

M I N U T E S

SPECIAL COMMITTEE ON EDUCATION

August 26 and 27, 1976

August 26, 1976

Committee Chairman, Representative Crumbaker, presided. All members except Senator Harder were in attendance. Staff present included Ben Barrett and Myrta Anderson from the Legislative Research Department and Avis Badke from the Revisor of Statutes' Office.

Morning Session

Conferee: Dr. Robert C. Harder, Secretary of Social and Rehabilitation Services (SRS).

Proposal No. 9 - Special Education

The Committee discussed the concept of "specialized instruction" as set forth in Kansas law. "Specialized instruction" means programs of life and social adjustment provided in an SRS institution. The standards for specialized instruction are established by the Secretary of SRS.

Dr. Harder stated that the concept of specialized instruction grew out of an interest by SRS to develop a service model which did not necessarily conform to traditional special education in the public school.

It was noted that "specialized instruction" as set forth in Kansas law is in conflict with certain provisions of the federal "Education for All Handicapped Children Act" (P.L. 94-142). The federal law requires that all educational programs for handicapped children within the state will be under the general supervision of the state educational agency. Furthermore, the law provides that all handicapped children, regardless of the severity of the handicap, must be provided free special education and related services.

Dr. Harder stated that in his judgment the primary purpose for which the concept of specialized instruction was developed has been served. In recent years, SRS has experienced some difficulty in securing approval from the State Department of Education (KSDE) for various of the professional and other personnel employed by SRS institutions for educational programs. If the special exception for SRS institutions is removed from the law, the relationship between SRS and KSDE will be more crucial in terms of the ability of the two agencies to resolve certification problems which occur. Dr. Harder stated that KSDE has become more flexible with regard to its certification standards for personnel employed in special education programs. He said SRS desires to staff its educational programs with properly certified teachers and with professional employees who are duly recognized by their professional organizations.

According to Dr. Harder, there has been a problem between SRS and KSDE with regard to recognizing psychiatric aides as paraprofessionals for purposes of providing special education services. The KSDE staff reports that under certain circumstances psychiatric aides could be recognized as paraprofessionals in accordance with the state plan for special education.

A question was raised as to whether "specialized instruction" as provided in state institutions allows USD's to avoid their legal responsibility to provide services for all exceptional children who reside in the district. (This mandate does not apply to all categories of exceptionality until July 1, 1979.) Dr. Harder stated that this

sometimes may be the case. Legally, however, it should not be permitted. He said the programs being provided by the mental health and the mental health retardation facilities are improving. The educational component of these programs probably is better than presently would be available in the home community of many of the children. However, some of the larger school districts such as Shawnee Mission, Wichita, Kansas City, and Topeka are providing extensive special education services which may be of better quality than those available in the state institutions.

Dr. Roy M. Rutherford, special education consultant to SRS, stated that he is familiar with state educational certification standards. He has been involved in one certification case considered by KSDE. He stated that KSDE should make a special effort to review the criteria for certification as a special education administrator for persons who serve in administrative positions in a state institution. He suggested that different standards are appropriate for these persons than for such administrators employed by a USD.

Dr. Harder stated that currently there are approximately 1,082 youth in SRS institutions. This is approximately the number of persons who would be involved if the concept of specialized instruction were eliminated and special education services were required to be provided. If there should be a "blanket" policy that special education services in state institutions be provided free of charge, there would be fiscal implications the state would have to consider. Some governmental unit would have to pay for these services -- probably either the USD or the state.

If an effort is made to isolate the expenses of an institutional program attributable to education, the result might be a reduction of Title XIX funds presently available to help defray the costs of programs provided in the institutional setting. This is because the Title XIX entitlement is based upon a medical model within the institution. Direct educational services are not a part of that model and, therefore, do not contribute to the Title XIX entitlement in any way. If, however, additional staff persons, such as psychiatric aides, were taken into account for at least a portion of their time in an educational program (as might be necessary in order for programs to receive KSDE approval), the effect would be that the costs attributable to the medical model would be diminished. As a result, Title XIX benefits due to the State of Kansas might be reduced.

Dr. Harder estimated that in FY 1977 the state will receive about \$9 million in Title XIX payments. Approximately \$6 million of this amount would be payments attributable to services for children.

Dr. Harder stated that SRS regularly computes the daily costs of hospitalization in its institutions. Under the current accounting procedures, SRS is able to extract the direct expenditures for special education. It is considerably more difficult, however, to identify and allocate the additional costs that could be attributed to "specialized instruction" or to special education in the campus setting.

According to Dr. Rutherford, specialized instruction in an institution is more expensive than providing special education services. This is because a greater amount of staff attention is required for each individual patient. The federal estimate of providing education and training in an institutional setting is approximately \$6,000 per patient per year.

Dr. Harder explained that children or the parents of children who reside in SRS institutions are billed for the services provided, except for those youth who have been adjudged delinquent by the juvenile court. There is no charge for services provided to these children. This fee is approximately \$30 per day for the first 60 days of service and \$1.66 per day thereafter. The \$30 per day figure is based on the per diem cost of institutional care. SRS has authority to waive all or a portion of these charges in cases involving financial hardship. It is necessary, however, to bill at the \$30 rate on a uniform basis in order to collect the full amount of insurance coverage that is available for some patients.

In response to a question, Dr. Harder stated that USD's presently are not paying SRS institutions for educational services being provided to children who are SRS patients.

A member of the Committee stated that continuing the concept of specialized instruction in the state institutions might have merit. The law might be changed, however, to provide that these programs would be approved by KSDE. The purpose of such a change would be to comply with the federal law (P.L. 94-142) insofar as central responsibility for special education services is concerned.

Afternoon Session

Proposal No. 9 - Special Education (Cont'd)

Ethel Miller. Ms. Miller stated that she was speaking on behalf of the Kansas Association of Retarded Citizens (KARC). KARC supports the Kansas State Plan for Special Education. The organization believes one of the issues that should be considered by the Committee is that of "specialized instruction." KARC recommends that this separate category of special education services be deleted from the law. KARC supports the provision of care for children in an institutional setting to the extent that such care cannot be provided adequately in the home or community. KARC believes that children in need of special education services should receive their fair share of available tax resources. Ms. Miller also stressed the need to provide preschool services for handicapped children.

Ruth Ann Oelsner. Ms. Oelsner is vice chairman of the Kansas Special Education Advisory Council. The Kansas Special Education Advisory Council regards "specialized instruction" in state institutions as an inherent inequity established by law. (For statement, see Attachment I.) The Council believes that children in state institutions should receive the same educational programs and services they would be receiving in their home communities. The Advisory Council believes that USD's who are unwilling to meet their obligation to provide services to handicapped children sometimes avoid that responsibility by determining that a child is in need of "specialized instruction." Specialized instruction is provided only in state institutions, and at no cost to the USD. The Council made the following recommendations to the Committee:

1. The Committee should undertake a study of the present methods of financing education in state institutions.
2. The Committee should adopt the philosophy that the USD's be made responsible for the cost of meeting the educational needs of the child who receives services in a state institution.
3. The Committee should remove from the law the category described as "specialized instruction."

Dr. Harder. Dr. Harder stated that it might be helpful if SRS would experiment with state institution budgets relative to funding a theoretical program to determine the effect on Title XIX benefits of isolating the full educational costs of children in SRS institutions. In response to a question, Dr. Harder stated that the state level concern about maintaining full entitlements under Title XIX is a common concern among the states. However, as far as Dr. Harder knows, the concept of "specialized instruction" as a separate kind of educational program is unique to Kansas.

Dr. Harder described the contractual relationship between Topeka State Hospital (TSH) and Topeka (USD 501) relative to the Capitol City School program. That school is operated as a special education institution. The staff is employed by USD 501. Students are from both USD 501 and TSH. SRS pays the actual costs of its students, less categorical special education state aid to USD 501. SRS also provides the facility for the program. Students who live in the Topeka USD and who attend classes at Capitol City may be counted as regularly enrolled pupils of USD 501. Students who live at TSH on a 24-hour basis are not counted as residents of the USD and may not be counted by USD 501 in computing its general fund budget. Dr. Harder stated that the TSH staff works with USD 501 staff to orient them toward a treatment model.

Teachers at Capitol City work 11 1/2 months per year. Teachers employed by the Youth Center at Beloit work under an 11 1/2 month contract, as do other teachers employed by SRS institutions. In general, the educational services at the institutions for the mentally retarded are provided by regular employees of the institution. These teachers are employed for a longer contract period than public school teachers. Further, their salaries tend to be lower than in the USD's. At institutions such as Osawatomie and Larned State Hospitals, the institutions contract with the school district for teachers. These teachers provide educational services at the institutions under the supervision of the hospital staff.

Jim Marshall. Mr. Marshall said the Committee might want to consider making the parents financially responsible for the maintenance of children at all SRS and State Board of Education institutions. Presently there is no parental responsibility for maintenance of the students at the Kansas State School for the Visually Handicapped and the Kansas State School for the Deaf. Also, youth assigned to the youth rehabilitation units at Topeka, Atchison, Beloit, Larned, and Osawatomie are maintained at state expense.

Other Matters. Avis Badke distributed to the Committee copies of a bill draft designed to amend several sections of the special education law to bring due process procedures in conformance with provisions of P.L. 94-142 (Attachment II).

Representative Yonally distributed to the Committee copies of a letter from Mr. Matt Musick, President of Johnson County Girl's Athletic Association, concerning matters of dissatisfaction relative to rulings of the Kansas State High School Activities Association (Attachment III).

August 27, 1976

Morning Session

Conferees

Nelson Hartman, Executive Secretary, KSHSAA
KSHSAA Executive Board Members

Dr. M.L. Winters, Superintendent, Olathe (USD 233)
James Irick, Board of Education member, Baldwin City (USD 348)
James Akers, Superintendent, Madison (USD 386)
Melvin Crouch, Superintendent, Hiawatha (USD 415)

Proposal No. 11 - Kansas State High
School Activities Association
(KSHSAA)

Dr. Winters stated that in his judgment the Committee has primarily been concerned with three main issues. These are:

1. The organization and composition of the KSHSAA Appeal Board;
2. Whether or not KSHSAA should be governed by the open meetings law;
and
3. Controversy surrounding KSHSAA league assignment responsibilities.

In response to concerns expressed by the Committee, KSHSAA submitted an excerpt from the minutes of the Executive Board meeting of August 16, 1976. At that time the Committee discussed possible revisions of the Appeal Board procedure. (See Attachment IV.)

The Executive Board minutes contain a proposal for a reconstituted Appeal Board which would consist of seven members, none of whom could be members of the Board of Directors. Four of the Appeal Board members would consist of members of local boards of education and three would be superintendents or principals of schools. The Appeal Board would be representative, insofar as possible, of all classes of schools and geographic areas of the state. Appeal Board members would be elected in statewide elections conducted in the Spring. The two-year term of office would begin April 1. A quorum of the Appeal Board would consist of at least four members. The Appeal Board would be authorized to hear and make final decisions on specific individual complaints based upon rules, regulations and policies of KSHSAA, as interpreted by the Executive Board or KSHSAA employees. The Appeal Board could hear appeals of decisions of the Board of Directors and could sustain decisions or recommend to the Board of Directors the reconsideration of such decisions. Appeal Board meetings would be open, except that executive sessions could be held at the request of an appellant.

The KSHSAA Executive Board stated it had no difficulty accepting the provisions of the open meetings law in conducting its affairs. The Board made no recommendations with regard to the matter of league assignments.

The Committee discussed whether or not the Appeal Board should have the authority to overturn a decision of the Board of Directors relative to KSHSAA policy. It also considered whether or not faculty members should be represented on the Appeal Board.

Dr. Winters stated that he would be opposed to faculty serving on the Board of Directors. In his judgment, KSHSAA should be governed by those persons who have responsibility for administration of school activities.

In reply to a question, Dr. Winters stated that the number of appeals considered by the Appeal Board has not been great. One Committee member emphasized the importance of applying penalties for rule violations to the schools rather than to the individual student. Mr. Hartman stated that this concept has been carefully considered and that it continues to be reviewed by KSHSAA. It also was stated that the statutory authority relative to the Appeal Board should set forth more explicitly the Board's role and function.

Mr. Hartman said that the complaints the Committee had heard during the summer represent the concerns of a few persons who have been upset with a KSHSAA ruling. The vast majority of the KSHSAA activities have the full support of the member schools and the patrons.

According to Mr. Hartman, approximately 80 percent to 90 percent of the KSHSAA rule violations are self-reported. In many cases, member schools take action to punish the offenders and KSHSAA applies no further sanctions.

There was considerable discussion about the responsibility of KSHSAA and the schools to inform students as to the rules that govern their participation in various activities. Generally, the rules regarding certain activities are provided to the teachers who take responsibility for informing the students about them. Undoubtedly, practices across the state vary with regard to the degree of effort that is made to inform students of participation criteria. KSHSAA believes the student must be responsible for knowing and obeying the rules. The student is the one who normally should be punished when a rules violation occurs. The Committee expressed concern that if students are required to bear this responsibility, efforts be made to insure that they are aware of the applicable rules.

Mr. Hartman stated that the KSHSAA Board of Directors will be meeting September 11. The Board will discuss the policy statement of the Executive Board concerning the reorganization of the Appeal Board. Also, tentative positions adopted by the Committee will be discussed at that time. The Chairman stated that the Committee hoped to develop a proposal concerning the Appeals Board that KSHSAA could take to its members for discussion and consideration at the earliest possible time. Hopefully, the Board of Directors could consider this proposal and report back to the Committee prior to the completion of its interim activities.

Afternoon Session

Proposal No. 11 - KSHSAA (Cont'd)

The Committee agreed that in a proposed bill draft the following policies tentatively should be included:

1. The Appeal Board should consist of nine members.
2. Appeal Board members should be elected statewide from among school board members and superintendents or principals. No Appeal Board member should also serve as a member of the KSHSAA Board of Directors.
3. Membership on the Appeal Board should be composed of five board of education members and four school superintendents or principals.
4. Appeal Board representation should, insofar as possible, be representative of all classifications of schools and geographical areas of the state.
5. A quorum of six members should be required before the Appeal Board could take an official action.
6. A majority vote, but not less than four affirmative votes, should be required to sustain or overrule any decision which comes before the Appeal Board.
7. The Appeal Board should be authorized to hear and make final determinations concerning any ruling or decision of the Executive Board of the KSHSAA.
8. The Appeal Board should be permitted to hear appeals from the decisions of the Board of Directors and have the power to sustain the decision or recommend (with directions) to the Board of Directors the reconsideration of any decision.
9. The Appeal Board meetings should be conducted in accord with the provisions of the open meetings law.

Matters such as the terms of Appeal Board members, election procedures, the manner in which representation is assured, and the procedures before the Appeal Board would be subjects determined by KSHSAA. The bill draft will make the various organs of KSHSAA subject to the open meetings law. Also, the responsibilities of each of the three organs of KSHSAA will be more clearly set forth in the statutes.

The staff was instructed to prepare a bill draft containing the Committee's recommendations and to send it to Mr. Hartman and the Committee for review and comment.

Proposal No. 10 - School Finance

The Committee reviewed two staff memorandums (included in Committee notebooks) which analyzed certain features of the School District Equalization Act. These were:

1. "Comparison of the Taxable Income Deduction in Computing General State Aid with the Income Tax Rebate."
2. "Relationship of District Wealth and State Aid Ratios."

Proposal No. 9 - Special Education

The Committee reviewed the staff bill draft concerning changes in special education due process procedures. The draft was tentatively approved. It will be given further consideration at the time other special education issues are addressed in bill draft form.

The staff was directed to work with the Secretary of SRS and KSDE staff to accomplish certain objectives:

1. Place responsibility with KSDE for approval of special education programs in state institutions, in accord with P.L. 94-142.
2. Explore the feasibility of eliminating from the law the concept of "specialized instruction."
3. Insure that students in SRS institutions receive a free public education.
4. Accomplish objectives one through three without diluting the state's entitlement to Title XIX funds.

The staff will continue its work on refining the cost estimates of implementing the special education mandate.

Other Matters

The minutes of the August 9 and 10 meeting were approved. Copies of draft Committee reports on Proposal No. 12 - Certification of Coaches and Proposal No. 13 - Certification of School Administrators were distributed to the Committee. These reports will be reviewed and considered by the Committee at its next meeting.

The next meeting is set for October 4 and 5.

The meeting was adjourned.

Prepared by Ben F. Barrett

Approved by the Committee on:

October 4, 1976
(Date)

TESTIMONY ON SPECIAL EDUCATION AND "SPECIALIZED INSTRUCTION"

IN THE STATE INSTITUTIONS

TO: Special Committee on Education

FROM: Kansas Special Education Advisory Council

The Kansas Special Education Advisory Council has been asked to comment on issues pertaining to special education services in the state institutions.

Under the provisions of the Kansas Special Education for Exceptional Children Act, special education services are to be provided in the local school districts for all exceptional children. However, the law permits, but does not require, institutions to provide both special education services and "specialized instruction." If the institution provides special education, such special education must meet standards of the State Board of Education. If the institution provides "specialized instruction", the standards for such instruction are set by the Secretary of Social and Rehabilitation Services.

As we understand it, the reasons for amending the original act and creating a category called "specialized instruction" in the institutions were:

- at the time the Act was passed, there was no State Plan for Special Education
- it was a stop-gap measure, to allow the institutions time to meet the mandate to provide educational services for all children
- the institutions could not meet what appeared to be the then current special education requirements for accreditation of teachers and for the number of hours a child must be in class.

There is inherent inequity in HB 2040, the act which created "specialized instruction." Children in state institutions should receive the same kind of educational programs and services they would be getting if

ey were in their home communities. (For example, a number of local school districts now have educational services for severely/multiply handicapped children, but the same level of educational services for these children is not available in the institutions.)

Still another inequity of 2040 is that if a local school district is unwilling to meet its responsibility to serve a handicapped child, it can avoid that responsibility by deciding that the child is ⁱⁿ need of "specialized instruction." At present, only one such case has come to our attention. However, there is a potential for abuse and for actually circumventing the special education mandate. Any handicapped child, even a mildly handicapped, learning disabled child, could be refused education services in the local district on the basis that the child needs "specialized instruction"--which, by law, exists only in a state institution under the jurisdiction of the Secretary of SRS.

Certain important changes have taken place since HB 2040, with its "specialized instruction" provision, was enacted:

- there is now a State Plan for Special Education
- no reference is made in the Plan to the number of hours a child must spend in class
- the Plan allows for a great deal of latitude in the definition of special teacher, accepting specialities other than the traditional teacher certification in special education
- Federal PL 94-142 (Education of All Handicapped Children) states that all education within a state is to be under the supervision of the state education agency.

Since the circumstances that gave rise to creating the category of "specialized instruction" in the institutions no longer exist, it would seem that "specialized instruction" should be amended out of the law and the mandate for special education for all school age children,

regardless of their location, should be assured.

The problems of financing special education programs and services in the institutions are obviously not simple. There are several different approaches being used to finance educational programs that now exist in the thirteen institutions named in the Special Education for Exceptional Children Act. (NOTE: It should be made clear that we are referring to the cost of education in the institutions, not to the total cost of institutionalization.)

RECOMMENDATIONS

- I. The Special Education Advisory Council suggests that the Special Committee on Education undertake a study of the present methods of financing special education in these thirteen institutions. The information obtained from such a study could provide the basis for the legislature to give future direction to the State Departments of SRS and Education.
- II. The Special Education Advisory Council strongly urges that in any decision the Committee makes regarding special education programs in the state institutions, serious consideration be given to the following:
 - 1) A child's home school district should have the responsibility--both educational and financial--for the child who is a resident of its district, regardless of where this child may be located.
 - 2) The present Special Education Act allows the local school district to count a child as a resident of its district and receive all state reimbursement for that child, even if he/she is in a state institution.
 - 3) The present Act allows the local school district to contract with an institution which has an educational program available, to provide special education for its children.
 - 4) According to a recent Attorney General opinion, a local school

district is required to pay an institution, which is providing special education services for one of its children, either the transportation cost for the child or up to \$600.00 for maintenance of the child in the institution. (To our knowledge, this is not now being done.)

- 5) The potential financial benefit to the institution if a child's home district were to pay the institution the same amount of money for special education services as would be expended if the child were being served in the local school district. This would include state foundation money, state special education reimbursement, the local per child effort, and the local special education levy.

While the mechanics of using or transferring the available money, as described in #4 and #5 above, would be complicated, it would appear that this already available money would make a significant contribution to the actual cost of special education for all school age children in the state institutions.

III. We urge that the Special Committee on Education recommend removing from the law the category of "specialized instruction" and strengthen the language of the Special Education Act so that all school age children will receive special education services.

The Act states "It is the purpose and intention of this act to provide for educational opportunities which will contribute to the development of each exceptional child in this state in accord with his abilities and capacities."

We respectfully request that this purpose and intention be brought into reality.

PROPOSED BILL NO. _____

By Special Committee on Education

AN ACT concerning the special education for exceptional children act; relating to due process procedures; amending K.S.A. 1976 Supp. 72-972, 72-973, 72-974 and 72-975, and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1976 Supp. 72-972 is hereby amended to read as follows: 72-972. (a) In accordance with rules and regulations which shall be adopted by every board, each child, or his ~~parents or guardians~~ or her lawful custodian, shall be afforded the right to a hearing before such child shall be:

(1) Excluded, reassigned or transferred from regular school classes on the ground that he or she is an exceptional child and cannot materially benefit therefrom;

(2) placed in, transferred to or from, or denied placement in special education services.

(b) A written notice of a proposal to take any of the actions described in subsection (a) of this section shall be given to the ~~parents or guardians~~ lawful custodian of the involved child. Such notice shall be mailed or personally delivered to said ~~parents or guardians~~ lawful custodian and shall: (1) Describe the proposed action; (2) state the reasons for the proposed action; and (3) inform the ~~parents or guardians~~ lawful custodian of the right to object to the proposed action at a hearing which may be had, upon request of ~~one of the parents or guardians~~ said lawful custodian, not less than fifteen (15) days and not more than thirty (30) days from the date on which the notice is received and (4) be written in the principal language used in the home of the child.

(c) ~~No action described in subsection (a) of this section~~

~~shall be taken within the period afforded the parents or guardians to request a hearing, which period shall not be less than ten (10) days, except that the proposed action may be taken before such period has expired with the written consent of the parents or guardians.~~ For the purposes of this section and of all proceedings conducted pursuant to the provisions of K.S.A. 1976 Supp. 72-973 to 72-975, inclusive, as amended, "lawful custodian" means a parent, step-parent, foster parent, guardian or other person having legal custody of an involved child or who is by law liable to maintain, care for or support such child or if there is none then some relative or other interested person. In the event that none of the above is known or can be found, the board shall cause proper proceedings to be instituted pursuant to the Kansas juvenile code to determine whether said child is dependent and neglected. The term legal custodian does not include within its meaning any employee of the state board or of any board involved in the education of such child.

Sec. 2. K.S.A. 1976 Supp. 72-973 is hereby amended to read as follows: 72-973. The hearing provided for in ~~section 13 of this act~~ K.S.A. 1976 Supp. 72-972, as amended, shall be held at a time and place reasonably convenient to the ~~parents or guardians~~ lawful custodian of the involved child, shall be a closed hearing unless the ~~parents or guardians~~ lawful custodian shall request an open hearing, and shall be conducted in accordance with rules and regulations relating thereto adopted by the board. Such rules and regulations shall afford procedural due process, including the following:

(a) The right of the ~~child~~ child parties to have counsel of ~~his~~ their own choice present and to receive the advice of such counsel or other person whom ~~he~~ they may select;

(b) the right of the ~~parents or guardians~~ lawful custodian of the child to be present at the hearing;

(c) the right of the child and his or her counsel or advisor to hear or read a full report of the testimony of witnesses responsible for recommending the proposed action and of any other

material witnesses;

(d) the right of the parties and their counsel or advisor to confront and cross-examine witnesses who appear in person at the hearing, either voluntarily or as a result of the issuance of a subpoena;

~~(d)~~ (e) the right of the child parties to present his--own witnesses in person or their testimony by affidavit, including expert medical, psychological or educational testimony;

~~(e)~~ (f) the right of the child to testify in his or her own behalf and give reasons in opposition to the proposed action;

~~(f)~~ (g) the right of the child parties to have an orderly hearing; and

~~(g)~~ (h) the right of the child to a fair and impartial decision based on substantial evidence; and

(i) the right of the parties to have a record of the hearing made by mechanical or electronic recording or by an official court reporter.

The person or persons who conduct the hearing shall be ~~certificated--employees--but--shall~~ not be the same person or persons responsible for recommending the proposed action upon which said hearing is based and shall not be an employee of the state board or of any board involved in the education of such child.

At a reasonable time prior to the hearing, the ~~parents--or guardians~~ lawful custodian or counsel of the involved child shall be given access to all records, tests, reports or clinical evaluations relating to the proposed action.

Sec. 3. K.S.A. 1976 Supp. 72-974 is hereby amended to read as follows: 72-974. (a) Written notice of the result of any hearing provided for in ~~section 13 of this act~~ K.S.A. 1976 Supp. 72-972, as amended, shall be sent by restricted mail to the affected child, his ~~parents--or--guardians~~ or her lawful custodian or his counsel within twenty-four (24) hours after such result is determined. Such decision shall also be transmitted to the state advisory council for special education. Any child ~~or his parents or guardians~~ or his or her lawful custodian may appeal such deci-

sion to the state board of the school district by filing a written notice of appeal with the clerk of the board commissioner of education not later than ten (10) calendar days after receiving the written notice specified in this section. Any such appeal shall be heard by the state board, or by a hearing officer appointed by ~~such~~ the state board, not later than twenty (20) calendar days after such notice of appeal is filed. The pupil and his ~~parents--or--guardians~~ or her lawful custodian shall be notified in writing of the time and place of the appeal hearing at least five (5) days prior thereto. Such appeal shall be conducted under rules and regulations which ~~are~~ shall be adopted by the state board consonant with ~~section 14 of this act and there shall be made a record of the appeal hearing by mechanical or electronic recording or by an official court reporter~~ K.S.A. 1976 Supp. 72-973, as amended. The state board of education shall render its decision on any such appeal not later than five (5) days after the conclusion of the appeal hearing.

(b) For the purpose of hearing any appeal under this section, the state board of education may appoint one or more hearing officers. Any No such hearing officer shall be ~~a member of the board, an attorney or a certificated employee of the school district but shall not be~~ an employee of the state board or of any board involved in the education of such child nor any person responsible for recommending the proposed action nor any person who conducted the hearing provided for in ~~section 13 of this act~~ K.S.A. 1976 Supp. 72-972, as amended. Any such appointment shall apply to a particular hearing or to a set or class of hearings as specified by the state board in making such appointment. Whenever a hearing officer appointed under authority of this section hears any appeal, he or she shall, after hearing the same, prepare a written report thereon to the state board. After receiving any such report, the state board of education shall determine the appeal with or without additional hearing. Any appeal determined by the state board in accordance with this subsection (b) shall be valid to the same extent as if the matter

were fully heard by the state board without a hearing officer.

Sec. 4. K.S.A. 1976 Supp. 72-975 is hereby amended to read as follows: 72-975. (a) Any person ~~or~~ hearing officer ~~or~~ the board holding a hearing or appeal under this act may administer oaths for the purpose of taking testimony therein.

(b) Any person or hearing officer holding a hearing or appeal under article 9 of chapter 72 of Kansas Statutes Annotated or any party to any such hearing or appeal may request the clerk of the district court to issue subpoenas for the attendance and testimony of witnesses and the production of all relevant records, tests, reports and evaluations in the same manner provided for the issuance of subpoenas in civil actions pursuant to K.S.A. 60-245.

~~(b)~~ (c) The costs of any hearing provided for in ~~section 13 of this act~~ K.S.A. 1976 Supp. 72-972, as amended, or of any appeal under ~~section 15 of this act~~ K.S.A. 1976 Supp. 72-974, as amended, shall be paid by the school district.

~~(c)~~ (d) The determination of any appeal under ~~section 15 of this act~~ K.S.A. 1976 Supp. 72-974, as amended may be appealed to the district court in the manner provided by K. S. A. 60-2101 and acts amendatory thereof and supplemental thereto.

(e) No action described in subsection (a) of K.S.A. 1976 Supp. 72-972, as amended, shall be taken during the pendency of any proceedings conducted pursuant to the provisions of K.S.A. 1976 Supp. 72-972 to 72-975, inclusive, and amendments thereto, except that the proposed action may be taken before all such proceedings have been completed if the lawful custodian of the involved child gives written consent thereto.

Sec. 5. K.S.A. 1976 Supp. 72-972, 72-973, 72-974 and 72-975 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.



ATTACHMENT II
Johnson County Girl's Athletic Association

9236 STURGEON DR. • (913) 888-6531 • LENEXA, KANSAS 66212

ATHLETIC COMMITTEE

NICK ROACH
CHAIRMAN

August 17, 1976

To Whom it May Concern:

The Johnson County Girl's Athletic Association welcomes the opportunity to submit an opinion on several of the Kansas State High School Activities Association Rules and Regulations with which we have had the opportunity to become familiar.

Two Girl Rule.

Basically, this rule states that anytime, during the School Year, more than two girls from the same school participate in any athletic contest, they shall be ineligible for any future athletic competition, representing their school. It is immaterial that the sport in which they may be competing is not being "In-Season" at the time of their participation.

Example: In March of 1976, JCGAA hosted a 16-18 year old Girl's Basketball Tournament, as a division within the overall Tournament, which included 11-12, and 13-15 year old divisions. The 16-18 division was cancelled by our officers, when this rule was called to our attention. Two weeks later, another organization elected to go ahead with their 16-18 division, with teams which consisted of two girls from each of the five Shawnee Mission High Schools, and two Wyandotte County High Schools. These teams played highly talented teams from around the nation, as well as a touring Canadian team. They did not represent the best talent which could have been used, but they were able to compete, through enthusiasm and pride. Had they been able to compete, with their School teams, there is no doubt that they would have better represented their District, State and Nation.

Example: A touring Canadian team will be in the Greater Kansas City area in late August. Basketball players from Kansas will not be able to put their best efforts together, on the court, as a team, because of the rule, even though Basketball season is some three months away.

We suggest that the Two Girl Rule does not, as KSHSAA states, prevent the prolonging of the season in a sport, but rather that it discriminates against those athletes who would enjoy participation, representing their School, State, and Nation, in an athletic event held after School hours, and not on School property, and that, therefore, the potential exists for the Two Girl Rule to be discriminatory, an invasion of privacy, and a denial of a basic right, that of Freedom of Choice.

Awards.

KSHSAA prohibits the presentation of awards to participants in outside programs.

Example: The Kansas City Kings provide low cost items, such as Panty-hose, to women who are selected to shoot for a basket from mid-court and miss the shot. KSHSAA has ruled that the acceptance of these "prizes" is grounds for the removal of ones athletic eligibility.

Example: JCGAA, after much conversation back and forth with Mr. Brice Durbin, withdrew the offer to send a Girl Basketball player to the Ted Owens Girl's Basketball Camp, all expenses paid. The criteria for selection was to be based upon several factors, such as: A 13-15 year old, who had shown improvement during the JCGAA season, and who would probably, (but not contingent upon) would participate for her school, at the High School level, and who would possibly not be able to otherwise attend the Camp.

Anti-Tryout and Competition Rule.

Briefly, this rule prohibits an athlete from trying out or practicing with a team on which he or she participates during the summer months, as long as he or she is a member of the school team. We recognize that the athlete should, first and foremost, represent his or her school in competition during the school year, and therefore should participate in all scheduled practices which may be held during the season. We fail to see, however, any logic to prohibiting the athlete from trying out, or practicing with a team on which he or she may be participating during the Summer months, so long as no conflict exists between the School team, to whom the primary obligation exists, and the Summer team.

In summary, it would appear that the KSHSAA would behoove itself to encourage participation by students in athletics in an era in which many other less healthy endeavors prevail upon the students extra time. Our organization has had the opportunity to provide Softball activities to over 1200 Girls, this past Summer. Last Winter, over 500 Girls participated in our Basketball program. Our organization is not unique. Many other cities in Kansas have similar programs, and more would exist with encouragement from KSHSAA, instead of denial, at every turn, when questions are raised and permissions are sought. Undoubtedly, many organizations, and athletes, violate KSHSAA Rules and Regulations, without knowing it, on an annual basis, when they participate in after school and off-of-school premises activities, such as All-Star Games, Town Team events, etc. Would it not be better to encourage our youth to participate in athletics, improving their skills, and thus affording them the opportunity for a College scholarship and the additional future benefits which would accrue to them, through athletic participation.

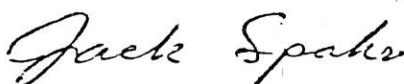
Respectfully Submitted,



Nick Roach, President
JCGAA Board of Governors



Matt Musick, President
JCGAA Board of Directors



Jack Spahr, Vice-President
JCGAA Board of Directors

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BRICE B. DURBIN, EXECUTIVE SECRETARY / Nelson Hartman, Asst. Exec. Secretary / Wanda May Vinson, Keith E. Akins, Francis L. McGinness, Adm. Asst's.

MINUTES OF THE EXECUTIVE BOARD MEETING
AUGUST 16, 1976

The Executive Board met at the KSHSAA office in Topeka on August 16, 1976, with the following in attendance: President Mel Winters; James Irick; James Akers; H. D. Neill; Kenneth Brown; Melvin Crouch; Administrative Assistants Wanda May Vinson and Kaye B. Pearce; Assistant Executive Secretary Designate, Francis L. McGinness; and Executive Secretary Designate, Nelson L. Hartman.

Appeal Board

The Executive Board discussed possible revisions of the Appeal Board which will be submitted to the Legislative Research Department in behalf of the study by the Special Committee on Education of proposal No. 11-Kansas State High School Activities Association. The Executive Board is hopeful this proposal will receive their tentative approval so that it may then be brought to the attention of all member schools at the fall Regional Administrators' Meetings to be held in October. At the conclusion of the fall meetings, the Executive Board will entertain any recommendations for changes, additions, deletions, etc., made by the member schools and the proposal will be referred back to the special study committee for their final action as it relates to statutory changes which they may recommend to the upcoming session of the legislature. The recommendation is as follows:

Section 1. There shall be an appeal provision available to member schools through a hearing procedure implemented through an Appeal Board.

The Appeal Board shall consist of seven (7) members, none of whom shall be members of the Board of Directors. The Appeal Board shall consist of four (4) board of education members and three (3) school superintendents or principals.

Insofar as possible, all classes and geographical areas of the state shall be represented on the Appeal Board.

State-wide elections shall take place in February and March similar but separate from that conducted for positions on the Board of Directors.

The term of office shall begin on April 1 following their election.

A quorum to rule on an appeal shall consist of at least four (4) members.

EXECUTIVE BOARD: President--Charles G. Wolfe, Bucklin/Vice-President--James Irick, Baldwin City/Sec.--Charles Schooler, Eureka Junior High/

H.D. Neill, Kansas City-Washington/John Bottom, Beloit/James Akers, Madison/M.L. Winters, Olathe/Charles Watkins, Anthony--Harper-Chaparral

(over)

Section 2. All members shall be elected for a term of two (2) years. (Exception: Initially it will be necessary to elect three (3) of the seven (7) members to a one-year term to insure carry-over.) Vacancies on the Appeal Board shall be filled by appointment by the Executive Board until the next possible election, when the appointee shall be replaced or confirmed by regular election.

Section 3. No member of the Appeal Board shall be permitted to take part in the hearing of an appeal which involves the school he is representing, except that he may be present as a plaintiff or defendant. He shall not be granted any privileges not accorded others in appeal hearings and he shall not vote on the final consideration.

Section 4. The Appeal Board is authorized to hear and make final decisions on specific individual complaints based upon rules, regulations, and policies of the KSHSAA as interpreted by the Executive Board or employees of the Association.

Section 5. The Appeal Board may hear appeals of decisions of the Board of Directors and may sustain the decision or recommend to the Board of Directors the reconsideration of any such decisions with direction.

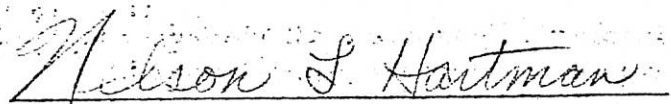
Section 6. All Appeal Board meetings will be conducted as "open meetings." Executive sessions may be requested by the appellant when they feel it is in their best interest.

Superintendent Don Musick of Mullinville Resigns

Superintendent Don Musick of Mullinville submitted a letter of resignation as a member of the Board of Directors and Executive Board. He cited ill health due to back surgery as the reason for this decision.

The Executive Board accepted his resignation with regrets and wished him well.

Meeting adjourned at 2 p. m.


Nelson L. Hartman
Executive Secretary Designate