

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION K-12.

The meeting was called to order by Chairperson Kathe Decker at 9:00 a.m. on February 12, 2003 in Room 313-S of the Capitol.

All members were present

Committee staff present: Carolyn Rampey, Legislative Research Department
Kathie Sparks, Legislative Research Department
Ann Deitcher, Committee Secretary

Conferees appearing before the committee: Pam Fellin, UMKC School of Law
Representative Mike O'Neal
Representative Bill Mason
Mac Plummer, Supt. USD 217
Raymond Dykens, Supt. USD 499
Tim Burnes, Supt. USD 508
Jim Sutton, Supt. USD 509
Kay Schultz, Supt. USD 406
Larry Geil, Supt. USD 488
Dave DuBois, Supt. USD 242
Anne Lassey, Supt. USD 436
Mark Tallman, KASB

The Chair explained to the committee that they would not be hearing **HB 2180** that was listed on the agenda. Since work is being done on the language of **HB 2180** on the Senate side, it was decided to delay hearing the bill until which time the Senate sends over.

HB 2187 - concerning schools; relating to non-resident pupils.

HB 2194 - disallowing the counting of certain pupils for purposes of computations; entering into reciprocal agreements.

As sponsor of **HB 2187**, Representative O'Neal appeared before the committee to introduce Pam Fellin who offered testimony regarding a survey of judicial and legislative reactions to non-resident and tuition-free public education. (Attachment 1).

Representative Mason spoke to the committee in support of **HB 2187 and HB 2194**. (Attachment 2).

Appearing as opponents to both **HB 2187 and 2194** were: Mac Plummer, Raymond Dykens, Tim Burnes, Jim Sutton, Kay Schultz, Larry Geil, Anne Lassey, Dave DuBois and Mark Tallman. (Attachments 3 through 12).

Those submitting written testimony only were, Scott Hills, Supt. USD 286; Scott Myers, Supt. USD 218; (Attachments 13 and 14).

The meeting was adjourned at 10:55 a.m. The next meeting is scheduled for Thursday, February 13, 2003.

November 18, 2002
Legislation
Professor Steve Leben

Table of Contents

Tab A.	Introduction and Overview
Tab B.	Proposed Amendment -- K.S.A. 72-1046a
Tab C.	State Comparison Analysis and Chart
Tab D.	Constitutional Analysis
Tab E.	Public Policy Analysis

Submitted by:
Crystal Crowder
Pam Fellin
Susan McGlone

House Education Committee
Date: 2/12/03
Attachment # 1-1

MEMORANDUM

TO: Representative Mike O'Neal
FROM: Crystal Crowder
Pam Fellin
Susan McGlone
DATE: November 15, 2002
RE: Legislation Drafting Project

Thank you for providing us with the opportunity to experience the legislation drafting process. We feel that we have developed a better awareness of the difficulties that our legislators face when they draft legislation.

The following paragraphs provide a brief overview of our reasoning as we developed our amendment. Our goal was to convey the message that the State of Kansas would like to provide the option to allow those out-of-state residents, who make significant contributions to the State of Kansas, an opportunity to enjoy the benefit of quality education that resident Kansans deem invaluable.

Section 1(a)

In order to avoid the appearance of conflict, all seemingly mandatory tuition language has been removed. We have revised this section to provide the board of education broad discretion in admitting nonresidents as well as broad discretion in waiving tuition for nonresidents. We have also struck the reference to (b) because we are concerned that it could be construed that out-of-state residents would need to enter into an agreement to be able to attend school in a particular district.

The sentence beginning with “Amounts received...” has been modified to provide direction – generally – for the receipt of tuition if tuition is in fact collected.

Section 1(b)

This paragraph remains unchanged and is a narrowing of 1(a) to mandate that districts collect tuition from the cooperating district *not the pupil* if an agreement is entered into by the districts for the pupil’s attendance. We debated removing this paragraph but ultimately decided that it should remain as is due to the fact that K.S.A. 72-8233 authorizes school districts to enter into agreements, which presumably dictate apportionment of funds.

Section 1(c)

This is the core of our amendment. We have given specific authority for the enrollment of out-of-state residents that fall into a broad class of people.

The purpose of inserting the “upon good faith consideration...” language is to diffuse possible conflict with residents/taxpayers who may feel that it is unfair for out-of-state residents to attend Kansas’s schools without paying tuition. If they believe that the board is required to at least consider the financial implications they may be less likely to challenge the pupil’s admission.

Conclusion

Obviously the broad class of pupils from out-of-state that may be allowed to attend clearly indicates that they would not be “milking” the Kansas taxpayers. It should be clear that the out-of-state pupils are not a “burden” on Kansas taxpayers and should be allowed to attend Kansas schools because of their significant contributions to the economy of Kansas.

Session of (Year)

HOUSE BILL NO. ____

By (Committee Sponsoring Bill)

AN ACT relating to school districts; nonresident pupils; nonresident pupil agreements; enrollment of out-of-state pupils; amending K.S.A. 72-1046a and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 72-1046a is hereby amended to read as follows: K.S.A. 72-1046a. (a) The board of education of any school district is hereby authorized to permit pupils who are not residents of the school district to enroll in and attend the schools of the district. The board of education may permit such pupils to attend school without charge. ~~or, subject to the provisions of subsection (b), may charge such pupils for attendance at school to offset, totally or in part, the costs of providing for such attendance.~~ Amounts received under this subsection by the board of education of a school district for enrollment and attendance of pupils at school in regular educational programs shall be deposited in the general fund of the school district.

(b) Pupils who are not residents of a school district and are attending the schools of the school district in accordance with the provisions of an agreement entered into under authority of K.S.A. 72-8233, and amendments thereto, shall not be charged for attendance at school. The costs of providing for the attendance of such pupils at school shall be paid by the school district of residence of the pupils in accordance with the provisions of the agreement.

(c) *Pupils allowed to enroll in and attend schools as set forth in subsection (a) may include out-of-state residents upon good faith consideration by the board of education of the cost to the State of Kansas and its taxpayers. Appropriate circumstances for allowing an out-of-state pupil to enroll in and attend a Kansas school include, but are not limited to, a pupil with an immediately family member who:*

1. *pays Kansas property or income taxes;*
2. *owns a business in Kansas; or*
3. *makes substantial contributions to a nonprofit entity providing significant benefit to Kansans.*

Sec. 2 K.S.A. 72-1046a is hereby repealed.

Sec. 3 This act shall take effect and be in force from and after its publication in the statute book.

1-4

MEMORANDUM

TO: Representative Mike O'Neal

FROM: Crystal Crowder
Pam Fellin
Susan McGlone

DATE: November 15, 2002

RE: Survey of Judicial and Legislative Reactions to Nonresident and Tuition-Free Public Education

Introduction

A partial survey of state law addressing the issue of nonresident and tuition-free public education reveals a diverse response to seemingly controversial issues. This memo provides an overview of various judicial and legislative reactions to the subject.

1. The Border States

Missouri

According to RSMo. §167.151(1), the school board of any district is given discretion to admit pupils not entitled to free instruction and impose tuition payable by the pupil. Tuition is not required for "orphan children, children with only one parent living and children whose parents do not contribute to their support" if they have a "permanent or temporary home" in the district. RSMo. §167.151(2).

As early as 1888 the issue of nonresident tuition free education arose in the State of Missouri. *Binde v. Kling*, 30 Mo. App. 285 (1888). The court held that a granddaughter residing with an ailing grandmother was not entitled to a tuition free education because she did not fit the narrow class of children described in §167.151(2) above. The court reasoned that the legislature "necessarily" excluded "other non-resident children" by

including the class of orphans, children with one parent living and children whose parents do not contribute to their support. RSMo. §167.151(2).

In addition to the exception noted above in RSMo. §167.151(2), §167.151(3) allows a tuition credit for school tax paid in a school district that is not the resident school district. An agriculture exception is granted for tuition purposes for those families owning 80 or more acres of land used for agricultural purposes upon which the residence is situated if the land is contiguous to a neighboring school district and at least 35 % of the land is located in the school district of choice. Tuition is not required and the school district of choice receives the benefit of state aid.

Clearly, it is Missouri's intention to provide free public education to the children of the state and grants discretion to the school board of any district to admit nonresident children *with the payment of tuition*. Missouri narrowly construes the exceptions to the rule for purposes of tuition waiver.

In *Fowler v. Clayton School District*, 528 S.W. 2d 955 (1975), a Missouri resident owning property partially situated in two Missouri school districts was denied tuition free public education upon the court's finding that the bulk of the residence was situated in the neighboring school district. A tax credit was applied to the cost of tuition however tuition was still required. It is clear from *Fowler* if the State of Missouri adheres to the strict application of its statutes to its own state residents it is highly unlikely that a nonresident student from a neighboring state would receive more lenient treatment by waiving tuition.

Nebraska

The State of Nebraska specifically lays out their policy concerning the admission of out-of-state nonresident students. "A school board may admit a student who is a resident of another state to the school district and collect tuition in advance at a rate determined by the school board." Neb. Rev. Stat. §79-215(6). Similar to the State of Missouri, the school board is afforded discretion to admit nonresident students but tuition is required. Nebraska goes one step further by requiring that the tuition be paid in advance.

In addition, Nebraska has established an elaborate statutory scheme to enable Nebraska residents to apply to the school board or board of education of the district for permission to attend public school in a neighboring state. Neb. Rev. Stat. §79-599. The student must reside in a Nebraska county that is "contiguous to the boundary line of the state" and must state whether:

1. The pupil lives nearer an attendance center in the proposed receiving district than in the district of residence;
2. Natural barriers such as rivers cause transportation difficulties within the district of residence;
3. Road conditions from the pupil's home to the school in the proposed receiving district are better than to the school in the district of residence;
4. Travel time would be less to the school in the proposed receiving district; or
5. Educational advantages for the pupil exist in the proposed receiving district.

Neb. Rev. Stat. § 79-599. Tuition provisions are established for the benefit of the neighboring state.

It is critical to note that applications will not be approved unless the receiving state has established provisions similar to the Nebraska provision set forth in Neb. Rev. Stat. §79-599—5,103. Neb. Rev. Stat. §79-5,101. Nebraska strictly construes all

procedural requirements with regard to nonresident public education and requires explicit legislative authority for those entities authorizing the payment or receipt of tuition. *Reserve Rural H.S. Dist. No. 4, Brown Co., KS v. Hanika*, 339 F.2d 788 (8th Cir. 1964).

Colorado

The State of Colorado takes a more liberal view of nonresident tuition free education. Colo. Rev. Stat. § 22-1-102(1) states: "Every public school shall be open for the admission of all children, between the ages of six and twenty-one years, residing in that district without the payment of tuition. The board of education shall have power to admit adults and children not residing in the district if it sees fit to do so and to fix the terms of such admission." The board of education has discretion in admitting and charging tuition to nonresident students. Colo. Rev. Stat. § 22-33-103 provides that tuition *may* be charged for students whose parents or guardians are not residents of the state (*Italics added*).

Available case law in the State of Colorado indicates that there has been little or no challenge presented with regard to the policy set forth by the Colorado legislature.

Oklahoma

Similar to Colorado, the State of Oklahoma has not been challenged to rethink their position with regard to nonresident tuition free education. However, Oklahoma has a much more strict policy for the admission of nonresidents and goes one step further to impose a "penalty" for noncompliance.

The Oklahoma statute specifically states that "no school district shall bear the cost of educating children who are not residents of the state of Oklahoma; provided, a school district may furnish educational services pursuant to contract as elsewhere provided by

law.” 70 Okla. St. §1-113(B). If a school district allows the attendance of a nonresident student without advance payment of tuition the school district will lose state aid until the requisite tuition has been collected. 70 Okla. St. §1-114(D).

2. Miscellaneous Non Border States

Arizona

The Arizona Constitution reserves the “right to a tuition-free public education to residents of” the state. The residence of the person having legal custody of the student defines a student’s residence. Ariz. Rev. Stat. § 15-824(D), Ariz. Rev. Stat § 15-824(B). Arizona’s commitment to the priority of providing public education of the residents of the state is publicized in Ariz. Rev. Stat. §15-823. With limited exceptions, children of nonresidents of the State of Arizona “may be admitted upon payment of a reasonable tuition fixed by the governing board.” Ariz. Rev. Stat. § 15-823(A).

In or around 1981 the Arizona Legislature recognized a class of nonresident children that should be entitled to a tuition free public education and enacted legislation expanding “the right to a tuition-free education” in *Sleeseman v. State Board of Education*, 156 Ariz. 496 (1988) as follows: tuition will not be required for “children who are residents of the United States but are nonresidents of” the State of Arizona if the evidence shows that the “child’s physical, mental, moral or emotional health is best served by placement with a grandparent, brother, sister, stepbrother, stepsister, aunt or uncle who is a resident within the school district, unless the governing board determines that the placement of a nonresident child is “solely for the purpose of obtaining an education in this state without payment of tuition.” Ariz. Rev. Stat. §15-823(C)(E). The previously stated rule also applies to homeless or abandoned children.

In *Oracle School District No. 2 v. Mammoth High School District No. 88*, 633 P.2d 450 (Ariz. App. Div. 2, 1981), the court found that an agreement entered into by the school boards of two different school districts was invalid. The two districts had entered into an agreement that required the acquiescence to school redistricting where valuable taxable properties were transferred from one district to the other. The districts further agreed that tuition would not be charged for nonresident high school students (which resulted from the redistricting). A subsequent agreement entered into by the school boards continued the tuition free nonresident high school attendance and provide that the state aid received by the resident district would be forwarded to the nonresident district. The court stated "school districts are a legislative creation having only such power as is granted to them by the legislature." *Id.* As the school districts lacked the necessary power to enter into agreements that would waive tuition or permit payment of tuition other than monies, the agreement was unenforceable.

It appears that the policy of Arizona is to afford the school districts no real discretion without express legislative authority to admit nonresident students without payment of tuition. Accordingly, in the State of Arizona, tuition free public education is provided to nonresidents in limited circumstances.

Ohio

Ohio Rev. Code Ann. §3313.64 sets forth the criteria for nonresident tuition collection. Section A of §3313.64 provides detailed definitions, which are to be used in determining "nonresident" status. The school district is directed to avoid collecting tuition for a narrow class of pupil described in Section B of §3313.64. If the pupil does

not fit into the class of pupils established in Section B, the payment of tuition is required.

Additionally, if a board admits a nonresident pupil "whose attendance tuition is not an obligation of the board of another district of this state or of a home as defined in section 3313.64 of the Revised Code and fails to collect tuition as required by division (B) of this section from the pupil's parents or guardian, the *attendance of such pupil is unauthorized attendance.*" Ohio Rev. Code Ann. §3327.06(C). It is unclear if there is a consequence for "unauthorized attendance."

In *State, ex. Rel. Henry v. Board of Education, Madison Plains Local Schools et al*, 20 Ohio App. 3d 185 (1984), the "general rule" of Ohio Rev. Code Ann. §3313.64(B) is described as securing the rights of tuition free education to those children whose parents reside in a given school district.

Mr. Henry was the pupil's grandfather – a resident of the school district in question – who was given "physical custody" of the pupil after the parents relocated from the district. The court determined that Mr. Henry's grandson was not eligible for a tuition free education under these circumstances as the parties failed to establish custody through the court system. The court stated that the revision of Ohio Rev. Code Ann. §3313.64 mandating the payment of tuition of nonresidents was a statement by the legislature to deter "school shopping" and discourage the "separation of the family unit." *Id.* While the court found that the school district had no "duty" to admit the pupil, the school district did "possess the authority to admit him if he pays tuition" *Id.*

Clearly, Ohio takes the position that public policy reasons make it necessary to collect tuition unless an exception is specifically provided by the legislature.

New York

The state of New York allows nonresidents of a district to attend school(s) in the district or city with the consent of the trustees or the board of education. *NY CLS Educ. § 3202(2)*. If the parent or guardian of a nonresident pupil owns property in the district or city and is required to pay taxes on the property, the school authorities *must* deduct the amount of the tax from the tuition due from the nonresident pupil. *NY CLS Educ. § 3202(3)*.

At first glance the above-mentioned statutes could be interpreted as inapplicable to out-of-state residents. However, *In the Matter of Robert Schultz v. State of New York*, 634 N.Y.S.2d 780 (N.Y.A.D. 3 Dept. 1995), the New York Supreme Court specifically states that Education Law §3202 “clearly provides for the education of out-of-State students.” Taxpayers challenging the enrollment of out-of-state students brought the cause of action seeking “to enjoin the state from making payments to the school district in aid of these students.” *Id.* The Supreme Court held that the taxpayers lacked standing under the State Finance Law and under the provision of the State Constitution prohibiting gift or loan of public funds. While the court did find that taxpayers residing within the district had standing under the General Municipal Law, the ultimate decision was that “the enrollment of out-of-state students did not violate constitutional prohibition that makes it incumbent upon legislature to provide for education system.” *Id.* It may be true that the Legislature has “an affirmative duty to educate only those children” in the State of New York but the Court’s decision in *Schultz* should make clear that the duty in no way precludes the legislature from providing education to out-of-state students.

Pennsylvania

Pennsylvania seems to take the "blank check" approach to providing tuition free public education to nonresidents. According to 24 P.S. § 13-1316, "the board of school directors of any school district may permit an non-resident pupils to attend the public schools in its district upon such terms as it may determine, subject to the provisions of this act."

It is important to note the significance of the language of "may permit" and "upon such terms as it may determine." Contrary to the laws established in Arizona, Pennsylvania has given the board of school directors complete discretion to admit nonresident students and to designate the conditions of such admission.

The issue of nonresidency is further addressed in 24 P.S. §13-1315, which reinforces the legislative mindset by again using discretionary language to enable the board of school directors in a school district adjacent to another state to admit and receive tuition from the nonresident out-of-state pupils. Specifically, the board "may admit" and "may receive tuition" for these pupils.

Conclusion

Clearly, the tendency of most State legislatures is to afford the school board of a district discretionary authority in admitting nonresident students (See following chart). However, there is a wide range of discretion with regard to the payment of and/or collection of tuition from these nonresident students.

Penalties for nonpayment of tuition, reciprocity requirements, advance payment requirements, pseudo "protected" classes of students, and complete discretionary

privileges compose the diverse spectrum on the issue of nonresident tuition free public education.

Generally, the ultimate decision is dictated by the state legislature, which may delegate responsibilities or reserve its own authority as the "last word" by requiring express provisions that are narrowly construed.

1-14

1-15

	<u>Border State</u>	<u>School District Discretion</u>	<u>Tuition</u>	<u>Penalty</u>
Missouri	X	X	Required	
Nebraska	X	X	Required in Advance	
Colorado	X	X	Discretion of School Board	
Oklahoma	X	Contract Required	Required in Advance	Loss of State Aid
Arizona		Need Express Legislative Authority	Required	
Ohio		X	Required	Unauthorized Attendance
New York		X	Required -- Property Tax Credit Allowed	
Pennsylvania		X	Discretion of School Board	

MEMORANDUM

TO: Representative Mike O'Neal

FROM: Crystal Crowder
Pam Fellin
Susan McGlone

DATE: November 15, 2002

RE: Federal and Kansas Constitutional issues related to amendment of KSA 72-1046a to allow local school districts of Kansas to unilaterally admit out-of-state students to their public schools, funded by the state of Kansas

Introduction

Almost all Kansas citizens hold education as a top priority. However, like many other life necessities, education is guaranteed nowhere in the United States Constitution. *San Antonio School District v. Rodriguez*, 411 U.S. 1, 35 (1973). Nevertheless, both education and funding are current political hotspots worth careful reflection. This memo will discuss and evaluate potential challenges to the above amendment based on either the United States or Kansas Constitutions.

1. **Powers of the Board of Education and Local School Boards Under the Kansas Constitution**

The United States Constitution does not address education, but the Kansas Constitution does. It allows the Kansas Board of Education to supervise the local school boards with a very broad power. Kans. Const. Art. VI § 2(a); *Unified School District No. 480 v. Lila Epperson*, 583 F.2d 1118, 1123 (10th Cir. 1978). This is supervision and not total control; the local school districts possess a great deal of autonomy. However, the State Board of Education's supervision must coincide with laws and guidance provided by the legislature. *Board of Education of Unified School District No. 443, Ford County, Kansas v. Kansas State Board of Education*, 266

1-16

Kan. 75, 83 (1998). Therefore, if the legislature passes this amendment to K.S.A. 72-1046a, the Board of Education, in supervising local school boards, should look to the degree of the local district's compliance with the "especially appropriate circumstances," as well as the degree to which the district's decision(s) further the purpose of the statute. District decisions to admit out-of-state students would not, however, have to be officially submitted to Board of education for approval.

In the case of *Board of Education of Unified School District No. 443*, the State Board of Education decided all interlocal agreements in existence at that time would be permanent no matter what the terms of the agreements were when signed. Unified School District No. 443 then sued the State Board of Education for impairment of contract. The Supreme Court of Kansas held the State Board of Education had power over school districts to supervise as directed by the legislature. The Court held that the district did not have a right or the power to unilaterally withdraw from the agreement without the approval of the Board of Education. It stressed that it was not ruling that the district absolutely could not withdraw from the contract, but only that it had to get approval to do so. *Id.* At 86-87.

While that case closely examined the powers of the legislature, State Board of Education, and school districts, it should not be assumed that the same answer would result if this proposed amendment were challenged. The statute in that case involved much larger groups of students statewide, and therefore, large amounts of money per transaction. It is therefore reasonable to allow the State Board of Education to have ultimate authority in decisions such as those. There are a limited number of school districts on the Kansas border however, and any or all of them may choose not to admit out-of-state students at all. Further, of those who decide to admit out-of-state students, they are not likely to admit all who apply. The total number of out-of-state

students thereby educated in Kansas public schools may be relatively miniscule, especially when compared to the large number students and amounts of money affected by the statute challenged in that case.

2. **Taxpayer Challenges to Funding the Education of Out-of-State Students**

A Kansas taxpayer may decide to challenge this law because he does not like the idea of his taxes being used to pay for out-of-state students' education. A Kansas taxpayer does not have standing to attack state expenditures, because their interest in such expenditures is too small, remote, indeterminate, and because his injury as a sole taxpayer is suffered in common with all other taxpayers generally. *Frothingham v. Mellon*, 262 U.S. 447 (1923). The only exception to this rule that someone could try to use to invalidate this amendment would be the weak argument that it is unconstitutional under the Kansas Constitution. Such unconstitutionality could only be implicit and would have to be well argued. The success of this argument will depend largely on whether the challenge is made during the legislative process, or after it is enacted. Once enacted and challenged, Kansas courts will presume a law to be Constitutional until a challenger proves otherwise. Since there is nothing in the Kansas Constitution expressly contradicting this amendment, such a challenge would almost certainly fail.

3. **Sovereign Immunity and Eleventh Amendment to United States Constitution**

A non-resident may try to sue the state or a local school board for its decision to deny them admission to Kansas schools. The 11th Amendment of the United States Constitution reads:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Under the U.S. Constitution, a nonconsenting state is therefore immune from suits by either its own citizens or by citizens of other states. Also immune as part of the state, are members of a state board or agency acting in their official capacities. *Ford Motor Co. v. Department of Treasury of Indiana*, 323 U.S. 459 (1945).

In *Epperson*, the court looked to the Supreme Court case of *Mt. Healthy School District Board of Education v. Doyle*, 429 U.S. 274 (1977), to determine whether the local school district board enjoyed the state's immunity. The *Epperson* court laid out two criteria from which to decide whether the school district is an arm or alter ego of the state and thereby immune from suit. It examined to what degree the local school district board:

- 1) functioned autonomously; and
- 2) is financed independently from the state treasury.

Epperson, 583 F.2d at 1122-23.

In *Epperson*, the court examined the facts and circumstances of that case and determined that the school board functioned autonomously enough to not be a part of the state and was therefore not immune. One important factor was an agreement that if any payout were required, the funds would not be drawn from the state treasury. With regard to immunity for state-related entities, liability follows autonomy. (See *Brentwood Academy v. Tennessee Secondary School Athletic Association*, 531 U.S. 288 (2001)). Any determination of immunity will turn on the particular facts and the factors listed above, and the school district board members cannot assume sovereign immunity will protect their decisions per se under this statute.

4. **Privileges and Immunities Clause of the United States Constitution**

An out-of-state student declined admission may claim violation of the Privileges and Immunities Clause of the United States Constitution. The 14th Amendment to the United States Constitution reads:

... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (emphasis added)

The first example of a privileges and immunities claim is when Student A asks and is granted permission to attend Kansas schools, but Student B is not. The state of Kansas only owes a public education as required in its constitution. It also has the power to admit out-of-state students at its discretion. K.S.A. 72-1046a. If the State of Kansas decides to admit student A, but deny admission to student B, it has not discriminated based on state residency, but on some *other* basis. Furthermore, the privilege at stake, education in Kansas public schools, is not one that Kansas owes to out-of-state students. Therefore, while student B may be understandably unhappy with the denial, the state of Kansas does not have to admit him just because it admits student A.

In *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287 (1998), the Supreme Court ruled that the State of New York could not tax nonresidents differently than its residents, and that doing so was a violation of the privileges and immunities clause. That case can be distinguished from this statutory amendment because of the difference in topic. States do not generally owe public school admission to residents of other states, so Kansas can deny free education to nonresidents. Presumably, each state offers to its residents a free public education, so even if Kansas denies admission to an out-of-state student, that student still has access to free public education.

To hold otherwise would unreasonably require a district that admits even just one non-resident student to admit every non-resident student that asks to be admitted. This would obviously eliminate the intended control of the local school boards to run the local school districts in a manner appropriate to that community's unique circumstances. It would

exponentially reduce control of the Kansas State Board of Education if that problem were to arise in numerous school districts. To meet the policy objectives and serve the purpose of this statute, the local school board must have discretion as to what out-of-state students it admits and declines.

A second type of claim that might arise is a claim of discrimination based on handicap if one or more regular out-of-state students are admitted to Kansas schools, while exceptional students are routinely denied. Both Kansas and federal law require school districts to provide certain special education services to "exceptional children" or other qualifying students enrolled in their respective districts, i.e., K.S.A. 72-966(a) and 20 U.S.C.S. 1400 et seq. Obviously, Kansas therefore owes no public education to nonresidents, handicapped or whole.

However, if a district chooses to admit out-of-state students, it should be aware that federal funding to the entire state could be at risk under the Rehabilitation Act of 1973, 29 U.S.C.S. § 701 et seq., if it were found to have discriminated against any student covered by that law. That act prohibits any discrimination against exceptional children with a standard of merely disparate impact (intent need not be proven), and the state waives immunity by receipt of the federal funds. While not an expressly constitutional issue, it nevertheless presents a very large and real threat to Kansas education if ignored. This is a necessary consideration because exceptional children usually cost more to educate than regular students, and may therefore be more likely to be denied admission. Further, some exceptional students are not recognized as such until well into their school years; if a child is admitted as a normal student and is later discovered to be "exceptional," the school district may not easily be able to terminate his admission on that basis. A prima facie case of discrimination consists of proof:

- 1) the student is handicapped under the Rehabilitation Act of 1973,
- 2) he is "otherwise qualified" to participate in the program,

- 3) the program receives federal financial assistance, and
- 4) that the program discriminated against him.

Robinson v. State of Kansas, 117 F. Supp. 2d 1124, 1144 (D. Kan. 2000).

The school district may want to be careful not to create, in a series of admission decisions, a situation showing such disparate impact. The argument of total discretion for admission decisions of all out-of-state students may not necessarily exonerate clear discrimination even between non-residents when federal education law so jealously guards against that, as well as the fact that the local school district board either should know, or can reasonably be expected to know, exactly what discrimination is prohibited by those federal laws.

5. **Equal Protection**

An out-of-state student denied admission to Kansas schools may make a claim of denial of equal protection. Equal protection is characterized by a disparity in treatment between two or more classifications of people whose "situations are arguably indistinguishable." *Unified School District No. 229 v. State of Kansas*, 256 Kan. 232, 259 (1994) (citing *Ross v. Moffitt*, 417 U.S. 600 (1974)). Constitutionality of a law imposing such a disparity in treatment is determined by the relationship of the challenged classification to the purpose of the law. The rational basis test would be applied to resolve these claims. That test requires that the enacted law must implicate legitimate goals, and that the means by which the legislature has chosen to meet those goals must bear a rational relationship to those goals. Such a rational relationship need not be the best, most likely, or quickest. Instead it can be any arguable relationship, whether or not reality fulfills those expectations.

This amendment's purpose of maintaining unity and coherence in Kansas border communities, and fairness to out-of-state citizens who contribute meaningfully to the State of Kansas, *inter alia*, are reasonable goals. Further, the admission of out-of-state residents in

Kansas border communities to Kansas public schools is rationally related to those valid state goals. Therefore, a challenge to this amendment based on equal protection should fail.

In the case of *Unified School District No. 229*, a school district sued in protest of legislation that required any excess funds in a district to be paid to the State Department of Education for possible use by poorer districts. That court ruled that this legislation did not violate the district's equal protection, as there was a legitimate rational basis for the law (good statewide public education) and the means by which that was to occur was rationally related to a valid state goal.

That court explained that the classifications did not have to be mathematically precise, but just have some rational basis. *Thompson v. KFB Ins. Co.*, 252 Kan. 1010, 1021 (1993). The court of *Unified School District No. 229* said that a taxpayer does not have a child in a public school before they benefit from public education because all taxpayers benefit from quality education received by students in their state. *Unified School District No. 229*, 256 Kan. at 271. This rational basis should be equally true when applied to out-of-state students who are part of "Kansas" communities. Kansas can arguably benefit from admitting to Kansas public schools non-resident students from families who contribute to Kansas border communities.

Another equal protection argument may be that the law places a greater burden on some than others when all are similarly situated. If a declined student protests that another out-of-state, apparently similar student was accepted, he may make this equal protection claim. However, this "greater burden" argument should not be available to a declined non-resident student to challenge the proposed amendment to K.S.A. 72-1046a, because no burden is placed on a non-resident student merely because of his denial to Kansas schools. Again, he may still attend school in his own state.

6. Kansas Requirement—Uniformity Throughout the State

Some may argue that this statute violates Article 2, § 17 of the Kansas Constitution, requiring laws to have uniform operation throughout the state. However, just because the statute will be more frequently used in some areas than others, does not mean it is lacking in “uniform operation.” Many valid Kansas statutes are used more in some parts of the state than others, without being held to violate the Kansas Constitution in this manner. Where this new statute is used, it will, like all other Kansas statutes, operate uniformly, and therefore it does not violate the uniformity requirement.

Conclusion

Kansas has a rational basis for this statutory amendment—continuity and unity of the Kansas communities on the borders of the state. All of Kansas can benefit much in the long-run from charitably allowing out-of-state residents to attend Kansas public schools in certain situations. Since there is so much for Kansas to gain by implementation of this statute, and relatively little cost to the state overall, the proposed amendment should prove to be a constitutional benefit to the state of Kansas if it can jump the first hurdle of initial enactment.

MEMORANDUM

TO: Representative Mike O'Neal
FROM: Crystal Crowder
Pam Fellin
Susan McGlone
DATE: November 15, 2002
RE: Policy Consideration for Amendment to 72-1046a

Introduction

Without a doubt, there are inherent policy considerations that deserve reflection when developing an amendment to a statute. The issues of voting, funding and overall good of the community may fall under scrutiny as the legislature contemplates the viability of an amendment to K.S.A. §72-1046a. It has been held, if any challenge is made against the statute, there must be a rational basis supporting the statute. *Provance v Shawnee Mission Unified School Dist. No. 512, 231 Kan. 636, 643, 648 P.2d 710, 713(1982)*. It should not be difficult to establish a rational basis of educating pupils that are a part of a given community even though they are considered to be out-of-state residents.

1. Voting

It is imperative to be prepared to address questions that may arise with regard to the voting rights of nonresidents utilizing a specific school district. Will these nonresidents be afforded the opportunity to vote on educational issues within that district?

First and foremost, it is not inherently unfair to disallow persons, not meeting fundamental state requirements, the right to vote on issues that may affect them. It has

1-25

been established that "the States have the power to impose reasonable citizenship, age, and residency requirements on the availability of the ballot." *Kramer v. Union Free Sch. Dist. No. 15*, 89 S. Ct. 1886, 1893 (1982).

On the other hand, courts are very flexible in finding rational reasons for statutes to allow nonresidents who reside in the state or city, but that do not reside in the district the right to vote on school issues. In *Provance*, the court stated that there was a rational basis for allowing voters that resided outside of the district to vote on school closing, where the issue of the closing would effect an area's bond indebtedness and property taxes. 231 Kan. at 636, 648 P.2d 716.

In light of the decisions in *Kramer* and *Provance*, it is clearly possible to allow resident voters to vote on issues outside of their district however it is less clear how out-of-state voters would be treated. It is true that a State has the ability to impose reasonable requirements per *Kramer*. Nevertheless, the policy set forth in *Provance* seems to state that "interested" parties should be allowed to vote when tax dollars are at stake. The resolution of these competing interests could be a challenge if a claim is asserted.

2. Funding

There are many layers of consideration pertaining to the issue of funding. For example, the issue of compliance will come into play. It is unclear how Kansas will resolve the issue of proof needed and/or required with regard to the "class" of potential out-of-state pupils set forth in K.S.A. 72-1046a. One suggestion may be that in order to attend a school in Kansas where one is not a resident of the district or the state, property taxes and income taxes should be current to avoid an issue of fairness or failure to contribute to state education coffers.

It is interesting to note that there are cases that have dealt with the transfer of state funds from one district to another. *Newark Sch. Dist. v. Cord-Charlotte Sch. Dist.* #8, 644 S.W. 2d 253, 278 Ark. 110 (1983). In fact, Kansas has set forth the procedure for payment of tuition when school districts enter into agreements per K.S.A. §72-8233.

Under the proposed Amendment the transfer of funds is not an issue per se but it is important to note that Kansas may be transferring additional money to the districts that decide to accept the out-of-state pupils due to the increase in head count. This may have a negative impact on districts that do not receive the additional students from across the state line.

3. For the Good of the Communities

Finally, there is the issue of the common good of individual communities. Kansas law has not said definitively that community good is the greatest factor in determining whether or not a statute is rational. However, the benefit to the community is a constructive argument to make.

There are a few very good reasons for allowing students from out-of-state that reside near a Kansas school district to enroll or continue attending Kansas's schools. For example, there is an opportunity to expose students to diversity that might not otherwise be available to that school and community. This amendment may open the door to allowing children from a variety of socioeconomic backgrounds, as well as a variety of ethnic backgrounds, to be a part of these Kansas school districts. Diversity is vital to the positive development of children and will undoubtedly pave the way for them to be better leaders in our local communities, our country, and our global community.

By allowing students to attend a school in their community, whether classified as resident or out-of-state, we foster a cohesive and unified community environment. For example, these children may already have ties to our Kansas communities by utilizing the vast array of programs available to residents and nonresidents. It would likely be beneficial for their emotional growth and overall development to be a part of their community on a much larger scale by attending school with those pupils they have developed relationships with through such programs as sports leagues.

As a business owner or Kansas taxpayer, the parents are also a part of the community and receive the benefit of fellowship, which in turn fosters a sense of commitment to the community and the school districts. It seems only fair to allow children whose parents pay Kansas income taxes, spend money regularly in Kansas's commerce, work in Kansas industries, and belong to Kansas communities to be a whole part of that community.

Conclusion

Public Policy is a multi-layered area of consideration when deciding to adopt an amendment. The issue of voting rights for non-residents regarding school issues, which may affect them, may be raised. Funding is another policy concern, however the proposed amendment requires a good-faith consideration of Kansas's ability to provide for out-of-state students and the requirement for Kansas's property taxes and/or income taxes paid exemplifies fairness for all. Finally, community development is a key policy reason for allowing nonresident out-of-state students to attend Kansas's school. Building strong communities is paramount to building a strong state and quality education is integral to the process.

WILLIAM G. (BILL) MASON
 REPRESENTATIVE, 75TH DISTRICT
 BUTLER COUNTY



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 CHAIRMAN: FEDERAL AND STATE AFFAIRS
 JOINT COMMITTEE ON TRIBAL AFFAIRS
 MEMBER: EDUCATION

February 11, 2003

Madam Chairperson and Committee Members:

Thank you for allowing me the opportunity to speak to you on HB 2194 which asks the State board of Education to negotiate reciprocal agreements with surrounding states with students crossing state lines.

In a time when every education dollar is extremely important and is in demand in every school district across the state, we must look at every program, every part of the school finance formula and every area where we are needlessly spending those much needed finances.

For several years, I have been concerned about out of state students coming into our state every day, getting a good education and being counted in the school finance formula the same as in - state students. I have been told that some of the neighboring states charge our students tuition if they go to their states schools.

The last figures I have are that 675 students come to Kansas schools and that only about 150-175 students go to neighboring state schools. This relates to a potential loss of 5-6 million dollars per year.

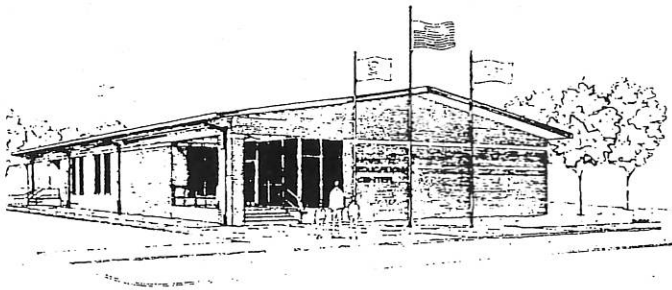
The bill simply asks for the board to have a reciprocal agreement in place by July 1, 2006 so that we can count these students in our regular count. If we do not have the agreement in place, we would no longer allow the counting of these students for credit.

The bill has been in the hopper for several years and the State Board has not made any attempt to negotiate an agreement. They have had the encouragement and opportunity to do so.

I am convinced that we will not get a fair and equitable agreement without this or some other kind of pressure encouragement.

It is imperative that we find and utilize every available dollar for its intended purpose in the classroom. We can no longer allow this misuse of the formula for the benefit of a few out of state students at the expense of our instate students and taxpayers.

Thank you for your consideration. I would be happy to stand for questions.



Unified School District 217
P.O. Box 167
Rolla, Kansas 67954

620
~~316~~-593-4344

February 12, 2003

Members of the House Education Committee:

Thank you for allowing me to testify in opposition to HB 2187 and HB 2194. As superintendent, I am representing USD 217 – Rolla Schools and Community. We are a small 1A school district located in Morton County in extreme southwest Kansas. Our school is eight miles from the Oklahoma state line and has an area of 252 square miles. Since the south edge of our school district is the Oklahoma line, we do have students from Oklahoma attending our school. A spreadsheet showing the number of out-of-state students for 1993-1994 to 2002-2003 is attached to this testimony. The Oklahoma students elect to attend our school for several reasons. We are the nearest attendance center, averaging 8 to 13 miles distance for these students. In comparison, Guymon and Hooker, Oklahoma are approximately 27 miles. Some of our Oklahoma students are third and even fourth generation Rolla students. Many of these families in question own land and mineral rights on both sides of the state line. Many families farm and pay taxes in both states.

Some of the parents of the Oklahoma students work in our community. They shop locally, purchasing fuel, fertilizer, and groceries. They attend and support local churches. They are an integral part of our community and are very supportive of our school. Some of our students live at CRI Feeders

House Education Committee
Date: 2/12/03
Attachment # 3-1

located 13 miles from Rolla. The feedlot buys grain from Kansas farmers and uses Kansas truckers. Other parents work for Seaboard Farms, a multi-state hog farming operation. Seaboard Farms have an office building and repair shop located within Rolla city limits. They have many hog farms located in our district and the panhandle of Oklahoma. Seaboard buys grain from area farmers. They support our school and community in many ways. I want to reiterate that these families in question are not only valuable members of our school but also of our community. They make substantial contributions to the quality of our school and community.

The out-of-state students are allowed to ride the bus and are picked up at the state line during our normal route. We do not travel into Oklahoma to transport any students. We do not recruit these students in any way.

The number one reason for attending Rolla Schools is that we have a quality school system. We believe all children have the right to an excellent public education. The students are our number one priority. We are very proud of being a seven times state champion in 1A Scholars' Bowl. Our team has qualified for state competition again this year. Several Oklahoma students have been valuable members of our past and present Rolla Scholars' Bowl teams.

In April, 2002, our patrons of USD 217 – Rolla Schools passed a four-million-dollar bond issue to build a ten-room K-5 building, a 7-12 science room, and a new gym. The bond issue passed by almost a 3-to-1 margin. Our community values education, children, and the future. Voters were aware of our out-of-state students and have welcomed them into our school

system as valuable members of our school, regardless of their housing location.

Attached is a spreadsheet with information showing out-of-state students, general fund budget, FTE enrollment, general fund budget per pupil, total weighted enrollment, excess local effort returned to state, and state aid entitlements. I was unable to find the number of out-of-state students for 1992-94. The past eleven-year history shows that we started receiving state aid in 2000-2001. Including this year's estimate of state aid, our total the last three years has been \$911,935. Now look at the previous eight years when USD 217 - Rolla Schools returned excess local effort to the state. The annual amounts range from \$1,843,504 to \$37,850, with a total for eight years of **\$9,216,419**. Currently, the total is a 10-to-1 ratio of excess local effort to state aid received. If we would have not counted out-of-state students for 2002-2003, the projected loss of general fund budget would be \$229,718. That loss would have a devastating effect on our budget, especially after losing \$27 per pupil.

We believe very strongly that the law should stay as it is currently written. Thank you for listening to our opposition to HB 2187 and HB 2194.



Mac Plummer

Superintendent

USD 219 – Rolla Schools

USD 217- Rolla Schools

3-4

YEAR	OUT of STATE STUDENTS	GENERAL FUND BUDGET	FTE ENROLLMENT	Budget Per-STUDENT	TOTAL WEIGHTED ENROLLMENT	EXCESS LOCAL EFFORT RETURNED TO STATE	STATE AID ENTITLEMENT
92-93	?	\$ 1,461,240.00	207.3	\$ 7,048.91	405.9	\$ 812,939.00	\$ -
93-94	?	\$ 1,406,880.00	200.6	\$ 7,013.36	290.8	\$ 1,088,862.00	
94-95	23	\$ 1,395,000.00	197.5	\$ 7,063.29	387.5	\$ 1,765,861.00	
95-96	25	\$ 1,442,423.00	195.3	\$ 7,385.68	397.8	\$ 1,843,504.00	
96-97	16	\$ 1,368,730.00	179.4	\$ 7,629.49	375.2	\$ 1,568,886.00	
97-98	12	\$ 1,470,569.00	194.0	\$ 7,580.25	400.7	\$ 1,341,998.00	
98-99	16	\$ 1,550,868.00	206.3	\$ 7,517.54	416.9	\$ 756,519.00	
99-00	29	\$ 1,642,589.00	223.3	\$ 7,355.97	435.7	\$ 37,850.00	
00-01	37	\$ 1,725,112.00	228.0	\$ 7,566.28	451.6		\$ 308,278.00
01-02	31	\$ 1,788,714.00	239.5	\$ 7,468.53	462.4		\$ 258,200.00
<i>Unaudited</i> 02-03	29	\$ 1,897,153.00	239.5	\$ 7,921.31	494.8	<i>estimated</i>	\$ 345,457.00
						\$ 9,216,419.00	\$ 911,935.00

Projected loss of general fund budget if we would have not counted out-of-state students for 02-03
 \$ 229,718.00

TESTIMONY: PROVIDED FEBRUARY 12, 2003

REFERENCE: HB 2187, HB 2194 AND SB 152
(Funding of Out-of-State Students)

PRESENTER: RAYMOND DYKENS, SUPERINTENDENT
U.S.D. NO. 499
GALENA, KANSAS

PROFILE:

Galena, Kansas is a small community located in Cherokee County in the extreme southeast corner of Kansas. The school district has a valuation (tax base) of slightly under \$11,000,000. One mill in Galena generates about \$11,000. The General Fund assessed valuation is right at 7.9 million. U.S.D. 499 ranks second from the bottom in the state, based on assessed valuation per pupil at \$14,000. The district serves approximately 743 students in K-12. 48 of this number are students that reside out-of-state. Please consider my factual concerns relative to not only these 48 kids but to our whole student population and community of Galena.

CONNECTION OF OUT-OF-STATE STUDENTS WITH U.S.D. 499

- 13 of these students' parents work in Galena.
- 10 have grandparents in Galena that provide before/after school care.
- 9 are students that started school at Galena before their parents moved out-of-state.
- 5 are students living right on the Kansas/Missouri line. Galena schools are less than ½ mile from the Missouri state line.
- 9 represent students that have been permitted to attend Galena under contract. They are students that seek a smaller school, lower pupil teacher ratio, special services, etc.
(An example of special services is one student that is legally blind and will be totally blind by his early 20's, is in an environment that is much less intimidating and can be a part of many activities. He is doing great and will lead a successful life in spite of his disability.)

NOTE (The above numbers are taken from the official September 20th count. since that date the total number of out-of-state students has dropped from 46 to 41)

GRADE/STATE DISTRIBUTION OUT-OF-STATE STUDENTS

	<u>00-01</u>	<u>01-02</u>	<u>02-03</u>
Kindergarten	2/MO	5/MO	2/MO
First	3/MO	3/MO	3/MO
Second	1/MO	4/MO	2/MO
Third	2/MO	3/MO	3/MO
Fourth	2/MO	4/MO	3/MO
Fifth	2/MO	4/MO	3/MO
Sixth	2/MO	6/MO	4/MO
Seventh	2/MO	3/MO	6/MO
Eighth	3/MO	1/MO	4/MO
Ninth	1/MO 1/OK	2/MO	2/MO
Tenth	1/MO	1/MO 1/OK	2/MO
Eleventh	2/MO	4/MO	4/MO 1/OK
Twelfth	6/MO	4/MO	7/MO
TOTAL	29/MO 1/OK	44/MO 1/OK	45/MO 1/OK

FINANCIAL FACTORS' COMPARISONS

	<u>STATE MEDIAN LOB</u>	<u>STATE HIGHEST LOB</u>	<u>GALENA LOB</u>
LOB	12.74 MILLS	42 MILLS	21 MILLS
AMOUNT OF GEN. FUND DEPENDENT ON STATE AIDE	<u>STATE AVE.</u> 70%		<u>GALENA</u> 96%
MILL LEVY			49.428

LOSS OF THESE STUDENTS THIS YEAR WOULD MEAN:

1. A loss in the General Fund Revenue of approximately 178,162.
2. Without the out-of-state students and in order to maintain the same amount of spending in this school year, we would have to go to our LOB and adopt 1,025,662. – Because this would decrease our budget authority, maxing out our LOB would only yield 1,108,864. In other words to recover this loss we would come within 80,000 of totally maxing out our LOB. This equates to about a 4 mill increase.

OPTIONS/CONSIDERATIONS

- 1. Go to tax payers – our mill levy is already at 49.428.**
- 2. Charge these kids an appropriate tuition – 65% of our elementary and 45% of our secondary are on free and reduced price meals.**
- 3. Reduce additional staff – no room left without hurting kids.**
- 4. Since these students are well distributed across the grades, it makes cuts impossible. They do not impact our school on the negative side. They do impact our school on the positive side and the money they generate is spent on all Galena kids, not just the out-of-state kids. It is money at Galena we can not recover.**

CONCLUSION

We understand that to save 2,000,000 across the state presently being spent to educate out-of-state students is a perception many consider as valid and a way to save money. We hope we have shown you that most of Galena's share of that money is being spent on all Galena kids and that, in our case at least, we have no viable way to recover it. We believe this is one of those times to just do the right thing for kids and not do what may seem on the surface to be just. On behalf of Galena Unified School District No. 499, we thank you for this opportunity to share our concerns and trust that if you study all those involved you will agree that to pass any one of the above mentioned bills would be a major setback not just for the few out-of-state students we highlight, but in fact for all Kansas kids.

Testimony on HB2187, HB 2194, and SB 152 – Funding of Out-of-State Students

By **Tim Burns, Superintendent**
USD 508, Baxter Springs

Baxter Springs Unified School District #508 provides educational services for approximately 850 students in the extreme southeast corner of the state. Of our total enrollment, 29 students reside out of state. It is in regard to these students that I would like to address this committee.

Following is a breakdown of the enrollment pattern of out-of-state students in USD 508 schools:

<u>Grade Level</u>	<u>Number</u>	<u>State of Residence</u>
Kindergarten	3	OK
First	2	OK
Second	5	OK
Third	0	
Fourth	1	OK
Fifth	3	2 - OK, 1- MO
Sixth	2	OK
Seventh	4	3 - OK, 1 - MO
Eighth	0	
Ninth	1	OK
Tenth	4	3 - OK, 1 - MO
Eleventh	2	OK
Twelfth	2	1 - OK, 1 - MO
Total	29	25 - OK, 4 - MO

There are several points regarding these students that I would please ask this committee to consider:

1. Even though these students reside outside the state of Kansas, and do not pay property taxes, their place of residency is so close to the state line that, they do support the economy of Kansas by the following:

- a. **Sales Taxes** – The majority purchase goods in Kansas such as food items at our grocery stores, miscellaneous goods and supplies at Wal-Mart, hardware items at our hardware stores, etc. These people are part of our community and as such, spend nearly as much non-sleeping time here as those who live here, supporting student activities, programs, and community events.

House Education Committee

Date: 2/12/03

Attachment # 5-1

b. **Income Taxes** – Several of the parents actually work in Kansas and pay income taxes to the state. This number is roughly 1/3 of the total (9 out of 29).

2. The mobility of families, to and from the state, for whatever reasons, clouds the issue of residency. Of the 29 students listed above, 5 have moved INTO the district, and therefore the state, since the official count date of September 20. This is even more common than the numbers indicate because of the availability and cost of housing and/or property, family considerations, and etc. Because of the size and location of our district, the state line is more times than not, just a road on the south end of town. Because of this mobility, most of these students have actually lived in the state at one time or another and chose to remain in our schools when the family changed residence.

3. Eliminating funding for these students would affect the general fund and supplemental general fund budgets of USD 508 in the following ways:

a. Reduce the general fund operating budget by approximately \$112,000.

b. Recapturing that loss via the supplemental general fund, should the district choose to continue to serve these students, would increase the LOB levy by approximately 4.5 mills.

The resulting reduction in the general fund reduces the potential maximum supplemental general fund because of the 25 % cap on the LOB.

c. In the absence of an increase in the LOB to cover the loss of revenue for the district we could:

1. Eliminate three teaching positions immediately to cover the reduction in funding, estimated to be \$112,000.

Problem: The distribution of the students is such that a simple decision is not possible. Elimination of positions either results in significantly larger class sizes, primarily in the elementary schools, or severely limiting our course offerings and/or programs at the middle and high schools.

2. Eliminate the purchase of technology hardware and software for the entire district. Our current budget for technology is \$87,000 per year.

3. Eliminate the entire building budgets for our two elementary schools or the high school, budget, including athletics and extra-curricular activities.

I could go on and on with possible solutions to the problem created by the passage of these bills. My point is that it would make a significant negative impact on the education of ALL students of the district.

I ask that this committee consider the impact that eliminating funding for these students would have on not only the district, but also the community, and more importantly the students themselves. For many of these students, the teachers, classmates, the families of the other students in school, and the community are stabilizing factors in their lives. Removing them from this environment because they move as little as across the road is NOT the RIGHT thing to do.

Testimony regarding House Bill 2187, 2194, and/or Senate Bill 0152

February 12, 2003

James A. Sutton, Ed.D.
South Haven Unified School District Number 509
Phone: 620-892-5216
E-mail: jsutton@usd509.org

My name is James Sutton, and I have been the superintendent of South Haven U.S.D. 509 for the past 10 years. South Haven is a town of about 400 citizens. The district is 150 square miles of farm land just 3 miles from the Kansas/Oklahoma border. Our district has an F.T.E. of 224 students, and 27 of those students are Oklahoma residents. Although more than half of these students are children of people who work in our district, there are 13 families represented by all of the 27 children, 13 families that have a positive impact on the Kansas economy, the culture of our district, and our local community.

Regarding the Kansas economy, 11 of the 13 families have one or both of the parents paying income tax to our state. Several of the families pay property tax as they own or farm Kansas land. All of the families shop in Kansas for items large and small. One family stated that they built a house recently and bought 80% of the building materials and supplies for the house in Kansas. Numerous vehicles were bought by these families in our state. One family stated that all of their major purchases were bought in Kansas from their five vehicles to their major appliances. One family stated that they purchased \$25,000 worth of chemicals and spraying services from a Kansas elevator during the past year. In addition, Kansas is where many of them come to do their banking, visit doctors and dentists, do Christmas shopping, fly out of the Wichita airport, and take care of car and farm maintenance. One of our families owns a business in Oklahoma and two businesses in Kansas. They employ 20 people in Kansas. They have 3 vehicles registered in Kansas. In one year they pay \$10,000 in property and personal property taxes to Kansas. In one year they pay \$50,000 in sales tax to Kansas, and they pay approximately \$500,000 each year in motor fuel tax to Kansas. The positive economic impact of our Oklahoma families far outweighs the money spent by Kansas to support our out-of-state students.

Our Oklahoma students also improve the culture of South Haven Schools. Eleven of our Oklahoma students are in junior high or high school. Eight of the eleven are "A and B" or "All A" students. Among our elementary students from Oklahoma, 79% are A or B students in Math, 93% are A or B students in Reading, 86% are A or B students in Science, and 93% are A or B students in Social Studies. Many of our Oklahoma students, past and present, are members of the National Honor Society; they help with the local school's Red Cross Blood Drive; they represent our county in the state spelling bee and scholar's bowl competitions. Two of South Haven's graduates from Oklahoma have gone on to become Harvard graduates.

Our Oklahoma families are also members of our community. An imaginary political boundary does not stop them from calling upon one another as neighbors or being a part of the South Haven community. They attend churches here. One family told me of their

House Education Committee
Date: 2/12/03
Attachment# 6-1

father's efforts in building one of the town's churches. They attend Kansas' colleges. They attend and participate in our fairs. They are a part of 4-H. They are room mothers. They support the school system and community in everything from various donations and fund-raisers to their loyal support of school activities.

There is no doubt that Oklahoma families are an important part of the local community, of the school's academic quality, and of the Kansas economy and tax base. It is my opinion that these connections and benefits exist along all four of our borders. In these difficult economic times our legislators must be conscious of the bigger picture as they attempt to solve our current situation. Given the advantages Kansas receives from its neighbors on all sides, do we wish to build walls or brush off welcome mats? Given the fact that only eight percent of Kansas' districts have 10 or more out-of-state students, is it fair to ask them to reduce their budgets by tens of thousands of dollars in the hopes of addressing less than one percent of our financial dilemma?

I ask this committee to consider these facts as they consider House Bill 2187, 2194, and Senate Bill 0152. It is my hope that this committee and this legislature recognizes the benefits received by Kansas as we share our quality schools with some of our neighbors knowing that the same courtesy is extended to us, knowing that this policy is not only the right thing to do, but good for community development, academic progress and sound business practice as well. It is my hope that these bills progress no further.

Thank you for your time and attention.

To: House Education Committee

Date: February 12, 2003

From: Dr. Kay Schultz, Superintendent USD 406 and USD 486

I represent two small school districts located in Doniphan County, Kansas in the very Northeast corner of the state—Elwood, USD 486 and Wathena, USD 406. We are situated right on the banks of the Missouri River directly across from St. Joseph, Missouri. During the flood of 1952 in our area the course of the river was changed, which left some part of Missouri on the Kansas side of the river after a new channel was cut. You have to come into Kansas to get to Rosecrans Airport, which is actually in Missouri. We have dealt with out-of-district students for many years without any problem.

House Bill 2187 would limit the students who choose to attend our schools. We do not differentiate from the out-of-state students or the out-of-district students. We just do the very best job we can to educate whatever students choose to come to our schools.

Many of the employees of our school district live in Missouri, but work in Kansas and pay Kansas taxes as is also true of the people who live in Kansas and work in Missouri. Parents also shop in our shops when they bring their students to and from school, thus paying Kansas taxes on their purchases. It is extremely difficult to determine who pays more to which state when you have people from Missouri coming into Kansas to work and purchase products and when you have people from Kansas going into Missouri to work and purchase products. This would be a hard bill to enforce if it were to pass.

I would urge you to look at the small struggling districts along the borders of Kansas and reconsider the passing of this bill. Not a substantial amount of money would be saved in passing this bill.

I think we should be very proud to have students choose to come from another state to be educated in Kansas. That says a lot about our educational system.

Working together to educate all students should be our goal.

House Education Committee

Date: 2/12/03

Attachment # 7

To: House Education Committee
Date: February 12, 2003
From: Dr. Kay Schultz, Superintendent USD 406 and USD 486
RE: House Bill 2194

I serve as superintendent for two small school districts located in Doniphan County in the Northeast corner of Kansas. Wathena USD 406 is a declining enrollment district and has declined by more than 100 students since the flood of 1993. Elwood USD 486 has been a growing district and has grown by 100 students since the flood of 1993. The flood of 1993 devastated our area totally covering the city and surrounding areas of Elwood and the eastern portion of Wathena. This act of nature cut our enrollments drastically for several years. At that time, our representative was Galen Weiland and he helped pass special legislation for us to count prior year's enrollment for one year in order to help the two school districts rebuild from the flood.

During the flood of 1993, the entire school of Elwood was under water and the school year was started in a school building attached to a church in St. Joseph, Missouri. School was held in Missouri for the first semester of the 1993-94 school year. We were allowed to hold school in that building without charge to our school district. The school of Elwood received major donations from the people of St. Joseph to help us out in a time of need—schools donated furniture, books, etc. to replace lost items from the flood. People from St. Joseph and other areas of Missouri volunteered their time and talents to help rebuild the city of Elwood. Many of the people left homeless by the flood, established residence in St. Joseph because of its proximity to Elwood (about 1 mile). Those people have chosen to educate their students in our Elwood School because we have a good school system and because they still have relatives and other ties back in Elwood.

Many of our teachers and other employees live in Missouri and travel to Kansas to teach and work in our schools. Several have chosen to bring their own children to our schools because that is where they work, which makes it more convenient for them. We attract students from St. Joseph because our class sizes are smaller and we have more to offer struggling students. Many of our students come from low-income families who could not afford to pay tuition for their students to attend our school, but are very concerned parents wanting what they feel is best for their students.

HB 2194 would be very detrimental to all border schools struggling to educate their students. The savings from the 614 out-of-state students would not be substantial to the over-all picture of finances. Do we know how many Kansas students cross the borders to attend schools in other states? It might just be a wash. Please reconsider the passage of this bill. We need to all work together to educate whatever students come to our doors—all kids are important no matter where they live.

House Education Committee
Date: 2/12/03
Attachment # 8

DATE: February 12, 2003
TO HOUSE EDUCATION COMMITTEE
FROM: LARRY GEIL,
SUPT. USD #488
BOX N
AXTELL, KS 66403
785-736-2304

House Bill 2187 and House Bill 2194 are not in the best interests of the communities and students that live on the borders of Kansas. The Axtell school district has two attendance centers on the Kansas/Nebraska border. The Summerfield Attendance Center is within 100 feet of the Nebraska border and serves 75 students in grades K-6. The Bern Attendance Center is within 2 ½ miles of the Nebraska border and serves 135 students in grades K-12. The district has 10 students from Nebraska attending our schools. The students and their families from Nebraska are contributors to our school and community. They shop and trade at Kansas businesses and some even work in Kansas. Some of these students' parents and grandparents have attended schools in our district. The state aid that our district receives for those 10 students is critical to the funding of the education of our district's Kansas students. Not allowing state aid for these students would be like building a wall at our borders which will restrict economic activities in our communities.

House Education Committee
Date: 2/12/03
Attachment # 9

Presentation to the House Education Committee Wednesday, February 12, 2003

Dave DuBois, Superintendent of Schools
USD #242-Weskan

Weskan is a rural district located on the Colorado border approximately 30 miles south of I-70. The Colorado-Kansas border is three miles west of Weskan.

125 Students in Grades K-12
18 from Colorado

Of the 18 Colorado students

- 3 are seniors this year
- 7 have parents who are employed by the Weskan School District
- 4 have parents who own farm property in the Weskan School District
- 4 have parents who graduated from Weskan Schools
- 13 have attended Weskan schools since Kindergarten
- 18 live within 10 miles of the Weskan School
- 18 live closer to the Weskan School than the closest Colorado School
- 18 are an active part of the Weskan Community

If funding for out of state students was taken from our budget this year, it would result in a reduction of approximately \$170,000 from a \$1.2 million dollar budget, a reduction of 14.4 %. This type of budget reduction would result in the Weskan School District being forced to reduce programs, staff and services to a level that is inconsistent with the expectations that exist for our programs and student performance.

Weskan School District has already implemented the following cost cutting strategies:

- Reduced travel distance and number of events for athletics and activities
- Initiated a four day school week
- Combined elementary classes to create multi-grade level classrooms
- Postponed capital improvement purchases for technology, transportation and food service
- Postponed salary increases planned for classified, certified and administrative staff

Simply put, the elimination of funding for out of state students would place our school district in a situation where we will be fighting for our very survival. While we recognize the significance of the financial challenges facing our state, we firmly believe that the answer does not lie in excluding funding for the children of some individuals who pay Kansas taxes, are employed in our school system, and who have chosen for years to be part of the community of **Weskan, Kansas**.

House Education Committee
Date: 2/12/03
Attachment # 10

In Regard to House Bills 2187 and 2194

1. USD 436, Caney Valley Schools, which sits adjacent to the Oklahoma border, is currently the educational home of 21 students who reside in Oklahoma or in other Kansas districts. All of these children and their parents had varied reasons for choosing our schools. All of these students are academically successful and their families feel positive toward the educational services we are providing them.
2. As a district of people who believes very much in public education, we find it difficult to turn families away who desire to be educated here. We believe that a much healthier stance for the State to take is to decide that we are going to educate every child who comes to us at the local level rather than for others in far away locations to decide that we are not going to educate a child because of certain minor circumstances.
3. Are we going to turn down a student because the adults involved chose to have the student live with an aunt or some other relative or friend in our district rather than have the student live with a turbulent family situation just across the border or in the adjacent district? At the local level, we are trying to provide a positive experience for all families and their circumstances, even in the midst of difficult times for public schools in Kansas. To do otherwise creates situations that are not beneficial to kids.
4. The loss of revenue that we would experience would be quite devastating to our district. Our curriculum would take a significant program cut or we could lose three teachers due to this financial loss.
5. We would lose parent volunteers. We would throw children into latchkey care for extended periods of time.
6. A state line should not disrupt community. As the third largest Indian Nation in Kansas, we often feel the term, "Kan-Okla" describes us best. The value of community is priceless. Our community spans the border.
7. Creating contracts for attendance, both district to district and state to state with other districts would stretch already exhausted resources, both human and monetary, as personnel would be required to facilitate the exhaustive paper work.
8. The reciprocal agreements could possibly pit one district against another, causing skepticism and distrust, detracting from the overall educational mission.
9. This may sound naïve and rather like something that came out of a Pollyanna story book and maybe it is. For you see I am but a first year superintendent, but I do have thirty years of proud Kansas education service in my past. And when I started my three hour trip to our proud capital this morning I had hundreds of well-wishers encouraging my efforts on behalf of all children. Ladies and gentlemen, thank you for your consideration to make allowances for our out-of-district/state students to continue to choose Caney as their educational home.

Sincerely submitted,



Anne Lassey,
Superintendent, Caney Valley USD 436

House Education Committee
Date: 2/12/03
Attachment # 10



Testimony on
HB 2187 – Relating to Non-resident Pupils
HB 2194 – Disallowing the Counting of Non-resident Pupils
Before the
House Committee on Education

By
Mark Tallman, Assistant Executive Director/Advocacy

February 12, 2003

Chairman Decker, Members of the Committee:

Thank you for the opportunity to comment on HB 2187 and HB 2194. Both bills deal with the issue educating non-residents in Kansas public schools.

As we understand it, H.B. 2187 would amend the Nonresident Student Statute, to provide three factors boards need to consider when allowing out of state students to enroll in Kansas schools. Those factors include, but are not limited to, whether the family pays Kansas property taxes, owns a business or makes contributions to a nonprofit entity. HB 2194 would give the State Board of Education authority to enter into agreements with other states to educate out-of-state students in Kansas's school districts. After July 1, 2006 out of state students shall not be counted for school finance state aid unless they are part of a reciprocal agreement approved by the State Board of Education.

KASB does not have specific policy positions regarding the enrollment of students who are residents of other states. However, we believe any change in legislation that would limit or reduce the enrollment of non-resident students could sharply reduce the funding of many school districts on the states borders. While this action might produce a relatively small saving in state educational expenditures, it would have a significantly negative impact on the students of those districts who are residents of Kansas.

In most cases, we believe that allowing the free enrollment of non-resident students benefits Kansas communities. Their families may well own property in Kansas; shop in Kansas and work in Kansas; and in each case, pay taxes in Kansas.

KASB believes that the current law regarding non-resident students is working and does not need to be changed.

Thank you for your consideration.

House Education Committee
Date: 2/12/03
Attachment # 12

Chautauqua County Community
Unified School District No. 286

BOARD OF EDUCATION

CAROLYN SUTTON, PRESIDENT
JAMES E. CLARK, JR., VICE PRESIDENT
NORA BANE
MICHAEL L. JONES
LEESA KINSEY
DIANE ROBERTS
JACK WARREN

302 North Sherman
Sedan, Kansas 67361

"Home of the Blue Devils"

SCOTT W. HILLS, SUPERINTENDENT
SUE KILL, CLERK
LISA M. DOTY, TREASURER

PHONE: 620-725-3187
FAX: 620-725-5642
WEB SITE: <http://usd286-sedan-ks.org>

February 10, 2003

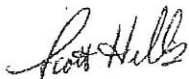
To: House Education Committee
Subject: HB 2187, HB 2194

On behalf of the USD 286 school board and patrons of this community I would like to urge you to not support House Bill 2187 and House Bill 2194 concerning out of state students. As a district of less than 500 students, we rely on all funding opportunities that will help us provide a great education for our students.

Our district is 12 miles from the Oklahoma state line and we have several families that send their children to our school and have done so for many years. We are glad to have them and also glad for the funding associated with those students. Our school is able to provide these students with educational opportunities that are not available where they live.

Please consider this appeal to not support HB 2187 and 2194. I am sure there are many other schools that border neighboring states who would share the same concern.

Sincerely,



Scott Hills
Superintendent of Schools
USD 286 – Chautauqua County Community Schools

Your Public Schools... There's no better place to learn!



House Education Committee
Date: 2/12/03
Attachment # 13



Elkhart Unified School District 218

Morton County
P. O. Box 999
Elkhart, Kansas 67960

District Office 697-2195
Fax 697-2607
High School 697-2193
Middle School 697-2197
Elementary School 697-2133

House Bill 2187 House Bill 2194

To: Chairman Decker and House Education Committee

As a regional education provider in the far southwest corner of Kansas, USD #218 believes that the proposed House Bills 2187 and 2194 are detrimental to the pursuit of life, liberty, and happiness. This proposed legislation looks to prevent those individuals who make financial and personal contributions to the state of Kansas from attaining a high-quality education. While there would be a perceived savings to the state of Kansas by not funding out-of-state students, USD #218 maintains the immediate savings will ultimately prove to be too costly in the long-term.

Outlined below are the two primary arguments for maintaining the current funding system:

Economic Growth: Allowing out of state students to attend Elkhart USD #218 has a positive impact on local economic development. These students and their families make Elkhart their primary center for both business and personal economic activity. By allowing these students to attend Elkhart schools they have become members of the community and buying goods and services in Kansas has become a natural behavior. These services and products range from tractors and combines to groceries and carpet cleaning. The tax dollars generated not only benefit the school district, but also positively impact the community and state. If it were to come to pass that the families of these same students were forced to pay tuition to attend Elkhart Schools, it would likely be detrimental to the local economy and adversely affect future

House Education Committee

Date: 2/12/03

Attachment # 15-1

economic prosperity in the area. Unfortunately, the families would not be able to afford the cost of tuition, forcing them to choose to take their academic and personal business elsewhere. Given the fiscal crisis currently facing the state of Kansas, taking steps to ostracize revenue providers seems unwise.

Geographical Isolation/Community Development: Elkhart, like other border towns around the state of Kansas, is in a unique geographical situation. The Oklahoma border partially divides the southwest side of the town. The Colorado border is approximately eight miles to the west. The out-of-state students and families served by the school and community resources live just across those state lines. These families rely on the resources of Elkhart to maintain their daily living activities. In addition, being thirty miles from the nearest MacDonald's and forty-five miles from the nearest Wal-Mart further accentuates how isolated this portion of Kansas is located.

The tri-state area depends on the educational and communal spirit of the geographical area that is beyond the established political boundaries. If the connections found within this rural community were to be severed due to the proposed legislation affecting the status of out-of-state students, the quality of life for many Kansas residents would suffer as a result. The students and families from out of state that participate in our school and community activities make critical contributions to the long-term well-being of not only Elkhart, but to the entire state.

Respectfully Submitted by,

Scott Myers, Superintendent of Schools

Clay Abla, Assistant Superintendent of Schools