

MINUTES OF THE SENATE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Dwayne Umbarger at 1:30 p.m. on February 19, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Hensley (excused)

Committee staff present: Ben Barrett, Legislative Research
Carolyn Rampey, Legislative Research
Theresa Kiernan, Revisor of Statutes
Dale Dennis, Deputy Commissioner of Education
Judy Steinlicht, Secretary

Conferees appearing before the committee: Val DeFever, State Board of Education
Amy Brunner, KASB
Dale Huffman, Families Together
Kirk Lowry, Topeka Independent Living Resource Center
Jane Rhys, KS Council on Developmental Disabilities
Neysa Ummel, Parent

Others attending: See Attached List

Hearing on SB401—Schools; teacher employment incentive and retention bonuses

Val DeFever, State Board of Education, gave testimony in support of **SB401**. This bill authorizes local boards of education to pay signing and retention bonuses for teachers which includes all certified personnel. The signing and retention bonuses were a recommendation of the task force and this practice is being used by other states to recruit and retain quality teachers. ([Attachment 1](#))

Amy Brunner, KASB, offered testimony in support of **SB401**. This bill will assist Kansas schools in recruiting and retaining teachers. Kansas is facing a crisis in placing quality teachers in the classroom and this bill is a step in the right direction to recruit and retain quality teachers. ([Attachment 2](#))

Craig Grant, KNEA, gave the Committee written testimony on **SB401**. KNEA has no problem with the concepts of the bill, however, KNEA believes that the statues already allow hiring and retention bonuses for teachers. If the bill is intended to provide authority for boards to give hiring and retention bonuses for superintendents, building administrators, or paraprofessionals, then the bill may be needed, but language may need to be changed to administrator or support staff hiring and retention bonuses. ([Attachment 3](#))

Hearing on SB516—Special Education; due process hearings time-limitation for requests

Amy Brunner testified in support of **SB516** for KASB. KASB believes that this bill provides a reasonable time frame for parents to exercise their rights and that it will assist in making school districts more efficient. KASB feels that students' rights must be protected to ensure they are receiving a quality education and that the process must be efficient so that districts are not overburdened with cost. KASB believes **SB516** achieves this balance. ([Attachment 4](#))

Dale Huffman, Families Together, Inc., gave testimony opposing **SB516**. They believe the language within the bill takes away parental rights pertaining to parental consent for a special education action. The federal law expressly states that written consent must be provided by the parent before certain special education actions may take place and the state law further requires written consent be provided by the parent whenever there is a substantial change in placement, or a material change in service. Families Together believes that a parents silence would more likely mean a parent disagrees or needs further clarification. Taking the parent out of the situation is not a solution and could lead to a more difficult

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON EDUCATION at on February 19, 2002 in Room 123-S of the Capitol.

relationship between two important parties as it relates to a child's education. (Attachment 5)

Kirk Lowry, attorney for Topeka Independent Living Resource Center, gave testimony in opposition to **SB516**. He opposes the bill because he believes it conflicts with the right to file a formal complaint, conflicts with mediation, will require parents to file more requests for due process, does not require that consent be informed, conflicts with the purpose of the IDEA, reverses the current balance requiring the school district to file for due process if they do not obtain consent, conflicts with the right of case law in the federal circuit courts of appeal and conflicts with the position of the United State Department of Education. Mr. Lowry explained why he believes each of the areas mentioned above conflicts with parental rights. Mr Lowry stated that he does not believe 60 days is adequate, necessary or reasonable. He stated that the consent provided for in this bill is neither voluntary nor informed as required by law. Mr. Lowry sited cases that had statute of limitations from one year to six years and he stated that Kansas should have statutes of limitations no less than one year and up to six years. Mr. Lowry said six years is a long time, but he believed 1-2 years to be reasonable. Mr. Lowry stated that he would delay providing a free and appropriate education to a child to protect the due process rights of the parents. (Attachment 6)

Jane Rhys, Kansas Council on Developmental Disabilities, also gave testimony in opposition to **SB516**. They oppose the bill for three reasons: first, IDEA does not place any restrictions on the amount of time a parent has to either consent to action proposed by a school district or request a due process hearing. It provides methods for the school district to use in case a parent refuses to consent or fails to respond to a district's request; second, many parents may not know that a school district is not following law until many days after an incident; third, mediation which is also provided for in federal law is not mentioned in the bill. Documentation for the federal laws are provided with the attached testimony. (Attachment 7)

Neysa Ummel, a parent of two, one with special needs, gave testimony strongly opposing **SB516**. She believes her parental rights would be taken away with the provisions contained in **SB516**. She stated that if she refused to place her signature on an item such as a placement or education plan, there is a reason for her refusal to sign and give consent. In no way does she want her refusal to sign ever to be construed as a silent consent. She does not believe that a 60 day time frame is enough and does not believe any time frame is adequate for a parent who is forced into a situation like this with a special needs child. (Attachment 8)

Time ran out for further testimony. Chairman Umbarger announced that the Committee would meet at 1:00 tomorrow and hearings for **SB516** would be continued at that time. Meeting was adjourned at 2:30 p.m.

SENATE EDUCATION COMMITTEE GUEST LIST

DATE - 5-19-07

<u>NAME</u>	<u>REPRESENTING</u>
Tony Brunner	KASB
[unclear]	USA - USD 506
Joel Arnold	Coalition For Independence
Dale Huffman	FAMILIES TOGETHER INC
Leslie Howard	Families Together, Inc.
Jessie Torres	KCDD
Neyra Ummit	Mother of a special needs child and Ks For Compliance
BRUCE COOPER	KNEA
Alyson Williams	Intern ^{sr} Karin Brownlee
Doug Bowman	Ks Coordinating Council on Early Childhood
Jan Rhys	KCDD
Rod Bieker	KSDE
Meghan Danning	Keys for Networking, Inc.
Susan Adams	Keys for Networking, Inc
Lori Ellis	Parent, Circleville, Kansas
Kirk Lounay	TILRC



Kansas State Department of Education

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

February 19, 2002

TO: Senate Education Committee

FROM: Val DeFever, Legislative Liaison
State Board of Education

SUBJECT: Senate Bill 401

My name is Val DeFever, Legislative Coordinator of the State Board of Education. I appreciate the opportunity to appear before this Committee on behalf of the State Board.

Senate Bill 401 authorizes local boards of education to pay signing and retention bonuses for teachers (includes all certified personnel) as defined in Section 2 of the bill. Some school districts have encountered problems being able to recruit and retain teaching staff. As a result a task force was commissioned by the Commissioner of Education to provide suggestions for recruiting and retaining teachers.

One of the recommendations from the task force was to authorize signing and retention bonuses. This is a practice being used by other states in the process of recruiting and retaining quality teachers.

The State Board of Education recommends you report Senate Bill 401 favorably for passage.

Senate Education
2-19-02
Attachment 1

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS



1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
785-273-3600

Testimony on
SB 401 – Employment Incentives and Retention Bonuses
Before the
Senate Committee on Education

By
Amy Brunner, Governmental Relations Specialist
Kansas Association of School Boards

February 6, 2002

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to offer comments on SB 401. KASB strongly supports the intent of this bill. In its current form, the bill would allow local school boards to pay employment incentives or retention bonuses to teachers and other professional employees in any public school. This bill will assist Kansas schools in recruiting and retaining teachers.

Kansas is facing a crisis in placing quality teachers in the classroom. During the last school year, our state was 550 teachers short at the beginning of the year. Substitutes and administrators filled many of these positions and where positions were not filled, classes were combined, increasing class size. When surveyed, many teachers not using their certificates cited salary as an issue.

The Kansas State Board of Education has put forth a proposal for recruiting and retaining quality teachers. The proposal directly addresses the need for increased compensation for teachers and will require increased revenue from the state. Teacher shortage is a problem that Kansas cannot afford to ignore. Failing to recruit and maintain quality teachers for Kansas students will erode the quality of public education. While SB 401 does not provide the comprehensive solution to teacher shortage that the entirety of the State Board's proposal does, it is a small step in this direction. Therefore, we support this bill and ask that the Committee favorably recommend it.

Thank you for your consideration.

*Senate Education
2-19-02
Attachment 2*



Craig Grant Testimony
Senate Education Committee
Wednesday, January 30, 2002

Thank you, Mr. Chairman. I am Craig Grant and I represent Kansas NEA. I appreciate this opportunity to visit with the Senate Education Committee about SB 401, the bill pertaining to hiring and retaining bonuses for teachers and administrators.

Kansas NEA has no problem with the concepts embodied in this bill. In fact, we have been doing this in Kansas for a number of years. The first contract I ever negotiated had a \$200 stipend for certain classes of teachers, specifically special education teachers. Since this has been a practice for thirty years or so, and no one that I am aware of has challenged this, I believe that most reasonable people would assume that this type of bonus is authorized (or reasonably authorized) for local school boards.

If one needs to go to the statute books, I believe KSA 72-5413, subsection 1, provides this authority. It states "terms and conditions of professional employment means (1) salaries and wages." It is clear to me that bonuses for whatever reason are clearly salaries and wages. Any reasonable interpretation—and many school boards and teacher groups interpret the statutes this way—would allow such bonuses.

We currently have districts with negotiated agreements in place providing for hiring and retention bonuses. If the real reason for SB 401 is to provide authority for boards to give hiring and retention bonuses for superintendents, building administrators, or paraprofessionals, then I might see a need for the bill. Administrators are excluded from the negotiation's statute where this authority is given. Possibly we need to change this to administrator or support staff hiring and retention bonuses. Or possibly we need to give negotiating rights to support staff in the law with similar definitions.

We do not believe that our teachers need to be included in this bill. We are comfortable that we can already receive and boards of education can give hiring and retention bonuses. Thank you for listening to our concerns.

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
785-273-3600

Testimony on
SB 516 – Special Education Due Process
Before the
Senate Committee on Education

By
Amy Brunner, Governmental Relations Specialist
Kansas Association of School Boards

February 19, 2002

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to offer comments on SB 516. This bill touches on special education with regard to parental consent and due process. Realizing this, KASB has carefully reviewed the provisions of this legislation to ensure that no student or parental rights are being violated. We have confidently concluded that SB 516 is sound legislation that will assist school districts in making special education procedures more efficient and therefore, appear here today as a proponent of this bill.

SB 516 makes special education procedures more efficient by implying parental consent and waiving the right to request due process if this consent or request is not specifically given within 60 days. At the same time, this bill keeps in place the requirement for parental consent to agency action and the parent's right to request due process. SB 516 simply provides a reasonable time frame in which these rights may be exercised. We believe that the 60 days provided within this bill for a parent to respond allows a parent a very reasonable period of time.

Special education is an area that necessitates careful review of procedure. Students' rights must be protected to ensure they are receiving a quality education and the process must be efficient so that districts are not overburdened with cost. We believe that this bill assists in achieving this balance. Therefore, we urge the Committee to favorably recommend this bill.

Thank you for your consideration.

*Senate Education
2-19-02
Attachment 4*



Families Together, Inc.

Parent Training & Information Centers for Kansas

Home Page:
<http://www.kansas.net/~family>

Wichita Parent &
Administrative Center
3340 W Douglas, Suite 102,
Wichita, KS 67203
Voice/TDD (316) 945-7747
1-888-815-6364
Fax (316) 945-7795
e-mail: fmin@southwind.net

Topeka Parent Center
501 Jackson, Suite 400,
Topeka, KS 66603
Voice/TDD (785) 233-4777
1-800-264-6364
Fax (785) 233-4787
e-mail: family@inlandnet.net

Garden City Parent Center
111 Grant
Garden City, KS 67846
Voice/TDD (316) 276-6364
1-888-820-6364
Español (316) 276-2380
Fax (316) 276-3488
e-mail: famtogether@gcnet.com

Kansas City Parent Center
6811 W 63rd St., Suite 204
Overland Park, KS 66202
Voice/TDD (913) 384-6783
1-877-499-5369
Fax (913) 384-5887
e-mail: [ksfam@kc.net](mailto:kfam@kc.net)

Statewide Spanish Parent Line
1-800-499-9443

Senate committee on Education,
February 19, 2002

Testimony in regard to S.B. 516,

Mr. Chairman, members of the committee, thank you for allowing me to speak to you today on behalf of Families Together in regards to the Senate bill 516. Families Together is the federally funded, nationally recognized Parent Training and Information center. As a state wide organization, we provide support and education for families that include a child with a disability.

We are opposed to Senate bill 516 because the language within the bill seems to take away parental rights pertaining to parental consent for a special education action. The federal law expressly states that written consent must be provided by the parent before certain special education actions may take place, including written consent to conduct an initial evaluation, a re evaluation, as well as initial placement.

State law further requires written consent be provided by the parent whenever there is a substantial change in placement, or a material change in service. At no place does it state or imply that a parents silence be construed to mean consent. We believe the contrary to be a more reasonable presumption. Failure to respond by a parent would more than likely mean that a parent disagrees with the proposed action or needs further clarification.

While we understand that resolutions need to proceed in a timely fashion, taking the parent out of the situation is not a solution. It could lead to a more difficult relationship between the two important parties as it relates to a child's education.

Senate Education
2-19-02
Attachment 5

Assisting Parents and Their Sons and Daughters with Disabilities



Families Together, Inc.

Parent Training & Information Centers for Kansas

Home Page:
<http://www.familiestogetherinc.org>

Wichita Parent &
Administrative Center
3340 W Douglas, Suite 102,
Wichita, KS 67203
Voice/TDD (316) 945-7747
1-888-815-6364
Fax (316) 945-7795
e-mail: fmin@southwind.net

Topeka Parent Center
501 Jackson, Suite 400,
Topeka, KS 66603
Voice/TDD (785) 233-4777
1-800-264-6343
Fax (785) 233-4787
e-mail: family@inlandnet.net

Garden City Parent Center
111 Grant
Garden City, KS 67846
Voice/TDD (620) 276-6364
1-888-820-6364
Español (620) 276-2380
Fax (620) 276-3488
e-mail: famtogether@gcnet.com

Kansas City Parent Center
6811 W 63rd St., Suite 204
Overland Park, KS 66202
Voice/TDD (913) 384-6783
1-877-499-5369
Fax (913) 384-5887
e-mail: ksfam@kc.net

Statewide Spanish Parent Line
1-800-499-9443

We believe everything needs to be done to make sure that the parents as well as educators are involved, not excluded.

This bill appears to take the opposite approach to the situation.

Parents of special needs children are often overwhelmed with added responsibilities, both personal and financial. These circumstances require many hours of dedication to provide to those needs.

It is possible they just haven't gotten around to responding, maybe as I stated earlier, that they disagree but haven't had time to discuss it with anyone else or explore their options. It is our belief that parents want what is best for their children, in all situations.

We need to work together, this bill can only tear the process apart.

Thank you for your time.

Dale Huffman
Legislative Advocate
Families Together Inc.

Topeka Independent Living Resource Center

Kirk W. Lowry

Attorney

501 S.W. Jackson Street

Topeka, Kansas 66603-3300

(785) 233-4572 Voice/TDD • Fax (785) 233-1561 • 1-800-443-2207

February 19, 2002

The Honorable Dwayne Umbarger and members of the committee:
Chair, Senate Education Committee
Room 123-S
State Capitol
Topeka, Kansas 66612

Re: SB 516

Dear Mr. Chairman and members of the Committee:

I represent the Topeka Independent Living Resource Center. The center is a human and civil rights organization whose mission is to advocate for justice, equality, and essential services for a fully integrated and accessible society for people with disabilities. The center helps thousands of individuals across the state live independent lives at home instead of in institutions. An important part of our mission is to help children with disabilities receive a free appropriate public education in the least restrictive environment. Although the Individuals with Disabilities Education Act (IDEA), whose predecessor was passed in 1975, has ensured that most children with disabilities receive an appropriate education in the least restrictive environment, many children still do not.

I oppose SB 516 because it conflicts with the right to file a formal complaint, conflicts with mediation, will require parents to file more requests for due process, does not require that consent be informed, conflicts with the purpose of the IDEA, reverses the current balance requiring the school district to file for due process if they do not obtain consent, conflicts with the weight of case law in the federal circuit courts of appeal, and conflicts with the position of the United States Department of Education.

Purpose of the IDEA

The purpose of the IDEA is to ensure that children with disabilities receive a free and appropriate education in the least restrictive environment and to protect children's rights to procedural due process. Children with disabilities should have their cases heard on the merits of their claim. A short statute of limitations will inevitably lead to the dismissal of an unrepresented child's valid claim for denial of education based on the technical procedural move of a well-financed and always represented school district. Dismissal on technical grounds violates the purpose of the IDEA.

Conflict with Right to File a Formal Complaint

The IDEA and state law provide for the right of a child with a disability to file a formal complaint. 20 U.S.C. § 1415(b)(6) and 34 C.F.R. § 300.662. A child may file a formal complaint and then follow up with a claim for due process. It may not be done the other way around. 34 C.F.R. § 300.661(c). SB 516's requirement of consent by default and a bar on any other action would foreclose the right to file a formal complaint and then follow up with a request for due process.

Lack of Informed Consent

Fair and legal consent should be voluntary and informed. SB 516's consent provision is neither voluntary nor informed. A child with a disability should not forfeit his or her right to a free appropriate public education in the least restrictive environment based on his or her potentially unrepresented parent's failure to file for due process within 60 days. The bill does not change the substance of the parental rights document. Nothing in the current parental rights document tells parents there is a deadline or statute of limitations on filing for due process. The consent provision is involuntary because it springs into effect upon the default of the parent. If the parent does nothing, consent is deemed to have been given. Parents of children with disabilities face extraordinary demands on their time and treasure. Just meeting the everyday physical and emotional needs of children who may need feeding tubes and bowel programs can consume all of a parent's energy. Then the parent will have to find an attorney who is able to do an IDEA due process case. Especially in rural areas, these attorneys are nonexistent.

Conflicts with Mediation

A short statute of limitations conflicts with the interest of the state in keeping the IEP team together, working on solutions without litigation. The short 60-day statute of limitations will force parents to file for due process or waive. A statute of limitations should be long enough to encourage and allow parents and the IEP team to work out problems informally and if that fails to request mediation. Sixty days does not allow sufficient time for mediation.

A Sixty Day Statute of Limitations to File for Due Process Violates Federal Law

Whether a state law establishing a statute of limitations is directly applicable, or borrowed, it must in either case be consistent with federal law and policy. *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000). *See also*, Amicus Response Brief of the United States Department of Justice, page 3, footnote 2, in *CM v. Board of Education of Henderson County*, 241 F.3d 374 (4th Cir. 2001). The child and the state have an interest in due process, to have their case heard on the merits, and an assurance of an appropriate education. The school district has an interest in a quick resolution to disputes. A one to three year statute of limitations does not conflict with either interest. A sixty-day statute of limitations conflicts with a child's right to an education and fundamental fairness.

All but one federal court of appeals to have decided the issue has held that a statute of limitations of more than one year is the most appropriate. *See Strawn v Missouri State Bd. of Educ.*, 210 F.3d 954, 957-958 (8th Cir. 2000) (two years); *Manning v. Fairfax County Sch. Dist.*, 176 F.3d 235 (4th Cir. 1999) (one year); *Bernardsville Bd. of Educ. v. J.H.*, 42 F.3d 149 (3d Cir. 1994) (reasonable time, in that case one year); *Murphy v. Timberlane Reg'l Sch. Dist.*, 22 F.3d 1186, 1192-1193 (1st Cir. 1994) (six years); and, *Alexopoulos v. San Francisco Unified Sch. Dist.*, 817 F.2d 551, 555, (9th Cir. 1987) (three years). The only case to uphold a short statute of limitations to file for due process is *CM v. Bd. of Educ. of Henderson County*, 241 F.3d 374 (4th Cir. 2001) (sixty days based on a specific North Carolina state statute and only because of strict notice and informed consent allowances.) (There are many cases, and the circuits are split approximately seven to four on short statute of limitations to file a federal civil action. *See United States*

Department of Justice Response Brief, page 4, footnotes 3 and 4 in *CM v. Board.*)

State statute of limitations law would suggest that the appropriate statute of limitations would be eight years. Kan. Stat. Ann. § 60-515 allows for a statute of limitations of up to a minor's nineteenth birthday or eight years. Kan. Stat. Ann. § 60-512 provides for a three-year statute of limitations for actions upon a liability created by a statute. In this case, the liability is created by state and federal law, statutes, and therefore the applicable statute of limitations not otherwise designated would be three years. See also, *Wagher v. Guys Foods Inc.*, 256 Kan. 300 (1994) holding a three year statute of limitations in a sex discrimination civil rights claim.

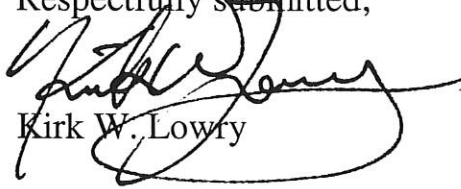
United States Department of Education Position

The United States Department of Education has long taken the position that state laws creating sixty-day statute of limitations for requesting due process hearings do not comply with the purpose of the IDEA. The Department of Education issues interpretive letters to give guidance on the department's position on important issues. The Department's position is that a sixty-day time limit for filing due process requests would be an unreasonable limitation upon federal law. See Letter to J. Raskin, 17 Educ. for the Handicapped Law Rep. 1116 (June 19, 1991); Letter to J. Pawlisch, 29 Educ. For the Handicapped Law Rep. 1088 (Oct. 22, 1997).

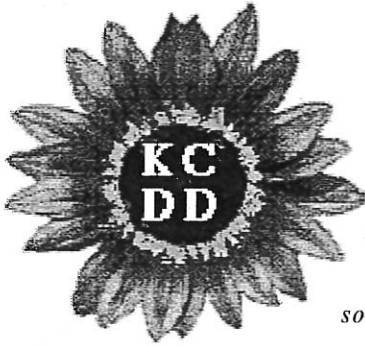
Conclusion

A sixty-day statute of limitations would be unfair and unwise public policy. Public policy of the State of Kansas should support the right of a child with a disability to a free appropriate public education in the least restrictive setting and access to due process to enforce that right. A sixty-day statute of limitations that operates by default, is based on neither a voluntary nor an informed act is a mean-spirited attack on potentially unrepresented children with disabilities against a well-financed, always well represented school district. SB 516 should not pass out of committee.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kirk W. Lowry", written over the printed name below it.

Kirk W. Lowry



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 life for individuals with developmental disabilities"

SENATE EDUCATION COMMITTEE

February 19, 2002

Testimony in Regard to S.B. 516, an act relating to Special Education.

To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities.

Mr. Chairman, Members of the Committee, I am appearing today on behalf of the Kansas Council on Developmental Disabilities to oppose S.B. 516, relating to special education; due process hearings time-limitation for requests.

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 what leisure activities they wish to do.

After careful study, the Council opposes this Bill for several reasons. First and foremost, the Individuals with Disabilities Education Act (IDEA) does not place any restrictions on the amount of time a parent has to either consent to action proposed by a school district or request a due process hearing. Under this proposal, a parent would have 60 days to consent or they must request a due process hearing within 60 days of the date of the school district's action. We believe that over \$60 million in Part B and \$4.4 million in Part C federal IDEA funds would be put in jeopardy by this proposed law. The IDEA Regulations, found in 34 Code of Federal Regulations (C.F.R.), 300.505(b) provide that parents may refuse or consent to any action proposed by the school district (see attachment). Federal regulation also provides methods for the school district to use in case a parent refuses to consent or fails to respond to a district's request [see 300.345(d)].

*Senate Education
2-19-02
Attachment 7*

Second, in many instances a parent may not know that a school district is not following law until many days after an incident. Children with disabilities do not always know what services they are to receive and many cannot convey this information to their parents. To place a 60 day limitation on the parents is not best practice nor is it consistent with federal law. Again, if you look at the second page of the attachment under 200.505(d) additional State consent requirements it states: a state may require parental consent for other services . . . if it ensures . . . that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

Third, Mediation, as also provided for in federal law, is also not mentioned (see 300.506 Mediation). Therefore a parent must consent or file for a due process hearing, a direct conflict with federal law.

Therefore we strongly urge that this Bill not be passed. As always, we appreciate the opportunity of appearing and I would be happy to stand for questions.

Jane Rhys, Ph.D., Executive Director
Kansas Council on Developmental Disabilities
Docking State Office Building, Room 141
915 SW Harrison
Topeka, KS 66612-1570
785 296-2608
jrhys@alltel.net

34 CFR Parts 300 and 303

Assistance to States for the Education of Children With Disabilities and the Early Intervention Program for Infants and Toddlers With Disabilities; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 300 and 303

RIN 1820-AB40

Assistance to States for the Education of Children With Disabilities and the Early Intervention Program for Infants and Toddlers With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the Assistance to States for Education of Children with Disabilities program under Part B of the Individuals with Disabilities Education Act (IDEA; Part B) and the Early Intervention Program for Infants and Toddlers with Disabilities under Part C of the Act (Part C). These regulations are needed to implement changes made to Part B by the IDEA Amendments of 1997; make other changes to the part B regulations based on relevant, longstanding policy guidance; and revise the requirements on State complaint procedures under both the Part B and Part C programs.

DATES: These regulations take effect on May 11, 1999. However, compliance with these regulations will not be required until the date the State receives FY 1999 funding (expected to be available for obligation to States on July 1, 1999) under the program or October 1, 1999, whichever is earlier. Affected parties do not have to comply with the information collection requirements contained in the regulations listed under the Paperwork Reduction Act of 1995 section of this preamble until the Department publishes in the Federal Register the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

Sec. 300.345 Parent participation.

(a) Public agency responsibility--general. Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including--

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) Information provided to parents. (1) The notice required under paragraph (a)(1) of this section must--

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in Sec. 300.344(a)(6) and (c) (relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child).

(2) For a student with a disability beginning at age 14, or younger, if appropriate, the notice must also--

(i) Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student required in Sec. 300.347(b)(1); and

(ii) Indicate that the agency will invite the student.

(3) For a student with a disability beginning at age 16, or younger, if appropriate, the notice must--

(i) Indicate that a purpose of the meeting is the consideration of needed transition services for the student required in Sec. 300.347(b)(2);

(ii) Indicate that the agency will invite the student; and

(iii) Identify any other agency that will be invited to send a representative.

(c) Other methods to ensure parent participation. If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

(d) Conducting an IEP meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place, such as--

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) Use of interpreters or other action, as appropriate. The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) Parent copy of child's IEP. The public agency shall give the parent a copy of the child's IEP at no cost to the parent.

(Authority: 20 U.S.C. 1414(d)(1)(B)(i))

Sec. 300.503 Prior notice by the public agency; content of notice.

(a) Notice. (1) Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency--

(i) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(ii) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) If the notice described under paragraph (a)(1) of this section relates to an action proposed by the public agency that also requires parental consent under Sec. 300.505, the agency may give notice at the same time it requests parent consent.

(b) Content of notice. The notice required under paragraph (a) of this section must include--

(1) A description of the action proposed or refused by the agency;

(2) An explanation of why the agency proposes or refuses to take the action;

(3) A description of any other options that the agency considered and the reasons why those options were rejected;

(4) A description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;

(5) A description of any other factors that are relevant to the agency's proposal or refusal;

(6) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

(7) Sources for parents to contact to obtain assistance in understanding the provisions of this part.

(c) Notice in understandable language. (1) The notice required under paragraph (a) of this section must be--

- (i) Written in language understandable to the general public; and
- (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure--

- (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
- (ii) That the parent understands the content of the notice; and
- (iii) That there is written evidence that the requirements in paragraphs (c)(2) (i) and (ii) of this section have been met.

(Authority: 20 U.S.C. 1415(b)(3), (4) and (c), 1414(b)(1))

Sec. 300.504 Procedural safeguards notice.

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum--

- (1) Upon initial referral for evaluation;
- (2) Upon each notification of an IEP meeting;
- (3) Upon reevaluation of the child; and
- (4) Upon receipt of a request for due process under Sec. 300.507.

(b) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under Secs. 300.403, 300.500-300.529, and 300.560-300.577, and the State complaint procedures available under Secs. 300.660-300.662 relating to--

- (1) Independent educational evaluation;
- (2) Prior written notice;
- (3) Parental consent;
- (4) Access to educational records;
- (5) Opportunity to present complaints to initiate due process hearings;
- (6) The child's placement during pendency of due process proceedings;
- (7) Procedures for students who are subject to placement in an interim alternative educational setting;
- (8) Requirements for unilateral placement by parents of children in private schools at public expense;
- (9) Mediation;
- (10) Due process hearings, including requirements for disclosure of evaluation results and recommendations;
- (11) State-level appeals (if applicable in that State);
- (12) Civil actions;
- (13) Attorneys' fees; and
- (14) The State complaint procedures under Secs. 300.660-300.662, including a description of how to file a complaint and the timelines under those procedures.

(c) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of Sec. 300.503(c).

(Authority: 20 U.S.C. 1415(d))

Sec. 300.505 Parental consent.

(a) General. (1) Subject to paragraphs (a)(3), (b) and (c) of this section, informed parent consent must be obtained before--

- (i) Conducting an initial evaluation or reevaluation; and
- (ii) Initial provision of special education and related services to a child with a disability.

(2) Consent for initial evaluation may not be construed as consent for initial placement described in paragraph (a)(1)(ii) of this section.

(3) Parental consent is not required before--

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(b) Refusal. If the parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the agency may continue to pursue those evaluations by using the due process procedures under Secs. 300.507-300.509, or the mediation procedures under Sec. 300.506 if appropriate, except to the extent inconsistent with State law relating to parental consent.

(c) Failure to respond to request for reevaluation. (1) Informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond.

(2) To meet the reasonable measures requirement in paragraph (c)(1) of this section, the public agency must use procedures consistent with those in **Sec. 300.345(d)**.

(d) Additional State consent requirements. In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(e) Limitation. A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a) and (d) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

(Authority: 20 U.S.C. 1415(b)(3); 1414(a)(1)(C) and (c)(3))

Sec. 300.506 Mediation.

(a) General. Each public agency shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in Sec. 300.503(a)(1) to resolve the disputes through a mediation process that, at a minimum, **must be available whenever a hearing is requested** under Secs. 300.507 or 300.520-300.528.

(b) Requirements. The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process--

(i) Is voluntary on the part of the parties;

(ii) Is not used to deny or delay a parent's right to a due process hearing under Sec. 300.507, or to deny any other rights afforded under Part B of the Act; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2)(i) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(ii) If a mediator is not selected on a random (e.g., a rotation) basis from the list described in paragraph (b)(2)(i) of this section, both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.

(3) The State shall bear the cost of the mediation process, including the costs of meetings described in paragraph (d) of this section.

(4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

(6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(c) Impartiality of mediator. (1) An individual who serves as a mediator under this part--

(i) May not be an employee of--

(A) Any LEA or any State agency described under Sec. 300.194; or

(B) An SEA that is providing direct services to a child who is the subject of the mediation process; and

(ii) Must not have a personal or professional conflict of interest.

(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under Sec. 300.194 solely because he or she is paid by the agency to serve as a mediator.

(d) Meeting to encourage mediation. (1) A public agency may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party--

(i) Who is under contract with a parent training and information center or community parent resource center in the State established under section 682 or 683 of the Act, or an appropriate alternative dispute resolution entity; and

(ii) Who would explain the benefits of the mediation process, and encourage the parents to use the process.

(2) A public agency may not deny or delay a parent's right to a due process hearing under Sec. 300.507 if the parent fails to participate in the meeting described in paragraph (d)(1) of this section. (Authority: 20 U.S.C. 1415(e))

Neysa Ummel
3112 SW Tutbury Town Road
Topeka, KS 66614
785-478-4473

I came to testify today because my husband and I strongly object to the bill No. 516 that would take away our parental rights and leave us helpless to advocate for our son's education.

I want to make myself clear and to the point: You can be certain that if I have refused to place my signature on an item such as a placement or education plan, THERE IS A REASON FOR MY REFUSAL TO SIGN AND GIVE CONSENT. I AM APPALLED THAT MY REFUSAL TO SIGN COULD LATER BE CONSTRUED AS CONSENT OR WAIVING MY RIGHTS?!?

My husband, Mitch and I are parents of 2 wonderful children. Our daughter Jenna is 8 years old and is in 2nd grade in public school at Indian Hills Elementary in school district #437. She is a typical kid. Our son, Harry, attends private catholic school. He is 6 years old and is in Kindergarten. He requires para support, but his least restrictive environment is a regular education classroom. He isn't the only one who benefits from the least restrictive environment setting, his peers benefit as well. At the last parent teacher conference his teacher commented again how she is so happy that Harry is in her classroom. Children can learn acceptance and inclusion as easily as we have been able to teach them discrimination and segregation. His classroom is full of 11 beautiful natural 5 & 6 year old supports, his classmates. They are well versed in person first language, it comes naturally when you are exposed to it at an early age.

You are looking at a parent who refused to signNo way do I want my refusal to sign ever to be construed as silent consent to agreeing to place my son into a self contained classroom; a setting that I know would not only be inappropriate but detrimental for my son's educational benefit.

This bill in effect gives parents 60 days to consent; if they do nothing then they will be deemed as consenting. If they consent then they cannot file for due process. If they do not file for due process within 60 days the case will be time barred. I know from my own personal experience that I still have not recovered from the shock of where my school district was going to place my child. After the realization of what was happening sunk in our heads, that there was not going to be any of those cute little pictures of our boy getting onto the school bus with his big sister or any bus for that matter for the first day of school, Our first concern

was getting our son enrolled into a school that was aware of his special needs but supportive of the principals of the IDEA that detail least restrictive environment. I remember my son questioning me why he wasn't getting to go to school, I tried to explain it in a way he could understand, I don't think it is possible to explain something that ugly to a child, I don't think not a one of my son's current classmates could understand either, it is simply not explainable. In our case we were left scrambling trying to get a suitable kindergarten placement for our child. At the same time we had to research to find who we could hire as a lawyer, we've never had to use an attorney before so it was all new to us. Our lawyer has a retainer of \$2,500 and we had to start paying the \$250 per hour fee for her services. There was also the fee for tuition for private school and all of the support service cost our son would require. I remember some vague numbers that were presented to us, a friend and previous coworker of mine had to take her case all the way to the supreme court to win over a decade ago with the same lawyer we have under retainer, it cost her more than \$40,000, we ~~would~~^{were} told that today that cost could easily go to \$100,000. If we won, we might be able to get that cost reimbursed, but there could be no guarantee. At the time it was almost overwhelming, and honestly it still is. A 60 day time frame is not enough, I don't think any time frame is adequate for a parent to be forced into something like this.

Thank you for your time and consideration.