

Approved March 17, 1992
Date

MINUTES OF THE SENATE COMMITTEE ON EDUCATION

The meeting was called to order by CHAIRMAN JOSEPH C. HARDER at
Chairperson

1:30 ~~x.m.~~/p.m. on Wednesday, March 4, 1992 in room 123-S of the Capitol.

All members were present except:

Committee staff present:

Mr. Ben Barrett, Legislative Research Department
Ms. Avis Swartzman, Revisor of Statutes
Mr. Dale Dennis, Assistant Commissioner of Education
Mrs. Millie Randell, Committee Secretary

Conferees appearing before the committee:

SB 523 - Special education services for exceptional children, provision
by school districts of nonresidence of certain children.

Proponents:

Mr. Rod Bieker, Director of Legal Services, State Board of Education
Ms. Pat Baker, Associate Executive Director, General Counsel, Kansas
Association of School Boards
Ms. Joan Strickler, Executive Director, Kansas Advocacy and Protective
Services, Inc.
Mr. Gerald W. Henderson, Executive Director, United School Administrators
of Kansas

After calling the meeting to order, Chairman Joseph C. Harder announced that the Committee hearing today is on SB 523, relating to special education services for exceptional children. He recognized Mr. Rod Bieker, Director of Legal Services, State Board of Education.

Mr. Bieker informed members that the State Board's request for introduction of SB 523 was to ensure state compliance with federal special education law. The state, he pointed out, is responsible for assuring that the requirements of federal law are met by providing special education to children so designated not only in schools but, also, "in hospitals, institutions, and other settings". He related that the State Department of Education has become aware of instances wherein such services have not been provided, and this makes the state liable. (Attachment 1)

Violation is caused, Mr. Bieker explained, when neither the home district nor the receiving district which has a facility for providing the special education services will assume the cost for those special education services. Mr. Bieker stated that SB 523 is intended to assure that the cost of providing special education services for a child placed in a care facility in another school district would be assumed by the district of residence of the student wherein the parents are paying taxes.

Mr. Bieker cited some examples of placement facilities: hospitals, care treatment facilities, and group boarding homes. He described a situation whereby the parents of a drug-addicted child might place the child in a treatment facility located in another school district, and the child, additionally, is a special needs child. He said the question of responsibility for paying the costs of special education services for the child then arises.

Mr. Bieker explained that SB 523 would not apply to cases in which a child is placed by SRS or the courts, because other statutes address this issue.

When Ms. Pat Baker, General Counsel, Kansas Association of School Boards, spoke in support of SB 523, she stated that although KASB agrees with the

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room 123-S, Statehouse, at 1:30 ~~xxx~~ a.m./p.m. on Wednesday, March 4, 1992

intent of the State Board to bring Kansas law into compliance with federal law, the bill may well create other problems by allowing too much freedom for parents in placing their child in a school district other than one in which they reside.

Ms. Baker proposed amending SB 523 so as to tighten the parameters of the bill. (Attachment 2) Ms. Baker also proposed amending SB 523 by using language from the divorce statutes to designate who has lawful custody of such a child. Another suggested proposal by Ms. Baker was to retain the language, beginning on the third page of the balloon, commencing with "Each such contract" on line 35, and ending with "in accordance with the state plan". on line 4. (preceding Sec. 2. on line 5)

Ms. Baker called Committee attention to HB 3076, which, she explained, is in the House Education Committee and seeks to change the definition of a "person acting as a parent" for both special education and regular education students. KASB, she said, agrees that clarification of terminology is needed.

Ms. Baker related that House Education Committee Chairman Rick Bowden has concurred with the proposed recommendations made by KASB and is agreeable, also, to amending HB 3076 into SB 523 for the purpose of eliminating conflicting definitions of terminology relating to resident, parent, or person acting as a parent, as well as to ensure compliance with federal law as proposed in SB 523.

Ms. Baker requested permission to work with legislative staff so as to best utilize the language in both SB 523 and HB 3076 to ensure that no child is denied educational service because of disagreement of residence.

Mr. Rod Bieker indicated that the amendments being proposed by Ms. Baker should not pose any adverse effect on the intent of SB 523, and he concurred with the amendments. Mr. Bieker said that although the law would apply to gifted children, he pointed out that the home school district must give its approval of the placement procedure, and he did not anticipate many, if any, abuses.

Responding to a question, Ms. Baker explained that HB 3076 was recommended by the court education SRS liaison committee to ensure that children who are in a non-traditional living environment could not be denied services.

The Chair recognized Ms. Joan Strickler, Executive Director, Kansas Advocacy and Protective Services, Inc. Ms. Strickler described her organization as a private, non-profit corporation created specifically to assist disabled children and adults in gaining access to the rights and services to which they are entitled. Ms. Strickler recalled problems similar to those which had been described by previous conferees. (Attachment 3) Ms. Strickler stated that her organization is not concerned with how the issue is resolved but, rather, that it is resolved. She said she would agree to the amendments proposed by the Kansas Association of School Boards.

Mr. Gerald Henderson, Executive Director, United School Administrators of Kansas, acknowledged that his organization does not know if the receiving district is required to take such a student. He stated that defining terminology in both SB 523 and HB 3076 is a concern that should be addressed. He concurred that HB 3076 and SB 523 should be combined into one bill, and he stated support for the amendments proposed by Ms. Baker.

Following a call for additional conferees, the Chair announced that the hearing on SB 523 is concluded. Because of various concerns expressed by the Committee and due to the legislative deadline for working bills in the house of origin, the Chair requested Committee approval to refer SB 523 to the Ways and Means Committee for rereferral to the Education

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Committee for its consideration at a later time. The Committee concurred with the Chairman's request.

The Chair appointed a subcommittee consisting of Senator Frahm and Senator Parrish to research the concerns expressed by the Committee for clarification at a later time.

The Chair announced that the meeting tomorrow will commence at 1 p.m. in order to allow time for discussion and possible action on Senate Bills 747 and 730 preceding the regularly scheduled hearing on SB 633.

The Chair thanked the conferees for their testimony and adjourned the meeting.

SENATE EDUCATION COMMITTEE

TIME: 1:30 p.m. PLACE: 123-S DATE: Wednesday, March 4, 1992

GUEST LIST

<u>NAME</u>	<u>ADDRESS</u>	<u>ORGANIZATION</u>	<u>Page</u>
Elizabeth Jankowski	2501 W. 121 st	Leawood Middle School	
Erika Wetzler	3000 W. 121 st	Leawood Middle School	↙
Craig Grant	Topeka	HNEA	
Kay Gles	Topeka	KNEA	
Paul Allen	Wellsville	BOE. #289	
Hershel Bee	Wellsville		
Gerald Henderson	Topeka	USA of KS	
Wm. Yoder	Topeka	D. Kern	
Kenn Gardner	Governor		
Josie Torres	1904 mod 1023 Gage	Families Together	
Jim Edwards	TOPEKA	SEKESC	
Gary Condra	2204 Crossgate Dr. Lawrence	self	
Donna Dittmore	Atchison	A.A.U.W.	
Cecilia Timberlake	Atchison, KS 66002	A.A.U.W.	
Barbara Symons	Atchison, Kans. 66002	A.A.U.W.	
Mary Anne Powell	Salina KS	EW-Salina	
Jacque Oates	Topeka	SQE	
Mark Tallman	Topeka	KASB	
Pat Baker	Topeka	KASB	
Cindy Kelly	Topeka	KASB	
Joan Strubbe	Manhattan	KAPS	
Chas Burnett	Topeka	USD 501#	
Nancy P Green	Topeka	KSBE	
Connie Huesel	Topeka	S+B of 10	

SENATE EDUCATION COMMITTEE

TIME: 1:30 p.m. PLACE: 123-S DATE: Wednesday, March 4, 1992

GUEST LIST

<u>NAME</u>	<u>ADDRESS</u>	<u>ORGANIZATION</u>
Bill M. ...	MINNEAPOLIS	ST BLD Ed
Betty Withers	Topeka	St Bld Ed
Deane Cpt	Topeka	U.S.A. #500
Edith Steichen	Manhattan	Doctoral Practicum/KSL
Matt Truell	Topeka	AP
Marynie ...	Salina	LWL
Doug Bowman	Topeka	Ch. Idres & Youth Advisory Comm.
Fris Starns	Winona	AAUW
Kris Weinland	Winona	AAUW quest
Gudi Wright	Winona	AAUW quest

Kansas State Board of Education

120 S.E. 10th Avenue, Topeka, Kansas 66612-1182

March 4, 1992

TO: Senate Education Committee
FROM: State Board of Education
SUBJECT: 1992 Senate Bill 523

My name is Rod Bieker, Director of Legal Services for the State Board of Education. It is a pleasure for me to appear before this Committee on behalf of the State Board.

Senate Bill 523 was requested to ensure that the state was in compliance with federal special education law, the Individuals With Disabilities Education Act (IDEA). Under the federal law, the state is responsible for assuring that the requirements of the federal law are met and each child with a disability is provided a free, appropriate public education. If this responsibility is not fulfilled, the state, as well as the local school district, can be sued and there is no immunity.

When Congress reauthorized the federal special education law, it specifically added language to ensure that special education was provided to children, not only in schools, but also "in hospitals and institutions and in other settings". We, in the Department of Education, have been made aware of instances when identified special education students have ceased being provided services when they are admitted to a care facility or other institution. Such activity puts the state in violation of the federal law.

In those situations, neither the district of residence of the student nor the district in which the care facility is located have wanted to assume the responsibility for providing the services to which the child is entitled. The state cannot allow this to occur, since it is the state that is responsible for the provision of special education services. Under Senate Bill 523, the school district of residence of a child with a disability would remain responsible for paying for the services needed by the child; however, if the child were moved to the care facility in another school district, that school district would be required to actually provide the services for the child if the school district of residence requested that special education services be provided to the child. This would be accomplished under an agreement entered into by the two local school districts.

In short, federal law requires that children with disabilities be provided special education services. This is the state's responsibility. Senate Bill 523 helps to ensure that the state is in compliance with the federal law. Therefore, we request your favorable recommendation on this bill.

Dale M. Dennis
Deputy Assistant Commissioner
Division of Fiscal Services and Quality Control
(913) 296-3871

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**Testimony on S.B. 523
before the
Senate Committee on Education**

by

**Patricia E. Baker
Associate Executive Director/General Counsel
Kansas Association of School Boards**

March 4, 1992

Mr. Chairman, Committee members, thank you for the opportunity to appear in support of Senate Bill 523. We understand the concerns of the State Department of Education in requesting this bill. No child should be denied special education services because of disagreement over where the child "resides." There has been good faith disagreement between districts as to the responsibility for provision of services.

I would like to call the committee's attention to another bill, House Bill 3076 which is in the House Education Committee. That bill would change the definition of "person acting as a parent" for determining the residency of a child both for special education and regular education. We believe the provisions of both bills should be considered jointly to avoid any possible conflict in the provisions.

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We are also concerned that the language, not the concept, of S.B. 523 may lead to unintended results. The purpose of S.B. 523 is to ensure that children who are placed outside the home will not be denied services. The language may, however, easily be interpreted to mean that parents may select the site of schooling and upon request of the parent's home district, the receiving district will provide the services. Example: I may choose to send my child to Wichita for special ed services (including Gifted) and if my home school district so requests, then USD 259 will provide the services. We don't think that was the intent of the legislation.

I have proposed suggested amendments to the bill to address the concerns of the Department and have included the provisions of H.B. 3076, with amendments to that bill. We ask that you give favorable consideration to S.B. 523 with amendments.

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SENATE BILL No. 523

By Committee on Education

1-23

8 AN ACT concerning special education services for exceptional chil-
9 dren; relating to the provision thereof by school districts other
10 than school districts of residence of certain children; amending
11 K.S.A. 1991 Supp. 72-966 and repealing the existing section.

Note: Italics are from H.B. 3076.
Underscored language is proposed as amendment to H.B. 3076.

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

Section 1. K.S.A. 1991 Supp. 72-962 is hereby amended to read as follows: 72-962. As used in this act:

- (a) "School district" means any public school district.
- (b) "Board" means the board of education of any school district.
- (c) "State board" means the state board of education.
- (d) "Department" means the state department of education.
- (e) "State institution" means Topeka state hospital, Osawatomie state hospital, Rainbow mental health facility, Larned state hospital, Parsons state hospital and training center, Norton state hospital, Winfield state hospital and training center, Kansas neurological institute and any state youth center as defined by K.S.A. 38-1602, and amendments thereto.
- (f) "Exceptional children" means persons who: (1) Are school age, to be determined in accordance with rules and regulations adopted by the state board, which age may differ from the ages of children required to attend school under the provisions of K.S.A. 72-1111, and amendments thereto; and (2) differ in physical, mental, social, emotional or educational characteristics to the extent that special education services are necessary to enable them to progress toward the maximum of their abilities or capacities.
- (g) "Gifted children" means exceptional children who are determined to be within the gifted category of exceptionality as such category is defined in the state plan.
- (h) "Special education services" means programs for which specialized training, instruction, programming techniques, facilities and equipment may be needed for the education of exceptional children.
- (i) "Special teacher" means a person employed by a school district or a state institution for special education services who is: (1) A teacher qualified to instruct exceptional children as determined by

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standards established by the state board and who is so certified by the state board; or (2) a paraprofessional qualified to assist certificated teachers in the instruction of exceptional children as determined by standards established by the state board and who is so approved by the state board.

(j) "State plan" means the state plan for special education services authorized by this act.

(k) "Agency" means boards and the secretary of social and rehabilitation services.

(l) "Lawful custodian" means a parent or a person acting as parent. If none of the above is known or can be found, an agency shall cause proper proceedings to be instituted pursuant to the Kansas code for care of children to determine whether a child is a child in need of care. For a child whose custodian is the secretary of social and rehabilitation services, the term lawful custodian means the secretary except, when used in K.S.A. 72-972 through 72-975, and amendments to such sections, the term means an education advocate.

(m) "Parent" means a natural parent, an adoptive parent, or a stepparent.

(n) "Person acting as parent" means: (1) ~~A person, other than a parent, who has physical or legal custody of a child, or is guardian or conservator; or (2) a person, other than a parent, who is liable by law liable to maintain, care for, or support the child, or is contributing the major portion of the cost of support of the child, or who has physical custody of the child with the written consent of a person who has legal custody of the child, or who has been granted custody of the child by a court of competent jurisdiction.~~

. . . and lawful custody of a child and is contributing the major support of the child or has physical custody . . .

(o) "Physical custody" means providing a permanent home where the child resides and providing supervision of the child.

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

~~Section 1.~~ K.S.A. 1991 Supp. 72-966 is hereby amended to read as follows: 72-966. (a) The board of education of every school district shall provide special education services for all exceptional children who reside in are residents of the school district, ~~Special education services required by this subsection shall meet standards and eriteria set by the state board. The manner and time for implementation in school districts of special education services designed for each of the various categories of exceptionality shall be designated by the state board in accordance with the state plan.~~

Section 2.

as defined in K.S.A. 72-962.

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4 ~~(b) The board of education of every school district shall provide~~
 25 ~~special education services for each exceptional child who is not a~~
 26 ~~resident of the school district if the child lives in the school district~~
 27 ~~as a result of placement therein by a parent or person acting as~~
 28 ~~parent of the child and the school district of which the child is a~~
 29 ~~resident requests the provision of special education services for the~~
 30 ~~child by the school district in which the child is living. Special~~
 31 ~~education services required by this subsection shall be provided~~
 32 ~~pursuant to and in accordance with a contract which shall be entered~~
 33 ~~into between the board of education of the school district of which~~
 34 ~~the child is a resident and the board of education of the school~~
 35 ~~district in which the child is living. Each such contract shall be~~
 36 ~~subject to the provisions of subsection (a)(3) and subsection (c) of~~
 37 ~~K.S.A. 72-967, and amendments thereto. Nothing in this subsection~~
 38 ~~shall be construed to limit or supersede or in any manner affect or~~
 39 ~~diminish the requirements of compliance by each school district with~~
 40 ~~the provisions of subsection (a), but shall operate as a comity of~~
 41 ~~school districts in assuring the provision of special education services~~
 42 ~~for each exceptional child in the state.~~
 43 ~~(c) Special education services required by this section shall meet~~

(b) When an exceptional child is admitted to a hospital, treatment center, or other health care institution, or to a group boarding home or other care facility, and the institution or facility is located outside the school district in which the child resides, the district in which the institution or facility is located must contract with the district in which the parents or person acting as a parent of the child reside, to provide special education or related services, if such services are necessary for the child.

Note: The following are proposed amendments to H.B. 3076.

SB 523

1 ~~standards and criteria set by the state board. The manner and time~~
 2 ~~for implementation in school districts of special education services~~
 3 ~~designed for each of the various categories of exceptionality shall be~~
 4 ~~designated by the state board in accordance with the state plan~~
 5 ~~Sec. 2. K.S.A. 1991 Supp. 72-966 is hereby repealed.~~
 6 ~~Sec. 3. This act shall take effect and be in force from and after~~
 7 ~~its publication in the statute book.~~

Sec. 3. K.S.A. 1991 Supp. 72-1046 is hereby amended to read as follows: 72-1046. (a) Any child who has attained the age of eligibility for school attendance may attend school in the district in which the child lives if (1) the child lives with a resident of the district and the resident is the parent, or a person acting as parent, of the child; or (2) subject to the provisions of subsection (c), the child lives in the district as a result of placement therein by a district court or by the secretary of social and rehabilitation services; or (3) the child is a homeless child.

(b) Any child who has attained the age of eligibility for school attendance may attend school in a school district in which the child is not a resident if the school district in which the child resides has entered into an agreement with such other school district in accordance with and under authority of K.S.A. 72-8233, and amendments thereto.

(c) Any child who has attained the age of eligibility for school attendance and who lives at the Judge James V. Riddel Boys Ranch as a result of placement at such ranch by a district court or by the secretary of social and rehabilitation services shall be deemed a resident of unified school district No. 259, Sedgwick county, Kansas, and any such child may attend school which shall be maintained for such child by the board of education of such school district as in the case of a child who is a bona fide resident of the district.

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(d) As used in this section:

(1) "Parent" means and includes natural parents, adoptive parents, stepparents, and foster parents;

(2) "person acting as parent" means (A) a guardian or conservator, or (B) a person, other than a parent, who is liable by law to maintain, care for, or support the child, or who has physical custody of the child and lawful custody of a child and is contributing the major support of the child or has physical custody with the written consent of a person who has legal custody of the child, or who has been granted custody of the child by a court of competent jurisdiction; and

(3) "Physical custody" means providing a permanent home where the child resides and providing supervision of the child.

(4) "homeless child" means a child who lacks a fixed, regular, and adequate nighttime residence and whose primary nighttime residence is (A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill), or (B) an institution that provides a temporary residence for individuals intended to be institutionalized; or (C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

New Sec. "4".

Kansas Advocacy & Protective Services, Inc.



513 Leavenworth, Manhattan, KS 66502 (913) 776-1541, FAX (913) 776-5783

Kansas City Area
6700 Squibb Rd.
Suite 104
Mission, KS 66202
(913) 236-5207

Wichita Area
255 N. Hydraulic
Wichita, KS 67214
(316) 269-2525

TO: The Senate Committee on Education
Senator Joseph Harder, Chairperson

FROM: Kansas Advocacy and Protective Services, Inc.
Joan Strickler, Executive Director

DATE: March 4, 1992

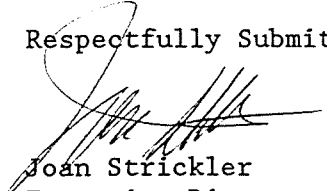
RE: S.B. 523

KAPS assists disabled children and adults in gaining access to the rights and services to which they are entitled. We fulfill the protection and advocacy requirements of P.L. 94-103, as amended, the Developmental Disabilities Act; and P.L. 99-319, as amended, the Protection and Advocacy for Mentally Ill Individuals Act. We also administer the Kansas Guardianship Program for the State. KAPS is a private, non-profit corporation, created specifically to fulfill these roles in Kansas.

Our staff has been very much involved in working with families and schools when problems and disagreements arise regarding special education matters. We have become increasingly concerned about a problem that occurs when a special education student is placed in a treatment and/or training facility in a location other than that served by the local school district in which the family resides. For instance, a 16 or 17 year old student with mental retardation and behavioral problems may be placed in a long term nursing facility or mental retardation center residential program but still be entitled to receive special education services. When this occurs, disagreements have arisen as to which school district, the one in which the parent lives or that in which the student lives, is financially responsible for the services.

We would hope that the issue of special education students placed in treatment and/or training facilities can be resolved. It is our understanding that S.B. 523 is intended to accomplish this.

Respectfully Submitted,


Joan Strickler
Executive Director

JS:jag

KAPS has been charged with developing systems of advocacy and protective services in Kansas relevant to the provisions of Sec. 113 of P.L. 94-103, as amended; the Developmental Disabilities Services and Facilities Construction Act, and P.L. 99-319, the Protection and Advocacy for Mentally Ill Individuals Act.

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