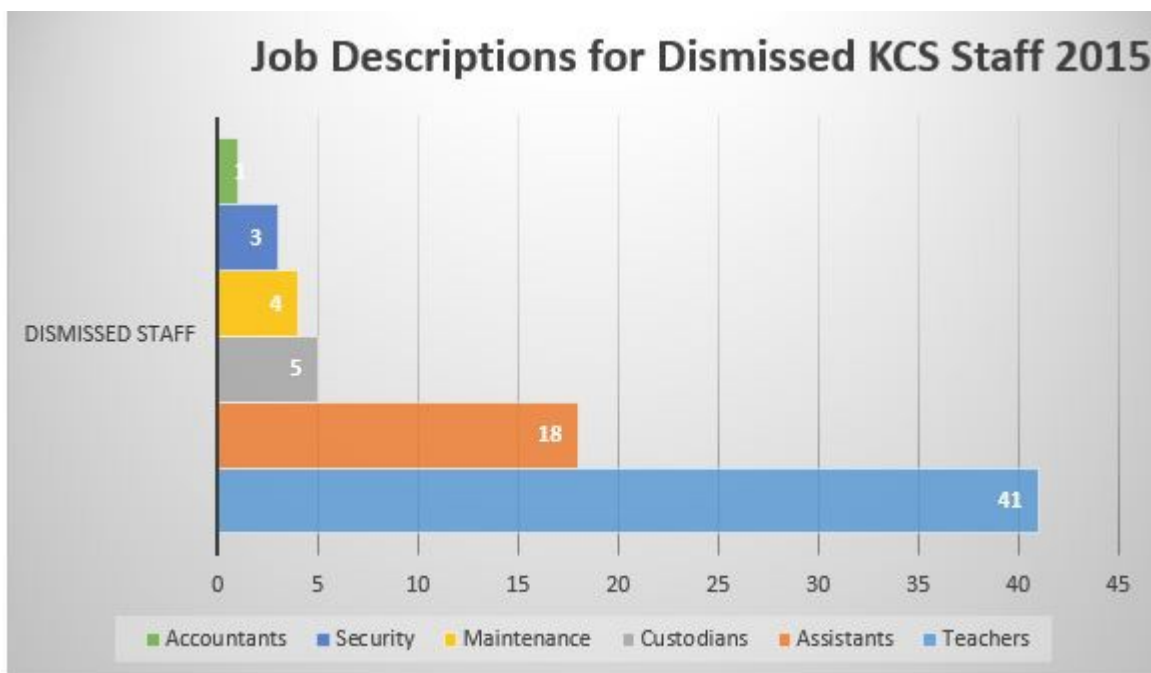


Figure 1: Job Descriptions for Dismissed KCS Staff May & June 2015

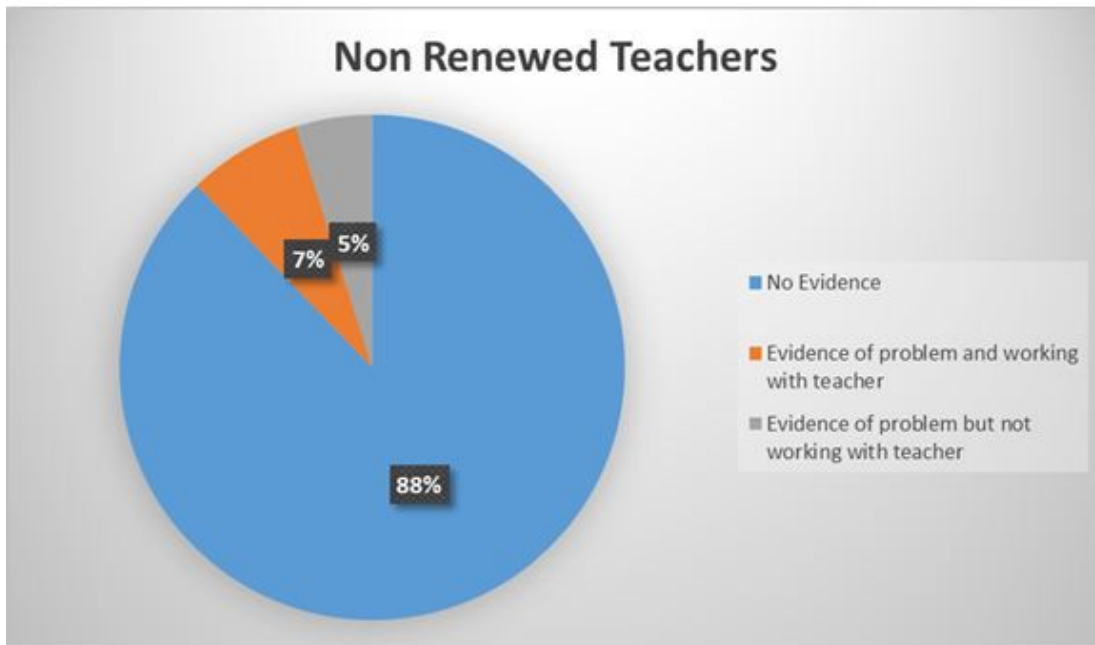
## Teachers

Forty-one teachers were non-renewed. Only five of the 41 non-renewed teachers had evidence in the personnel file of a performance problem. In only three of the five cases where a performance problem was noted in the file was there evidence that the supervisor had worked with the employee to correct the problem. In other words, 88% had no evidence of a performance issue and 93% had no evidence that the teacher had had the opportunity to correct possible performance issues (Figure 2).

Among the 41 non-renewed teachers, only one had been rehired at KCS school. Given that 88% of non-renewed teachers had spotless records, it is difficult to imagine a good explanation for the very low rehire rate. We searched Board human resources policies and KCS administrative procedures and found no policy that restricted rehiring non-renewed teachers. The only plausible explanation is that the superintendent has an unwritten policy, and it is well known to principals. Principals' situation isn't very different than non-tenured teachers; the

<sup>4</sup> Because we inadvertently overlooked one personnel file, this report addresses only results for 72 employees dismissed during May and June, 2015.

superintendent has unlimited power to change the employment situation of any principal. Thus, the superintendent and only the superintendent could enforce such a policy.



*Figure 2: Percentages of non-renewed teachers with evidence of performance issues, & with evidence of a principal working with the teacher prior to non-renewal.*

Six non-renewed teachers had received signing bonuses for the 2014-15 school year. One teacher, hired August 2014 was given a \$12,000 signing bonus and non-renewed in May 2015. The personnel file showed no indication of performance issues. Another teacher who had taught for six years in Morgan County was hired June 2014, given a \$12,000 signing bonus in August, and non-renewed effective June 1, 2015. She also received a \$2,500 TAP mentor bonus. There was no indication of performance issues in the teacher's personnel file. Three more teachers were given \$12,000 or \$3,000 signing bonuses for the 2014-15 school year and non-renewed at the end of the school year. The \$12,000 signing bonuses must be repaid in part by teachers who resign before the end of three years, but none of these teachers had to repay their signing bonuses because KCS terminated them.

In all, six non-renewed teachers received signing bonuses for the 2014-15 school year, and only one of them had any evidence in their file that there was a performance problem. Signing bonuses are a method the district uses to fill hard-to-fill positions. The district spent over \$40,000 on bonuses for those five non-renewed teachers who had clean records. It is difficult to understand why the district would allow principals to dismiss teachers without apparent cause in any case, but it is even more baffling when the district had paid bonus money to hire the teachers.

The non-renewed teacher who received a signing bonus for the 2014-15 school year and had indications of performance problems suggests a completely different management problem. After an incident in the classroom, this teacher was put on "administrative leave" with pay starting October 17, 2014. It wasn't until March 23, 2015 that a written reprimand for "unprofessional conduct and interaction with a student in the classroom..." was added to her file. For reasons the file does not explain, the decision to non-renew the teacher was documented

on January 12, 2015, more than four months before her contract expired on May 22, 2015. So, the teacher was on paid administrative leave for more than seven months even though the decision to non-renew her had been made no later than January 12, 2015.

This case raised several questions. If the misbehavior was serious enough to justify administrative leave, why wasn't she terminated promptly? Why did the principal wait five months to document the unprofessional conduct? Why was *paid* administrative leave used? It seems clear that the Board's intention is that non-tenured teachers not be paid while performance issues are being investigated; Policy GBNB (now G-381) states, "Under no circumstances shall the Director of Schools dismiss or suspend a non-tenured teacher with pay."

The use of paid administrative leave in this case led us to look for policies or procedures that govern its use. We found no Board policy describing how administrative leave, with or without pay, should be used. The only mention of administrative leave in Board policies is in policy G-201, regarding drug testing of employee if suspected of misusing drugs. KCS procedures G-460, Administrative Leave, and G-463-3, Administrative Leave Without Pay are clearly intended to be initiated by the employee, not management. There are several policies related to suspension related to incidents or performance issues, but none of them addresses *administrative leave*. It appears that the administration's use of administrative leave with pay is not authorized by Board policy or administrative procedures.

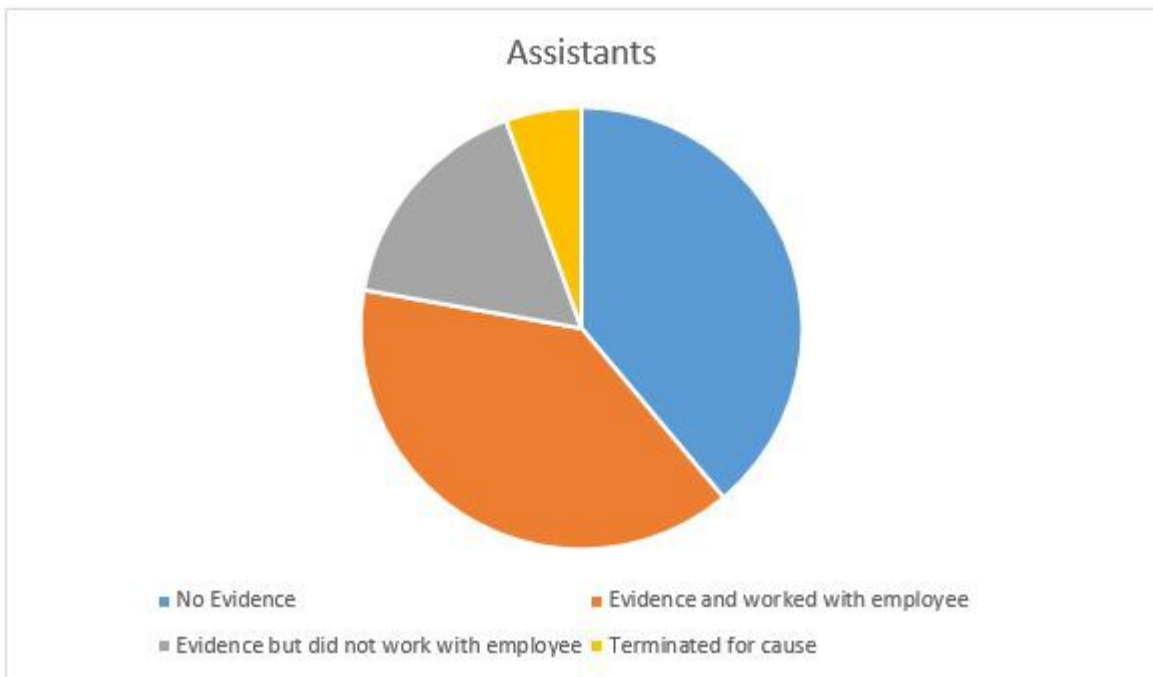
Sixty percent (25) of the 41 non-renewed teachers had been with the district for three years or less. Only three of those with the school system three years or less had any evidence of a possible performance issue. Forty percent (17) of the 41 non-renewed teachers were hired at the beginning of the school year. Only two of those who were with the district for one year had any evidence of a possible performance issue or any evidence that the principal worked with them to improve performance. Some of those new hires had just earned their teaching licenses.

Like any professional, new teachers need mentoring and experience to perfect their skills. After a single year's experience, a new teacher is just getting her or his feet on the ground. It makes no sense for the district to spend money to hire new teachers only to terminate them after a single year. This practice is also deeply unfair to fledgling teachers. They have a right to expect mentoring and help developing their skills. Instead, by non-renewing them when there have been no performance issues, KCS gives them a black mark on their record that may prevent them from getting another teaching position. Dismissing teachers in which the district has invested two or three years training is even more wasteful to the District and equally harmful to the teachers.

### **Educational Assistants**

Eighteen educational assistants (EAs) were dismissed during May and June of 2015. Seventeen were "Not recommended for continued employment" (NRCE). The eighteenth was terminated because she stopped coming to work; an example of a legitimate reason for termination for cause.

Of the 17 NRCE EAs, seven (39%) personnel files showed no evidence of a performance issue. Among the 10 files that showed evidence of a performance issue, seven (39%) showed evidence that the supervisor had worked with the employee. These results suggest supervisors were more likely to work with EAs with performance issues than with teachers (Figure 3).



*Figure 3: Proportion of dismissed educational assistants with evidence of performance issues & evidence that supervisor worked with employee before dismissal*

One file for an EA stood out because it was the only instance of a letter from a supervisor stating, “It is not our intention to keep [...] from working in Knox County Schools.” Actually, it seems to be much easier for an EA who was NRCE to be rehired than a teacher. Five of the 17 NRCE EAs were rehired by KCS, though not all as EAs. Evidently, non-renewal of a teacher is a more serious handicap to being rehired than a NRCE is for an EA, even though the EA who was NRCE is much more likely to have had performance issues noted in her or his file.

### **Other Classified Staff**

The 13 non-EA classified staff files we inspected included five custodians, four skilled maintenance people, three security guards, and one accountant. Four of these staff members were dismissed by termination, eight were dismissed by NRCE and one by RIF.

Excluding the person dismissed by RIF, five of the remaining 12 had no indication of performance issues. The supervisor appeared to work with four of the seven staff with indications of possible performance issues. There was no indication that the supervisor had worked with the remaining three who had possible performance issues.

There was no indication of performance issues in the files of the three dismissed security guards, one by NRCE and two by termination. One of the terminated security guards involved the use of administrative leave with pay. She was put on leave April 8, 2015 and terminated May 8, after 25 days of paid administrative leave. As noted above, there appear to be no KCS policies and procedures for the use of administrative leave, with or without pay, except around drug testing, policy G-201.



## Conclusions and Recommendations

We began this investigation to look for evidence that would support or refute the reports that KCS employees, especially teachers, were dismissed arbitrarily, often without meaningful warning. Unfortunately, the evidence supports such reports. The personnel files we examined suggest inconsistencies with Board policy throughout, but the evidence was clearest for teachers. Of the 41 teachers whose files we inspected, only in five cases did we find evidence of a performance issue. And in only three of the five cases was there evidence that the supervisor worked with the employee to correct the problem.

Non-renewals of teachers are problematic in many ways. The pattern of dismissals is contrary to Board policy that clearly expects principals to work with teachers to correct problems. Non-renewals without apparent justification lead to a loss of teachers that the HR department had spent much time and effort to hire and train, not to mention the loss of teaching talent.

These apparently unjustified non-renewals cause serious morale problems. It is easy to understand how teachers who remain on the job while their peers are being dismissed learn to fear doing anything to make the principal unhappy or to speak up about their concerns. An environment of fear is incompatible with keeping high quality teachers on the job and maintaining a good learning environment for students.

There is no evidence that either the HR department or the superintendent is reviewing principals' use of non-renewals. While state law allows employees to be terminated for any or no reason, good management would certainly include review by HR and the superintendent. Board policy shows a clear expectation that, "Efforts shall be made to correct problems which might lead to the dismissal." If, as it appears, that the superintendent has failed to verify that such efforts have been made, he has failed to fulfill his responsibility as superintendent. Board policies place the full authority and responsibility for deciding whether or not to terminate an employee with the superintendent.

We found nothing in Board policies or administrative procedures that say a non-renewed teacher should not be rehired. Still, the fact that only one of 41 non-renewed teachers was rehired indicates at least great prejudice against rehiring non-renewed teachers. The fact that 36 of the 41 had no indications of performance problems shows that the presumption against rehiring non-renewed teachers is unwarranted.

With regard to non-renewal of teachers, we recommend that the Board of Education take the following actions:

1. Suspend the use of non-renewal for dismissing teachers, until an independent review of HR practices has been performed.
2. Adopt policies stating that, when approving employee dismissals, the superintendent shall provide written documentation to the board and to the employee's file that he has personally verified the dismissal is justified and that the supervisor made reasonable and appropriate efforts to correct problems before recommending the employee be dismissed.
3. Instruct the superintendent to direct his principals not to consider non-renewal, in itself, as reason not to rehire non-renewed teachers,
4. Remove the "non-renewal" language from the record of each staff member whose file lacks evidence of performance issues, and

5. Direct the superintendent to instruct HR to give priority to hiring previously non-renewed teachers who do not have a record of performance issues.

For classified staff, the “not recommended for continued employment” (NRCE) dismissal category seems to be used essentially the same way as non-renewal is for teachers. Among the 17 EAs who were dismissed by NRCE, only 10 had files that indicated any performance problem. Seven of the 10 showed indications that the supervisor had made an effort to correct the performance problems. Despite the higher frequency of performance problems, being dismissed by NRCE is less of a handicap to being rehired than non-renewal is for teachers.

Personnel files of other classified staff show the same inconsistencies found in files of EAs. Some dismissals seemed warranted and others had no evidence of performance problems. The *termination* dismissal category is used inconsistently. It was used for three staff who stopped coming to work, and for two staff whose personnel files indicated spotless records.

Similarly, NRCE seems to be used in some cases where problems indicate prompt termination would be more appropriate. The Board of Education should direct the superintendent to suspend the use of NRCE until clear policies are established for when it can be used and when termination should be used.

We found two instances of paid administrative leave who were ultimately dismissed. The most egregious case was a teacher who was put on administrative leave with pay for seven months after which she was non-renewed. We cannot understand the reason for wasting school funds by keeping someone on paid leave for so long, only to be dismissed. Board policies address various kinds of leave, military, medical and so on, but we could find no policy that addresses *administrative leave*. The Board should instruct the superintendent to suspend the use of administrative leave until the Board adopts policies on administrative leave with and without pay.

The superintendent has sole authority to terminate (via non-renewal or other methods) staff. With the authority comes responsibility to assure that such personnel actions are appropriate and in accord with Board policy. Consequently, we expected to find correspondence from the HR department or from the supervisor recommending termination to the superintendent explaining why a dismissal was warranted. We did not find a single example of such correspondence.

The absence of such correspondence suggests that the superintendent is not fulfilling his duty to assure that dismissals are warranted and in the best interest of the school system. The Board of Education should instruct the superintendent to document, in the employee's personnel file, his rationale for approving each individual dismissal by whatever method.

No two people are the same. Work assignments are seldom exactly the same—certainly not in a school system. Decisions about hiring and dismissal are complicated and usually subjective. Of course, managers are just as variable and fallible as the employees who report to them. Employment policies and HR departments are efforts to structure employer-employee relations in a way that protects the interests of the employer assuring fairness to the employee. Without good rules and an HR department to enforce them, human failings lead to a hostile workplace and inefficient use of people.

In an ideal world, the superintendent, HR department, or other internal mechanism would assure that the kinds of problems described above did not exist, and there would be no need for the Board or for community oversight. In the real world, we know that inadequate oversight

inevitably leads to corruption or worse. The Board exists to provide sufficient oversight to prevent such problems.

However, it is clear that the Board does not have the capacity to uncover problems in school operations. The flaws in Knox County Schools' dismissal practices noted here have only come to light because concerned citizens navigated daunting administrative hurdles and invested significant effort to uncover them. Just as the Board cannot rely on the superintendent to reveal information that would reflect badly on his performance, it cannot rely on citizens to do what the three of us have done that led to this report. If the Board is to fulfill its fiduciary responsibility of providing oversight of the superintendent, his administration, and the schools, it needs to have accurate information that is independent of the superintendent and his administration.

To fulfill its responsibility, the Board of Education needs to conduct ongoing, independent review of personnel and other practices in the schools. The Board should establish a KCS audit function consisting of employees, over whom the superintendent has no authority, whose only job is to monitor and investigate school operations and report its findings directly to the Board. The ideal situation would seem to be a group that is paid by the Board and is administered by the Board. However, it might be more convenient to have the audit group administered by Knox County's government, but directed entirely by the Board. However it is arranged, it is clear that the Board will be unable to fulfill its responsibility supervise the schools until it has an independent research and/or audit capability.