

Approved: March 21, 1996
Date

MINUTES OF THE SENATE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Barbara Lawrence at 1:30 p.m. on January 30, 1996 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Ben Barrett, Legislative Research Department
Avis Swartzman, Revisor of Statutes
Jennifer Bishop, Committee Secretary

Conferees appearing before the committee: Gerry Henderson, USA
Sherry Diel, KAPS

Others attending: See attached list

Senator Lawrence postpones the hearing on **SB 526** for Wednesday, February 7, 1996.

Senator Emert introduced two gentlemen from Kenya Parliament who were present to observe the committees techniques. They were Hon. Farah Maalim and James Orengo.

SB 482: Schools relating to policies requiring expulsion of pupils for possession of weapons

Sherry Diel appeared before the committee on concerns regarding **SB 482**. She stated that KAPS staff supports a "gun-free" school. KAPS staff does not oppose **SB 482**, however, if the bill would be recommended by the committee for passage, KAPS staff believed that the committee should consider KAPS comments and recommendations regarding the bill (Attachment 1).

Gerry Henderson stated that U.S.A. supports the language of **SB 482** which adds some needed flexibility to the section of the statutes dealing with who may conduct hearings for pupils required to be expelled for possession of weapons. The potential conflicts between what U.S.A's members are required or are able to do with special education students who come in conflict with this law will perhaps be lessened if the IEP committee is involved in the process (Attachment 2).

Mark Tallman provided documentation responding to questions asked by the committee, January 23, regarding specific examples of expulsion for weapons violations (Attachment 3).

The committee held further discussion regarding several conflicting issues relating with the bill.

Senator Lawrence made a motion to amend **SB 482** to a case-by-case basis from kindergarten to 4th grade and zero tolerance for 5th grades on up. Senator Oleen seconded the motion. No action was taken.

The meeting adjourned at 2:30 p.m.

The next meeting is scheduled for February 1, 1996.

SENATE EDUCATION COMMITTEE GUEST LIST

DATE: January 30, 1996

NAME	REPRESENTING
Ken Baker	4th Enrollment USD's
Mark Tallman	KASB
Maurice Weiss	KASB
Kristen Hays	Cap Journal
Josie Torres	Families Together, Inc.
Amy Trcega	Sen. Majority Leader
Jim Yercally	USD #512
Sherry Diehl	KAPS
Hon. FARAH MAAJIM	MP, KENYA NATIONAL ASSEMBLY
JAMES ORENKO	MP, PARLIAMENT, KENYA
Rosilyn James-Martin	SRS-Children & Family Services
Oran Burnett	USD 301#
Kathie Sparks	DOR
Diane Gjerstad	USD 259
Jim Barrett	ESD #466 Scott City
Jacque Oakes	SQE
Bob Elliott	White Federation of Teachers
Nerise Dept	USA / KACC
Kevin Lowrey	KASB

Gerald Andersen
 Jan McLanahan
 Merle Hee
 Susan Hobbs
 NEIL ANDERSEN

USA of KS
 BCK-SEC # 615
 KACC
 Emporia State University AS6
 EMPORIA STATE UNIVERSITY

(over)

~~Ellen~~ Schmitt
Rosie Cooper
Sarah Adams
Sue Chase

Emporia State University - ASG
Keys For Networking
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KNEA

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MEMO TO: Senate Committee on Education
FROM: Kansas Advocacy & Protective Services, Inc.
DATE: January 24, 1996
RE: Staff Report on SB 482--Expulsion of Pupils for Possession of Weapons

Kansas Advocacy & Protective Services, Inc. (KAPS) is a federally funded non-profit corporation which advocates for the rights of Kansans with disabilities. KAPS administers four programs: (1) Protection & Advocacy for Individuals with Developmental Disabilities (PADD); (2) Protection & Advocacy for Individuals with Mental Illness (PAIMI); (3) Protection & Advocacy for Individual Rights; and (4) Protection & Advocacy for Assistive Technology (PAAT).

The PADD Program has dedicated two attorney advocates to special education issues for the last ten years. Therefore, KAPS staff has experience working with children with mental illness and severe behavior disorders.

First and foremost, KAPS staff supports a "guns free" school. KAPS staff does not oppose SB 482, however, if the bill is recommended by the Committee on Education for passage, KAPS staff believes that the Committee should consider the following comments and recommendations:

1) Page 2, line 35--KAPS staff recommends that the word "shall" be substituted for the word "may". Current law states that a hearing "shall be conducted . . ." Substitution of the word "may" could easily be interpreted to mean the hearing is discretionary. It is our understanding that the proposed revision was only intended to expand who could hear the case beyond the chief administrative officer. Kansas law must provide adequate procedural protections for children facing expulsion; particularly in light of the fact, that these students generally lose approximately 1 1/2 years of their education. Therefore, KAPS staff believes that the language must be clear to require a hearing in every instance.

2) Page 2, line 42-43--KAPS staff recommends that the wording be changed to read: "may modify the expulsion requirement only in a manner which is consistent with the requirements of federal law". The federal Gun-Free Schools Act provides that the chief administrative officer may modify the expulsion requirement on a case-by-case basis. For state law purposes, KAPS staff believes that SB 482 would be subject to less

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ATTACHMENT 1

misinterpretation if it was made clear that if the chief administrative officer modifies the expulsion requirement, they can do so only in a manner which is consistent with federal law.

3) Page 2, lines 42-43--KAPS staff recommends the addition of the wording "on a case-by-case basis" after the words "expulsion requirement". It is our understanding that the intent of SB 482 is to allow for modification of the expulsion requirement for all students on a case-by-case basis, rather than the modification requirement only applying to children with disabilities. The rationale being that "bad intent" is not present in every circumstance, e.g. the child who shares a locker with another student who brings the gun to school did nothing wrong, but is technically in possession of a weapon on school property. Addition of the suggested wording allows for flexibility, but still ties the modification to consistency with federal law.

4) As the Revisor and the conferee from the Kansas Association for School Boards brought to your attention, SB 496 is quite similar to SB 482. KAPS staff have reviewed both bills and feel that SB 482 is more appropriate in that it includes in the definition of "federal law" the Guns-Free Schools Act of 1994; and it allows for modification of the expulsion requirement which appears to be required by federal law.

We thank you for the opportunity to present our written testimony on this subject. If any of the members have any questions of our staff, please do not hesitate to contact our office.



SB 482

Testimony presented before the Senate Committee on Education
by Gerald W. Henderson, Executive Director
United School Administrators of Kansas
January 22, 1996

Madam Chairman and Members of the Committee:

United School Administrators of Kansas supports the language of **SB 482** which adds some needed flexibility to the section of the statutes dealing with who may conduct hearings for pupils required to expelled for possession of weapons. The potential conflicts between what my members are required or are able to do with special education students who come in conflict with this law will perhaps be lessened if the IEP committee is involved in the process.

I will be happy to stand for questions.

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SP 842

TO: Senate Education Committee
FROM: Mark Tallman, Director of Governmental Relations
DATE: January 26, 1996
RE: Gun Free Schools - Student Expulsion for One Year

Dear Senator:

In response to questions from the committee last week regarding specific examples of expulsion for weapons violations, our legal staff has prepared the attached brief on specific cases they have been involved with or followed closely.

We have only anecdotal information about the number of such cases in the state over the past several years. Because the federal mandate has only been in effect for about a year and half as a federal law and for half a year as a state law, complete records are probably not available. The State Board of Education should be compiling this information as soon as possible.

We would stress that if the Kansas law is found to be out of compliance with the federal law, schools in our state could lose millions of dollars in federal aid. In addition, local school districts face additional legal challenges and costs.

Thank you for your consideration.

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ATTACHMENT 3

EXPULSION FOR POSSESSION OF WEAPONS

SPECIFIC CASE EXAMPLES

Rural School District - South central Kansas

Three students (two boys and one girl) were expelled for possession of pepper gas and involvement in planning to set it off at the high school with intent of getting out of school for a day. One student also made a telephone bomb threat to the high school during the noon hour. The student who made the bomb threat gave the canister of pepper gas to his girlfriend who was an honor roll student and she was caught in possession of it on school property.

Two of the three students appealed the expulsions to the Board of Education. The Board of Education upheld the expulsions but modified the one-year time limit to allow the students to return in January of 1996 if they complete 120 hours of community service, plus attended counseling, to be paid by their parents. One of the three students was 16 and quit school before he received his notice of expulsion. The two expelled students appealed the Board's decision and on appeal to the district court one judge upheld the expulsion in one case and in the other case the judge granted a temporary injunction and required the student to be enrolled at school. That case was settled. The district incurred legal fees in excess of \$10,000. The court expressed its dislike for the mandatory expulsion law.

U.S.D. 321 - Kaw Valley

An 8th grade student was expelled for one year for bringing an unloaded gun to school in a book bag. During the testimony he stated he was returning it to another student who had brought it over to the expelled student's house and hid it under the expelled student's bed. The 8th grader exercised poor judgment and the parents argued for a reduction in the terms of the expulsion. The 8th grader had been a good student prior to this incident and had no history of violent acts. The principal testified the mother had been very supportive and showed an interest in her son's school work and behavior. The school board upheld the one-year expulsion.

Rural School District - Southeast Kansas

A seventh grader was expelled for bringing an unloaded .22 handgun to school. The student testified he brought it to school to deliver it to another student. The expelled student was transporting it from seller to buyer. The expelled student had no prior history of violent behavior problems and his parents had recently gone through a bitter divorce. On appeal to the Board of Education, the board affirmed the 186 day expulsion. The student's attorney filed a motion in District Court for an injunction to allow the student to go to summer school. The court granted the injunction and allowed the student to go to summer school. The court continued the hearing for the permanent injunction requesting the school district to provide its plan for alternative education. The court expressed its dislike for the mandatory expulsion law. This case was settled when another district agreed to accept the student.

The attached article from Douglas Bates accurately reflects the fact situations large and small districts in Kansas have experienced. Mr. Bates also stated that when all students are attending school in Utah the felony/burglary crime rate drops by 50%.

Kansas law contains specific procedural due process requirements which must be afforded to students in an expulsion hearing. Without the case-by-case exception amendment, an attorney for a student could challenge the Kansas expulsion statute as violating the student's existing due process rights under K.S.A. 72-8903(a) and challenge whether Kansas law even complies with the federal law, since it allows a case-by-case exception for special education students but not for regular education students.

GUN FREE SCHOOLS

NOLPE, NOVEMBER 17-19 1995
SATURDAY, NOVEMBER 18, 1995
1:00 p.m.-1:45 p.m.

Douglas F. Bates, Ph.D., J.D.; Utah State Office of Education

One thing that appears to be growing faster than actual incidents of violence in the United States, and particularly in the schools, is the body of laws and rules intended to make schools safe from gang and drug-related violence. The 1994 election year saw the enactment of a school district-based gun-free schools provision, as part of Goals 2000; a requirement for legislative enactments which passed later that year as part of the IASA; and finally an Executive Order announced by President Clinton during a campaign speech in Los Angeles. Congress is promising even tougher new amendments.

Every state must now enact a law requiring a one-year expulsion of students who possess guns at school. In reaffirmation of the creativity of the human mind, students who feel the need to have guns have quickly found ways to circumvent the rules--many gang leaders no longer carry their own guns; they recruit girls, "wannabes," and even children with disabilities to carry the weapons but remain close so that the gun owner always has easy access to the gun but not actual possession.

This session will look at some of the problems (and some tentative solutions) that have developed around gun-free school laws, including loopholes and the question of what one should do with a student after suspension or expulsion--one should not forget that the U.S. Supreme Court said in Wisconsin v Yoder that compulsory education was permissible because there is a compelling state interest in ensuring that children are prepared to function as good citizens and be self-sufficient. It hardly makes sense to say that those most in need of citizenship and self-sufficiency training are not eligible to attend school, while those who are good citizens remain subject to compulsory education.

Jefferson's statement that if we expect to be both ignorant and free we expect what never was and never will be is as true today as ever, and recent efforts to increase rates of suspension and expulsion without making adequate provisions to ensure that education continues--in other words, that students are not released from educational programs, but to educational programs--appear to be taking the nation down the road to a tragic dead-end. X