

Approved: 3-6-98  
Date

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on January 15, 1998 in Room 519-S of the Capitol.

All members were present except:  
Representative Clay Aurand - Excused  
Representative Billie Vining - Excused

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

Conferees appearing before the committee:  
Karla McGlothlin, Kansas Autism Foundation  
Dale Dennis, Kansas State Department of Education

Others attending: See attached list

The committee received requests for bill introductions.

Karla McGlothlin, Kansas Autism Foundation, requested a bill that would require written information regarding different types of treatment for children with autism and a listing of referral information of those who are qualified to provide treatment be given to the parents. (Attachment 1) Representative Powers made a motion to have the request introduced as a bill. Representative Morrison seconded the motion. The motion carried.

Dale Dennis, Kansas Department of Education, requested two bill introductions. The first would increase the number of charter schools to serve students in the bottom one-third of schools with the lowest performance on the state assessment in reading and math. The second request dealt with decreasing the transportation mileage limitation for state aid eligibility over a three year period by .5 miles per year until the reimbursement limitation reaches one mile. (Attachment 2) Representative Stone made a motion to have the requests introduced as bills. Representative Empson seconded the motion. The motion carried.

The committee received a briefing by staff on interim committee reports: Special Committee on Education (Attachment 3), Special Committee on Community College Governance (Attachment 4), and Legislative Educational Planning Committee (Attachment 5) .

The chairman provided members with an opinion in which the United States Court of Appeals, Fourth Circuit held that Loudoun County Board of Education made adequate efforts to provide an adequate education to Mark Hartmann, who is autistic, in a regular classroom; but the student's disruptive behavior was affecting the educational opportunity of other children and therefore the student's IEP was appropriate and did not violate IDEA's mainstreaming provision. (Attachment 6)

The committee meeting adjourned at 4:45 p.m. The next committee meeting is scheduled for January 20, 1998.

# HOUSE EDUCATION COMMITTEE GUEST LIST

DATE: January 15, 1998

NAME	REPRESENTING
Karla McGlothlin Parent	Kansas Autism Foundation
Jim Laugher	D & B
Steve McAnis	KSDF
Steve Hill	KSDF
Mark Tallman	KSIS
Deland J. Shore	MNU 456
Herschel Bee	Cit.
Stacy Farnum	KA815
Ashley Shevard	Overland Park Chamber
Jim Yossally	USD #572
Ken Bahr	Nays, USD #489
Holly Davis	intern for Rep. Samuelson
Don Kells	Supt. of Schools <sup>USA TASK FORCE ON PERFORMANCE</sup> Milvau USD 203
Jacque Oakes	SQE
Dorothy Rockefeller	LWUT
Diane Gjerstad	USD 259
Bob Vancouver	USD 229

# KANSAS AUTISM INFORMATION ACT

## DEFINITIONS

**Autism** is a severe neurological disorder which significantly impairs an individual's ability to process information and to learn, especially social and language skills.

**Professional** is a person who conducts diagnostic or educational assessments of children having or suspected of having autism.

## REASON FOR THIS BILL

When a disability this severe does not readily respond to traditional educational or treatment practices, it deserves special attention. The purpose of this act is to increase the availability of information concerning practices which have proven effective in remediating the incapacitating effects of autism. Providing information on legitimate interventions for autism to individuals with autism and their families in Kansas, is expected to increase the likelihood of more favorable developmental outcomes, thus, lessening the emotional hardships on families and future financial burden to communities.

## ACTUAL BILL

- A. Any professional who diagnoses or conducts an educational assessment for a child having or suspected of having autism shall provide the family of such child the following:
1. Written information regarding different types of treatment for children with autism, including information on traditional special education developmental approaches and Applied Behavior Analysis. Such information shall be presented in a neutral and unbiased method. The information, however, must be accurate in its definition of treatment approaches and the scientific documentation of their effectiveness in treating individuals with autism provided.
  2. A listing of referral information which includes names, addresses, and phone numbers of those individuals and organizations, (both in and out of state), qualified to provide appropriate assessment, treatment or training pertaining to the different available treatments.
- B. The Kansas State Department of Education (KSDE) will be responsible for assembling the information on treatment options. Professionals, as indicated in section A, shall provide the information and resource lists to KSDE for distribution.

Thereafter, the information shall be provided by KSDE to all parties involved the treatment review process, as well as to all professionals in Kansas who are qualified to make such a diagnosis, all school districts, all special education cooperatives and any autism resource centers in the state.

- C. By reason of the uniqueness of this disability in its educational focus and needs, the KSDE will establish a separate eligibility category of autism in order to remove existing barriers to effective education. The establishment of such category will facilitate access to effective treatment for all children with the diagnosis of autism in the state of Kansas.



# Kansas State Department of Education

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

January 15, 1998

TO: House Education Committee

FROM: Dale M. Dennis, Deputy  
Commissioner of Education

SUBJECT: Request for Introduction of Bills

The State Board of Education would appreciate permission to introduce two bills in the House Education Committee. The subject matter of these bills is listed below and additional information attached for your review.

- \* Increase the number of charter schools above the current limit of 15 to serve students in the bottom one-third of schools with the lowest performance on the state assessment in reading and math and who have shown little improvement over the past three years.
- \* Decrease the transportation mileage limitation for state aid eligibility over a three-year period by .5 miles per year until the reimbursement limitation reaches one mile.

**Division of Fiscal & Administrative Services**

785-296-3871 (phone)  
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House Education  
1-15-98  
Attachment 2

## PROPOSED CHANGES IN STATE CHARTER SCHOOL LAW

The State Board of Education recommends the following amendments to the current charter school law.

- Delete the provision that only allows 15 charter schools to operate in any one school year and only two per district.
- Add a provision that any new charter schools approved after the original 15 must serve students in the bottom one-third of schools with the lowest performance on the state assessments in reading and math and who have shown little improvement over the past three years.
- Amend the reason for authorizing petitions to include improving instruction and student performance.
- Retain the provision that requires local board approval of a petition before it is forwarded to the state but require local board approval if petitions meet the following parameters:
  - (1) the petition meets the provisions already specified in the law,
  - (2) the petition utilizes an innovative program(s) which requires use of waiver provisions, and
  - (3) the petition must come from a low-performing school and be initiated by either a majority of the board, the faculty, or the parents of students in attendance.
- Amend the law to allow a school board to initiate the charter school petition.
- Add a provision that would allow an appeal to the State Board if a local board revokes a charter.
- Add a provision that grants the State Board of Education the authority to approve charter school petitions based on a set of guidelines established by the State Board. Initial thoughts on possible guidelines included a review of charter school petitions in response to such questions as (a) does the petition reflect a clear understanding of the source of low student performance; (b) does the petition identify specific solutions including a staff development plan; and (c) does the petition have an appropriate evaluation plan.

## SCHOOL DISTRICT TRANSPORTATION

The state currently reimburses school districts for transporting resident students of the district who live more than 2.5 miles from home to school. The State Board of Education recommends that over a three-year period that the mileage limitation be lowered by .5 miles per year until the reimbursement limitation reaches one mile.

There are many school districts that transport students living under 2.5 miles from home to school that receive no reimbursement because of the safety factors involved in transporting students to school.

Listed below is a table which provides the estimated costs for lowering the transportation mileage rate.

<u>Mileage</u>	<u>No. of Students</u>	<u>Estimated Cost at 50%</u>
2.5 to 2.0	24,850	\$ 6,212,500
2.0 to 1.5	27,576	\$ 6,894,000
1.5 to 1.0	38,388	\$ 9,597,000

Reports of the  
Special Committee on Education  
to the  
1998 Kansas Legislature

**CHAIRPERSON:** Representative Michael O'Neal

**VICE-CHAIRPERSON:** Senator Barbara Lawrence

**OTHER MEMBERS:** Senators Christine Downey, Sherman Jones, Audrey Langworthy, and Lana Oleen; Representatives Clay Aurand, John M. Faber, Ruby Gilbert, Kay O'Connor, Bill Reardon, Billie Vining, and Galen Weiland

**STUDY TOPICS**

Special education—service delivery and funding issues  
School district boundaries—need for organizational changes  
Education governance—review of governance of public education in Kansas and, especially, the concepts contained in 1997 S.B. 359 and S.C.R. 1607  
Kansas State High School Activities Association—regulatory authority  
Truancy—alternatives pertaining to children who are habitually absent from school  
Scholarship options for Kansas postsecondary students

*December, 1997*

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# SPECIAL COMMITTEE ON EDUCATION

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## **Education Governance\***

**SUMMARY:** The Committee recommends an amendment to the *Kansas Constitution* for the purpose of equalizing the powers of the State Board of Education with those of the State Board of Regents by removing the self-executing powers of the State Board of Education. The Committee also recommends legislation to change from partisan to nonpartisan the election of State Board of Education members. In connection with its consideration of this bill, the Legislature should evaluate the merits of conducting State Board of Education and local board of education elections at the same time.

## **BACKGROUND**

The study topic, requested by the Chairperson of the Senate Committee on Education, was directed toward the issue of education governance in Kansas generally but also included specific reference to five measures impacting education governance that were introduced in the 1997 Session.

Following is a brief summary of the legislative proposals (S.C.R. 1607 and S.B. 359 are companion measures).

**S.C.R. 1607.** S.C.R. 1607 proposes to amend the Education Article (Article 6) of the *Kansas Constitution* to provide the following:

- The Legislature is delegated responsibility for establishing a system of public education that is organized and changed as provided by law. (Similar to current provision.)
- The Legislature is directed to make suitable provision for governance of the system of public education and schools and institutions that are a part of the system. This includes the authority to create and prescribe the powers and duties of any "instrumentalities of governance," as may be

deemed necessary.

- Public elementary and secondary schools are required to be maintained, operated, and managed by locally elected boards. (Similar to current provision.)
- Public institutions of postsecondary education and other public education institutions provided by law are to be operated and managed under state supervision as provided by law.
- The Legislature is directed to make suitable provision for financing of the system of public education. In this respect, the Legislature is authorized to levy a permanent tax for the system of public education and to provide for the apportionment of the proceeds thereof.
- The charging of tuition for attendance at any public school or other public education institution to persons who are required by law to attend the school or institution is prohibited. Fees (other than tuition) could be charged when authorized by law. The Legislature could authorize or require the charging of tuition or other fees for attendance at any public school or other public education institution to persons not required by law to attend. (Similar to current provision.)
- No religious sect or sects may control any part of the public education funds. (This provision currently is in the *Constitution*.)

**S.B. 359.** In the place of the current State Board of Regents and State Department of Education, the bill establishes the Kansas Department of Education (KDOE), the head of which is the Secretary of Education. The Secretary is appointed by the Governor and confirmed by the Senate. The Secretary serves at the Governor's pleasure and has administrative responsibility for KDOE.

Within KDOE, there is established the divisions of: Higher Education, Community Colleges and Vocational and Technical Education, and Elementary and Secondary Education.

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\* S.B. 406 and S.C.R. 1615 accompany this report.

Each division is administered under the Secretary's supervision by a commissioner who serves as the division's chief administrative officer. Each commissioner is appointed by the Secretary and serves at the Secretary's pleasure.

As a part of each division, there is an advisory board composed of seven members appointed by the Governor for four-year terms. There is one advisory board member from each Congressional district. The remaining members are appointed at large. No two members may reside in the same county at the time of their appointment and no more than four members may be of the same political party. Advisory boards have powers, duties, and functions assigned to them by the Secretary of Education and commissioner for the advisory board's division.

**H.B. 2146.** H.B. 2146 provides for a Commissioner of Higher Education in place of the current Executive Officer of the State Board of Regents.

- The State Board of Regents submits to the Governor a list of nominees for Commissioner. Appointment of the Commissioner occurs after the Governor has considered the listing of nominees.
- The Governor appoints the Commissioner of Higher Education who is confirmed by the Senate. The Commissioner serves at the Governor's pleasure. The Commissioner is a member of the Governor's cabinet, serves as executive officer of the State Board of Regents, serves as liaison between the Governor and the State Board of Regents, and performs other duties prescribed by law.

**H.C.R. 5008.** H.C.R. 5008 eliminates the self-executing powers of the State Board of Education and provides for gubernatorial appointment of the Commissioner of Education.

- The State Board of Education submits to the Governor a list of nominees for Commissioner. Appointment occurs after the Governor has considered the listing of nominees.
- The Governor appoints a Commissioner of Education who is confirmed by the Senate. The Commissioner serves at the Governor's pleasure. The Commissioner is a member of

the Governor's cabinet, serves as executive officer of the State Board of Education, serves as liaison between the Governor and the State Board of Education, and performs other duties prescribed by law.

**H.C.R. 5009.** H.C.R. 5009 eliminates the "self-executing" powers of the State Board of Education and provides for gubernatorial appointment of both the Commissioner of Education and the Commissioner of Higher Education.

- The State Board of Education or the State Board of Regents, as the case may be, submits to the Governor a list of nominees for Commissioner. Appointment of each of the Commissioners occurs after the Governor has considered the listing of nominees.
- The Governor appoints a Commissioner of Education and Commissioner of Higher Education, both subject to confirmation by the Senate. These Commissioners serve at the Governor's pleasure.

#### COMMITTEE ACTIVITIES

The Committee devoted one of its meetings to this topic, at which the Committee reviewed staff materials, conducted hearings, and received information from a nationally recognized consultant on educational governance issues.

**Staff Materials.** The Committee reviewed material prepared by the staff that addressed state constitutional patterns in governance of elementary and secondary education and postsecondary education, trends among the states in reforming governance structures, reasons prompting initiation of higher education reorganization proposals, and guidelines for consideration in evaluating reorganization proposals. Staff memoranda also discussed the Education Article of the *Kansas Constitution*, including background on the development of the Article in its present form and highlights of 23 concurrent resolutions that have proposed changes in the Article since 1973; explained five 1997 legislative proposals affecting governance and organization of public education; provided a status report on the activities of the Kansas Council on the Future of Postsecondary

Education and the Special Committee on Community College Governance; and chronicled recommendations beginning in 1972 of 22 past studies regarding higher education organizational matters.

**Hearings.** The Committee received presentations from spokespersons for the State Board of Education, State Board of Regents, Washburn University of Topeka, Kansas Association of Area Vocational-Technical Schools, United School Administrators, Kansas-National Education Association, and Kansas Association of School Boards. State Senator Tim Emert, State Representative Ralph Tanner (written testimony only), and the President of the Kansas City Kansas Community College also presented testimony. Following is a summary of the conferees' main points of emphasis.

**Senator Emert.** Senator Emert emphasized that education has changed greatly in the 30 years that have elapsed since the Education Article of the *Kansas Constitution* last was revised. Consequently, current governance structures do not meet contemporary needs. Senator Emert emphasized that much of the annual legislative activity is driven by budgetary considerations. He explained that many people believe education is the most important function of state government, but noted that education is not represented at the table when the Governor's budget is adopted. Senator Emert explained that he had crafted S.C.R. 1607 and S.B. 359 as vehicles to address this issue and to prompt changes in the way of thinking about education governance in Kansas.

**Representative Tanner.** Representative Tanner, in written testimony, proposed eliminating the State Board of Education's self-executing

constitutional powers\* and urged that various legislators who are interested in reorganizing education governance work on reaching an agreement on how the system might be improved. Representative Tanner suggested that these parties might want to petition the Governor to call a special meeting for this purpose.

**State Board of Education.** The Chairperson of the State Board of Education reported that the State Board supports retaining the present system of governance. Kansas is one of eight states that provides for an elected state board and an appointed chief state school officer. The State Board Chairperson said he could think of no better standard of leadership or accountability than to be subject to the scrutiny of the electorate.

With regard to the issue of the State Board's self-executing authority, the Chairperson said his judgment is that the State Board has not and would not abuse these powers. He noted that the Legislature's control over expenditures of public funds balances the powers the State Board possesses.

**State Board of Regents.** The Chairperson of the State Board of Regents said that the present governance system has been responsive to the interests of governors and legislators and has served the state well. The Board opposes efforts to remove references to the State Board of Regents from the *Kansas Constitution* and opposes the specific educational governance configuration contained in S.B. 359. The opposition to the constitutional change is based on

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\* In 1973, The Kansas Supreme Court in *State, ex rel. v. Board of Education*, 212 Kan. 482 ruled that Article 6, Section 2 (a) of the *Kansas Constitution* granting to the State Board of Education authority to exercise general supervision of the public schools, educational institutions, and educational interests of the state, except educational functions delegated by law to the State Board of Regents, is self-executing in effect. A self-executing provision requires no supplementary legislation to make it effective and leaves nothing to be done by the Legislature to put it in operation. The Court said that where a constitutional provision is self-executing the Legislature may enact legislation to facilitate or assist in its operation, but whatever legislation is adopted must be in harmony with and not in derogation of the provisions of the *Constitution*.

the concern that the university system could become subject to partisan and political influence if structuring education governance were left entirely to the Legislature. Also, the tradition of academic freedom that protects scholars from political trends could be jeopardized if the constitutional reference to the Board of Regents is removed. In reference to S.B. 359, the Board of Regents contends that it would be unwise to place the authority to establish tuition and fees, to hire the heads of the universities, and to set university personnel policies in the hands of a single individual. There also is a question of whether a gubernatorial cabinet appointee would hold office long enough to maintain continuity and stability necessary for a system of higher education to function well. The Regents believe it would be a good idea for community colleges to be brought under the Board's jurisdiction for purposes of coordination. The Regents' proposal is to retain local community college governing boards, but to place these institutions under the Board for purposes of developing a policy agenda for postsecondary education, approving new and existing academic programs, assigning off-campus service areas, and advocating on behalf of all postsecondary institutions.

**Washburn University.** Testimony presented on behalf of the Washburn University President identified a number of policy issues regarded to be essential state interests in postsecondary education and suggested that any education governance and coordination structure should be subject to periodic review. The testimony stated that there is no single best way to organize the system. However, policy and coordination issues should be dealt with in a centralized fashion while operation of individual institutions should be decentralized to the campus level. The testimony urged that if the current governance arrangement is deemed an appropriate structure to address policy issues and maximize student opportunity, then the structure should be reaffirmed and attention should be turned toward state level coordination matters. If the current bifurcated structure is not deemed to provide sufficient coordination, it was noted that S.C.R. 1607 provides the Governor and Legislature maximum flexibility to create whatever system they choose. It was recommended that

if such a system were adopted, a two-thirds super majority vote of the Legislature should be required in order to alter the governance structure.

**Kansas City Kansas Community College President.** The Kansas City Kansas Community College President said that Virginia, Missouri, and Kansas all have different education governance systems but that each works well. A system should be evaluated on the basis of whether its product is good for the state. The President said that, if it thinks education governance should be changed, the Legislature should consider the merits of a proposal such as S.B. 359. This proposal looks to the future by creating an umbrella organization for all of postsecondary education and is not bound by past governance structures. On a related matter, the President said he believes there is confusion over the term "governance" and "coordination" and that community colleges do not want to be governed by the State Board of Regents.

**Area Vocational-Technical Schools.** The spokesperson for the Kansas Association of Area Vocational-Technical Schools reported that a survey of the organization's membership found near unanimous agreement on four issues: technical education should not be placed under the State Board of Regents; local control of locally-elected boards of education, boards of control, or boards of trustees should be retained; the State Board of Education should be retained; and the current system for selecting a commissioner of education should be retained. It was noted that one advantage of S.B. 359 would be placement of education on an equal level with other state agencies in terms of access to the Governor. With respect to S.C.R. 1607, the Association's membership expressed no interest in delegating to the Legislature the responsibility for oversight of education.

**United School Administrators.** The United School Administrators spokesperson testified in opposition to S.C.R. 1607 and S.B. 359 on the grounds that an elected state board of education and appointed commissioner are beneficial to children. As Kansas schools are getting better, no change in governance should be made unless it is clearly demonstrable that the result will be better educational performance of Kansas children.

**Kansas-National Educational Association.**

The Kansas-National Education Association spokesperson explained that the organization had not progressed sufficiently in its preparation of a 1998 legislative program to enable it to present a view on the structure and governance of education in Kansas.

**Kansas Association of School Boards.** The Kansas Association of School Boards' representative said the Association believes that the self-executing authority of the State Board of Education should be removed. Further, the Association opposes proposals to make the State Board of Education appointive, to change the way in which the Commissioner is selected, or to remove references to the State Board of Education from the *Kansas Constitution*. Subsequently, the Association submitted the following additional recommendations:

- make the Lieutenant Governor a voting member of the State Board;
- remove the constitutional link between State Board of Education districts and state Senate districts;
- change State Board elections from partisan to nonpartisan; and
- hold elections for State Board members at the same time local school board members are elected.

**Consultant.** The Committee was fortunate to have obtained the services of Dr. Aims McGuinness, Jr., National Center for Higher Education Management Systems. For several years, Dr. McGuinness has engaged in consulting with states on education governance matters and is published in that field. As he previously has served as an education governance resource person in Kansas, he brought with him more than a superficial understanding of the Kansas education governance pattern and the issues concerning it.

Dr. McGuinness said that, in Kansas, educational policy is driven by the budget, which is initiated by the Governor, but the Governor really does not lead on educational issues. The Governor seems to have no vested interest in education. It appears that each institutional sector, and, in some cases, each institution, acts as its own advocate, with the Governor and the

Legislature reacting, not leading.

Dr. McGuinness observed that much has changed since 1966 when the current Education Article of the *Kansas Constitution* was adopted. The continuing debate about where the community colleges belong is symptomatic of the problem with the *Kansas Constitution*, in that its inflexibility has contributed to problems that, thus far, the Legislature has not been able to resolve.

Dr. McGuinness reviewed the 1997 legislative proposals to amend the *Kansas Constitution* and to change education governance. He said certain proposals would remove current restraints and give the Legislature the authority to structure educational governance in a more workable way. The specific proposal contained in S.B. 359 would eliminate lay governance and make education an Executive Branch function. Dr. McGuinness said he knew of no other state that had such a governance system. Some states have consolidated all educational functions, but none has abolished lay governance.

Dr. McGuinness explained that governance proposals that are neither inherently good nor bad may fail because they are contrary to a state's history, culture, or political environment. For example, education in Kansas is marked by a tradition of local control and lay governance, so any proposal that does not take these traditions into account may fail. He also observed that the public generally is not enamored of executive control or control by "politicians."

Dr. McGuinness suggested that the way for policymakers who are considering change to proceed is to identify the real problems and then to reorganize education governance only if the reorganization addresses the problems that have been identified. He cautioned against solutions that disregard strongly felt values and called for recognizing the difference between leadership and "running things." Bureaucracies are good at running things, he said, but they usually do not provide policy leadership. Centralizing governance often creates a bigger bureaucracy, not more effective educational leadership. It may be that a state, such as Kansas, that has considered many proposals to change education is really satisfied with the status quo, in which case policymakers should affirm those parts of the system they do not want to change, make the

changes they think are necessary, and stop studying education governance.

**Other 1997 Study Groups.** The Committee wishes to note other study groups currently assigned responsibility for education governance matters.

The Kansas Council on the Future of Postsecondary Education, established by 1995 legislation, is composed of 16 members—four legislators, four members each of the State Board of Education and the State Board of Regents, one member of the Washburn University Board of Regents, one representative of the independent colleges and universities, and two persons from the general public (appointed by the Governor). The Council is directed to develop a state plan for postsecondary education that takes into account Regents institutions, community colleges, area vocational schools, Washburn University, and the independent colleges and universities. The legislation specifies that the plan, along with implementation recommendations, was to be completed and a report thereon made by August 1, 1996. A final report on implementation of the plan is to be made by November 1, 1998. The plan called for in the legislation has not been developed. In March 1997, the Council announced it had abandoned its efforts due to the inability of the membership to reach consensus on various key issues.

The Special Committee on Community College Governance, a 1997 interim study committee created by the Legislative Coordinating Council, is considering various community college financing and organization issues. Its work had not been completed by the time this Committee concluded its activities.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee evaluated much valuable information about the history of education governance in Kansas, governance patterns in other states, and contemporary issues concerning Kansas' education governance arrangements. There are vexing problems affecting education governance and coordination for which solutions still need to be found. Some problems involve constraints imposed under the

Education Article of the *Kansas Constitution*. While the Committee's recommendations are not intended to address changes in education governance structures, they do incorporate a change that could resolve ambiguities about the Legislature's role in education policymaking and enhance the stature of State Board of Education elections.

The Committee recommends amending the *Kansas Constitution* for the purpose of equalizing the powers of the State Board of Education with those of the State Board of Regents by removing the self-executing powers of the State Board of Education. This change will remove confusion that now exists as to the ability of the Legislature to enact legislation affecting education policy that the State Board of Education will be bound to observe. The Committee wishes to make clear the State Board has no history of wielding its legislative authority unwisely, nor has it balked at implementing any legislation that has been passed. The Committee simply believes that in the structure of government, legislative authority should reside solely in the Legislative Branch and not be dispersed as presently is the case. The Committee believes that the crafters of the Education Article did not deliberately seek to confer self-executing powers on the State Board of Education; therefore, the proposed amendment does nothing to alter the stature intended for the State Board.

The Committee also recommends legislation to change from partisan to nonpartisan the election of State Board of Education members. This change will promote the nonpartisan character of public education governance in Kansas and should elevate policy considerations as the basis for distinguishing among candidates.

Finally, the Committee recommends that, in connection with its consideration of the State Board of Education election bill, the Legislature evaluate the merits of conducting State Board of Education and local board of education elections at the same time, *i.e.*, at the April election in the odd-numbered years. (Presently, State Board of Education elections are held in November of even-numbered years in conjunction with the election of various county, state, and national officers and local school board elections are held in the spring of odd-numbered years in conjunction with city elections.)

This issue came to the Committee late in its deliberations, so members did not have ade-

quate time to fully evaluate the pros and cons the change.

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### ***Special Education Funding and Service Delivery Matters\****

**SUMMARY:** The Committee recommends legislation to provide state categorical aid for special education services at 85.0 percent of "excess costs," computed on a statewide average basis, and to reduce the threshold for school district participation in the "catastrophic aid" program from \$25,000 in annual costs for an exceptional child to \$17,500, to be funded by a separate line item appropriation. The Committee also recommends a concurrent resolution memorializing Congress to increase federal funding for special education to a higher percentage of the average cost of education for children in the United States that is more nearly in line with the percentage authorized by federal law (40.0 percent).

The Committee recommends that the State Board of Education present to the House and Senate Education Committees early in the 1998 Session the Board's recommendations for legislation in connection with implementation in Kansas of provisions of the federal Individuals with Disabilities Education Act (IDEA) amendments of 1997.

The Committee recognizes the rigorous efforts school districts are making to obtain reimbursement from other public agency programs and from insurers in connection with the provision of special education services and urges them to seek additional funding streams from other sources such as private foundations.

#### **BACKGROUND**

This topic was recommended for interim study by the Chairperson of the Senate Educa-

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\* S.B. 401, H.B. 2597, and H.C.R. 5029 accompany this report.

tion Committee out of concern for the continued cost escalation of providing special education services, the new challenges facing school districts in their efforts to provide these services in connection with broad changes presently occurring across the spectrum of social services programs, and the potential impact in the state of the 1997 federal IDEA amendments.

#### **COMMITTEE ACTIVITIES**

One meeting was devoted to various special education issues, especially those associated with new provisions of the federal 1997 IDEA amendments.

**Staff Materials.** The Committee reviewed staff memoranda that addressed constitutional rights of children with disabilities to public educational services; rights of access to public services and facilities under the federal Rehabilitation Act and the federal Americans with Disabilities Act; special education services requirements under IDEA, including the 1997 amendments; special education funding mechanisms in use among the states and state funding trends; and a multi-year history for Kansas of special education expenditures, "excess costs" of providing special education services, special education categorical aid, special education teaching units, state categorical aid per teaching unit, and pupil headcount enrollments.

**Conferees.** Conferees provided information on a variety of matters. Counsel for the Kansas Association of School Boards discussed several of the main 1997 IDEA amendments. Staff of the State Department of Education presented information on procedures that must be followed in identifying children for special education services; provided multi-year data by category of exceptionality on the number of school district special education teachers, paraprofessionals, and children who received special education

services; reported on the results of the work of the Department's appointed special education funding committee; and delivered responses to a series of questions that had been posed by the Special Education Directors Legislative Committee relating to the State Board of Education's administration of the federal special education law. Two special education administrators discussed their concerns with State Board of Education priorities in federal special education funding administration and problems related to delivery of special education services that they believe have been exacerbated by privatization of social services and the transition to community corrections for juveniles. A vice-president of the Wichita accounting firm of Allen, Gibbs and Houlik, L.C., presented an analysis of trends in Wichita (USD 259) services and expenditures for special education, and the attorney for the Wichita school board provided updated information on litigation in which the district is involved relative to provision of special education services in a private school setting.

**Other Information.** Subsequent to the hearing, the Committee received information it had requested on the pattern among school districts in making transfers from the school district general fund and supplemental general fund to the special education fund and Department of Social and Rehabilitation Services institutions youth placement information for the first quarter of FY 1998.

**New Issues.** The Committee learned that the federal 1997 IDEA amendments made several changes that are likely to further increase the costs of special education services. The Committee believes this to be the case even though some of the changes were intended to result in cost reductions. Among other things, the new law requires participation by a regular classroom teacher as a member of the team that develops a student's individualized education program (IEP). The law also imposes greater requirements relating to involvement of students with disabilities in the regular curriculum and the school district's testing program and to school district reporting on such students' educational progress. Student disciplinary procedures have become increasingly complex. The law requires that, even if a student with a disability is expelled, the district must continue

providing educational services. The law creates the emphasis placed on related, supportive, and assistive services and devices to enable children with disabilities to participate in the regular school program and, ultimately, to make the transition out of the school setting. On the other hand, changes in the law appear more effectively to control costs to school districts for provision of special education services to children unilaterally placed by their parents in private schools. Amendments also are designed to assist school districts by attempting to secure greater financial participation from other public agencies and programs in providing services to children with disabilities. Addition of the mediation feature is intended to reduce the number of incidences in which the parties find it necessary to use the due process procedure. Added emphasis by Congress to increase federal funding for special education also could prove helpful.

The Committee learned that ever-persistent problems that schools face in providing educational services to children involved in foster care or other out-of-home residential placements are increasing. Conferees cited shortcomings in implementation of the juvenile justice reform legislation and in privatization of foster care and children's services as major contributing factors. Testimony indicated that some of the private providers of services understand the legal obligations of school districts to provide special education and related services and, therefore, avoid or reduce expenditures for some types of service they otherwise would provide. In this regard, one conferee said that schools are experiencing increased referrals from family preservation counselors for special services evaluations. A conferee described incidences in which youths assigned to community corrections were expelled from those programs for behavioral reasons, returned to their homes, and then returned to school. More intense and expensive educational services were then required than would have been the case if the youths had remained in a more structured setting.



## CONCLUSIONS AND RECOMMENDATIONS

**Funding of Special Education Services.** The Committee is concerned about the impact on school districts of the unrelenting increase in the costs of providing special education services. The search for cost containment measures must continue, but, in the meantime, an insidious consequence of the current funding system is that school districts find themselves relying significantly on transfers from their general fund or supplemental general fund to pay the costs of special education services, thus reducing the amount of money otherwise available to fund general education. In order to provide some relief to school districts in this area, the Committee is recommending the following legislative proposals:

- **State Funding of 85.0 Percent of Special Education Excess Costs.** The bill proposes that state categorical aid for special education services be provided at the level of 85.0 percent of the estimated excess costs of providing these services.

The bill incorporates the formula to be used in making this calculation. The calculation would be made by subtracting from total school district special education expenditures from state and local resources an amount equal to an average cost per pupil (for all pupils) multiplied by the full-time equivalent number of special education children in the state. (The exclusion of federal funds in this procedure has the same effect as including them and then making a specific federal funds deduction in computing the excess costs amount. In this respect, Medicaid reimbursements to school districts are considered to be federal funds.) The bill specifies the steps to be followed in making this "average cost" calculation: the sum of school district general fund and supplemental general fund budgets is determined; this sum is modified by deduction of amounts from the school district general fund for the transportation, vocational education, bilingual education, and at-risk pupil weightings; and this "adjusted sum" is divided by the

September 20 enrollment of all school districts.

In FY 1998, the legislative appropriation is designed to fund special education at approximately 80.0 percent of excess costs. In accord with provisions of the bill, a 5.0 percentage point increase in state categorical aid for excess costs equates to about \$12.45 million.

- **Reduced Threshold for School District Participation in the "Catastrophic Aid" Program.** The bill proposes to reduce the threshold for school district participation in the "catastrophic aid" program from \$25,000 in annual costs to \$17,500, with the program to be funded as a separate line item appropriation.

Current law provides that, when the annual costs of a school district to provide special education services to a child exceed \$25,000, the state will reimburse the district for 75.0 percent of the costs in excess of \$25,000 for such services. The Committee's bill reduces this \$25,000 threshold to \$17,500. Also, it is the Committee's intention that this program be funded by a separate line item appropriation. The current practice is that the funding needed for this program is treated as a first claim on the annual appropriation for special education services aid, thereby diluting somewhat the teaching unit distributions made from that appropriation.

A State Department of Education estimate was that this change in law would increase from about 45 to 725 the number of cases qualifying for funding under the program and increase the costs by about \$2.0 million from about \$1.5 million to \$3.5 million.

- **Federal Funding for Special Education Services—Increased Effort.** The concurrent resolution memorializes Congress to increase its support for special education funding. Current federal law contains a goal of federal support for 40.0 percent of the average costs of providing educational

services to children in the United States. Historically, the federal funding level has been in the 7.0 to 8.0 percent range. The concurrent resolution urges that Congress increase its percentage contribution in the direction of the target percentage contained in the federal law.

The Committee discussed at length concerns members have about school districts becoming increasingly responsible for health related costs in connection with providing special education services. While school districts are not required to provide services defined strictly as medical, they must provide what appears to be an increasing number of health-related services in order to make it possible for children with disabilities to participate in the school program. In connection with the provision of such services, recent governmental initiatives have focused on aiding school districts in gaining access to other resources, especially Medicaid reimbursements, to help pay for these programs. School districts have vigorously pursued these resources and also have been attempting to secure payments from private insurers where possible. The Committee urges school districts to seek additional funding streams from other sources, such as private foundations.

**State Board of Education—Proposed Legislation.** Testimony revealed that changes contained in the federal IDEA amendments of 1997 likely will cause the State Board of Education to propose several changes in Kansas statutes the Board believes necessary or desirable in order to bring the state laws into harmony with the

federal provisions. These changes could include adopting by reference certain provisions of the federal law, requiring the State Board to adopt regulations to implement both the federal and state law, requiring provision of a free appropriate public education to children with disabilities who have been suspended or expelled, specifying services to be provided to children voluntarily enrolled by their parents in a private school, modifying the membership of the State Advisory Council for Special Education, requiring that parental consent be given for reevaluation of disabled children's educational needs, modifying certain due process and parent notification procedures, and placing children with disabilities in an alternative education setting. Additional changes that might be proposed could include increasing the maximum duration of short-term suspensions from five days to ten days, repealing the law that pertains to auxiliary services for children enrolled in private schools, and removing the requirement for educational services for incarcerated youth 18 to 21 years of age.

The State Board of Education's analysis of changes in state law needed in connection with the 1997 amendments to the federal law was not completed by the time the Committee had concluded its interim work. As a result, there was no opportunity for the Committee to receive and evaluate the Board's final set of proposals. The Committee therefore recommends that the State Board present to the House and Senate Education Committees early in the 1998 Session the Board's recommendations for state legislation, together with supporting explanatory material to aid members of the Legislature in evaluating the merits of each proposal.

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### ***School District Boundaries***

**SUMMARY:** The Committee is not recommending legislation requested by citizens of the city of Erie to divide the Erie-St. Paul (USD 101) school district into the two districts that existed prior to their July 1, 1967, consolidation.

The Committee urges the USD 101 school board to reconsider school cost information for similarly sized school districts and the school construction issue in view of permitting an election on it.

## BACKGROUND

This study topic was the result of a request submitted to the Legislative Coordinating Council on behalf of patrons of the Erie-St. Paul (USD 101) school district and by the Chairperson of the Senate Education Committee. While the charge to the Committee was broad enough to accommodate a general inquiry into school district organization, the Committee opted to limit the scope of its activity to hearing the USD 101 issue.

## COMMITTEE ACTIVITIES

**Background Materials.** In preparation for its hearing, the Committee reviewed documents prepared by the staff which explained state constitutional and statutory provisions applicable to modification of school district boundaries; discussed findings contained in education research literature concerning relationships between school and school district size (enrollment) and other variables, *i.e.*, per pupil costs, pupil achievement, breadth of curricular offerings, and pupil attitudes toward school; and compared 1996-97 Kansas school enrollments to a hypothetical model of optimal school size at the elementary and secondary levels.

**Hearing.** Three conferees from the Erie community, including the past president of the school district board of education, requested that the Legislature divide USD 101 into the two school districts that existed prior to their consolidation on July 1, 1967. The other conferee, the current school board president who lives in rural St. Paul, urged that no changes be made in the school district boundaries.

USD 101 represents the union of the former Erie school district and a district that included the communities of St. Paul, Thayer, Stark, and Galesburg. The Erie conferees expressed strong objection to inefficient expenditure of school district funds, particularly at the high school level, under the current system. Now, the district is maintaining three high schools—one each at Erie, St. Paul, and Thayer. This means expenditures for improvements often are triplicated in order to make similar educational opportunities available at the three high schools.

An Erie conferee noted as an example the recent acquisition of technology laboratories. Instead of purchasing just one laboratory, the district purchased three and had to undertake building projects at two locations to house them. The conferee noted that elections to approve a single high school for the district have failed on at least two occasions. The Erie conferees believe that the current situation is detrimental to the educational opportunity provided to the Erie children and that the remedy lies in the division of the school district. The USD 101 board president cited various facility and technology changes and improvements that have been made and that are planned for the district in his defense of the current school district configuration.

An Erie conferee explained that nearly one half of the USD 101 students attend Erie schools but that the community constitutes only about 30 percent of the school district electorate. The result is that a majority of the school board membership always is composed of the representatives of the smaller communities. If the district were divided, Erie, which then would control its school board, would serve about 550 students while the other district would have about 650 students. The enrollment of both districts would be reasonably close to the state median school district enrollment.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee is sympathetic to the frustrations expressed on behalf of the Erie community in its quest to fulfill a vision for the educational opportunity of its children and to the desires of the other communities that compose the school district to maintain the district's current identity. At the same time, the Committee is keenly aware of the peril that exists in addressing a specific situation for unintended consequences in other areas of school law, such as the financing mechanism. Such legislation very likely would become a vehicle for other proposals to breakup existing districts. The Committee urges the USD 101 school board to reconsider comparative school cost information for similarly sized schools and the school construction issue in view of permitting an election on it. The Committee notes that issues such as those raised

by the Erie patrons are repeated in varying degree in many school districts throughout the state. These may be highly emotional and divisive matters in the affected communities. Under current laws and practices, resolution of these issues falls within the jurisdiction of the locally-elected boards of education. Perhaps the time will come when the Legislature will decide to undertake a more comprehensive examina-

tion of the organization and operation of Kansas school districts. In the meantime, the responsibility for resolving problems such as those identified by the Erie patrons remains with the local school board. The Committee, therefore, is not recommending legislation requested by the Erie patrons to divide USD 101 into the two districts that existed prior to July 1, 1967.

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### ***Kansas State High School Activities Association (KSHSAA)—Regulatory Authority***

**SUMMARY:** The Committee believes the Kansas State High School Activities Association (KSHSAA) is making a concerted effort to receive, evaluate, and act fairly on student activities issues under its jurisdiction. KSHSAA should continue to remain responsive to student centered policy amendments that address the changing needs and times. In this regard, the Association should consider increased reliance on use of special study or advisory groups created in accord with the specific sport or other activity involved. Further, it appears that KSHSAA has placed greater emphasis on improving communications about the organization and its functions. The Committee believes such an initiative is needed and that it should continue to be afforded a high priority. The Committee's hearing provided another venue for communication by some who are dissatisfied with certain KSHSAA rules affecting the school activities program. It is important that the Legislature keep open this avenue of communication.

The Committee discerned no present need to recommend statutory changes affecting the KSHSAA organization or operation or to recommend modification of any specific rule.

#### **BACKGROUND**

This topic was recommended for interim study by the Chairperson of the House Federal and State Affairs Committee. During the 1997

Session, three bills were introduced in the House concerning KSHSAA regulation of school activities programs. None of these measures was passed.

#### **COMMITTEE ACTIVITIES**

One meeting of the Committee was devoted to this topic. At that time staff materials were reviewed, the KSHSAA Executive Director provided general information about the KSHSAA policymaking process and recent KSHSAA activities, and a hearing was held.

**Staff Materials.** The Committee reviewed a staff memorandum which contained historical information about KSHSAA development, including the statutory authority under which the Association operates, its organizational structure, how school membership and classification are determined, how the Association is financed, and how school activities are regulated in some other states. In Kansas, in contrast to some other states, both sports and other school activities are regulated by the same association.

**KSHSAA Staff Overview.** The KSHSAA Executive Director and an assistant explained the Association's policymaking process. The last legislative enactment affecting the Association occurred in 1993. According to the Executive Director, the result has been improved communication with member schools and boards and significantly increased numbers of women and minority members on both the KSHSAA Board of Directors and Executive Board. In addition, in 1996 the Association

became the second state in the nation to create a student advisory team. The purpose of this 12-member group is to improve communications through a better understanding by students of Association rules and policies and to serve as a sounding board for the Association regarding student views.

Recently, KSHSAA has been addressing the issue of Association membership by certain nonpublic schools that no longer want to opt for accreditation under the State Board of Education's Quality Performance Accreditation program (QPA). (Being an accredited school is a criterion for KSHSAA membership.) The Executive Director said that the Association currently recognizes schools accredited by the State Board of Education and the Independent Schools Association of the Southwest. To address the current situation, the Executive Director said his recommendation would be to extend Association membership to schools accredited by the Association of Christian Schools International or the National Council for Private School Accreditation.

It was reported that KSHSAA staff have been making a concerted effort to help people throughout the state become better informed about KSHSAA's role and its activities. Twelve forums at various locations in Kansas have been held for this purpose during 1997. The Executive Director explained that each October the Association conducts six regional administrator and board of education meetings for the purpose of gathering information from members on emerging issues. Also, intermittently, the KSHSAA Executive Board creates special study committees to evaluate significant or controversial issues.

The Executive Director explained his belief that the issues which had prompted introduction in 1997 of three bills affecting KSHSAA were all matters that had been scheduled for consideration during the September meeting of the KSHSAA Board of Directors. One bill contained a definition of "non-school activities" that would have been exempted from Association oversight. The other two bills would have prohibited the Association from exercising oversight of regulated activities outside of the usual school seasons, exclusive of postseason tournaments.

In response to the charge that KSHSAA tends

to be unresponsive to change, the Executive Director explained that KSHSAA does have a process for reviewing and changing rules and that the process works. By way of analogy to the Legislature, the Executive Director noted that many times people do not get the solutions they want or that some changes take a long time to occur. It was noted that, in April of 1997, two significant rule changes were adopted:

- summertime restrictions on school coaches working with athletes from their school teams were lifted for all sports except football, volleyball, and basketball; and
- the schedule for the survey designed to monitor the loss of instructional time due to activities was changed from administration once in every two years to once in every four years.

**Conferees.** Conferees included various parties having some objection to the KSHSAA role in interschool activities generally or to specific KSHSAA rules: the past president of the Kansas Basketball Coaches Association; the state chairman of U.S.A. Wrestling-Kansas, Inc.; a Kansas State University faculty member and representative of the Parks and Recreation Board of Manhattan; the Goddard High School Band Director; two parents of children who do not regularly attend accredited schools; and a parent and soccer coach from Manhattan. The issues raised by these conferees are summarized below:

- KSHSAA rules should not prohibit students who are home schooled or who attend schools that are not KSHSAA members from participating in KSHSAA sanctioned contests or playoffs.
- The KSHSAA rule that places summertime restrictions on football, basketball, and volleyball coaches in working with their students should be changed.
- The rule that prevents coaches from coaching in practice or competition students whom they will be coaching in the same sport during the following year should be changed. (This issue was raised in connection with preparation of youth for Olympic wrestling.)

- Rules as applied to soccer pertaining to off-season participation by students from the same school soccer team should be liberalized, including elimination of provisions of the rule which apply unfairly to girls.
- KSHSAA rules should not affect a child's participation in activities outside of the regular school program. This should be a student and family decision.
- KSHSAA rules should either allow in-state competitions among bands or permit bands to travel out of the state to compete.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee's hearing provided an alternative venue for persons dissatisfied with certain KSHSAA rules and practices to make their concerns known. The Committee is appreciative of the efforts the conferees made to bring their issues forward. Legislative oversight of this very important component of school operations should be ongoing.

The concerns regarding the KSHSAA role and its activities brought before the Committee by conferees and that emerged from Committee discussion may be grouped as follows:

- limits on student involvement in competitions outside of the school-sponsored activities programs and seasons;
- limits on coaching outside of the school-sponsored activities programs;
- recognition of nonpublic schools for KSHSAA membership through accreditation mechanisms other than accreditation by the State Board of Education and the Independent Schools Association of the Southwest;
- participation by students schooled mainly in the home in certain school district activities; and
- use of performance rankings in music rather than direct competition.

KSHSAA officials responded to the Committee regarding each of these matters. The Committee recognizes that restrictions on student and coach participation in activities outside of the regular school season is a perennial issue with which the Association must contend. The

Committee's view is that the Association is endeavoring to strike a suitable balance on these issues. It also appears KSHSAA is making progress in modifying its membership criteria to more easily accommodate schools that do not seek State Board of Education accreditation. An area of concern that will continue to grow is that of participation of students principally schooled in the home in school district activities programs. Now, such students are prohibited from participating in interschool activities unless they are enrolled in five or more subjects and meet the Association's scholarship requirements.

In response to questions raised and issues identified during the hearings, the KSHSAA Executive Director said that some matters had been addressed by changes in the rules that have occurred during the last year and other proposed changes, including some that affect soccer, were on the agenda for KSHSAA consideration at the September Board of Directors meeting.

In response to repeated complaints that KSHSAA rules are too restrictive, the KSHSAA Executive Director explained that, in general, the Association cannot focus on individual needs and desires at the expense of the student body as a whole. A principle upon which KSHSAA operates is that students should be well-rounded, not only with respect to the balance between academics and activities, but also with regard to too much specialization in one activity. KSHSAA generally does not promote student specialization in one activity to the exclusion of others, nor does it encourage activities that involve considerable travel or expense. The KSHSAA view is that students should be engaged in education and not high stakes competition in national events. Providing the opportunity for a student to develop enough proficiency in a sport or activity to win a scholarship is not a KSHSAA goal. These views are not universally shared by parents and students.

The Executive Director emphasized that the KSHSAA rules are made and changed by member schools. It is not unusual for rule changes to be promoted by one group, such as coaches or educators, but to be opposed by another group, such as school administrators. The KSHSAA

deliberative process was characterized as much like that of the Legislature.

The KSHSAA testimony suggests that a more concerted effort is being made to receive, evaluate, and act fairly on student activities issues under KSHSAA jurisdiction. KSHSAA's focus on the merits of rule changes should remain student centered and should reflect the changing needs and times. In this regard the Association should consider increased reliance on use of special study or advisory groups created in accord with the specific sport or other activity involved.

Further, it appears that KSHSAA has become more acutely aware of the importance of informing the public of the Association role and functions and, therefore, is placing greater emphasis on this activity. The Committee believes such an effort is needed and that it continue to be given high priority. In light of these KSHSAA efforts, the Committee sees no present need to propose statutory changes affecting the KSHSAA organization or operation or to recommend change of any specific rule.

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### ***Truancy Issues***

**SUMMARY:** The Committee observes that most legislative initiatives adopted in other states to combat truancy have been considered, if not adopted, in Kansas. In this connection, the Committee urges Kansas professional educational organizations to make a special effort to advise school boards and school personnel of the options available to them in their campaigns against truancy.

The Committee also notes that there is slippage at each stage in the execution of statutory provisions regarding reporting, investigating, and proceeding in truancy cases so that a significant gap exists between actual practice and what the law seems to require. Those working in the system could offer suggestions in this regard.

In addition to efforts to curtail truancy, prevention initiatives also should be considered.

### **BACKGROUND**

This study topic was requested by Representative Jim D. Garner who was urged by an assistant county attorney in Montgomery County to explore options for dealing more effectively with truancy issues.

### **COMMITTEE ACTIVITIES**

In conducting this study, the Committee

reviewed staff materials and received testimony from Representative Jim D. Garner, the Department of Social and Rehabilitation Services, the County and District Attorneys Association, and the Wichita school district (USD 259).

**Staff Materials.** One staff memorandum covered the main provisions of the Kansas compulsory attendance law, compulsory attendance noncompliance reporting requirements, and actions to be taken in reported truancy cases. Also included was a summary of the statute which permits law enforcement officers to pick up truants and deliver them to school and the 1992 law which established regional interagency councils (H.B. 3113 councils) for the purpose of coordinating the efforts of agencies that work with children, adolescents, and families. The other memorandum identified ways states historically have dealt with truancy and more recent truancy prevention innovations, summarized social science research findings on dropout risk factors and both effective and ineffective dropout prevention program features, and presented information from the U.S. Department of Education and U.S. Department of Justice manual on elements of a comprehensive community and educational prevention strategy.

**Hearings.** The following summary highlights key points made by the conferees who appeared before the Committee.

**Representative Jim D. Garner.** Representative Garner explained that his main objective is to elevate the issue of truancy on the public

policy agenda and to get people actively involved in addressing it. He said he is convinced that the current system is not working and that there is a need to more effectively intervene in the lives of children, address problems in the home, and reconnect children with school. Representative Garner called the Committee's attention to 1997 H.B. 2449, of which he was chief sponsor, that would have created a task force on truancy charged with recommending policy options.

**Department of Social and Rehabilitation Services (SRS).** An SRS spokesperson reviewed SRS practices and policies for handling truancy complaints and discussed truancy diversion programs adopted in Douglas, Neosho, and Crawford Counties. When investigation occurs, determinations are based on a family assessment, as SRS policy is to evaluate the entire family situation, not just the behavior of one individual. It was noted that, especially in younger children, truancy may be an indicator of abuse or neglect. Priorities are established for conducting investigations.

It was explained that a variety of intervention strategies may prevent the filing of child in need of care petitions. In fact, only a very small percentage of cases reach that stage.

A report on the use of H.B. 3113 councils indicated that 36 such councils representing 55 counties currently exist. It was emphasized that the law recognizes in the place of such councils, committees or groups already in existence for the purpose of enhancing cooperation and collaboration. It was explained that these councils may be involved with some truancy cases, but that their main focus is broader. Rather, as it relates to truancy, it is more common for SRS area offices to work cooperatively with schools and local district attorneys. Programs in Chanute, Kansas City, Lawrence, and Pittsburg were mentioned in this regard.

**County and District Attorneys Association.** The spokesperson for the County and District Attorneys Association said that not much of a response had been received from the organization's membership on this topic. Truancy was acknowledged to be an important problem that needs to be addressed. It was reported, however, that court resources are so overburdened

that truancy-based child in need of care petitions are assigned a lower priority than other more urgent concerns. It was suggested that some separate type of court or procedure might be needed so that truancy cases do not get mixed with more serious cases.

**Wichita USD 259.** The spokesperson for Wichita USD 259 acknowledged the seriousness of the truancy issue and explained that effective responses to it require support and resources beyond those available in the school—the parents, social services agencies, and law enforcement—for example. The following recommendations were proposed:

- truancy prevention pilot projects targeted to high incidence populations that include maximum use of community resources and provide for measurement of results;
- increased weighting for at-risk students; and
- co-location of social services within schools, such as SRS social workers.

## CONCLUSIONS AND RECOMMENDATIONS

Upon completion of its review of information concerning state legislative initiatives in the area of truancy prevention, the Committee concludes that most such initiatives already have been considered, if not adopted, in Kansas. The Committee learned that no school districts yet have opted to use provisions of the 1996 legislation which authorized school districts to establish school attendance review boards. This prompted Committee discussion of the fact that school districts might not be using all of the options currently available to them in their campaigns against truancy. The Committee therefore urges Kansas professional educational organizations to make a special effort to advise school boards and school personnel of the options available to them.

The Committee wishes to comment on its observation that there is slippage at each stage in the execution of the statutory procedures regarding reporting, investigating, and proceeding in truancy cases, to the extent that there is a significant gap between actual practice and what the law seems to require. It would be helpful if the parties who most often work with



this system could offer suggestions in this regard.

Finally, the Committee wants to acknowledge that it is important for state policymakers to

concern themselves not only with actions that are designed to curtail truancy but also with prevention initiatives directed at addressing the underlying causes.

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### **Scholarship Options for Kansas Postsecondary Students**

**SUMMARY:** The Special Committee expresses general support for the existing state-funded student financial aid programs administered by the State Board of Regents and recommends that some level of increased funding for these financial aid programs be approved through the appropriations process. The Committee recommends that the Kansas Distinguished Scholarship Program, which has not been funded since its enactment in 1996, be funded at a level of \$25,000 each year. Lastly, the Committee requests that Board of Regents staff prepare historical data relative to the financial aid programs directed at minority students and attempt to determine whether increased funding for minority scholarships would produce higher levels of minority participation at the Regents schools.

#### **BACKGROUND**

The Special Committee on Education was charged to review scholarship options for Kansas postsecondary students. The Committee reviewed a staff memorandum which provided an overview of the state-funded student financial aid programs currently administered by the Board of Regents. Also, the memorandum summarized the Georgia HOPE Scholarship Program, student aid programs in other states, and recently-enacted federal legislation which relates to student financial assistance. Lastly, the memorandum discussed a bill (1997 H.B. 2458) which would establish a new comprehensive scholarship program to be known as the Student Tuition Assistance Recognition (STARS) Program.

The State Board of Regents administers a number of state-funded student financial aid programs. These include:

- **need-based aid programs**, such as the Tuition Grant, State Scholarship, Regents Supplemental Grant, Ethnic Minority Scholarship, and the College Work Study Programs;
- **merit-only aid**, such as the Vocational Scholarship Program; and
- **service-based aid programs**, such as the Ethnic Minority Fellowship, Teacher Scholarship, Nursing Scholarship, Osteopathic Scholarship, Optometry Contracts, and ROTC Scholarship Programs.

Approved funding for these aid programs in FY 1998 totaled \$12.7 million, a 3.4 percent increase over the prior year.

The **Georgia HOPE Scholarship Program**—Helping Outstanding Pupils Educationally—was instituted in 1993 to provide scholarship assistance to resident students at any eligible Georgia public or private college, university, or public technical institute. Since the program began, over 265,000 Georgians have benefitted. The program is funded by the Georgia Lottery for Education. Eligible students enrolled in a *public* college or university may receive financial assistance covering tuition, approved mandatory fees, and a book allowance of up to \$100 per quarter. Students enrolled in a Georgia *private* college may be eligible for a \$3,000 annual scholarship for tuition and fees, and may also receive an additional \$1,000 Georgia Tuition Equalization Grant. Financial assistance also is available for students enrolled in nondegree programs at any Georgia *public technical institute*. Lastly, Georgia resident students who have successfully completed the General Education Development (*GED*) diploma

may be eligible for a one-time HOPE award of \$500. The FY 1998 approved HOPE scholarship budget is \$174.7 million.

Students must meet the following qualifications for a HOPE scholarship award:

- be a legal resident of Georgia;
- be a 1993 or later graduate of an eligible high school (1996 or later for private schools), with a "B" average GPA; and
- maintain a "B" average while in college.

HOPE scholarships may be renewed for the sophomore, junior, and senior years as long as the student maintains a "B" average in all coursework.

**Student Aid Highlights in Other States.** The National Association of State Student Grant and Aid Programs recently has published its annual survey report of state-administered financial aid; the data in the report are for the 1995-1996 academic year:

- The states awarded \$2.914 billion in student grant aid to over 2.0 million students, an increase of 1.6 percent over the \$2.869 billion awarded in 1994-1995. Of the amount awarded, 85 percent was need-based grant aid to undergraduate and graduate students, while 15 percent of the total was nonneed-based grant aid.
- Five states (California, Illinois, New Jersey, New York, and Pennsylvania) collectively awarded more than \$1.5 billion in undergraduate need-based grant aid, comprising 60 percent of the total awarded in this category.
- Overall, state spending on need and nonneed-based grant aid has increased almost 52 percent over the past five years.
- Funding for undergraduate need-based grant aid leveled off in the 1995-1996, increasing only 0.6 percent from 1994-1995. It had increased at an average of 9.6 percent yearly in each of the previous five academic years.
- By way of comparison, need-based grant aid spending in Kansas has increased by 13.0 percent over the past five fiscal years. The following dollar amounts are the legislative approved amounts for these need-based

programs: Regents Supplemental Grant, Tuition Grant, State Scholarship, and Ethnic Minority Scholarship.

FY 1998	\$ 10.3 million
FY 1997	9.8 million
FY 1996	10.4 million
FY 1995	9.7 million
FY 1994	9.1 million

**Taxpayer Relief Act of 1997.** The Taxpayer Relief Act of 1997 was enacted by Congress on July 31, 1997. Several of the new tax breaks in the bill are education incentives. Two of these incentives—the Hope Scholarship and the Lifetime Learning Credit—have received considerable media attention.

The Hope Scholarship is really a tax credit and not a scholarship. This credit is allowed only for the first two years of postsecondary education for qualified tuition and related expenses (this includes mandatory fees, but not food or lodging). A family may claim a tax credit of up to \$1,500 per tax year (for two years) for each eligible dependent. The tax credit applies to expenses paid after *December 31, 1997*, for an academic period beginning after that date. The student must be enrolled at least half-time and must not have completed the first two years of undergraduate study. The actual amount of the credit depends upon the family's income, the amount of tuition and fees paid, and the amount of other scholarships received which are deducted. The tax credit is phased out as family income increases.

The Lifetime Learning Credit is a 20 percent credit that is applied to the first \$5,000 of qualified educational expenses, including educational expenses to acquire or improve job skills, beginning with expenses paid after June 30, 1998. After June 30, 2003, the credit can be applied to \$10,000 of eligible expenses. The 20 percent tax credit would apply to college juniors, seniors, graduate students, and workers pursuing job skill training. The student must be enrolled at least half-time in an approved undergraduate or graduate program, or an approved course of instruction to improve job skills.

**The Student Tuition Assistance Recognition (STARS) Legislation.** Legislation was introduced during the 1997 Session which would establish

in Kansas a new financial aid program—the Student Tuition Assistance Recognition (STARS) Program—to be administered by the State Board of Regents. H.B. 2458 was referred to the House Education Committee and is being carried over in that Committee; no hearings were held on the bill.

The STARS Program is intended to provide assistance to eligible Kansas residents enrolled in Kansas educational institutions. The term "educational institutions" includes area vocational-technical schools, community colleges, Washburn University, Regents schools, and independent private colleges. The amount of a STARS scholarship award would be equal to the actual tuition and fees charged to the student (less any federal aid received), but would be capped at \$1,200 per semester.

**Eligibility for the STARS Program.** Student eligibility requirements would include the following qualifications:

- be a Kansas resident with an adjusted gross family income of less than \$50,000 per year;
- be a graduate of a Kansas high school with a GPA of 2.75 or higher on a 4-point scale, or be enrolled in an educational institution and have a 2.75 or higher GPA;
- apply for all available federal financial assistance; and
- have not previously received a baccalaureate degree, if the student is enrolled in an undergraduate degree program.

The STARS scholarship could be renewed for the length of study needed to complete the student's educational program. Students would be required to maintain a GPA of 2.75 or higher in order to remain eligible for financial aid under the program.

Funding for the STARS Program would be generated by transfers from the State Gaming Revenues Fund (SGRF). Currently, all amounts credited to the SGRF in excess of \$50.0 million are transferred to the SGF. H.B. 2458 would provide for the transfer of this excess amount to the new STARS Scholarship Program Fund. The Board of Regents would use moneys credited to this fund to provide STARS scholarships. The original fiscal note on H.B. 2458 prepared by

the Division of the Budget (February 28, 1996) estimated that these excess transfers would total \$6.9 million in FY 1997 and \$7.2 million in FY 1998. This original fiscal note also stated that, the Board of Regents, using data on student financial applications for 1995-1996, had estimated that 18,000 students could qualify for financial assistance under the program. If each student received the maximum \$1,200 per semester, program expenditures from the new Fund would total \$42.3 million in the first year.

Last August, the Board of Regents staff prepared updated fiscal impact information on the STARS bill. This document raised three areas of concern with regard to the administrative efforts needed to implement the bill: need to collect GPA data from 370 high schools and determine the comparability of the data; collection of income information from all families seeking assistance; and need to track student enrollments and student progress to determine continuing eligibility. The Board of Regents estimated that seven to nine additional staff would be necessary to administer the STARS Program, which could result in annual personnel costs of \$250,000, and additional computing support, publicity, and telephone expenses approaching \$100,000, annually.

## COMMITTEE ACTIVITIES

The Committee heard testimony from two conferees: Representative Tom Sawyer and the Executive Director of the State Board of Regents.

**Representative Sawyer.** Representative Sawyer, the principal sponsor, spoke in favor of the concept of 1997 H.B. 2458. He stated that, since 1980, the average tuition at four-year public colleges increased 234 percent, while the median household income grew only 82 percent and the consumer price index increased just 74 percent. He said that these numbers indicate that the cost of college is increasing beyond the reach of Kansas working families, and that the STARS Program will assist Kansas students in meeting the increasing costs of completing their education. He noted that the STARS Program is patterned after the successful Georgia HOPE Program, and he suggested two amendments to the current bill: increase the

maximum adjusted gross family income to \$75,000 and increase the required GPA to 3.0. He explained that the program would be funded with lottery revenues, so no new tax dollars would be needed. He recommended that the program be phased in to control costs, *i.e.*, only freshmen would be included in the first year. He expressed the belief that the existing state-funded scholarship programs are too complicated, and that STARS would simplify financial aid for students and their parents. He stated that college graduates earn \$12,000 to \$14,000 a year more than high school graduates, and that jobs requiring B.A. degrees are expected to grow by 27 percent during the next decade.

**Executive Director of the State Board of Regents.** The Executive Director presented prepared testimony and stated that he supports several of the goals which the sponsors of the STARS bill are trying to achieve: maintaining access to Kansas postsecondary institutions, enhancing the motivation of college students, and focusing attention on the financial pressure being placed on middle income families. The Executive Director then expressed three areas of concern about the STARS proposal:

- the program loses sight of the historical purpose of the Kansas Legislature in providing need-based aid to students from low income families;
- the program places too great an emphasis on high school grades alone and may unintentionally lead to grade inflation and racial disparity in retention of the scholarship; and
- the program will be a significant and unnecessary administrative burden.

The Executive Director explained that the action of simply increasing funding to existing state-funded programs—specifically the State Scholarship Program, the Vocational Education Program, the Tuition Grant Program, and the Regents Supplemental Grant Program—would assist most, if not all, of the students targeted by the STARS Program at little or no additional staff or computing costs, while maintaining the commitment to need based financial aid. The Executive Director stated that he was expressing these concerns in his role as an administrator, and was not representing a Board policy as the

Board has taken no position on the legislation. He explained that the Regents schools themselves award about \$21 million annually in scholarships at the campus level; that the Minority Scholarship and Minority Fellowship Programs have been successful and could be funded at a higher level; that the Kansas Distinguished Scholarship Program created by 1996 S.B. 404 has not been funded since its enactment and should be funded at a level of \$20,000 to \$25,000 annually; and that there is some evidence that the HOPE Program in Georgia had resulted in grade inflation both in the high schools and in the colleges and universities.

## CONCLUSIONS AND RECOMMENDATIONS

Committee members expressed general support for the state-funded student financial aid programs now being administered by the State Board of Regents. The programs currently are funded at a level of about \$12.8 million, annually. Upon its review of the concept of the STARS Program (H.B. 2458); the Committee concluded that setting up an entirely new program, with the associated personnel, administrative, and other new costs, which the Regents staff estimated could approach \$350,000 annually, was not desirable. Instead the Committee agreed to support some level of increased funding for the state-funded student financial aid programs through the appropriations process.

The Committee received testimony that the Kansas Distinguished Scholarship Program has not been funded since its enactment in 1996. The legislation expanded the benefits of the program (tuition and fees at a Regents institution) to Rhodes, Brasenose, Chevening, Fulbright, Marshall, and Truman scholars, and Madison and Mellon Fellows who are Kansas residents or who hold an academic degree from a Regents institution. The Committee endorses the Regents' staff recommendations that this program be funded at a level of \$20,000 to \$25,000 each year. The Committee recommends that a line-item appropriation of \$25,000 annually be included in the Regents appropriation bill to support the Distinguished Scholarship Program.

The Committee also requests that the Board of Regents staff prepare historical data relative to the Minority Scholarship and Minority Fellowship Programs, including the number of recipients of the aid programs, the participation level of minority students as compared to the percent-

age of minority population, and any trend data on minority students in Regents schools, and develop projections concerning the impact of increased funding for minority scholarships on minority participation at the Regents schools.

Report of the  
Special Committee on Community  
College Governance  
to the  
1998 Kansas Legislature

**CHAIRPERSON:** Representative Cindy Empson

**VICE-CHAIRPERSON:** No Vice-Chairperson

**OTHER MEMBERS:** Senators Sherman Jones, Audrey Langworthy, Barbara Lawrence, and Janis Lee; and Representatives Richard Reinhardt, Ralph M. Tanner, and Jack Wempe

**STUDY TOPIC**

Structure and funding of postsecondary education

*December, 1997*

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# SPECIAL COMMITTEE ON COMMUNITY COLLEGE GOVERNANCE

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## ***Structure and Funding of Postsecondary Education\****

**SUMMARY:** The Committee examined postsecondary topics in two general areas: governance and finance. Information about previous efforts to restructure postsecondary education was presented. Detailed information about community college and Washburn University finance also was presented. The Committee recommends legislation be introduced that provides for an increase of over \$33 million in state aid for community colleges and Washburn University; for an elector initiative to require local boards to consider mergers of community colleges and area schools; for greater coordination and oversight of postsecondary education activities; and for enhanced accountability in postsecondary education.

## **BACKGROUND**

The Committee was authorized by the Legislative Coordinating Council (LCC) to meet during the 1997 interim after an informal meeting was held on May 27, 1997, in conjunction with sine die of the 1997 Legislature. The Committee met on June 24, July 24-25, August 13-14, September 22-23, October 9-10, November 20-21, and December 2, 1997. Copies of the Committee minutes and attachments are filed with the Division of Legislative Administrative Services.

**Past Studies and Recommendations to Reorganize Postsecondary Education.** Beginning in 1972 with the Master Planning Commission, there have been numerous entities over the past 25 years studying postsecondary education in Kansas and offering alternative recommendations about how to restructure the system.

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\* S.B. 403 and H.B. 2605 accompany this report.

Some of the groups were charged by the Legislature with that task, some were authorized by the Governor, some were established by the State Board of Education, and some other groups or individuals assumed that responsibility on their own initiative.

Most studies dealt with restructuring, primarily considering the governance arrangements, and secondarily, considering the finance arrangements of the postsecondary education system in Kansas. Reengineering the postsecondary system has been the main focus of these studies and recommendations of the past 25 years. Lack of consensus on exactly what changes were needed in restructuring governance mechanisms, in the absence of an acute financial crisis, mitigated against adoption of most restructuring recommendations. Other states which have reorganized governance, in general, were either responding to financial crises or reacting to perceived, severe financial problems.

Over the 25 years since the Master Planning Commission made its recommendations, few of the initiatives from that study or any subsequent study have been implemented. However, given the number of studies and recommendations produced over the past quarter century, it may be concluded that not everyone has been satisfied with the Kansas postsecondary education system. Since 1986, there have been a number of reviewers focusing on the numerous studies and recommendations about reorganizing postsecondary education in Kansas. In fact, some of the reviewers became enmeshed in their studies and concluded with recommendations for changes. Edward Flentje (1986) prepared a report on the governance of postsecondary education for the 1986 Task Force on Higher Education (a work group of the Legislative Commission on Economic Development). He cites a November 1962 publication, *Kansas Plans for the Next Generation*, published by the Kansas Board of Regents, which states:

"For forty years, therefore, the Board and other agencies concerned with higher education in Kansas have been 'studying' the problems of the State's universities and colleges. No fewer than nine major statewide reports have been prepared since 1922. Literally hundreds of recommendations have been made on how to improve higher education in Kansas or at least how to coordinate it better. But a reading of Kansas educational history leads to the conclusion that nothing much has happened as a result of these reports. The studies were made, the reports were accepted, the material was read, then it was filed. Higher education in Kansas continued to march on much as before."

A few recommendations from the various studies have been adopted. Among the more recent changes, which were recommended usually in several different studies, are the following developments. There have been mergers of community colleges with area vocational schools and the development of regional consortia by schools. Other potential mergers have been considered, including Fort Hays State University and Barton County Community College, and Pittsburg State University and Labette County Community College. Legislation was passed in 1994 which allows area vocational schools to become technical colleges. Four schools have made the conversion.

Aims C. McGuinness, Jr., told the LEPC during the 1994 interim that, in his opinion as a consultant for the National Center for Higher Education Management Systems:

"How to shape the structures and policies for a constructive relationship between the state and higher education will be one of the most important challenges of the next decade. It is time for states to step back and examine the relevance for the next century of structures formed for an earlier time."

Since 1972, at least 22 studies have reported recommendations from entities that sought to bring about changes in the Kansas

postsecondary education system. In recent years since 1993, legislators began to complain that there had been enough studies and not enough action to implement recommendations. The 1995 Legislature, acting on this complaint and the initiative of the House Select Committee on Postsecondary Education, enacted H.B. 2553 creating the Kansas Council on the Future of Postsecondary Education. Its primary responsibility was to develop a comprehensive state plan for postsecondary education in Kansas.

Two years later in March of 1997, the Council submitted a summary of its conclusions and recommendations to the Legislature, with the statement that "The Council has no plans for any additional meetings." Rather than developing a plan, the Council became another study group which produced a vision statement and three different governance and coordination options. Since no consensus developed among Council members, its recommendations embraced all three options, together with a listing of positive and negative implications of each option.

**Community College and Washburn University Sources of Revenue.** The major sources of revenue for community colleges are local property taxes, state aid, and student tuition. These three sources account for about 90 percent of the total received by the institutions. The following table for community colleges shows, for the 1995-96 school year, total revenues received for the state as a whole.



**COMMUNITY COLLEGE REVENUES SCHOOL YEAR  
1995-96<sup>1</sup>**

Source	Revenue	Percent of Total
State <sup>2</sup>	\$ 59,036,120	26.8%
Local <sup>3</sup>	98,260,803	44.5
Student <sup>4</sup>	41,026,117	18.6
County Out-District Tuition	9,649,649	4.4
Federal	2,464,251	1.1
Other <sup>5</sup>	10,236,127	4.6
<b>TOTAL</b>	<b>\$ 220,673,067</b>	<b>100.0%</b>

- 1) Includes revenues to the community college general, vocational education, employee benefit, adult education, and adult supplemental education funds.
- 2) Includes credit hour, out-district, and general state aid; receipts from the Local Ad Valorem Tax Reduction Fund; state grants and contracts; and any other state aid.
- 3) Includes local ad valorem property taxes, motor vehicle property taxes, recreational vehicle taxes, and miscellaneous local income.
- 4) Includes in- and out-of-state student tuition and fees.
- 5) Includes gifts, interest earnings, and miscellaneous income.

**Source:** *Statistical and Financial Information of Kansas Community Colleges*, Kansas State Department of Education, April 1997.

State sources of revenue, which account for about 27 percent of revenues statewide, range from a low of 17 percent at Seward County Community College to a high of 40 percent at Highland Community College. For institutions with stable or declining enrollments, a dependence on an enrollment-driven state aid formula for a large proportion of financing is problematic unless inflationary increases or other adjustments to state aid is made. Other institutions that derive a third or more of their revenues from the state include Allen, Barton, Cloud, Cowley, Fort Scott, and Labette Community Colleges.

Local revenues (excluding county out-district tuition) account for about 45 percent of community college revenues statewide, but for individual institutions the range is from a low of 21 percent at Highland to 62 percent at Seward. Seven community colleges receive more than half of their revenues from local sources: Coffeyville, Garden City, Independence, Johnson, Kansas City, Pratt, and Seward.

Student tuition and fees, which comprise about 19 percent of the total statewide, range from a low of 10 percent of total revenues at Independence Community College to a high of

almost 29 percent at Colby Community College.

Payments by counties for out-district tuition are less than 5 percent of total resources statewide, but, for some institutions, represent an important source of revenue. Examples include Cloud and Highland Community Colleges, each of which derives more than 10 percent of total revenues from county tuition payments. At the other extreme are Coffeyville and Johnson County Community Colleges, whose income from county out-district tuition payments is less than 2 percent of their total revenues.

Community colleges statewide received less than \$2.5 million in federal funds, which represents approximately 1 percent of total revenues. In the 1995-96 school year, all community colleges received federal funding (mainly for vocational education and adult basic education programs), but no institution received less than \$50,000.

Other sources of revenue which comprise less than 5 percent of total income statewide include such things as interest earnings, gifts, and miscellaneous income.

For purposes of comparison, similar revenue information for Washburn University is shown below:

**WASHBURN UNIVERSITY EDUCATION AND  
GENERAL REVENUES TO GENERAL  
FUND SCHOOL YEAR 1995-96**

Source	Revenue	Percent of Total
State <sup>1)</sup>	\$ 7,427,047	20.7%
Local <sup>2)</sup>	9,479,049	26.4
Student	14,659,980	40.8
Out-District Tuition <sup>3)</sup>	487,816	1.4
Federal	596,369	1.7
Other <sup>4)</sup>	3,265,833	9.1
<b>TOTAL</b>	<b>\$ 35,916,094</b>	<b>100.0%</b>

- 1) Includes Washburn University operating grant, receipts from the Local Ad Valorem Tax Reduction Fund, and state aid for KTWU public television.
- 2) Includes local ad valorem property tax revenues to the general and employee benefit funds based on property in the city of Topeka.
- 3) Includes county out-district tuition payments and payments from townships in Shawnee County outside Topeka.
- 4) A large portion consists of gifts to KTWU public television.

**COMMITTEE ACTIVITIES**

The Committee conducted a number of informational reviews and hearings on the subjects of postsecondary education governance and finance as its two main themes of interim study. The June meeting was devoted to governing and coordinating postsecondary education. Research about other states was considered, especially a recent report calling for strong state coordination of public colleges. The work of the Kansas Council on the Future of Postsecondary Education was summarized. It was noted that the Council had ceased meeting in early 1997 without completing a master plan for Kansas postsecondary education. The Council has a statutory charge to prepare a master plan for postsecondary education and submit it to the Governor and Legislature.

Representatives of the Board of Education and Board of Regents presented information about the overlapping responsibilities of each Board and how they cooperate in trying to solve problems. Regular meetings of an informal group of three members from each board, known as the Joint Advisory Committee on

Governance, have been held since the Council suspended meetings. Representatives of both the Board of Regents and Board of Education pledged to continue these informal meetings since the Council has no plans for any additional sessions. Board members had participated in the informal sessions of the Joint Advisory Committee which predates the statutory Council, but had suspended the meetings while the Council was functioning.

The July meeting addressed finance of community colleges. Topics included tuition and out-district tuition, local mill levies, vocational program funding, course approval, types of appropriations and funding methods, projected enrollments, state funding for postsecondary education, and administrative salaries.

Information was presented at the August meeting about proposed 1997 legislation (H.B. 2119) that would have transferred supervision of the community colleges to the Board of Regents and changed the manner in which community colleges are funded. Testimony was heard about current barriers to providing educational services and cooperating with Regents institutions, as well as about successes in delivering services. Consolidations of community colleges and area schools were reviewed. Several different plans for changing governance and finance arrangements were discussed.

Testimony was heard at the September meeting from representatives of community colleges and Regents institutions. Coordination and cooperation between community colleges and Regents institutions was described. Mergers of community colleges and area schools also were portrayed. Different proposals by members of the Committee were reviewed by staff and the fiscal impact was assessed. A list of items common to all proposals was developed and the Committee endorsed part of the listing as a basis for further consideration of proposals. Since many of the items have relevance for Washburn University, the Committee decided to incorporate the institution into future deliberations about community college finance.

Testimony was heard in October from a representative of Washburn University. The Committee reviewed options for funding community colleges. A bill draft was requested

during the October meeting that incorporates many of the options for changes in financing that would impact both community colleges and Washburn University. A second bill draft also was requested that includes additional funds for Washburn University. The Committee discussed the need for a coordinating agency to monitor postsecondary education. Consideration was given to changing the merger statutes for community colleges and area schools, with a new provision allowing voters to petition for an election.

Two draft bills were reviewed during the November meeting. Additional Committee discussion focused on state coordination of community colleges and a proposal offered by staff of the Board of Regents. A response from the Board of Education in the form of its proposal was requested. Other means of coordinating postsecondary education were considered, including use of the LEPC and the need for a master plan. The issue of mergers also was a subject of Committee discussion. Testimony was received from the State Board of Education, the Kansas Area Vocational Technical School Association, a group from Seward County, a group affiliated with community college associations, and a representative of the Kansas National Education Association. The Committee agreed on additional items to include in its proposed legislation that changes financing of community colleges. The Committee also included a provision enhancing the authority of the LEPC to meet any time on the call of its chairperson.

The December meeting finalized the Committee's conclusions and recommendations to be submitted to the 1998 Legislature. A new proposed state aid plan was reviewed for the Committee that was developed after the last meeting and designed to correct some of the deficiencies in an earlier plan that were pointed out in testimony by conferees at the November meeting. Documents about performance indicators were considered, along with a response from the Commissioner of Education to an earlier coordination proposal made by the Executive Director of the Board of Regents. It was pointed out that the Joint Advisory Committee on Governance would consider distance learning issues involving Regents institutions

and community colleges at its next meeting. The Committee discussed additional roles for the LEPC. A number of proposals and recommendations for inclusion in the final report were discussed. Several recommendations for legislation were adopted.

The Committee notes in its final report that the issue of residency should be studied by the Joint Advisory Committee on Governance and a report made to the LEPC. The Committee also notes that there has been considerable cooperation and collaboration between Regents institutions and community colleges, notably through regional consortia and the Joint Advisory Committee efforts. The Committee asked that its commendation be added to the final report and that further activities relative to cooperation and collaboration should be encouraged by the Board of Regents and the Board of Education.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee adopts a number of recommendations concerning both statutory and procedural changes relative to postsecondary education and coordination, while other recommendations address changes in how community colleges and Washburn University are funded. Items 1-9 pertain to governance, while items 10-19 pertain to finance.

### Postsecondary Coordination and Governance

1. **Authorize Elector Petitions for Mergers.** The Committee recommends a statutory amendment to permit electors to initiate the process of merging postsecondary institutions. Currently, state law requires that the consolidation process be initiated by governing boards of community colleges and area vocational technical schools. The proposed change in law would require, upon petition by 10 percent of the registered voters in each district, for governing boards to place the matter of consolidation on the agenda at the next regular board meeting. The proposal would apply to registered voters and gov-

- erning boards in all districts affected by proposed consolidation of community college districts and area vocational technical school districts as defined by the bill. Opportunity for testimony on the matter must be provided at all governing board meetings. Action by the boards is required within 60 days of the hearing, with either a rejection of the citizen petition or agreement to proceed under provisions of K.S.A. 71-1301 *et seq.*, or K.S.A. 71-1701 which allow consolidations of institutions.
2. **Enhance Noninstitutional Mergers.** The Committee recommends the State Board of Education to develop and implement guidelines for mergers (coordination) of educational effort. It is understood that a merger of effort can be accomplished without institutional merger. The process should include interaction between instructors, administrators, and governing board members. The objective is to create the most customer-friendly, taxpayer-friendly, and effective system possible. In accord with this recommendation, the State Board of Education would issue an annual report detailing specific measures which have been taken to meet the objective. Examples of such measures should include curriculum, administration, technology, counseling, purchasing, staffing, library services, enrollment procedures, and office processes. The annual report would be submitted to the LEPC on or before September 1 of each year, beginning in 1999.
  3. **Institute a Five-Year Planning Cycle and Annual Reporting Procedures.** The Committee recommends the State Board of Education to develop a five-year plan for community colleges and that the plan should be updated periodically—at least once every five years. In addition, the State Board should report annually to the Governor and Legislature regarding progress in achieving goals established in the plan and the results as measured by performance indicators. A set of performance indicators should include information that currently is collected as well as new information to be added in support of the performance indicators. The Committee recognizes that the State Board adopted a new plan in November of 1997 that is required by K.S.A. 71-1001 *et seq.*
  4. **Compile State-Level Performance Indicators.** The Committee recommends legislation requiring the State Board of Education in the case of community colleges to identify core indicators of performance, establish a data management system, and maintain uniform information about common and institutional specific performance indicators that document the effectiveness of the colleges. The Committee also reviewed the work of the State Board of Regents, as well as that of the State Board of Education, regarding development and implementation of core performance indicators designed to measure effectiveness and efficiency in delivering postsecondary education. The Committee expresses its support for continuing these efforts and for enhancing accountability in postsecondary education. The Committee believes when providing additional financial resources, such as its recommendations would provide for community colleges, there must be new data provided to allow evaluating the results produced by increased state funds.
  5. **Monitor Development of Performance Indicators.** The Committee requests the Board of Regents and the Board of Education to keep the LEPC informed as each board develops core indicators and performance measures. The Committee emphasizes that this monitoring should be a function of the LEPC. It is strongly felt that, concurrent to increases in financing for postsecondary education, legislative empowerment to monitor developments and assure accountability could be achieved by increasing the LEPC authority.
  6. **Review Institutional Missions.** The Committee recommends the State Board of Education to include a review of institutional missions in the process of developing a five-year plan for community colleges.
  7. **Review Instructional Programs.** The Com-

mittee recommends the State Board of Education to develop state-level procedures and uniform guidelines to ensure that periodic review is conducted by each community college of all academic and vocational programs, and that the results of the local reviews are reported to the State Board of Education for its consideration.

8. **Coordinate Distance Learning.** The Committee urges the State Board of Education and the State Board of Regents to cooperate in matters relative to distance learning and to coordinate programs in order to provide access for all citizens. The Committee understands that the Joint Advisory Committee on Governance is considering a definition of "close proximity" to ensure the process of institutional cooperation continue between Regents institutions and community colleges, and encourages that entity to continued its coordination efforts.
9. **Increase the Authority of the LEPC.** The Committee recommends amending the LEPC statute to authorize it meet any time and any place in the state upon call of the Chairperson. The Committee was concerned that during the 1997 interim, the LCC had limited the LEPC to only four meeting days, including two for its annual conference, and that the limitation had restricted the LEPC's ability to monitor postsecondary activities during the 1997 interim. The amendment is intended to remove the LEPC from LCC control over the number of meetings that the LEPC can hold. The Committee wants the LEPC to serve as an oversight entity and recommends clarifying that the LEPC is required to review certain issues. The issues include governance, coordination among institutions, accessibility, articulation and transfer, finance, and program offerings. The LEPC would be authorized to recommend measures for enhancing accountability of the postsecondary education system. The proposed changes would allow the LEPC to develop a policy agenda for postsecondary education and to develop

a schedule for implementation.

## Postsecondary Finance

10. **Increase Credit Hour and Out-district State Aid.** The Committee recommends increasing credit hour aid from \$30.50 to \$38.00 and increasing out-district state aid from \$24.00 to \$36.00. Cost of increasing credit hour aid is almost \$13.3 million in FY 1999 and out-district state aid is slightly over \$7.7 million. During the interim, the Committee reviewed a proposal that would have allocated all state aid to community colleges on the basis of an operating grant (1997 H.B. 2119), but became concerned that, without providing some incentives for institutions to offer courses based on credit hours generated, community colleges would be less likely to offer outreach programs. Instead, the Committee decided to recommend an increase in both credit hour and out-district state aid to help buy down the local mill levies. The Committee notes several other options that would have combined the existing credit hour and out-district state aid programs with a new operating grant. Under one proposal, the grant would have replaced county out-district tuition, the general state aid program, and the amount needed to replace local property tax support as the result of a proposed 15-mill cap. The operating grant concept is preserved in another item below for a more limited purpose.
11. **Increase General State Aid.** The Committee recommends increasing funds by \$8.0 million in FY 1999. The general state aid program is based upon the assessed valuation of the community college district, the enrollment of the community college, and the median assessed valuation per student. It is the only community college program that takes into account the relative property wealth of districts and is not entirely enrollment driven. In recognition of the fact that increasing general state aid has the potential impact of reducing mill levies, the

- Committee considered several alternatives for funding levels of this approach. Currently, only \$2.6 million of state funding is distributed through general state aid.
12. **Provide an Operating Grant in Order to Buy Down Local Levies to 20 Mills.** The Committee recommends operating grants estimated at \$2.74 million in FY 1999. After taking into account increases recommended for state credit hour aid, out-district state aid, and general state aid, it is estimated that four community colleges still would need to levy in 1998-99 more than 20 mills to maintain current expenditure levels, assuming no changes in enrollments or tuition. State operating grants, based on current estimates, would be provided for four institutions: Coffeyville, Independence, Neosho County, and Pratt. The operating grant amount would be frozen at the FY 1999 dollar amount computed. The presumption is that for subsequent fiscal years, the operating grant will be subjected to review during the appropriations process and to adjustment, if necessary. One example reviewed by the Committee illustrated the effect that could result from a major variation in a district's property tax base. The effect of a decline in valuations and subsequent loss of expected tax revenue needed to fund a community college's continued operation might warrant an adjustment in the operating grant.
  13. **Cap Community College Levies for Operating Expenses (General, Vocational, and Employee Benefit Funds) at 20 Mills.** The Committee recommends legislation to impose a 20 mill cap for operating revenues. Mill levies for the general, vocational, and employee benefit funds would be included in the cap at 20 mills. The recommended legislation also provides an exemption from the current tax lid. Community colleges with lower aggregate levies of less than 20 mills in 1998-99 would be unaffected. Four community colleges are estimated to have mill levies of more than 20 mills after taking into account other state aid increases designed to reduce ad valorem property taxes. Because of the increased state aid in this community college funding plan, the Committee understands that property tax relief will be achieved. Approximately two-thirds (\$20 million) of the additional state funding could be applied to tax relief at the local level.
  14. **Eliminate County Out-District Tuition.** The Committee recommends legislation repealing out-district tuition paid by counties. Payments by counties for out-district tuition are less than 5 percent of total community college resources state-wide, but, for some institutions, represent an important source of revenue. For the counties, the payments long have represented an annual expense over which commissioners could exercise little control, except to pay the bill when presented by the community colleges. Budgeting for this purpose from year to year is problematical. The State Department of Education estimates that state funding to replace county out-district tuition currently is \$10 million. For FY 1999, the estimated cost is slightly more than \$12.2 million. Financing for this change is included in the recommended state funding increases for state aid.
  15. **Eliminate the 64/72-Hour Limit on Academic Out-district State Aid and Out-district Tuition.** The Committee recommends eliminating this current statutory limitation. At one time, no state aid was paid for community college courses taken by students who had more than 64 credit hours (or 72 hours in the case of pre-engineering and pre-nursing programs). However, the limit was first removed in the case of the credit hour aid program and then for vocational out-district state aid and county tuition. The rationale was that many community college students are adults who have baccalaureate degrees but need job training or retraining. Because it is deemed to be in the state's interest to have a well trained workforce, the 64-hour limit was removed for vocational courses so that it would not be a barrier to community colleges providing job training and retraining. The State Department of Educa-

- tion estimates that removing the limit on academic out-district tuition would require an additional \$1.5 million in state aid. Financing for this change is included in the recommended state funding increases.
16. **Fund All Vocational Education Courses at Two Times the Academic Hour Rate.** The Committee recommends changing current law that pays two different rates for community colleges vocational courses. Presently, the higher rate of 2.0 times the academic rate for vocational education courses applies to five community colleges that are designated area vocational schools. The other 14 community colleges are paid at a rate of 1.5 times the academic rate for the same vocational education courses. The State Department of Education estimates paying all the community colleges vocational credit hour aid at the higher rate would cost an additional \$3.0 million. Generally, vocational education courses are more expensive for institutions to offer, which is the reason for the higher reimbursement rate. There is no programmatic basis for two levels of vocational course reimbursement, and the Committee felt that this is the appropriate time to establish equity in financing vocational education courses at the same rate for all community colleges. Financing for this change is included in the recommended state funding increases.
  17. **Change the Credit Hour Definition in K.S.A. 71-601.** The Committee recommends a revision in state law to authorize the State Board of Education to determine the length of a community college semester. Part of the rationale is that the Regents institutions have operated on a 15-week semester for many years. Currently, statutes require that community colleges offer an 18-week semester, and that equates to 900 minutes of instruction for one credit hour, the basis for state aid payments on approved courses. This change was requested by the community colleges and it will allow the State Board of Education to reduce the community college term for a semester to 15 weeks, and that equates to 750 minutes of instruction for one credit hour. This revised definition for credit hour is the basis for accreditation and constitutes 50 minutes of instruction per class period. No fiscal impact is anticipated in the first year after the change becomes law. The State Board of Education would supervise the transition from 18 to 15 weeks in administering the new provisions in law, and the change should take at least one year to complete.
  18. **Increase the Operating Grant to Washburn University.** The Committee's recommendation to eliminate out-district tuition for community colleges also applies to out-district tuition for Washburn University. An increase in the amount of state money to replace the lost income is recommended by the Committee, increasing the current operating grant. The estimate for increased cost is \$503,890.
  19. **Add an Equity Grant for Washburn University.** The Committee also recommends a second funding enhancement, or equity grant, to address a parity issue. During the Committee's review of funding issues, it was pointed out that Washburn University receives state support that averages \$1,630 per FTE student, while the average is \$1,740 per FTE student for community colleges. The gap in funding is what the equity grant attempts to address by reducing 20 percent of the difference during the first year. The estimated cost of the equity grant is \$861,003 in FY 1999. The equity grant represents one-fifth of the amount needed to fully finance the grant which is anticipated to be phased-in over five years by one-fifth each subsequent year.

### Recommended Legislation

The Committee recommends introduction of two bills for consideration by the 1998 Legislature. The first bill contains the statutory changes needed to implement the Committee's recommendations, except the funding of Washburn University's enhancements. The

second bill is an appropriations measure providing line items for an increased operating grant and an equity grant.

**Proposed Community College State Aid Plan.** This proposed community college state aid plan includes the following provisions:

- repeals out-district tuition;
- increases out-district state aid from \$24.00 to \$36.00 per credit hour;
- increases credit hour state aid from \$30.50 to \$38.00 per credit hour;
- increases general state aid from \$2,642,771 to \$10,642,845;
- increases vocational education weighting from 1.5 to 1 to 2 to 1 for the 14 community colleges that do not have area vocational school designation;
- repeals the academic out-district credit hour state aid limitation for students with over 64/72 credit hours;
- provides for an operating grant to the community colleges when state aid increase results in a mill levy of more than 20 mills; and
- provides an exemption from the current tax lid and places a 20-mill limitation on the general, vocational, and employee benefit funds.

**Proposed Washburn University Funding Plan.** This Washburn University state aid plan includes the following provisions:

- repeals out-district tuition and increases the state operating grant to offset any lost revenue; and
- establishes an equity grant program and funds one-fifth of the calculated cost in the first year, with annual increases of one-fifth anticipated in each subsequent year until full equity funding is achieved.

Equity funding is based initially on a 199 calculation.

**Estimated Cost of Proposed State Funding Plans.** The following table summarizes the estimated costs of this state plan for community colleges and Washburn University.

<u>State Support</u>	<u>FY 1999</u>	<u>FY 1998</u>	<u>Difference</u>
<u>Cmnty Colleges</u>			
Credit Hour Aid	\$ 54,739,631	\$ 41,457,678	\$ 13,281,953
Out-District Aid	19,933,210	12,225,973	7,707,237
General State Aid	10,642,845	2,642,795	8,000,000
Operating Grant	<u>2,741,630</u>	<u>0</u>	<u>2,741,630</u>
Subtotals	\$ 88,057,316	\$ 56,326,446	\$ 31,730,870
<u>Washburn Uni.</u>			
Operating Grant	\$ 7,958,766	\$ 7,454,876	\$ 503,890
Equity Grant	<u>861,003</u>	<u>0</u>	<u>861,003</u>
Subtotals	\$ 8,819,769	\$ 7,454,876	\$ 1,364,893
Grand Total	<u>\$ 96,877,085</u>	<u>\$ 63,781,322</u>	<u>\$ 33,095,763</u>



Report of the  
Legislative Educational Planning Committee  
to the  
1998 Kansas Legislature

**CHAIRPERSON:** Senator Barbara Lawrence

**VICE-CHAIRPERSON:** Representative Cindy Empson

**OTHER MEMBERS:** Senators Laurie Bleeker, Christine Downey, Janis Lee, and Lana Oleen; Representatives Barbara W. Ballard, Kent Glasscock, Deena L. Horst, Richard Reinhardt, and Jonathan Wells

**STUDY TOPIC**

Postsecondary education planning (traditional topic)

*December, 1997*

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# LEGISLATIVE EDUCATIONAL PLANNING COMMITTEE

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## ***Planning for Postsecondary Education\****

**SUMMARY:** The Committee reviewed a number of issues during the 1997 interim. Three of its studies led to recommendations for continued monitoring of qualified admissions, distance learning, and teacher licensure. Several other topics relative to technology result in endorsements for the 1998 Legislature to consider when appropriating funds for telecommunications. After reviewing prepaid tuition and college savings programs, the Committee recommends a bill be introduced for consideration by the 1998 Legislature that would establish a postsecondary education expense program in Kansas.

## **BACKGROUND**

The Legislative Educational Planning Committee (LEPC) was authorized four days of meetings during the 1997 interim, including two for its annual Kansas Conference on Postsecondary Education. The Committee met on October 16-17 and November 18-19, 1997 with the latter two days devoted to the Conference. Copies of the minutes and attachments are filed with the Division of Legislative Administrative Services.

K.S.A. 46-1208a establishes the LEPC. It is composed of 11 members, six of whom are members of the House of Representatives and five of whom are members of the Senate. At least five members of the Committee shall be of the minority party, with at least two thereof from each house. Members are appointed by the Legislative Coordinating Council (LCC). The Committee is permanent with membership changing from time to time as the LCC determines. It meets during the interim as authorized by the LCC and it may meet during the session.

Statutes direct the Committee to plan for public and private postsecondary education in Kansas, including vocational and technical

education. The Committee is instructed to make an annual report and to present recommendations to the Legislature and the Governor. It also is authorized to make other reports and may publish them separately from documents which are required by law to be submitted to the LCC.

Upon request of the LEPC, the State Board of Regents and the State Board of Education are required to provide consultants from the faculties and staffs of institutions and agencies under their respective control and jurisdiction. The Committee may introduce such legislation as it deems necessary in performing its functions.

## **COMMITTEE ACTIVITIES**

### **Board of Regents Matters. Annual Retreat.**

The Committee heard about activities at the Board of Regents retreat. Three discussion sessions for the Regents were devoted to:

- program policies and initiatives,
- the future of higher education in Kansas, and
- faculty salaries.

Board members were given a document entitled "The Future of Higher Education in Kansas" in order to stimulate discussion during the retreat.

**Qualified Admissions.** Board of Regents staff presented a report on the implementation of qualified admissions. It was noted that the Kansas Legislature enacted legislation in 1996 providing for admissions standards to the Regents universities, beginning with undergraduate students seeking admission for the Fall 2001 semester. Much has been completed of the preparatory work necessary for implementation of qualified admissions, such as specifying the precollege curriculum; communicating curriculum requirements to counselors, students, and their parents; and identifying computer technology proficiencies included in the precollege curriculum. However, working to establish

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\* S.B. 402 accompanies this report.

administrative protocols for admissions decisions according to the statute has not been completed. It was noted that the Regents Council of Chief Academic Officers has established a systemwide committee to review and recommend administrative protocols for implementing qualified admissions.

**Telecommunications and Distance Learning.** A report was presented on academic extension within the Kansas Regents system. There are five principles that guide academic extension in the Kansas Regents system:

- The fundamental goal of academic extension is to provide increased access to the educational services of the Regents universities through off-campus programming.
- Academic extension also seeks to increase opportunities for traditionally underserved constituencies, as well as established constituencies, by providing instructional experiences through a variety of course and delivery formats.
- The Board and universities seek to eliminate unnecessary duplication of academic extension courses and programs through clearly demarcated service areas and by promoting cooperation and program specialization where appropriate and beneficial.
- The quality of the learning experiences offered through academic extension should be comparable to those offered on campus, particularly in faculty appointments and academic support.
- The Board encourages the development and delivery of mediated courses and programs where this will advance educational objectives.

**Joint Advisory Committee on Governance.** Representatives of the Board of Regents and the Board of Education reviewed the activities of the Joint Advisory Committee on Governance that is composed of three members from both boards. An on-going effort is underway to develop a transfer student information system which would be consistent with the capacity of institutions to collect and report information, and which would supplement existing data collecting and reporting practices. Community college and Regents presidents believe that the

current articulation and transfer agreements working, and that the educational consortia have been helpful in this effort. Discussions have begun involving faculty in defining common standards for coursework.

**Board of Education. Teacher Certification.** Current issues and activities regarding redesign of licensure for Kansas educators were reviewed by a representative from the Department of Education. The current target for final approval of changes is May of 1998. Information provided to the Committee about specific topics included:

- the February 1997 draft proposal for redesign of licensure for Kansas educators;
- the August 1997 draft supplement for redesign of licensure for Kansas educators;
- prior public hearings schedule and procedures;
- proposed future schedule for study of recommendations by Standards Board for redesign of educator licensure; and
- State Board of Education redesign issues as identified June 11, 1997.

**Distance Learning.** Representatives from the Department of Education presented information about telecommunications and Kansas schools:

- the 1996 federal Telecommunications Act and unified school district technology assessments;
- technology grants for unified school districts;
- technology literacy challenge grants;
- distribution of \$2.0 million in FY 1997 of technology funds for community colleges and Washburn University appropriated by the 1997 Legislature; and
- capital outlay for area vocational schools and technical colleges.

It was pointed out that the State Board of Education is requesting in FY 1999 a total of \$13,525,000 for Internet access and technology equipment for elementary/secondary schools and \$2.0 million in second-year funding for

technology equipment for community colleges and Washburn University.

**Annual Postsecondary Conference.** The 19th Annual Kansas Conference on Postsecondary Education was held November 18-19, 1997, in Topeka at the Bradbury Thompson Center, Washburn University. The 1997 Kansas Conference was sponsored by the LEPC and provided an opportunity for bringing together a group of legislators and educators to consider the state's future and the issues that must be confronted as postsecondary education prepares to enter the 21st Century.

The evening schedule included a Keynote Address by Becky H. Timmons, Director of Congressional Relations, Office of Government Relations, American Council on Education, Washington, D.C. Ms. Timmons discussed federal activities and financing postsecondary education, recent laws enacted by Congress, and prospects for reauthorization of the federal Higher Education Act.

Jeffery B. Edwards, Director of Marketing, Western Governors University, Salt Lake City, Utah, provided an overview of the Western Governors University. Dr. Ed Hammond, President, Fort Hays State University and Fred Boesch, Chief Information Architect, Kansas Information Resources Council, responded to Mr. Edwards remarks.

Dr. David Murphy, President, Midwestern Higher Education Commission (MHEC), Minneapolis, Minnesota and Dr. Phil Sirotkin, Senior Advisor, MHEC, Boulder, Colorado, presented information about the Commission activities and the 1998 Midwest Higher Education Summit. Dr. Steven M. Jordan, Executive Director, Kansas Board of Regents, Dr. Andy Tompkins, Commissioner of Education, and Senator Tim Emert, Senate Majority Leader, responded to the information about the 1998 Summit.

In 1998, the Midwestern Higher Education Policy Summit will bring together the region's governors, state legislative leaders, and higher education officials to develop an action agenda for the 21st Century. The Commission, the Midwestern Legislative Conference (MLC), and the Midwestern Governor's Conference (MGC) of the Council of State Governments, with assistance from the American Council on Educa-

tion, the Education Commission of the State and the University of Minnesota's Hubert H. Humphrey Institute of Public Affairs, are planning the Summit. The program is being supported by a grant from the W. K. Kellogg Foundation. Scheduled for June 3-5, 1998 at The Lodge in Oakbrook, Illinois, the Summit will address three of issues to be identified in a regional survey to determine the Summit's agenda.

The concluding activity of the Conference was a panel of presenters who provided information about employment training in Kansas and reviewed selected programs currently in place. The presenters included Steve Jack, Department of Commerce and Housing; Candy Shively, Department of Social and Rehabilitation Services; Jerry Glazier, Sprint; Dr. Ed Berger, President, Hutchinson Community College; Dr. Phillip Halstead, Dean of the College of Technology, Pittsburg State University; and Johnnie Cartledge, Cessna.

**Fall 1997 Enrollments.** The following summary information is taken from the Kansas Higher Education Enrollment Report and represents the 20th day counts for postsecondary institutions that award credit towards a college degree or certificate. Compared with fall enrollments of 1996, this year's headcount and full-time equivalent (FTE) students represent decreases on a statewide basis.

Headcount Students			
Fall 1996	Fall 1997	Change 96-97	% Change 96-97
173,450	172,646	(804)	(0.5)%
FTE Students			
Fall 1996	Fall 1997	Change 96-97	% Change 96-97
120,335	120,230	(105)	(0.1)%

### **Prepaid College Tuition and Savings Plans.**

A review was undertaken of state sponsored college savings and prepaid tuition programs with an emphasis on the types of programs, a regional survey of the Midwestern states' activities, and an overview of the status of programs in other states.

According to information compiled by the National Association of State Treasurers and reported by the College Savings Plan Network, as of October 2, 1997, there were 41 states which have one or more state sponsored college savings or prepaid tuition programs. Some 19 of the states have what are labeled as new, or recently created, programs. Prepaid tuition or tuition trust programs are found in 22 states. Savings bond, savings plan, or savings plan trust programs are found in 21 states. Ohio and Illinois offer both plans—a prepaid tuition program and a savings bond program.

At the start of calendar year 1997, an earlier report from the National Association of State Treasurers showed that 18 states had established either savings or prepaid tuition programs. The increase in the number of states with programs occurred after Congress passed 1996 legislation resolving questions over federal tax treatment of qualified state programs. The other 23 states with newly authorized programs have begun implementing plans.

**Colorado Program.** After a review of national data and a regional survey, the Committee expressed interest in the new Colorado program. Legislation passed in 1996 created a postsecondary education expense program. The program allows students to use tuition credits and savings throughout the United States at public and private colleges, universities, and vocational schools; to pay for tuition, fees, room and board, books and supplies; to pay federal income taxes on the increased value that is deferred until funds are used for education; and for the increased value to be exempt from Colorado income tax. Participants may choose either monthly installments or a single lump sum payment, and investments can be transferred to another family member. Funds are managed by the Colorado Student Obligation Bond Authority using private sector investment professionals.

The Colorado Postsecondary Education Expense Program was established by the Colorado General Assembly in 1996 to provide families with an opportunity to invest toward future college education expenses. Because the program is dedicated to this mission, it offers certain federal and state tax advantages to investors and students. Two different plans were authorized by the legislation and each plan has separate funds: the prepaid postsecondary education expense trust fund and the postsecondary education expense savings trust fund. Either one or both of the plans may be implemented under Colorado law. Only the prepaid expense plan was implemented in 1997 by the program following a feasibility study that was required by the enabling legislation.

The program's flexibility allows families to set their own investment goals and the date when the student would begin using funds toward college expenses. The investment can be used throughout the United States at public and private colleges, universities, and vocational schools. Each contract for prepaid tuition must identify a single student by name. Virtually anyone is eligible to invest, including parents, grandparents, other relatives or friends of the student. Individuals can even invest on their own behalf.

The program allows the investment to be made in a lump sum or in monthly payments. The investment amount and term can be customized for individual needs. Taxes on the increased value of investments are deferred at the federal and state levels. When funds in the program are used for education, the increased value is exempt from Colorado taxes and federal taxes are assessed at the student's (not the parent's) rate when funds are used for educational purposes.

### **CONCLUSIONS AND RECOMMENDATIONS**

The LEPC has reviewed a number of issues during the 1997 interim. Many of its studies resulted in recommendations for continued monitoring or in endorsements. After reviewing prepaid tuition and college savings programs, the Committee recommends a bill be introduced that would establish a postsecondary education

expense program in Kansas and that the proposal be considered by the 1998 Legislature.

**Committee Endorsements.** The Committee endorses state participation in federal programs relative to technology acquisition and believes that technology advancement at all levels, including elementary, secondary and postsecondary, is important for education. Although the Committee chooses not to recommend a specific dollar amount at this time, the consensus is that the state should use federal monies made available for technology and that the appropriate state match should be considered by the 1998 Legislature. Since there are other funding requests for technology that are not required for matching federal monies, the Legislature needs to carefully consider the needs of all sectors of postsecondary education, including Regents, Washburn, and community colleges, when deciding how much technology funding to appropriate for the different levels of education.

**Continued Monitoring.** The LEPC recommends continued Committee monitoring of activities in three areas and requests the Board of Regents and the Department of Education staffs to keep the Committee informed in three areas: qualified admissions, distance learning, and teacher certification.

LEPC members note that the Committee had an abbreviated schedule during the 1997 interim because the LCC approved only four meeting days, including two for the annual conference. The Committee expresses the hope that the LEPC will be authorized by the LCC to continue its monitoring activities of broad issues concerning postsecondary education next interim.

**Legislation Recommended.** The Committee recommends introduction of legislation that would establish the Kansas Postsecondary Education Expense Program under the administration of the State Treasurer. The purpose of the new program is to improve access and choice to postsecondary education and to assist residents in meeting the expenses for postsecondary education.

Prior to implementing the bill's provisions, the State Treasurer would be required to conduct a feasibility study for a prepaid expense program and for a savings program, and to

evaluate the financial soundness of both a prepaid plan and a savings plan. Findings of the Treasurer's study would be presented by January 15, 1999, to the Legislature. After a favorable finding and consultation with the Governor and Legislature, the Treasurer shall adopt policies and procedures for implementing the education expenses program by July 1, 2000.

The State Treasurer is authorized to determine whether the education expense program, or any aspect of the program, is financially sound. If the Treasurer should determine that the education expense program or any aspect of it is not financially sound, then the Treasurer either may discontinue the prepaid expense plan or savings plan or any particular aspect of the program. Discontinuation could be either for a period of time or permanent.

The bill is modeled after 1996 Colorado legislation, S.B. 96-172. Most of the provisions in the proposed Kansas bill parallel those of the Colorado law.

The Kansas Postsecondary Education Expense Program is established, and the scope of the program is defined. The type of eligible expenses that may be paid through the program include tuition and other costs such as room, board, and books that may be determined by the State Treasurer. The type of eligible institutions at which expenses may be paid include Kansas public and private postsecondary institutions and other institutions that may be approved by the Treasurer. The program may include a prepaid expense plan, a savings plan, or both plans. Both types of plans are defined in section 4. Two funds are created in the State Treasury: the Kansas Prepaid Postsecondary Education Expense Trust Fund and the Kansas Postsecondary Education Expense Savings Trust Fund. The Treasurer is authorized to determine if a program should be implemented and what types of plans should be included.

The bill would clarify that any contracts or benefits due under the Kansas Postsecondary Education Expense Program shall not constitute a liability of the state and that the program must be self-sufficient. The bill states that income earned on investments shall be tax exempt from Kansas taxes and assessments. It also would delineate the types of investments that are permitted for funds deposited.

The State Treasurer is designed to administer provisions of the Kansas Postsecondary Education Expense Program. In Colorado, the program is placed under the administration of the

Student Obligation Bond Authority. Certain administrative powers and duties are specified in order to conduct business and carry out the provisions.

ment, 668 F.Supp. 267, 271 (S.D.N.Y.1987) (listing cases).

The National Labor Relations Board has itself imposed minimum due process standards in evaluating the fairness of arbitration proceedings resolving unfair labor practice issues. *Spielberg Manufacturing Company*, 112 N.L.R.B. 1080 (1955). Thus, it has refused to defer to an arbitrator's decision where evidence was deliberately withheld from an arbitrator, *Precision Fittings*, 141 N.L.R.B. 1034, 1041-43 (1963), where the grievant was given insufficient time to prepare, *Gateway Transp. Co.*, 137 N.L.R.B. 1763, 1764 (1962), or was not afforded an opportunity to cross-examine a witness, *Versi Craft Corp.*, 227 N.L.R.B. 877 (1977).

In this case, the record establishes that the arbitrator made a fundamental procedural error in deciding the merits of the controversy after advising the parties that he would not do so until after he decided the procedural issues and until Matlack had an opportunity to present its case on the merits. In the district court's words, the arbitrator simply "told the parties one thing and, albeit mistakenly, did another." *Matlack, Inc.*, 916 F.Supp. at 486. The arbitrator's resolution of the merits of the Union's Article 50 grievance without benefit of Matlack's evidence or argument on the issue severely impeded Matlack's right to notice and opportunity to be heard in such an adversarial proceeding. See *Konkar Maritime Enters.*, 668 F.Supp. at 271. This is precisely the type of procedural error that "undermine[s] the validity of the arbitration process," Gorman, *Labor Law* 602, permits an arbitrator to take remedial measures such as withdrawal, and authorizes a district court to vacate and remand an arbitration award.

### III.

We conclude that the *functus officio* doctrine did not proscribe the district court from examining the arbitrator's post award letter which purported to clarify the intended scope of the award, and that the arbitrator's award was partially the product of a fundamental procedural irregularity. Accordingly, we will affirm the district court's decision to vacate the substantive portion of the award and to

remand the remainder of the proceedings to another arbitrator.



Mark HARTMANN, a minor, by his parents and next friends, Roxanna HARTMANN and Joseph Hartmann; Roxanna Hartmann; Joseph Hartmann, Plaintiffs-Appellees,

v.

LOUDOUN COUNTY BOARD OF EDUCATION, Defendant-Appellant,

and

Edgar B. Hatrick; Ned Waterhouse, Defendants.

Virginia School Boards Association; Tidewater Down Syndrome Association; The Association For Persons With Severe Handicaps, Virginia Chapter; The Arc of Virginia; Spina Bifida Association of Tidewater; Tidewater Association For Hearing Impaired Children; Endependence Center, Incorporated; The Virginia Foundation For the Exceptional Child And Adolescent; Graf-ton School, Incorporated; Parents And Children Coping Together, Incorporated; Northern Virginia Chapter of the Autism Society of America; Central Virginia Chapter of the Autism Society of America; Peninsula Chapter of the Autism Society of America; Autism Training and Family Support Program; Attention Deficit Disorder Association of Virginia; Peninsula Attention Defi-

Cite as 118 F.3d 996 (4th Cir. 1997)

cit Disorder Association; The Virginia Institute of Autism, Incorporated; Commonwealth Coalition For Community; Loudoun Association For Retarded Citizens; United States of America, Amici Curiae.

No. 96-2809.

United States Court of Appeals,  
Fourth Circuit.

Argued May 9, 1997.

Decided July 8, 1997.

Parents brought suit on behalf of disabled student against county board of education alleging that board had failed to ensure that student was educated with non-handicapped children to maximum extent appropriate, as required by mainstreaming provision of the Individuals With Disabilities Education Act (IDEA). The United States District Court for the Eastern District of Virginia, Leonie M. Brinkema, J., entered judgment in favor of parents, and county appealed. The Court of Appeals, Wilkinson, Chief Judge, held that: (1) district court's finding that student could obtain educational benefits in regular classroom was not supported by evidence; (2) county made adequate efforts to provide education to student in regular classroom; (3) disruptive effects of student's behavior upon other students was proper consideration in developing individualized education program (IEP); and (4) student's IEP was appropriate, and did not violate IDEA's mainstreaming provision, even if student was to be placed in self-contained classroom part of the time.

Reversed and remanded.

#### 1. Federal Courts ⇌13.30

Fact that disabled student was currently in educational placement in another school district which parents found appropriate did not mean that parents' action against student's previous district under Individuals With Disabilities Education Act (IDEA) did not present valid case or controversy, where evidence indicated that parents would re-enroll student in previous district if their suit

was successful. Individuals with Disabilities Education Act, § 601 et seq., as amended, 20 U.S.C.A. § 1400 et seq.

#### 2. Schools ⇌155.5(2.1)

Although Individuals With Disabilities Education Act (IDEA) provides district courts with authority to grant appropriate relief based on preponderance of evidence, such authority is not invitation to courts to substitute their own notions of sound educational policy for those of school authorities which they review; absent some statutory infraction, task of education belongs to educators who have been charged by society with that critical task. Individuals with Disabilities Education Act, § 615(e)(2), as amended, 20 U.S.C.A. § 1415(e)(2).

#### 3. Schools ⇌155.5(2.1)

Administrative findings in Individuals With Disabilities Education Act (IDEA) proceeding are entitled to be considered prima facie correct, and district court, if it is not going to follow them, is required to explain why it does not. Individuals with Disabilities Education Act, § 601 et seq., as amended, 20 U.S.C.A. § 1400 et seq.

#### 4. Schools ⇌148(2.1)

Under Individuals With Disabilities Education Act (IDEA), states must provide specialized instruction and related services sufficient to confer some educational benefit upon handicapped child, but IDEA does not require furnishing of every special service necessary to maximize each handicapped child's potential. Individuals with Disabilities Education Act, § 601 et seq., as amended, 20 U.S.C.A. § 1400 et seq.

#### 5. Schools ⇌148(2.1)

Individuals With Disabilities Education Act (IDEA) section providing that disabled children are to be educated with children who are not handicapped only to maximum extent appropriate establishes presumption, not inflexible federal mandate. Individuals with Disabilities Education Act, § 612(5)(B), as amended, 20 U.S.C.A. § 1412(5)(B).

#### 6. Schools ⇌155.5(4)

District court's finding that disabled student could receive educational benefit in reg-



ular classroom, and that individualized education program (IEP) which would involve only partial mainstreaming was thus inappropriate for student under Individuals With Disabilities Education Act (IDEA), was not supported by evidence; notwithstanding student's allegedly more successful experiences in regular classrooms before and after student's placement by defendant county, evidence indicated that student failed to make academic progress in regular classrooms, and interaction with non-handicapped students did not outweigh student's need for educational benefits. Individuals with Disabilities Education Act, §§ 601 et seq., 612(5)(B), as amended, 20 U.S.C.A. §§ 1400 et seq., 1412(5)(B).

#### 7. Schools ⇐148(2.1)

County provided sufficient supplementary aids and services to disabled child in effort to provide education to child in regular classroom, as contemplated by mainstreaming provision of Individuals With Disabilities Education Act (IDEA), where county made special efforts to make child's classroom an advantageous environment and utilized competent individuals to assist child. Individuals with Disabilities Education Act, § 612(5)(B), as amended, 20 U.S.C.A. § 1412(5)(B).

#### 8. Schools ⇐148(2.1)

Individuals With Disabilities Education Act (IDEA) does not require special education service providers to have every conceivable credential relevant to every child's disability. Individuals with Disabilities Education Act, § 601 et seq., as amended, 20 U.S.C.A. § 1400 et seq.

#### 9. Schools ⇐148(2.1)

Disruptive effect of disabled child's behavior in classroom was proper consideration in determining whether child's individualized education program (IEP) satisfied mainstreaming provision of Individuals With Disabilities Education Act (IDEA). Individuals with Disabilities Education Act, §§ 601 et seq., 612(5)(B), as amended, 20 U.S.C.A. §§ 1400 et seq., 1416(5)(B).

#### 10. Schools ⇐148(3)

Placement of disabled student in school with class specifically structured for autistic

children as to academic subjects, but in which child would be placed in regular classes for other subjects, was appropriate under mainstreaming provision of Individuals With Disabilities Education Act (IDEA), as placement was carefully tailored to ensure that student was mainstreamed to maximum extent appropriate. Individuals with Disabilities Education Act, § 612(5)(B), as amended, 20 U.S.C.A. § 1412(5)(B).

**ARGUED:** Kathleen Shepherd Mehfoud, Hazel & Thomas, P.C., Richmond, VA, for Appellant. Gerard Sale Rugel, Herndon, VA, for Appellees. **ON BRIEF:** James J. Wheaton, Charles B. Lustig, Willcox & Savage, P.C., Norfolk, VA, for Amici Curiae Tidewater Down Syndrome Association, et al. John F. Cafferky, Kathryn Y. Aspegren, Hunton & Williams, McLean, VA, for Amicus Curiae Virginia School Boards Association. Isabelle Katz Pinzler, Acting Assistant Attorney General, Mark L. Gross, Michelle M. Aronowitz, United States Department of Justice, Washington, D.C.; Judith A. Winston, General Counsel, Francisco Lopez, Department of Education, Washington, D.C., for Amicus Curiae United States.

Before WILKINSON, Chief Judge, LUTTIG, Circuit Judge, and COPENHAVER, United States District Judge for the Southern District of West Virginia, sitting by designation.

Reversed and remanded with instructions to dismiss by published opinion. Chief Judge WILKINSON wrote the opinion, in which Judge LUTTIG and Judge COPENHAVER joined.

#### OPINION

WILKINSON, Chief Judge:

Roxanna and Joseph Hartmann brought suit on behalf of their disabled son Mark against the Loudoun County Board of Education under the Individuals With Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq. The Hartmanns alleged that the Board had failed to ensure that Mark was educated with non-handicapped children "to the maxi-

imum extent appropriate" as required by the IDEA's mainstreaming provision, 20 U.S.C. § 1412(5)(B). The district court agreed, rejecting the findings of both the local hearing officer and the state review officer. The Board appeals, contending that the court's decision is contrary to the law and the evidence in the record. We agree. As Supreme Court precedent makes clear, the IDEA does not grant federal courts a license to substitute their own notions of sound educational policy for those of local school authorities, or to disregard the findings developed in state administrative proceedings. Upon careful review of the record, however, we are forced to conclude that this is precisely what has occurred in this case. Accordingly, we reverse and remand with directions to dismiss.

#### I.

Mark Hartmann is an eleven-year-old autistic child. Autism is a developmental disorder characterized by significant deficiencies in communication skills, social interaction, and motor control. Mark is unable to speak and suffers severe problems with fine motor coordination. Mark's writing ability is extremely limited; he does not write by hand and can consistently type only a few words such as "is" and "at" by himself on a keyboard device known as a Canon communicator. The parties agree that Mark's greatest need is to develop communication skills.

Mark spent his pre-school years in various programs for disabled children. In kindergarten, he spent half his time in a self-contained program for autistic children and half in a regular education classroom at Butterfield Elementary in Lombard, Illinois. Upon entering first grade, Mark received speech and occupational therapy one-on-one, but was otherwise included in the regular classroom at Butterfield full-time with an aide to assist him.

After Mark's first-grade year, the Hartmanns moved to Loudoun County, Virginia, where they enrolled Mark at Ashburn Elementary for the 1993-1994 school year. Based on Mark's individualized education program (IEP) from Illinois, the school placed Mark in a regular education class-

room. To facilitate Mark's inclusion, Loudoun officials carefully selected his teacher, hired a full-time aide to assist him, and put him in a smaller class with more independent children. Mark's teacher, Diane Johnson, read extensively about autism, and both Johnson and Mark's aide, Suz Leitner, received training in facilitated communication, a special communication technique used with autistic children. Mark received five hours per week of speech and language therapy with a qualified specialist, Carolyn Clement. Halfway through the year, Virginia McCullough, a special education teacher, was assigned to provide Mark with three hours of instruction a week and to advise Mark's teacher and aide.

Mary Kearney, the Loudoun County Director of Special Education, personally worked with Mark's IEP team, which consisted of Johnson, Leitner, Clement, and Laurie McDonald, the principal of Ashburn. Kearney provided in-service training for the Ashburn staff on autism and inclusion of disabled children in the regular classroom. Johnson, Leitner, Clement, and McDonald also attended a seminar on inclusion held by the Virginia Council for Administrators of Special Education. Mark's IEP team also received assistance from educational consultants Jamie Ruppman and Gail Mayfield, and Johnson conferred with additional specialists whose names were provided to her by the Hartmanns and the school. Mark's curriculum was continually modified to ensure that it was properly adapted to his needs and abilities.

Frank Johnson, supervisor of the county's program for autistic children, formally joined the IEP team in January, but provided assistance throughout the year in managing Mark's behavior. Mark engaged in daily episodes of loud screeching and other disruptive conduct such as hitting, pinching, kicking, biting, and removing his clothing. These outbursts not only required Diane Johnson and Leitner to calm Mark and redirect him, but also consumed the additional time necessary to get the rest of the children back on task after the distraction.

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Despite these efforts, by the end of the year Mark's IEP team concluded that he was making no academic progress in the regular classroom. In Mark's May 1994 IEP, the team therefore proposed to place Mark in a class specifically structured for autistic children at Leesburg Elementary. Leesburg is a regular elementary school which houses the autism class in order to facilitate interaction between the autistic children and students who are not handicapped. The Leesburg class would have included five autistic students working with a special education teacher and at least one full-time aide. Under the May IEP, Mark would have received only academic instruction and speech in the self-contained classroom, while joining a regular class for art, music, physical education, library, and recess. The Leesburg program also would have permitted Mark to increase the portion of his instruction received in a regular education setting as he demonstrated an improved ability to handle it.

The Hartmanns refused to approve the IEP, claiming that it failed to comply with the mainstreaming provision of the IDEA, which states that "to the maximum extent appropriate," disabled children should be educated with children who are not handicapped. 20 U.S.C. § 1412(5)(B). The county initiated due process proceedings, see 20 U.S.C. § 1415(h), and on December 14, 1994, the local hearing officer upheld the May 1994 IEP. She found that Mark's behavior was disruptive and that despite the "enthusiastic" efforts of the county, he had obtained no academic benefit from the regular education classroom. On May 3, 1995, the state review officer affirmed the decision, adopting both the hearing officer's findings and her legal analysis. The Hartmanns then challenged the hearing officer's decision in federal court.

[1] While the administrative process continued, Mark entered third grade in the regular education classroom at Ashburn. In December of that year, the Hartmanns withdrew Mark from Ashburn. Mark and his

1. Loudoun County contends that the Hartmanns do not present a valid case or controversy because Mark is currently in an educational placement which the Hartmanns find appropriate. Under the unusual circumstances of this case, this conclusion is not correct. There is no ques-

tion that the Hartmanns would re-enroll Mark in Loudoun County if their suit is successful. Specifically, the Hartmanns' expressed intent to return Mark to school there is corroborated by the fact that Mark's father and sister continue to occupy the family's home in Loudoun County

mother moved to Montgomery County, Virginia, to permit the Hartmanns to enroll Mark in public school there. Mark was placed in the regular third-grade classroom for the remainder of that year as well as the next.<sup>1</sup>

The district court reversed the hearing officer's decision. The court rejected the administrative findings and concluded that Mark could receive significant educational benefit in a regular classroom and that "the Board simply did not take enough appropriate steps to try to include Mark in a regular class." The court made little of the testimony of Mark's Loudoun County instructors, and instead relied heavily on its reading of Mark's experience in Illinois and Montgomery County. While the hearing officer had addressed Mark's conduct in detail, the court stated that "[g]iven the strong presumption for inclusion under the IDEA, disruptive behavior should not be a significant factor in determining the appropriate educational placement for a disabled child." Loudoun County now appeals.

II.

[2,3] The IDEA embodies important principles governing the relationship between local school authorities and a reviewing district court. Although section 1415(e)(2) provides district courts with authority to grant "appropriate" relief based on a preponderance of the evidence, 20 U.S.C. § 1415(e)(2), that section "is by no means an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review." *Board of Education of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034, 3050, 73 L.Ed.2d 690 (1982). Absent some statutory infraction, the task of education belongs to the educators who have been charged by society with that critical task. Likewise, federal courts must accord "due weight" to state administrative proceedings. *Id.* Administra-

tion that the Hartmanns would re-enroll Mark in Loudoun County if their suit is successful. Specifically, the Hartmanns' expressed intent to return Mark to school there is corroborated by the fact that Mark's father and sister continue to occupy the family's home in Loudoun County

tive findings in an IDEA case "are entitled to be considered *prima facie* correct," and "the district court, if it is not going to follow them, is required to explain why it does not." *Doyle v. Arlington County Sch. Bd.*, 953 F.2d 100, 105 (4th Cir.1991).

[4] These principles reflect the IDEA's recognition that federal courts cannot run local schools. Local educators deserve latitude in determining the individualized education program most appropriate for a disabled child. The IDEA does not deprive these educators of the right to apply their professional judgment. Rather it establishes a "basic floor of opportunity" for every handicapped child. *Rowley*, 458 U.S. at 201, 102 S.Ct. at 3047. States must provide specialized instruction and related services "sufficient to confer some educational benefit upon the handicapped child," *id.* at 200, 102 S.Ct. at 3047 but the Act does not require "the furnishing of every special service necessary to maximize each handicapped child's potential," *id.* at 199, 102 S.Ct. at 3047.

[5] In this same vein, the IDEA's mainstreaming provision establishes a presumption, not an inflexible federal mandate. Under its terms, disabled children are to be educated with children who are not handicapped only "to the maximum extent appropriate." 20 U.S.C. § 1412(5)(B). Section 1412(5)(B) explicitly states that mainstreaming is not appropriate "when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. § 1412(5)(B); see also *Rowley*, 458 U.S. at 181 n. 4, 102 S.Ct. at 3038 n. 4.

III.

[6] The district court's ruling strayed generally from the aforementioned principles. It diverged in particular from our decision in *DeVries v. Fairfax County Sch. Bd.*, 882 F.2d 876 (4th Cir.1989). In *DeVries*, we held that mainstreaming is not required where (1) the disabled child would not receive an educational benefit from mainstreaming into a regular class; (2) any marginal benefit from mainstreaming would be

significantly outweighed by benefits which could feasibly be obtained only in a separate instructional setting; or, (3) the disabled child is a disruptive force in a regular classroom setting. *Id.* at 879. Although the district court failed to mention *DeVries*, its opinion suggests that none of these three categories describes Mark's situation. The district court found that Mark could receive substantial educational benefit in a regular classroom, that his disruptive behavior was not sufficient to justify a more segregated instructional setting, and that the Leesburg program would not have been an appropriate placement. After careful examination of the record, however, we are forced to conclude that the district court's decision fails to account for the administrative findings and is not supported by the evidence based on a correct application of the law. In effect, the court simply substituted its own judgment regarding Mark's proper educational program for that of local school officials.

A.

In finding that Mark could receive an educational benefit in a regular classroom, the district court disregarded both the hearing officer's finding and the overwhelming evidence that Mark made no academic progress in the regular second grade classroom at Ashburn. Mark's teacher testified, for example, that he was unable to retain skills: "once we thought he mastered [a math skill] and we left it alone and went onto another concept, if we went back to review, it seemed that he had forgotten." She confessed, "I felt like he lost a year in my classroom." Other Loudoun County personnel testified to the same effect. His speech therapist, for instance, stated that "[t]he only gain that I saw him make was in the one to one setting." The supervisor for the county's program for autistic students likewise concluded, "I think there has been no progress academically in the inclusive settings;" "I think we're wasting his time." The hearing officer accordingly found that "Mark made no measurable academic progress attributable to his placement in the regular classroom."

Mark's situation is similar to the one we faced in *DeVries*, 882 F.2d 876. In upholding

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Fairfax County's decision not to place Michael DeVries in Annandale High School, the court observed not only that Michael would derive virtually no academic benefit from the regular classroom, but also that his work would be at a much lower level than his classmates and that he would in effect "simply be monitoring classes." *Id.* at 879. Here the hearing officer made an identical finding, concluding that Mark "did not participate in the regular curriculum, but was provided his own curriculum." Mark's special education teacher in Loudoun County explained, "Mark needs a completely different program.... His skills have to be taught in a different way, in a different sequence, and even a different group of skills... from what his typical functioning peers are learning."

The district court acknowledged the testimony of Mark's second grade teacher regarding his lack of progress, but asserted that the hearing officer's conclusions were erroneous because the officer failed to give due weight to the testimony of Cathy Thornton, Mark's private tutor during second grade, and to Mark's first grade experience in Illinois. To the contrary, the administrative decisions took careful note of both. The hearing officer fully credited Thornton's testimony, finding that Mark made progress with both her and his speech therapist. The officer went further, however, and observed that both the tutoring and speech instruction occurred in a one-to-one setting outside of the regular class. In light of Mark's failure to progress in the regular classroom, the officer drew the only reasonable inference from this evidence, namely that separate instruction was precisely what Mark needed to make educational progress. As to Mark's experience in Illinois, the state review officer explained that the Illinois assessment of Mark's capabilities was flawed:

[I]t became clear during the course of the second grade that Mark's academic skills were not as advanced as the Illinois school system thought. Mark cannot read and cannot add, yet the Illinois teachers thought he was reading at first grade level and progressing in the first grade math workbook.... Mark apparently did not make the academic progress in first grade

the records forwarded to Loudoun County from Illinois indicated....

While the district court opinion references the hearing officer's decision, its failure to address the administrative findings noted above simply does not reflect the teachings of *Rowley* and *Doyle* that state proceedings must command considerable deference in federal courts.

The district court also relied heavily on Mark's subsequent performance in the Montgomery County schools during fourth grade. While Montgomery County personnel did make some conclusory statements asserting that Mark made progress, the evidence is inconclusive at best. The district court pointed to math skills Mark demonstrated at the end of fourth grade, for example, but Mark was pulled out of the regular class for math instruction, just as Loudoun County had recommended. Any progress he made in math therefore simply supports the conclusion that separate, one-on-one instruction is appropriate for Mark. Mark also continued to receive speech therapy one-on-one, and his special education teacher in Montgomery County admitted that the county had no reliable method for assessing Mark's reading ability.

Finally, the district court pointed to perceived improvement in Mark's social skills due to interaction with his non-disabled peers. Any such benefits, however, cannot outweigh his failure to progress academically in the regular classroom. The mainstreaming provision represents recognition of the value of having disabled children interact with non-handicapped students. The fact that the provision only creates a presumption, however, reflects a congressional judgment that receipt of such social benefits is ultimately a goal subordinate to the requirement that disabled children receive educational benefit. Here the evidence clearly supports the judgment of the local education officials and the administrative hearing officers that Mark's educational progress required significant instruction outside of the regular classroom setting.

## B.

[7] The district court attributed Mark's lack of progress in Loudoun County to the county's alleged failure to make reasonable efforts to accommodate him in the regular classroom. We interpret this as a ruling that the county failed to provide the supplementary aids and services contemplated by the IDEA's mainstreaming provision. 20 U.S.C. § 1412(5)(B).

The district court's conclusion is remarkable in light of the extensive measures taken on Mark's behalf. The hearing officer found that Loudoun personnel were "enthusiastic" about including Mark at Ashburn, a description fully supported by the record. The Ashburn principal deliberately reduced the size of Mark's class and ensured that it was composed of students who were more independent and had higher level skills. Mark's teacher was selected because of her excellent teaching abilities, and the county hired a full-time, one-on-one aide for Mark. Mark received a full hour of speech and language instruction daily. Frank Johnson, the supervisor of the county's program for autistic children, provided assistance in behavior management throughout the year. Halfway through the year, the school's efforts increased when Virginia McCullough began providing special education services directly to Mark as well as advising Mark's teacher and aide. Inclusion specialists Gail Mayfield and Jamie Ruppmann consulted with the school during the fall, and Mark's teacher sought advice from other experts whose names were provided to her by the school or the Hartmanns. The teacher testified that she met constantly with Mark's aide, his speech therapist, the IEP team, and others to work on Mark's program—daily at the beginning of the year and at least twice a week throughout.

The district court nonetheless found the county's efforts insufficient. The court relied primarily on its conclusion that the Loudoun

2. The court also concluded that Loudoun County's commitment to mainstreaming Mark lapsed at mid-year. Such a conclusion again does not take proper account of the administrative record as required by *Rowley* and *Doyle*. The hearing officer pointed out, for example, that the county actually added services for Mark in the second

educators involved with Mark had inadequate training and experience to work with an autistic child.<sup>2</sup> The court found the credentials of two groups to be lacking. Neither the special education professionals nor the regular education instructors were deemed properly qualified. The conclusion that Mark had inadequately trained personnel developing and implementing his program, however, is irreconcilable with either the law or the record.

As to special education personnel, the district court concedes that the individuals working with Mark during the first half of the year, Mary Kearney and Jamie Ruppmann, were fully competent to assist him. Kearney led Mark's IEP team, while Ruppmann provided consultation services. In addition to serving as the county Director of Special Education, Kearney had participated in the Virginia Systems Change Project, a two-year state program on mainstreaming which involved selected schools from across the state. Ruppmann is an experienced, highly qualified consultant.

During the second half of the year, Frank Johnson led the IEP team, and Virginia McCullough provided Mark with special education services. The district court rejected their qualifications, asserting, for example, that Johnson's credentials were clearly inadequate because they were inferior to those of Kearney and Ruppmann. However, in addition to serving as the supervisor of Loudoun County's program for autistic children, Johnson had a special education masters degree, did graduate work with an autistic child, worked directly with approximately ten autistic children as a teacher, and had attended special education courses and seminars relating to autism throughout his professional career. Both McCullough's early childhood degree program and her work in Loudoun County focused specifically on integrating children with disabilities into the regular classroom.

half of the year, when McCullough began providing special education instruction to Mark. Moreover, the hearing officer noted that the IEP prepared by Mark's team in March—three months after the county allegedly gave up on mainstreaming him—called for retaining him in the regular classroom.

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[8] To dismiss Johnson's and McCullough's qualifications is to adopt exactly the sort of potential-maximizing standard rejected by the Supreme Court in *Rowley*. We think the Court's admonition that the IDEA does not require "the furnishing of every special service necessary to maximize each handicapped child's potential," *Rowley*, 458 U.S. at 199, 102 S.Ct. at 3047 encompasses the notion that the IDEA likewise does not require special education service providers to have every conceivable credential relevant to every child's disability. Not all school systems will have the resources to hire top-notch consultants, nor will every school have the good fortune to have personnel who were involved in a major state program related to the needs of every disabled child. We note that in Virginia, there is no certification for autism. Furthermore, at the time of the trial, Loudoun County had eleven autistic children in a total school population of approximately 20,000 students. In this light, Johnson's experience teaching ten autistic children was substantial. Johnson and McCullough were clearly qualified to work with Mark as special educators, even accepting the district court's assertion that Ruppmann and Kearney had better credentials.

The suggestion that the regular education instructors, Mark's teacher and aide, were not adequately qualified also does not survive close scrutiny. Diane Johnson was an experienced professional properly certified under state law, and Virginia law does not require teaching assistants to be certified. Furthermore, Johnson and Leitner both obtained special training to work with Mark. Both received in-service instruction and attended an outside seminar on inclusion of disabled children in the regular classroom. They also were trained in facilitated communication, a special communication method used with Mark in Illinois.

To demand more than this from regular education personnel would essentially require them to become special education teachers trained in the full panoply of disabilities that their students might have. Virginia law does not require this, nor does the IDEA. First, such a requirement would fall afoul of *Row-*

*ley's* admonition that the IDEA does not guarantee the ideal educational opportunity for every disabled child. Furthermore, when the IDEA was passed, "Congress' intention was not that the Act displace the primacy of States in the field of education, but that States receive funds to assist them in extending their educational systems to the handicapped." *Rowley*, 458 U.S. at 208, 102 S.Ct. at 3051. The IDEA "expressly incorporates State educational standards." *Schimmel v. Spillane*, 819 F.2d 477, 484 (4th Cir.1987). We can think of few steps that would do more to usurp state educational standards and policy than to have federal courts rewrite state teaching certification requirements in the guise of applying the IDEA.

In sum, we conclude that Loudoun County's efforts on behalf of Mark were sufficient to satisfy the IDEA's mainstreaming directive.

#### C.

[9] The district court also gave little or no weight to the disruptive effects of Mark's behavior in the classroom, stating that "[g]iven the strong presumption for inclusion under the IDEA, disruptive behavior should not be a significant factor in determining the appropriate educational placement for a disabled child." This statement simply ignores *DeVries*, where we specifically held that mainstreaming is inappropriate when "the handicapped child is a disruptive force in the non-segregated setting." 882 F.2d at 879 (quoting *Roncker v. Walter*, 700 F.2d 1058, 1063 (6th Cir.1983)). In this case, disruptive behavior was clearly an issue. The hearing officer summarized:

[Mark's] misbehaviors include continual vocalization, especially whining, screeching and crying when unhappy or frustrated, hitting, pinching, kicking, biting, sucking the leg of a chair, rolling on the floor, and removing his shoes and clothing. Mark is a big strong child who cannot be easily restrained when he engages in injurious behaviors such as hitting, kicking, pinching and biting. His continual vocalizations are distracting and make it difficult for other children to stay on task. When Jamie Ruppmann observed Mark in his class-

room, she observed two instances of significant disruption, in which he threw himself on the floor. She noted that in each instance it took about five to eight minutes to get Mark settled down. His loud screeching outbursts, which occur daily, take the attention of the teacher and the aide to redirect him; these outbursts also take the other children off task and they then have to be redirected. Mark hits and pinches others several times a day.

While the hearing officer did not find Mark's disruptive behavior by itself to be dispositive, the attention she gave to Mark's conduct was entirely appropriate, indeed required, under *DeVries*.

#### D.

[10] The district court also found that Leesburg would not have been an appropriate placement. This conclusion generally derived from the same analysis that led to the court's determination that Mark should remain in the regular classroom. To the contrary, we hold that the proposed Leesburg placement was carefully tailored to ensure that he was mainstreamed "to the maximum extent appropriate." 20 U.S.C. § 1412(5)(B). Leesburg was a regular elementary school. Responding to Mark's lack of academic progress in the regular classroom, the May IEP would have placed Mark in the self-contained class for his academic subjects, while including him with his non-disabled peers for all other school activities such as art, music, and physical education. To promote the success of this partial mainstreaming, the hearing officer required the school to have an aide or teacher accompany Mark whenever he was in the regular classroom environment and to place Mark with the *same* regular education class for all his nonacademic activities.

#### IV.

This is not a case which either the local educational authorities or the reviewing administrative officers took lightly. We have sketched in great detail the efforts that Loudoun County made to provide Mark Hartmann with a suitable education. Furthermore, the administrative review process could not have been more thorough. The hearing officer heard testimony from eighteen witnesses over a two month period and

made detailed factual findings regarding all aspects of Mark's educational experience. The officer's analysis carefully incorporated those findings and specifically addressed the evidence the Hartmanns presented in support of their position. The district court, however, set all this extensive effort and review at naught. The court failed to mention, let alone discuss, critical administrative findings inconsistent with its conclusions. While making much of the credentials and credibility of witnesses endorsing full inclusion, the court gave little or no attention to the testimony of Loudoun professionals. In some instances the court, without listening to local educators, discounted their views despite the fact that the hearing officer had found them credible. One Loudoun official was dismissed outright as "a philosophical opponent of inclusion" for daring to state that he saw no evidence that Mark had progressed in the regular classroom.

The IDEA encourages mainstreaming, but only to the extent that it does not prevent a child from receiving educational benefit. The evidence in this case demonstrates that Mark Hartmann was not making academic progress in a regular education classroom despite the provision of adequate supplementary aids and services. Loudoun County properly proposed to place Mark in a partially mainstreamed program which would have addressed the academic deficiencies of his full inclusion program while permitting him to interact with nonhandicapped students to the greatest extent possible. This professional judgment by local educators was deserving of respect. The approval of this educational approach by the local and state administrative officers likewise deserved a deference from the district court which it failed to receive. In rejecting reasonable pedagogical choices and disregarding well-supported administrative findings, the district court assumed an educational mantle which the IDEA did not confer. Accordingly, the judgment must be reversed, and the case remanded with directions to dismiss it.

REVERSED AND REMANDED.



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