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MINUTES OF THE SENATE COMMITTEE ON EDUCATION

The meeting was called to order by Chairperson Barbara Lawrence at 9:00 a.m. on March 24, 1998 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Ben Barrett, Legislative Research Department
Carolyn Rampey, Legislative Research Department
Avis Swartzman, Revisor of Statutes
Jackie Breymeyer, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

Chairperson Lawrence called the meeting to order and explained that the Committee was going to take up again the content of **SB 591--special education for exceptional children, revision of act** the bill that was aligning the state law up to the federal law and making that law compliant with the law in regard to special education and IDEA regulations. She called on Senator Emert to explain.

Senator Emert stated that what the subcommittee had done dealt with the parental consent issue. The unspoken charge to the Committee has always been to not do anything worse than the federal law does. In the haste to get a Senate bill out of the Senate and into the House the thought was that all persons in this matter were in agreement as to going further than the federal law with regard to parental consent. In the memo that came from the Department of Education there was specifically outlined what the federal law requires as far as parental consent.

Senator Emert read from the federal law, 'prior written parental consent is required only when the school district proposes to evaluate a child, reevaluate a child or to make the initial placement of the child. When the school district proposes other changes such as the services provided to the child or the placement of the child, the district must give prior written notice of such proposed action to the parents and then the parents can object.' What this comes down to is that if there is something other than the initial placements or reevaluations, parental consent is required, this always happens in the form of an IEP. The parents sign. Everyone gets involved. If there are any other changes made, the parents must give written consent. If we did no more than federal law required, what we would have for a disciplinary matter or for any other change, notice would be given the parents that something was going to be done. If the parents objected, then due process would come into play. The amendment the subcommittee put in just required a lot of time and thereby a lot of expense to be getting written notices every time something happened. His preference would be that the added parental consent amendment be removed that was put on in Committee.

The Chairperson stated that one important element in the federal law that has not been mentioned as much is the fact that they have added one provision that was not in the old law and that is while the parents were allowed under the old law to be in on the IEP, they were not necessarily participants in the placement after the IEP had been written. That has been added as another element that the parents can claim. Not only are they participants in the IEP, but also in the initial placement of the child. They have that added privilege or responsibility. What is being proposed because it is so late in the process is to take one of the two House bills that the Committee has and and put the provisions of **SB 591** minus the parental consent in that bill to expedite the process. It was a suggestion to use **HB 2907**, but that could not be used because it was reported adversely.

It was discussed and decided that it might be too difficult to amend the bill on the floor of the Senate.

It was decided to use **HB 2837** as the vehicle to amend **SB 591** into. The only two places the language needs to be changed are on page 1, line 26 and page 20, line 28.

The Chairperson asked Cindy Kelly, KASB, to explain the net effect of taking the amendment out. Ms. Kelly stated that if the parent disagrees with the placement, the school can go ahead and put the child into that placement. The parent then has one of three remedies. A complaint can be filed with the state department of education; a due process hearing can be requested; or the new federal law has the mediation process.

It was asked what happens if the child needs a new placement; where are the parents then. The response was that a new IEP placement can be requested.

The Chairperson added that this, then, would be four remedies.

Ms. Kelly is going to prepare something for the Committee to look at tomorrow.

The Chairman stated that she thinks this is a case of trusting that the expertise the IEP people have would be more objective than a parent's decision of what the child is ready for. These people are advocates for the children and the professionalism of those working in the field can be relied on. With the added responsibility of the parent as far as placement is concerned, the initial placement is important.

One of the Committee gave some input on special ed parents and children. Having a special ed child of his own, the family became involved with a large number of people who were parents of special ed kids. What was found with the IEP is something the Chairperson alluded to and that is that the system is overwhelmingly stacked with advocates for the kids. There is one administrator, a speech therapist, teachers and several others; all the people that have direct contact with the students. One can imagine the problem with the bureaucracy and the feeling of the state board. It is a pro kid group that makes the placement; they have to get along with the parents for a long time.

The Chairperson added that the parents are very knowledgeable; they know their rights and they know the law. We cannot stand in the way of what the professionals see is best for the child. A parent does not always see the child objectively. We would hope the professionals see the child as a student and understand what that student needs in the progression. A parent may not be able to discern that.

The comments was made that the bill will need careful explanation. There are two extensions of parental involvement; one is the ability to help with the placement and the second is the mediation process.

It was clarified that it is a yearly thing. During that year, if there is a need to place that child in a different place, the parents wouldn't be present. If the parent wanted to object, there could be mediation. This is what the bill does. It ensures that the child that is put in a placement that those with expertise believe is appropriate for the child rather than giving one party the ability to block what everyone believes to be in the best interests of the child.

The Chairperson stated the IDEA law changed this last June and that is why this has to be done now. There have been some problems with Kansas law as it stood in conjunction with the old IDEA.

Ms. Kelly, stated that in most cases placement should not be a problem. It is the cases where parents refuse to consent and the school believes it is in the best interest of the child that the child be in a particular placement where the problem is created; that won't happen in every special education case.

It was further added that on the change of placement they still have to be notified. The only thing that this removes is the ability of the parents to block the recommended change. Even this could be addressed in the initial IEP placement as a second option. A parental signature could be obtained for a second placement change during the initial IEP, if there were two or three options laid out.

The Revisor read from the statutes that the law requires that each child and his or her lawful custodian shall be accorded the right to a hearing before the child shall be excluded, reassigned or transferred from regular school classes on the grounds that he or she is an exceptional child and cannot materially benefit therefrom, or placed in, transferred to or from or denied placement in a special education service. If the lawful custodian of the involved child does not consent, object, or revoke consent to the proposed absence and does not request a hearing, the agency makes the decision. The lawful custodian of the child may revoke his or her consent to the proposed action at any time and may request a hearing.

The comment was made that the point was that the custodian could have the hearing, but not consent to what the hearing decision was. A further comment was made was that if the school made a change of placement the parents didn't like, an IEP could be requested and the process would start over again.

The Chairperson stated she would ask that the bill be brought back to Committee. The Committee will meet Wednesday morning.

The meeting was adjourned.

SENATE EDUCATION COMMITTEE GUEST LIST

DATE: March 24, 1998

NAME	REPRESENTING
Mark Tallman	KASB
Sue Chase	KNFA
Cindy Kelly	KASB
Denise Ayt	USA
Linda Hollaway	KSBF
Lauren Brandenburg	Shawnee Tomorrow Leadership class
Sharon Zoellner	Shawnee Tomorrow
Patrick Noss	STL
Melissa Ness	Ko Children's Service League
Rita Lehman	Olathe USD 233
Pat Lehman	" " "
Pat Spruin	Shawnee Tomorrow Leadership
Bill L. GA	Parent IDAL
Roger Trellker	Senator Hensley
Bob Vance	Blue Valley USD 229
Diane Gjerstad	Wichita - USD 259
Jacquie Debes	SQE
Oran Burnett	USD 501 #
Senator MARK Gilstrap	Himself