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House Bill No. 2382
School District Board of Education Member Free
Speech and Transparency Act

Proponent

February 16th, 2023

Hearing Date: February 20th, 2023

Committee on K-12 Education Budget
Chair
Committee on K-12 Education Budget

Dear Committee on K-12 Education Budget:

I submit this written testimony as a proponent of House Bill No. 2382, the School District Board of Education Member Free Speech and Transparency Act with a hearing date of February 20th, 2023.

I would like thank the Committee on K-12 Education Budget for holding a hearing for this proposed legislation. I served on the USD 416 Louisburg Board of Education in 2021, when I was appointed to fill a vacancy. This legislation directly addresses some of the challenges I faced as an engaged and active member of the board of education. I would like to take this opportunity to address key components of this legislation that stand out to me.

Section (b) (2)

It was abundantly clear to me that there were numerous conversations and communications held by school board members on their personal email accounts and phones to avoid KORA. By addressing this simple “loophole” to KORA you will help address on of the tools utilized to avoid transparency in public schools.

Section (c)

On multiple occasions I attempted to have agenda items added to the agenda that I felt were important to discuss. To my dismay, the board president and/or the superintendent would tell me that the matter I wanted to discuss was not worth having as an agenda item. The power to control what business was conducted by the board of education was essentially left to the devices of the superintendent and board president (who essentially served as a yes man for the superintendent). There were many instances where I was left unable to get an agenda item to discuss a policy or concern, even when other board wanted to have the agenda item added.

In USD 416, Board Policy BCBD states:

... The board agenda shall be compiled by the superintendent in cooperation with the board president. Other board members may request items to be placed on the agenda...

You will note that a board member is only guaranteed the ability to request an agenda item, but that does not mean the request will be granted. Therefore, the meeting agenda decided upon prior to the open meeting is completely in the control of the board president and superintendent.

To work around this, I began motioning to amend the agenda during the open meeting. On one occasion, I was reprimanded by the board president for motioning to add a discussion item to the agenda which he had already unilaterally declined to add. In that instance, the board voted against my agenda addition. There were other instances where the board voted to approve to amend the agenda, but something I have learned is that not every board of education in Kansas is equipped to go against unnecessary challenges like these in fulfilling the obligations of a board of education member.

Your proposed change to allow board members discretion to add agenda items will enhance the power and ability board members have to discuss and raise issues important to them in public meeting, especially those members who find themselves in the minority.

Section (d) and (e)

It is important that board of education members feel free to engage with the public in the public comments section. I appreciate that boards have implemented the policy of non-engagement to help prevent quarreling, misspeak, or other errors by its members. However, there were multiple instances in my time on the board of education where I would have liked to ask questions or engage in additional conversation with a patron. In addition, it would be nice to address comments made by patrons that may be factually incorrect or warrant some debate. This should be able to occur, within reason, without having to add the patron to the official discussion agenda.

You will find in boards of education that there are also rules for thee and not for me when it comes to engagement with patrons in public comment. Many times, the superintendent and board president will engage with a patron without recourse, but if another member of the board attempts to do so, the conversation will be cut off as a violation of policy. In USD 416, the policy permits for board members to ask clarifying questions, but that is the extent of the engagement permitted. Other districts are much more restrictive, which I view as problematic and a restriction of the speech of the board members.

In addition, there are boards of education who either prohibit or restrict public comment in the open meeting. For some governmental bodies it is acceptable to not have a public comment period in every open meeting because of the creation of public hearings and other mechanisms to receive public comment. For local and school governments who meet only once or twice a month, these public comment periods are truly the only opportunity for public engagement with the elected. Even if inconvenient for the elected, these free speech open comment periods must be in place for the integrity of local government.

Section (f)

This may be the most important change brought about by the proposed legislation. As a member of the board of education, I experienced multiple instances where my request for information was denied to me despite request. To be fair, this did not happen at all times, but it did appear that information was only shared selectively and as desired. As an educated board of education member, I knew that I had the option to KORA request my own school district, but this carried the risk of being counterproductive and viewed as antagonistic on my part. There should never be an instance where a board of education member requests information from a school district they govern and then face refusal to satisfy that request by the unelected.

This is a significant problem in almost every school district in Kansas that has board members seeking to investigate matters in their districts. In addition to refusal to produce information, school board members are frequently faced with staff claims that “such a record or information does not exist”. It is challenging to for school board members to know when this is a truthful statement or is being used to mislead them. Provisioning statutory requirements for the unelected to answer questions from the school board will do a lot to promote the authority and responsibilities of the board of education, in addition to promoting transparency from within the ranks of the schools.

I would also recommend this committee consider action that can be associated with suspected non-compliance of unelected personnel to this proposed statute, similar to a private citizen’s ability to file a KOMA or KORA complaint against a governmental body. Many boards of education will fail to craft self-policing policy for their staff that creates a disincentive for non-compliance, therefore I encourage this body to also consider potential remedies or penalties for non-compliance with this provision.

Conclusions

Thank you for having a hearing on House Bill No. 2382. These statutory changes would be about meaningful progress in local school governance, individual school board member power, and school transparency. As you consider this legislation, I would also like you to consider how these statutes would necessarily be enacted at the local level and if there would penalty associated for school districts non-compliant with the provisions of these statutes. History has shown us that statutes without teeth will frequently be ignored or worked around by Kansas public school.

Sincerely,

A handwritten signature in dark ink, appearing to read "Douglas Shane", with a horizontal line extending to the right.

Douglas Shane, DVM, PhD