

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 February 23, 1996 in Room 526-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: Representative Tom Powell
Mark Tallman, KASB
Jay Fowler, Representing Michael Fowler
Bob Voboril, Superintendent Wichita Diocese
Josie Torrez, Family's Together
Sherry Diel, KAPS
Wayne Mnich, Kansas Commission for Deaf and Hard of Hearing

Others attending: See attached list

SB 636: Pupils of private, nonprofit elementary or secondary schools relating to the provision of auxiliary school services thereto by school districts

Representative Tom Powell addressed the committee as a proponent of **SB 636**. He stated that **SB 636** clarifies that school districts are not required to provide Auxiliary School Services on the premises of a private school. The enactment of **SB 636** will not prevent school districts from providing auxiliary school services on the premises of private schools if the school district decided that such services should be provided. Section 2 of **SB 636** specifically provides that a school district may provide auxiliary services on the premises of a private school. **SB 636** will not be in conflict with the federal law if the Tenth Circuit Court of Appeals rules that school districts in Kansas, under federal law, must provide related services on the premises of private schools. **SB 636** will, if enacted, assure that school districts in Kansas are not obligated to provide related services that exceed what is required by federal law, i.e., the unfunded mandate to provide such services will be caused by the federal government, not the state government. Unified school districts request that **SB 636** be passed to clarify that school districts' obligations to provide auxiliary services on the premises of private schools does not exceed what is required under federal law to avoid an unfunded Mandate being imposed by state law (Attachment 1).

Mark Tallman addressed the committee as a proponent of **SB 636**. KASB believes that this bill represents one of the relatively few ways the State of Kansas could help contain the exploding costs of special education to school districts. Passage of this legislation may limit some services desired by the families of students attending private schools. But it will not change the requirement of districts to provide a free, appropriate education under the federal law (Attachment 2).

Jay Fowler addressed the committee as an opponent of **SB 636**. Mr. Fowler is the father of Michael Fowler, who is a profoundly deaf ten year old child. **SB 636** directly affects Michael and was initially filed at the request of USD 259 in direct response to an educational due process proceeding involving him. Michael currently attends fourth grade at Wichita Collegiate School, which is a private school located in Wichita, Kansas. Michael requires an interpreter in order to be successful in his education. Interpretive service is an auxiliary or related service under the special education statute, and is the service that the school district wants to eliminate by obtaining a modification in current law, using the amendment proposed in **SB 636**. There is no evidence that the current auxiliary services statute imposes a significant financial burden on school districts for special education services provided to private school students. For this reason, it is asked that the

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON EDUCATION, Room 526-s Statehouse, at 1:30 p.m. on February 23, 1996.

committee not pass **SB 636**, for the sake of Michael and thousands of other children in need of auxiliary services.

Bob Voboril addressed the committee as an opponent of **SB 636**. He stated that this bill creates many more problems than the one problem it solves. To settle one dispute, this proposal would allow the public school to take away from 30,000 private school children the right to be enrolled in the school they want and continue to receive a whole range of services from speech therapy to learning disability diagnosis. **SB 636** attempts to establish as law a presumption that parents enroll their children in private schools "despite the availability of a free and appropriate public education" (**Attachment3**).

Josie Torrez addressed the committee as an opponent of **SB 636**. She stated that Families Together supports parent choice and strongly supports the current law. The amendments in **SB 636** would modify the law to reverse Judge Saffel's ruling in the Michael Fowler case. Families Together urge you to oppose **SB 636** (**Attachment4**).

Sherry Diel addressed the committee as an opponent of **SB 636**. She stated that KAPS does not support **SB 636** for two reasons. First, the proposed bill has the potential of eliminating parental choice which is available to parents of children with disabilities under the current law. Second, the proposed bill may potentially deprive children with disabilities who attend private schools necessary assistive technology services. Although the proposed bill states that school districts are not exempted from compliance with federal and state laws with respect to the provision of special education services, KAPS staff is concerned that the proposed language could be interpreted by school districts to deprive students with disabilities necessary assistive technology services (**Attachment5**).

Wayne C. Mnich addressed the committee as an opponent of **SB 636**. He asked the committee to not rush to enact legislation in response to claims of fiscal distress, which to him is not a valid reason to deny any child with disabilities who need auxiliary services to succeed (**Attachment6**).

The meeting adjourned at 2:37 p.m.

The next meeting is scheduled for February 26, 1996.

SENATE EDUCATION COMMITTEE GUEST LIST

DATE: February 23, 1996

NAME	REPRESENTING
JAY FOWLER	MICHAEL FOWLER
Rayne A. Miel	KC JHH
Josie Torres	Families Together, Inc.
Sherry Diehl	KAPS @ Mt. View Hosp
Mark Tallman	KASD
Jacques Dakes	SPE
Karen Kowery	KRB
Margie Prossgrove	Intellab, Intern
Jon Bowman	CCECOS
Sharon	
Mike Harris	Senate
Mark St. Harethe	USD 259
Diane Gjerstad	USD 259 - Wichita
Tom Powell	USD 259 - Wichita
Terry Bachus	USD 259 - Wichita
Maui Pat Brooks	Kansas Catholic Conference
Bob Vobyl	Catholic Diocese of Wichita
Gusie Anderson	USA of KS
Sue Chan	KUEA

Craig Grant HNEA
 Helen Stephens BU # 229

SB 636

Testimony re: SB 636

Presented by: Tom Powell
Hinkle, Eberhart & Elkouri, L.L.C.
Attorney Representing Unified School District No. 259

(Senate Bill No. 636 clarifies that school districts are not required to provide Auxiliary School Services on the premises of a private school.) Auxiliary School Services are speech and hearing diagnostic services; diagnostic psychological services; therapeutic psychological and speech and hearing services and programs and services for exceptional children.

The need for the clarification arises from a recent decision by the federal district court of Kansas, Fowler v. Unified School District No. 259. In this case the federal district court judge ruled that school districts are required to provide related services under federal law and auxiliary services under state law. Under federal law the term "related services" has the same meaning as "auxiliary services" has under state law.

The Fowler case is on appeal to the Tenth Circuit Court of Appeals. In the Fowler case the federal district court ruled that Unified School District 259 must provide interpretative services at Wichita Collegiate, a private school, to a hearing-impaired child who attends Wichita Collegiate.

Auxiliary Services include services other than interpretative services. For example, other auxiliary services that a school district would have to provide on private school premises under the federal district court decision in Fowler are as follows:

1. Personal computer package;
2. Clean intermittent catheterization;
3. Full time, one-on-one aids;
4. Feeding therapy;
5. Tracheotomy tube reinsertion;
6. Psychotherapy; and
7. Professional nursing services

Prior to the *Fowler* case, USD 259 was not providing auxiliary services on the premises of private schools and to our knowledge, other school districts in Kansas were not providing such services. The requirement to provide auxiliary services amounts to an unfunded Mandate.

(The enactment of SB 636 will not prevent school districts from providing auxiliary school services on the premises of private schools if the school district decides that such services should be provided. Section 2 of SB 636 specifically provides that a school district may provide auxiliary services on the premises of a private school.)

(SB 636 will not be in conflict with federal law if the Tenth Circuit Court of Appeals rules that school districts in Kansas, under federal law, must provide related services on the premises of private schools. SB 636 will, if enacted, assure that school districts in Kansas are not obligated to provide related services that exceed what is required by federal law, i.e., the unfunded Mandate to provide such services will be caused by the federal government, not the state government.)

(The providing of interpretative services to one child at Wichita Collegiate School does not create a financial hardship for USD 259. However, the providing of auxiliary services at private schools upon the request of a parent or guardian for all special education students who now attends or may attend private schools in the future will result in a financial hardship to USD 259.) As you know, funds received for special education services from federal and state sources are insufficient to pay for special education services. At present, 25% of the special education budget for USD 259 comes from the general funds received from the state and local options budget funds will probably need to be increased in the future. The quality of education for special education students and regular education students could be affected if significant amounts of money are needed to provide auxiliary services on the premises of private schools to special education students who attend private schools.

From a human resource standpoint, special education services are often a scarce resource. For example, USD 259 has, in the past, had problems finding qualified interpreters to fill available positions. USD 259 provides hearing-impaired services at one school site. Hearing interpreters generally provide services to two or more hearing-impaired student. The providing of interpretative services to one child at a private school means that such services will be less available to all hearing-impaired students. This problem will be compounded if there are several children receiving hearing-impaired services in a private school.

(In summary, unified school districts request that SB 636 be passed to clarify that school districts' obligations to provide auxiliary services on the premises of private schools does not exceed what is required under federal law to avoid an unfunded Mandate being imposed by state law.)



TO: Senate Committee on Education
FROM: Mark Tallman, Director of Governmental Relations
DATE: February 23, 1996

RE: Testimony on S.B. 636

Madam Chairman, Members of the Committee:

(KASB appears today in support of S.B. 636. We believe this bill represents one of the relatively few ways the State of Kansas could help contain the exploding costs of special education to school districts.) We probably do not need to remind the committee that (these costs are mandated by federal and state laws, yet neither the federal or state government is providing funding to cover the extra costs required to comply with them.)

(Passage of this legislation may limit some services desired by the families of students attending private schools. But it will not change the requirement of districts to provide a free, appropriate education under federal law.) If districts are required to provide more expansive services to private school children - who have chosen a different education setting - it will be at the cost of all the other children in the district.

We urge you to support this legislation.

SENATE EDUCATION
2-23-96
ATTACHMENT 2

TESTIMONY AGAINST S.B. 636

BOB VOBORIL, SUPERINTENDENT OF SCHOOLS
DIOCESE OF WICHITA

FEBRUARY 23, 1996

We have here today a disagreement between a family and their public school district. One side lost, and now we have this bill. The only problem is, fixing their problem with this bill is like catching a mouse with an axe. (The problems it creates are far larger than the one problem it solves. To settle one dispute, this proposal would allow the public school to take away from 30,000 private school children the right to be enrolled in the school they want and continue to receive a whole range of services form speech therapy to learning disability diagnosis.)

I oppose Senate Bill 636 because it confers a right refused them by the United States Supreme Court, denied in United States District Court, and forbidden them in Federal Law.

In an Oregon school case, Pierce v. School Sisters, settled in 1925, the State of Oregon sought to require children to attend only public schools. The Supreme Court ruled instead that the government may not interfere with the parents' right to choose the best school for their child.

SENATE EDUCATION
2-23-96
ATTACHMENT 3

(Senate Bill 636, however, attempts to establish as law a presumption that parents enroll their children in private schools “despite the availability of a free and appropriate public education”. If you accept the premise established in lines 30-33 of this bill, it then follows that by rejecting a “free and appropriate” public education, parents give up the option to receive a whole range of auxiliary services in the best possible setting, their school building.)

That is directly contrary to the language in the Individuals with Disabilities Act (“IDEA”) which states “if the parents choose to place their child in a private school, the school system must still provide special education and related services designed to meet the needs of private school children with disabilities.” Furthermore, the regulations require that the service for students enrolled in private schools must be “comparable in quality, scope, and opportunity for participation.”

What does this language mean?

It means that providing speech therapy after school to private school children is not equal to providing speech therapy during the school day to public school children.

It means that making a private school child travel to a public school eight blocks away to receive remedial services for a learning disability is not equal to providing a public school child the same service in the next classroom.

It means that if a child needs an aide, an interpreter, a test, or a wheelchair, then the substantial federal moneys that fund special education are to help that child regardless of where he or she goes to school.

As you already know, U.S.D. 259 tested this law in the case of "Fowler v. U.S.D. 259", refusing to provide an interpreter for a deaf child attending a private school. On October 16, 1995, Federal District Court Judge Dale Saffels upheld IDEA and ordered U.S.D. 259 to provide the interpreter. The District has appealed this case, and it will lose because the United States Supreme Court has already ruled, in the Zobrest case, that interpreters for deaf children attending private school have to go with the child to the private school building if they are to do their job.

This is not an isolated case. In 1993, Jason Rush asked to enroll at Bishop Carroll High School in Wichita, as his brother had before him. Jason Rush had muscular dystrophy and was confined to a wheel chair. I requested that U.S.D. 259 provide the same aide Jason had received the year before in the public school. U.S.D. 259 refused. Jason begged his

parents to find a way for him to attend Bishop Carroll anyway. Rather than turn Jason away, we took scholarship money and paid an aide to help Jason. I have several other students in my schools right now who have been denied this assistance, but I simply don't have the money to pay their aides. This shouldn't have to be when the federal government already provides money to serve all special needs aides.

Finally, Senate Bill 636 asks you to dishonor the long history of cooperation between public and private education during which our common goal has been to do what is best for kids, not attack each other. Before you do that, I ask you to recall some of the benefits private education brings to the State of Kansas.

1. The first schools in Kansas were religiously affiliated and when public school districts were unified, several Catholic schools and Catholic school buildings became public schools overnight.
2. The private schools of Kansas serve more than 30,000 citizens of this state. More than 2,000 of the state's certified teachers teach in private schools. More than 125 of the state's schools are accredited private schools.

3. According to the 1996 Kansas Kids Count Data book, about 11.5% of all students in Kansas are members of minority groups. In my diocese, 13.6% of our children are minority. In other words, my 37 Catholic schools are more ethnically diverse than the average public school.
4. One of every six of my students in Grades 1-8, or more than 1,000 children, qualify as poor by federal hot lunch standards.
5. My diocese is considered a national leader in the inclusion of children with handicaps in the regular classrooms.
6. Private schools save the state's taxpayers \$110 million in state aid that would have to be raised in taxes if all 30,000 private school children were enrolled in public schools. This doesn't begin to count the cost of LOB's and bond levies.

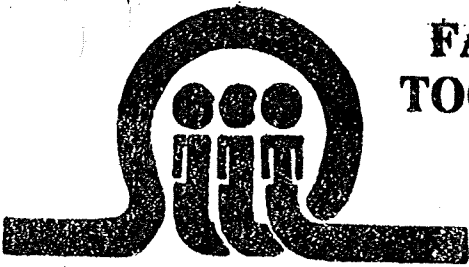
One would think that such a long history of service and cooperation would merit the respect of the people of this state. In Kansas instead, we already deny to parents the right to use their tax dollars to enroll children in private schools. We force them to pay for the exact same textbooks public school parents receive for free. All of the assessment testing required by QPA (about a quarter of a million dollars worth) is paid for by our parents or contributed by our teachers. Our parents conduct fund-raiser after fund-

raiser to buy computers, desks, books, paper, and pencils. This is the price we pay to exercise our freedom of religion in this state. But is it really necessary, after all that, to now punish the parents of the severely and mentally handicapped, the profoundly deaf, and the physically crippled so that U.S.D. 259 can get even with one parent?

In Meyer v. Nebraska in 1923, United States Supreme Court Justice McReynolds wrote for the majority:

“The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public school teachers only.”

I believe that Senate Bill 636 asks you to require parents of children with exceptional needs to do just that if they want to retain the rights consistently guaranteed to them under case rulings and federal law. I ask you to oppose this ill-conceived proposal. Let's put away the axe and find a way to build a better mousetrap.



**FAMILIES
TOGETHER,
INC.**

PARENT CENTER:
* 501 Jackson, Suite 400
Topeka, KS 66603
(913) 233-4777 V/TDD
(913) 233-4787 FAX
1-800-264-6343 Toll free
in Kansas for parents

SATELLITE OFF.
* 3330 W. Douglas, Suite 102
Wichita, KS 67203
(316) 945-7747
* 116 E. Chestnut, Suite 103
Garden City, KS 67846
(316) 276-6364

ASSISTING FAMILIES THAT INCLUDE A CHILD WITH A DISABILITY

Date: February 23, 1996
To: Senate Education Committee
From: Josie Torrez, Families Together, Inc.
Re: SB 636

Families Together, Inc. is a statewide organization that assists families that include a child or youth with a disability. We have three parent centers in Kansas; one in Wichita, Garden City and Topeka. The majority of staff are family members of young people with disabilities.

(We are in opposition of this bill. Our organization supports parent choice and strongly supports the current law. The amendments in SB 636 will modify the law to reverse Judge Saffel's ruling. Judge Saffel supports auxiliary and related services to students needs.)

We urge you to oppose this bill.

Senate Education
2-23-96
Attachment 4

KAPS *KANSAS ADVOCACY & PROTECTIVE SERVICES, INC.*

2601 Anderson Ave. Suite 200
Manhattan, Kansas 66502-2876

Voice/TDD (913) 776-1541
Voice/TDD (800) 432-8276
Fax (913) 776-5783

Board of Directors:
Robert Ochs, President
Peter Williams, Vice President
Josephine Patten, Secretary/Treasurer
Martha Blue-Banning
Sharon Joseph

Shirley Lifsey
Nanette Roubideaux
Patrick Russell
Kate Shaer
Ray Spring
Tim Steininger

MEMO TO: Members of the Senate Education Committee
FROM: Kansas Advocacy & Protective Services, Inc.
RE: Staff Report on SB 636--Auxiliary School Services
DATE: February 23, 1996

My name is Sherry Diel. I am an attorney with Kansas Advocacy & Protective Services, Inc. (KAPS). KAPS is a federally funded non-profit corporation which advocates for the rights of Kansans with disabilities.

(KAPS staff does not support SB 636 for two reasons:

- 1) the proposed bill has the potential of eliminating parental choice which is available to parents of children with disabilities under current law; and
- 2) the proposed bill may potentially deprive children with disabilities who attend private schools necessary assistive technology services.

It is our understanding that this bill was introduced as a reaction to Judge Saffel's opinion rendered in the Fowler case, which required, pursuant to state law, that the Wichita public schools provide an interpreter for the Fowler's son who transferred to Wichita Collegiate, a private school. The effect of the proposed bill would be to eliminate parental choice for parents of deaf students and parents of children with other types of disabilities who require special education services when the public school provides those services either on-site or off-site. For example, a student who is deaf would be forced to attend public school in order to receive speech and hearing services.

Special education funding is allocated based upon staffing rather than the number of students with disabilities. The special education funding is allocated to the district where the student with disabilities resides. Therefore, had any of the other students in the Wichita school system requested to receive special education services in their home school rather than in cluster settings, the Wichita school system would have had to provide interpreter services in the home school of that student.

(Although the proposed bill states that school districts are not exempted from compliance with federal and state laws with respect to the provision of special education services, KAPS staff is concerned that the proposed language could be interpreted by school districts to deprive students with disabilities necessary assistive technology services.)

Senate Education
2-23-96
Attachment 5

"Assistive technology devices and services" are not incorporated within the listing of "related services" under the Individuals with Disabilities Education Act (IDEA). Rather, "assistive technology devices and services" are separately defined to broaden the scope of services required to be provided under federal law in order to meet the special education needs of children with disabilities. The Kansas statutes do not utilize the term "related services". However, the State Board of Education rules and regulations do include "assistive technology devices and services" as "related services". With the inconsistent terminology which exists, we are concerned that if SB 636 was passed that children with disabilities who attend private schools would not receive the services necessary to appropriately use assistive technology devices to further their education and that appropriate coordination between special education programs and services and assistive technology devices would not take place.

Based upon the above reasons, KAPS staff respectfully requests the Committee not recommend SB 636 for passage.

We appreciate your willingness to hear our concerns. If you have any questions, I will be happy to try and answer them.



K A N S A S
Commission for the
Deaf & Hard of Hearing

300 S.W. Oakley, Biddle Bldg.
Topeka, Kansas 66606-1861
913-296-2874 V/TTY
800-432-0698 V/TTY
913-296-6842 FAX

The mission of the Kansas Commission for the
Deaf and Hard of Hearing is to advocate
for and facilitate equal access to quality,
coordinated and comprehensive services
that enhance the quality of life for Kansans
who are deaf and hard of hearing.

February 23, 1996

SENATE BILL 636

My name is Wayne C. Mnich and I am the Executive Director of the Kansas Commission for the Deaf and Hard of Hearing. I am also a member of the Council of Executives of American Schools for the Deaf and a life member of the the Council on Education of the Deaf. My background experience is in education - my field of specialization is in deafness and the hard of hearing. I have taught in residential programs, private programs, on the community college level, the university level for 34 years. I continue to teach - presently teaching two classes a week at Washburn University so that people will understand the unique socioeducational needs of deaf students and to develop standards for a full range of educational programs to meet these needs.

One of the most important rights of our American heritage is that every child in the United States shall have an opportunity for an education. With the passage and implementation of the Education for All Handicapped Children Act (Pl. 94-142), signed by President Gerald Ford November 29, 1975, the United States took the legislative step necessary which ensured that all handicapped children, including the hearing impaired, would receive an appropriate education.

Senate Education
2-23-96 *Attachment 6*

Deaf children should be taught by teachers who are properly prepared to help them overcome their handicap. These teachers need guidance from supervisors who are professionally qualified in the area of the education of the deaf in order to provide appropriate programs. Under PL. 94-142 a sensory-impaired child is entitled to an appropriate education. In all cases the child must receive meaningful benefit from his/her instruction in the least restrictive environment. For some sensory-impaired children this means placement in a state school for the deaf or blind on a residential basis seven days a week. For others this means receiving instruction within the local school system, whether public or private, in a separate class, in the regular class, or a combination.

Usually when deaf children are ready to enter school, their use of language is limited. Unlike their hearing counterparts, they do not have a knowledge of the meaning of very many words. They frequently do not know their own names and do not know simple words such as chair, table, mother, milk, and words describing their immediate environment. Not only do they not know the vocabulary, but they usually do not know how to use these words in structured sequences which transmit meaning to others. This is because they have never heard them. Not only do these children not know the meaning of words, but they do not know how to say the words.

It is quite logical and natural that parents want to keep their children at home and have their deaf children educated in the neighborhood school - may it be public or private, just as is true with the other children in the family. Parents want their deaf child to attend the neighborhood school and do sometimes realize the fundamental differences of the educational program needs because

of his/her basic communication handicap.

The objective of the integration of deaf children into the overall hearing society as adults is of primary importance. The degree to which this integration can take place in the school situation, either in terms of total mainstreaming or partial mainstreaming is important for all educators and for parents. The Council of Executives of American Schools for the Deaf has developed a 12-point criteria in determining in whether a deaf or severely hard of hearing pupil should be assigned to a regular class for instruction.

Parents of young deaf children are frequently the ones who are most insistent that their child be integrated into classes of typical hearing children. They are seeking normality or the appearance of normality. Actually, it is the young deaf child with his or her lack of language and communication who is most in need of the special education of the deaf. Time lost from this special education during the early years can never be regained.

In addition to the lack of learning and lack of development of language, the psychological impact on the child being placed in a situation of maximum frustration and continuing failure may have long-term traumatic effects. This frequently results in producing educational cripples who can never accept or overcome their handicap.

In considering Senate Bill 636, I ask this committee to not rush to enact legislation in response to claims of fiscal distress which to me is not a valid reason to deny any child with disabilities who need auxiliary services to succeed.