



CONTINUATION SHEET

MINUTES OF THE SENATE EDUCATION COMMITTEE, Room 123-S Statehouse, at 9:00 a.m. on February 16, 1999.

After a few brief comments from members of the committee, Chairperson Lawrence stated she would like to take action on the bill.

Senator Langworthy stated that she had received correspondence from child advocates for gifted education stating their concerns. She asked the committee to look at page 6, line 36 of the bill.

**Senator Langworthy moved to amend SB 129 on page 6, line 36, after ' (A) Parents of exceptional children', to read, " at least one of whom shall be the parent of a gifted child."**  
**Senator Bleeker gave a second to the motion.**

After discussion on the makeup of the advisory council, the Chairperson called for a vote.

**The motion carried.**

**Senator Lee moved to amend SB 129 with the amendment recommend by Kansas Advocacy and Protective Services, Inc. Page 4, lines 30-35 and Page 19, lines 10-19. Senator Umbarger gave a second to the motion.**

One of the members of the committee expressed his perturbation over the offensive way teachers were portrayed in the testimony of a couple of the conferees. He commented on the already limited resources.

**Senator Emert made a substitute motion to pass the bill favorably as previously amended.**  
**Senator Langworthy gave a second to the motion. The motion carried.**

Senator Lee was recorded as voting no.

The Chairperson turned to **SB 8 - special education; services for exceptional children attending private schools** - proponents

Cynthia Kelly, KASB, submitted her testimony (Attachment 3) and stated that the bill goes beyond federal law by requiring schools to spend greater amounts of money than federal law would require to provide services for children in private schools if those children are willing to come to the public school site to receive the services. The bill ensures all children have access to complete services, but does not require complete services be provided in a manner which is both costly and inefficient.

Dee McKee, Mullinville; Roger Allen, Salina; Stan Moseley, Oakley; and Diane Gjerstad, Wichita, asked to make their comments as a group.

Dee McKee presented her testimony (Attachments 4 and 5) and stated that the changes in the bill do not erode any special education services provided to children. KASEA members are interested in containing costs and encourage the changes allowed by the passage of the bill.

Roger Allen stated that this law is an update of lawsuits that have occurred fairly recently. This would not limit access to the students in private schools.

Stan Moseley stated that his area covers 21 districts. For years they have provided services at the public schools and it has worked fine.

Diane Gjerstad presented her testimony (Attachment 6) and stated that USD 259 would prefer that the state statute mirror the federal, but the district is aware that the legislature has made certain commitments to special education services beyond those provided for in the Individuals with Disabilities Educational Act. The bill stands as a compromise between public and private school positions and is not what either side entirely wants.

The Chairperson stated the opponents would be heard tomorrow; the meeting was adjourned.

# SENATE EDUCATION COMMITTEE GUEST LIST

DATE: February 16, 1999

NAME	REPRESENTING
Mark Tallman	KASB
Cindy Kelly	KASB
Eldine Frisbie	Div. of the Budget
Sherry C. Diel	KS Advocacy & Protective Services
Josie Torrez	KS Council on Developmental Disabilities
Roger Allen	Centrol KS. Council on Education
Frank Meeley	NWKE SL in Oakley
Troy Waymaster	Sen. Janis Lee
Tim Yonally	USD # 512
Rod Bieker	KSDE
Jerry Stewart	USD # 259 <sup>th</sup>
Ann G. Burnett	USD 501 <sup>#</sup>
Mary Kay Culp	KS. Catholic Conference
Jacob Johnson	3 <sup>rd</sup> grade student
Jim Johnson	Parent
Shirley Armentrout	SPED teacher / parent
Diane Gjerstad	USD 259
Dee McKee	KASEA (sped) <sup>Interlocal</sup> US # 635
Neshi Guard	Families Together

# SENATE EDUCATION COMMITTEE GUEST LIST

DATE: 2-16-99

NAME	REPRESENTING
Bonnie Pennie	Families Together, Inc
Jacque Dabes	SQE
Denise Apts	USA IXCX.
Brilla Scott	USA





## KANSAS ADVOCACY & PROTECTIVE SERVICES, INC.

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**James Germer, Executive Director**

**Sherry Diel, Deputy Director**

**Tim Voth, Attorney**

**Kari Ramos, Advocate**

**Scott Letts, Deputy Director**

**Lori A. Davis, Attorney**

**Michelle Rola', CFO**

**Michelle Heydon, Advocate**

Memo To: Members of the Senate Education Committee

From: Sherry C. Diel, Deputy Director

RE: SB-129--Kansas Special Education Act

Date: February 15, 1999

### **What is Kansas Advocacy and Protective Services, Inc.?**

Kansas Advocacy and Protective Services, Inc. ("KAPS") is a federally funded non-profit corporation. Our agency serves as the designated Protection and Agency for persons with disabilities in the state of Kansas. Each state and territory in the United States has a similar type of organization. Our role is to advocate for legal rights and services for persons with disabilities. Pursuant to federal law, KAPS has authority to pursue resolution of disputes through use of legal, administrative and other appropriate remedies. Because our funding is limited, KAPS utilizes priorities, developed as a result of public input, to advocate for systemic changes in the public and private sector to benefit Kansans with disabilities.

### **KAPS Generally Supports the Amendments Proposed by SB-129.**

SB-129, in large part, mirrors the federal Individuals With Education Act Amendments of 1997 ("IDEA-97"). The proposed amendments to SB-129 will bring Kansas into compliance with the new requirements of IDEA-97. Federal law and SB-129 ensure that parents are parties to their children's education by ensuring their participation in Individual Education Plan ("IEP") Team decisions regarding the special education, related services and placement of their children. IDEA-97 and SB-129 also provide for the option of mediation, which KAPS believes will serve to improve relations between schools and parents. SB-129 also improves the process for appointment of hearing officers which will speed up the process and give the parties more time to concentrate on the issues in dispute rather than the hearing officer selection process. SB-129 must pass this Session to avoid placing federal funding in jeopardy. However, there is one item that KAPS would be remiss, if we do not bring our concerns to the Committee's attention.

### **Parental Consent For Substantial Change In Placement.**

Last year, all states, including Kansas, believed that they had to pass state laws to come

*Senate Education  
Attachment 1  
2-16-99*

into compliance with IDEA-97 before the end of their legislative sessions. Representatives of Kansas school districts pushed to do nothing more in state law than was required by IDEA-97. However, IDEA-97 does not require parental consent for a change in placement or services after the child is initially placed in special education. Kansas parents have been granted this right for many years under state law. Because the parties were "under the gun" to pass a bill which complied with IDEA-97, parent advocates reluctantly agreed, through negotiations between representatives of the Kansas Association of School Boards and parent advocacy groups, to support the parental consent provisions which are now contained in SB-129 [Page 4, Lines 30-35 and Page 19, Lines 10-19]. Late in the Session last year, the states were advised by the federal government that they had 1 year to bring their state laws into compliance with the requirements of IDEA-97.

SB-129 proposes to add a definition for "Substantial change in placement" [Page 4, Lines 30-35], which requires parental consent for a change in placement of a child with disabilities to a more or less restrictive setting for more than 25% of the school day or the **total elimination or addition** of a related service or supplementary aid or service. KAPS, being one of the primary negotiators of the compromise language for "substantial change in placement" [Page 4, Lines 30-35], reluctantly will stand by its agreement to support this language.

However, we are concerned what impact the provision concerning total elimination of related services and supplementary aids will have on children. There are very little protections available if the school decides to **reduce, but not eliminate**, a related service or support. The only protection that parents are left with is to request mediation or due process if they feel that their child is not receiving a free and appropriate education ("FAPE"). KAPS has limited funding and cannot due process every individual case. There are very few private attorneys involved in this field, and many parents cannot afford an attorney.

#### **Proposed Improvement To The Compromised Language.**

Although KAPS will support SB-129 as written, KAPS believes that a better and just approach exists. KAPS would fully support the following amendment to SB-129:

**Page 4, Lines 30-35] (z)** "Substantial change in placement" means the movement of an exceptional child, for more than 25% of the child's school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment, ~~or the addition to, or deletion from, the child's IEP of a related service or a supplementary aid or service.~~

**Add new definition: "Material change in services" means an increase or decrease of 25% or more of the duration or frequency of a special education service, a related service or a supplementary aid or service specified on the IEP".**

**[Page 19, Lines 10-19]** "consent, or refuse to consent, to the evaluation, reevaluation or the initial placement of their child and to any substantial change in placement **or a material change in services** of their child . . .".

KAPS believes that this is an improvement which carefully maintains the distinction between placement and special education and related services. We believe that this proposal will reduce the number of mediations and due process cases filed, because parents will be placed on a more level playing field to participate in decisions of what is best for their child. Moreover, we believe this proposal will build trust between parents and schools--something that we believe is currently lacking, and may get worse under the provisions of SB-129, as written.

**Conclusion.**

KAPS will reluctantly support SB-129, as written. If the Committee recommends passage of SB-129 as written, KAPS requests the Committee request that the State Board of Education monitor the numbers of mediations and due process cases filed regarding the provision of FAPE and report to the Committee during the 2000 Session. KAPS respectfully requests the Committee consider the above suggested amendments, which KAPS believes will improve relations between schools and parents, and may, save public funding expended for dispute resolution under the current language of SB-129, instead of being expended for services to children with disabilities.



# ***Kansas Council on Developmental Disabilities***

BILL GRAVES, Governor  
DAVE HEDERSTEDT, Chairperson  
JANE RHYS, Ph. D., Executive Director

Docking State Off. Bldg., Room 141, 915 Harrison  
Topeka, KS 66612-1570  
Phone (785) 296-2608, FAX (785) 296-2861

*"To ensure the opportunity to make choices  
regarding participation in society and quality of*

## **SENATE EDUCATION COMMITTEE**

**FEBRUARY 15, 1999**

Testimony in Regard to S.B. 129, AN ACT RELATING TO SPECIAL EDUCATION

Madame Chairperson, Members of the Committee, I regret that I am unable to appear before you today but I developed an illness and thought you would appreciate me not bringing it to you. Josie Torrez, Council staff, is delivering my testimony for me.

The Kansas Council is a federally mandated, federally funded council composed of individuals who are appointed by the Governor, include representatives of the major agencies who provide services for individuals with developmental disabilities, and at least half of the membership is composed of individuals who are persons with developmental disabilities or their immediate relatives. Our mission is to advocate for individuals with developmental disabilities, to see that they have choices in life about where they wish to live, work, and their leisure activities.

The Council was also a party to the development of the compromise language about parental consent for changes in a child's special education service in this bill during the last Session. Our understanding, like that of Families Together, was that the compromise language requiring parental consent included the amount of services to be provided as well as the physical placement of the child. We regret that we are also unable to support this compromise as written.

Some of you know me and know my background. For those who do not, please permit me to tell you. I taught both general and special education for over eight years, then served as a program specialist in special education at the Kansas State Department of Education (KSDE) for twelve years. During that time I was responsible for the special education regulations as well as the State Plan for Special Education and the training of due process hearing officers. Since leaving the Department I have remained active in the education field, serving on several KSDE task forces as well as being an active participant in the reauthorization of the federal Individuals with Disabilities Education Act (IDEA).

*Senate Education  
Attachment 2  
2-16-99*



I have always been proud that Kansas was a family focused state, one in which parents were considered a part of the team and their opinions valued. Yet I can also see the point of educators who had to get permission when they wished to change a child's program by five minutes. Therefore, in good faith, we agreed that consent needed to be obtained *only* when the proposed change affected over 25% of the child's school day. Why is it important to us to have consent when the change is in the amount of services as well as physical placement? Many schools are using new methods of providing services, such as "class within a class." In this method the child with a disability spends his or her day in a general education classroom with special education services provided to the child in that general education classroom. Under the proposed language the school can move from five hours of special education services to 30 minutes without parent consent required. Parents must still be notified, which, when they find out what the school has done, could result in the filing of more due process hearings. We do not view this as good for the parents or school, and especially, not good for the child who must attend that school.

A second reason for the language to include services as well as placement is that this proposed language is confusing. A week ago I attended a workgroup meeting with special education staff from the KSDE. We discussed the language in SB 129 and there was much confusion on the part of Department staff as well as the local director of special education who attended the meeting. Attached to my testimony are two flow charts, one which shows the options under the compromise language and one which shows how we would propose to change the language.

We would propose that the following language be added to the statutes definition section:

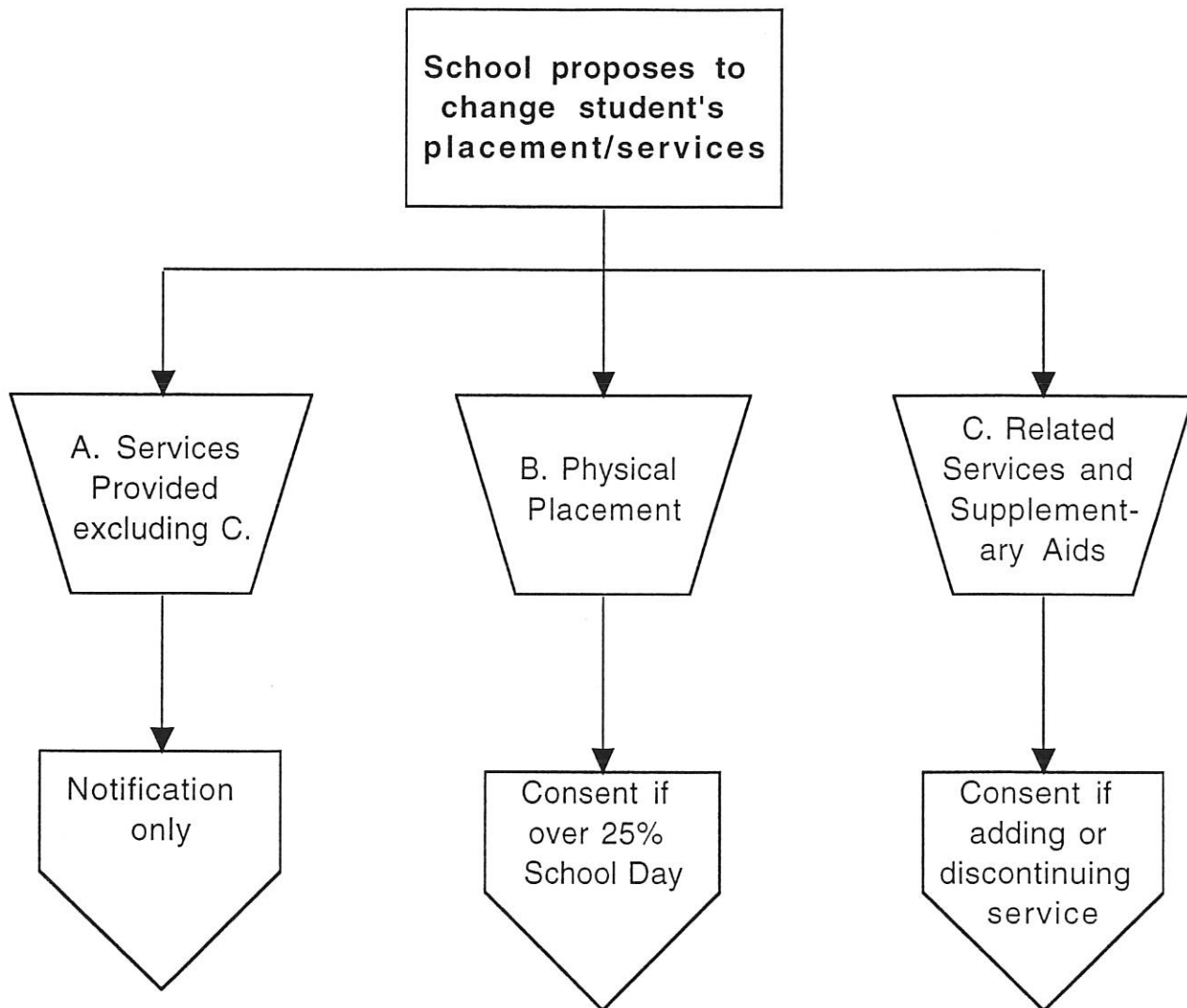
Material change in services means an increase or decrease, by 25 % or more, of the duration or frequency of a related service or a supplementary aid or service specified on a child's individual education program.

While at the State Department of Education I learned that "Special Education is a service, not a place." I would like for that statement to be remembered by you as you deliberate on this bill and I ask you to carefully consider our request. Thank you for the opportunity of providing testimony. I am sure that Josie can answer any questions you may have.

Jane Rhys, Executive Director  
Kansas Council on Developmental Disabilities  
Docking State Office Building, Room 141  
915 SW Harrison  
Topeka, KS 66612-1570  
913 296-2608

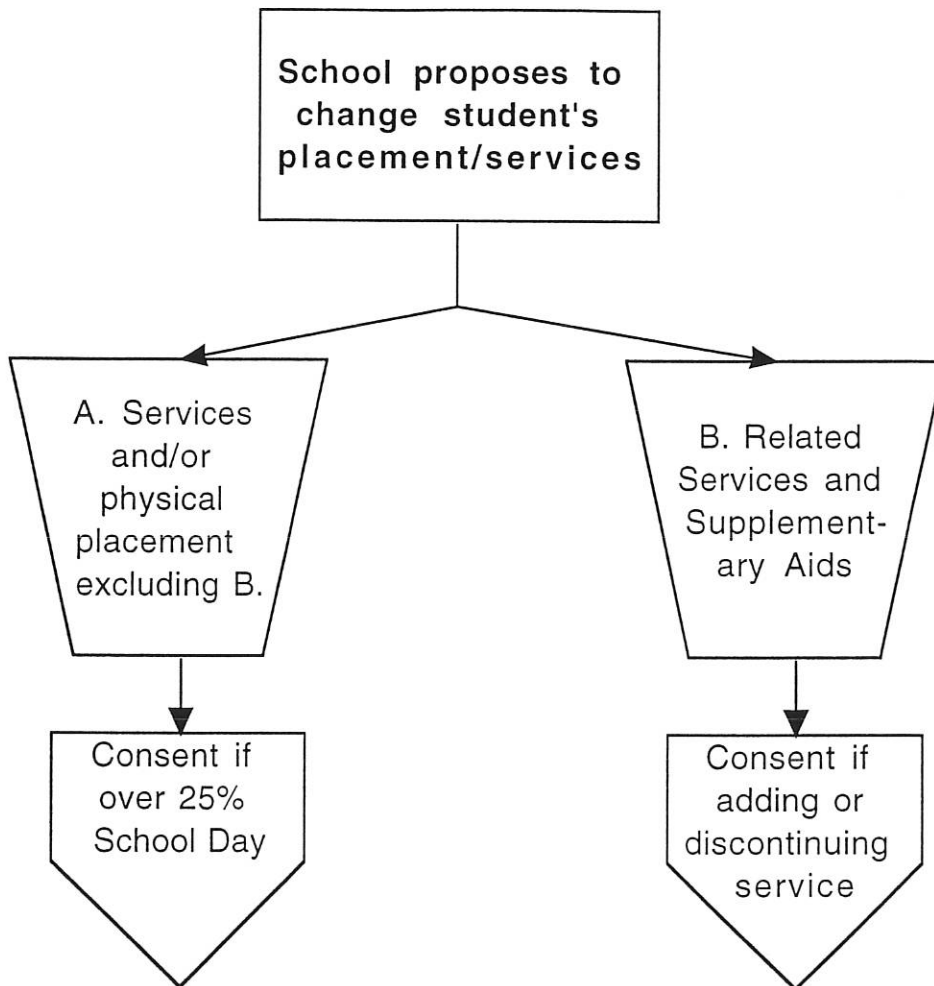
# Parental Notification and Consent

SB 129



# Parental Notification and Consent

## Our Proposal





Testimony on S.B. 8  
Senate Education Committee  
February 16, 1999  
by  
Cynthia Lutz Kelly, Attorney  
Kansas Association of School Boards

Madame Chairman, committee members, thank you for the opportunity to appear in support of S.B. 8 on behalf of the Kansas Association of School Boards and Schools for Quality Education.

As I testified yesterday, we have grave concerns about the provisions of S.B. 129 which fail to address necessary changes in the state auxiliary services statutes. The manner in which school districts must provide special education services to children voluntarily enrolled in private schools should be addressed in that legislation. Therefore we urge you to amend the provisions of S.B. 8 into S.B. 129.

We believe the amendments contained in S.B. 8 are necessary for several reasons. First, much of the language in the current law was included in response to Supreme Court cases which indicated the types of services which could or could not be provided on the premises of a parochial school. The Supreme Court decision in *Agostini v. Felton* overturning their prior decision in *Aguilar v. Felton* largely eliminates the need for these distinctions. Direct educational services, including teaching services, under IDEA or Title I can now be provided on the premises of a parochial school. However, just because providing services on the premises of a parochial school does not violate the Establishment Clause of the First Amendment does not mean services **must** be provided at that site, nor does it mean providing services at that site will be cost efficient.

Recognizing that public education dollars cannot be stretched to meet the needs of all children attending private schools, Congress included language in IDEA which limits the amount schools must spend in providing services to children attending private schools to a proportionate share of federal funding under IDEA. Regulations under IDEA require schools to meet with representatives of private schools to determine how best to meet the needs of students with disabilities in private schools. In interpreting these provisions, most circuit courts of appeal have concluded a school district meets its obligations under IDEA by making the opportunity for participation in IDEA programming available at the public school site.

S.B. 8 goes beyond federal law by requiring schools to spend greater amounts than federal law would require to provide services for children in private schools if those children are willing to come to the public school site to receive the services. Our members do not object to this provision. However, S.B. 8 appropriately limits the amount schools must spend in providing services at the private school site to a proportionate amount of the federal funding the district receives for providing those services. The bill ensures all children have access to complete services, but does not require complete services be provided in a manner which is both costly and inefficient.

We urge you to amend the provisions of S.B. 8 into S.B. 129 and recommend the legislation favorably for passage.

Senate Education  
Attachment 3  
2-16-99



2-16-99

**Members of the Education Committee**

**RE: SB 8**

Testimony to committee by

Dee McKee Director - Prairie Hills Interlocal # 635

Kansas Association of Special Education Administrators

Kansas Association of Special Education Administrators is the state wide organization of leaders in the area of Special Education Services. It's membership deals daily with the issues of management of these services in education.

The directors of special education have adopted a position that the Kansas special education rules and regulations should mirror the requirements of the federal law. This bill SB 8 will, we believe, fairly align the management of special services to all schools in the state. The changes in SB8 do not erode any special education services provided to kids, but allows local education administrators to manage their individual programs efficiently and deliver needed service in the most efficient manner for the benefit of all kids.

Following the courts decision on the Fowler case (10<sup>th</sup> circuit) the current "auxillary services" component elevated to the point that individuals in private schools were afforded more specific opportunities than students in public schools. This bill will level that field again, and continue to provide services to children.... not to buildings and locations.

In the interium session 1998, our organization came before the budget committee to discuss special education funding. At that time we suggested that there were several legislative changes that would assist in containing the special education costs. In that discussion we specifically asked for this bills change in language because the Kansas laws were causing increased, specific responsibilities to hire staff for individual locations ... and there fore additional expense for the tax payers of Kansas.

I represent one of the smaller special education service providers, and have minimum service responsibilities to meet the directive of the current law. However as a provider, my organization is impacted by the staff additions that come about when other areas attempt to comply and place single staff members in locations to meet the courts requirements. This does impact the state wide appropriations formula for staff that each district or cooperative receives at the end of each year.

KASEA members are interested in containing costs and to this end encourage and advise you to make the changes allowed by passage of SB8 which meets but does not exceed the Individuals with Disabilities Education Act, the current federal law

*Senate Education  
Attachment 4  
2-16-99*

RE: Policy Positions on Special Education Issues 1998-99

At the October meeting of the Kansas Association of Special Education Administrators, the membership as a whole adopted and hereby express support for the following positions:

1. The new Kansas regulations and statutes regarding Special Education should mirror the federal statutes except for the inclusion of giftedness.
2. We believe Special Education should (as a mandate) be funded at 100% of excess cost.
3. We believe the present method of funding Kansas Special Education should be maintained. We do not favor census-based funding.
4. Funding for educational staff development for teachers should be increased in order to maintain necessary skills in our schools.

*Senate Education  
attachment 5-  
2-16-99*



Winston C. Brooks  
Superintendent

**Senate Education Committee  
Senator Barbara Lawrence, chair**

**Senate Bill 8**

*Submitted by Diane Gjerstad  
Wichita Public Schools*

February 16, 1999

Madame Chair, members of the committee:

I rise in reluctant support of SB 8 before you today. USD 259 would prefer that the state statute mirror the federal, the district is aware that the legislature has made certain commitments to special education services beyond those provided for in the Individuals with Disabilities Educational Act. Senate Bill 8 as recommended by the Special Committee on Budget stands as a compromise between the public and private school positions. It is not what either side entirely wants.

It is important to review what SB 8, if enacted into law, would **not** do.

- *"this would repeal current state guaranteed special education services for private school children".*

Public schools are required under federal law to seek, evaluate and make special education services available to *all* children within the district, regardless of public or private.

- *"this bill would undo 20 years of law".*

The auxiliary services statute has been state law for a lengthy period, but the Fowler decision come down about eighteen months ago. Prior to that decision, school districts were not providing services at the private school when the student was unilaterally placed by the parent.

- *"districts get 85% of special education funding paid by the state".*

The Legislative Post Audit released in October 1998 clearly reveals that the legislature appropriates special education funding as a percentage of total excess cost, *but* the distribution system to schools is a separate method. The audit also revealed that USD 259 is very efficient in providing those services with an average cost per FTE of \$16,196 (*Reviewing Issues Related to Funding for Special Education, October 1998, appendix A, page 28*). If the district loses the ability to determine the location of the services, the cost will increase.

This legislation is not an attack on children. It stands as a reminder that we are striving for the elusive and difficult balance between the needs of *all* children.

This bill is crafted as a middle ground. I would urge your support of this compromise.

*Senate Education  
Attachment 6  
2-16-99*