

MINUTES OF THE SENATE EDUCATION COMMITTEE

The meeting was called to order by Chairman Jean Schodorf at 1:35 p.m. on February 21, 2005 in Room 123-S of the Capitol.

Committee members absent:

Committee staff present: Carolyn Rampey, Kansas Legislative Research Department
Theresa Kiernan, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Senator Kay O'Connor
Dr. Greg Forster, Manhattan Institute for Policy & Research
Sharyl Kennedy, Horizon Academy
Bob Fritsch, Horizon Academy

SB 169—Schools; special needs scholarship program

Senator Kay O'Connor, author of **SB 169**, informed the Committee that the bill was model legislation from the American Legion Exchange Council (ALEC) who patterned the legislation on the McKay Scholarship Program which has been in effect in Florida for several years. She noted that her interest in special education vouchers stemmed from her personal experience as the mother of two special needs students. After relating the problems her children experienced while they were in school, she noted that she did not have the ability to make another choice for their education because she was unable to afford the choices. (Attachment 1)

Theresa Kiernan, Revisor of Statutes Office, explained that **SB 169** sets up a special needs scholarship program and would allow any parent who has a special needs child in public school to request a scholarship from the State Department of Education that would allow the child to enroll in a nonpublic school if the child has an individual education plan (IEP), if the child has been accepted for admission at a participating school, and if the parent has requested a scholarship from the state before the deadline established by the Department of Education. The basis for the amount of the scholarship would be the IEP prepared at the public school. The maximum amount would be the amount that the resident school district would have paid for educating the child. Even though the basis for the amount of the scholarship is the IEP, the participating school is not required to abide by that IEP. The participating students are counted in the enrollment of their resident school district, and the funds to provide the scholarship are subtracted from the state aid payable to the resident school district. School districts are required to give an annual notice of the program to parents of special needs children. If a parent has a child participating in the program, they can request that the child be given a state assessment. The Department would have certain duties to adopt rules and procedures for the eligibility for participation in a nonpublic school program, the procedure for calculating the distribution of the scholarship, and the application and approval procedures. Section 6 provides the requirements in order to be a participating school. The bill also provides that the Department may contract for a study of a program to determine its effectiveness. The bill would be in effect beginning with the fall semester of school year 2005-2006.

Senator Steineger asked how the cost for educating the child in public school would be determined, if federal law would conflict with the provision that a participating school is not required to abide by the IEP, and how No Child Left Behind testing requirements would be monitored.

Dr. Greg Forster, a research associate at the Manhattan Institute for Policy Research in Florida, responded to Senator Steineger's questions. He explained that the IEP system is created by federal law to govern the education of students in public schools so there is no conflict if students are in private schools. No Child Left Behind also applies to what happens in public schools. As to the cost of special education, he commented that the word "cost" is unfortunately somewhat ambiguous, and perhaps that would have to be clarified later in the process. He noted that it is particularly difficult to figure out what is a cost of special education and what is not because schools can move things from the regular budget to the special education budget wherever they want; therefore, it is difficult to find what exactly is a cost.

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MINUTES OF THE Senate Education Committee at 1:35 p.m. on February 21, 2005 in Room 123-S of the Capitol.

Dr. Forster went on to testify in support of vouchers for disabled students. As he began to present the findings of his research on the subject, he cautioned the Committee to base its opinion of the vouchers on what is vindicated by evidence, not on which side tells a better story. He pointed out that many people have a strong, but unfounded, expectation that vouchers will hurt disabled students because private schools are not governed by federal law which creates a process to guarantee appropriate services for disabled students in public schools. He noted that the federal system has serious shortcomings because the only way for parents to hold public schools accountable under this system is to sue, and there are many obstacles that make it difficult for parents to bring a lawsuit. Because of these problems, many disabled students do not get the services they should. For these students, vouchers can provide an escape hatch. He noted that vouchers offer a parental-choice accountability model under which parents can hold schools accountable by withdrawing their children from schools that do not provide adequate services. He went on to explain that the McKay Scholarship Program in Florida, which offers a voucher to every disabled student in Florida public schools, is similar to **SB 169**; therefore, the experiences of students in the McKay system would provide the best evidence of the results one could expect with passage of the bill. He noted that he and his colleague, who conducted the only empirical research on the McKay program, found that disabled students were better served by their McKay schools than by their previous public schools on virtually every measure. Students were victimized much less often by their peers and had fewer behavior problems in McKay schools, and the program produced very similar outcomes for students of different races, different income levels and different kinds of disabilities. He reported that 90% of those who had left the program said that they thought it should continue to be available to those who wish to use it. (Attachment 2)

Sharyl Kennedy, Executive Director of Horizon Academy in Roeland Park, testified in support of **SB 169**. She noted that, after 29 years of teaching at a private school for children with learning disabilities in the Chicago area, she came to Kansas in 1999 at the request of parents who wanted her to start a private school for students with learning disabilities in the Kansas City area. Horizon Academy opened its doors to 12 students in 1999, and the population grew to 70 over the years. To accommodate an increasing demand, the school was moved to Roeland Park. Ms. Kennedy noted that, currently, the school is at full capacity, and this will be the case until the Board of Directors is able to raise funds to renovate more space in the existing building. The current tuition is \$18,500 for elementary students and \$19,500 for high school students. She urged the Committee to support the bill in the interest of helping parents with the expense of providing the special instruction needed for their child. (Attachment 3)

Bob Fritsch, a teacher at Horizon Academy, testified in support of **SB 169**. He noted that teachers at Horizon Academy must deal with many types and combinations of learning disabilities and that the average stay at the academy is three years. In order to teach the students, teachers must use diagnostic, prescriptive teaching and provide a highly structured classroom environment. Mr. Fritsch related his experience with a student with a severe auditory processing problem, a student diagnosed with dyslexia and extreme dysgraphia, and a student with dyslexia and ADD. He noted that, in five years, over 60 students have been returned to their traditional schools where they are now successful learners. In closing, he asked the Committee to consider helping parents who see that their child needs an intense special program to give them the skills required for success in a traditional school. (Attachment 4)

Senator Allen pointed out language on page four of the bill which essentially provides that the Department of Education and any other state agency may not in any way regulate the educational program of a participating school that accepts the special needs scholarship and that the participating school shall be given the maximum freedom to provide the educational needs of its students. She commented, "It appears to me that it would be asking to give state money to the schools for a very good purpose, but yet, there's no accountability back to the state. I guess that would be a concern that I would have."

In response to Senator Allen's concern, Ms. Kennedy noted that Horizon Academy is an accredited school in Kansas and Missouri. All Horizon students take the Kansas state assessment test; therefore, Horizon is held accountable by the scores. Additionally, Horizon is held accountable because of the fact that the school is donor based and, as a result, must list the gains in all the academic areas and track social skills.

There being a limited amount of time, Senator Schodorf asked that remaining conferees in support of **SB 169** submit their written testimony. Testimony was submitted by Elizabeth Bowers, the mother of a child with

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MINUTES OF THE Senate Education Committee at 1:35 p.m. on February 21, 2005 in Room 123-S of the Capitol.

autism and eosinophilic gastroenteritis (Attachment 5), Dr. Suzanne C. Bagas, M.D., a pediatrician who has visited with parents who are struggling to fund appropriate education for their child (Attachment 6), Ron Johnson, the father of a child with autism (Attachment 7), and Jim and Trisha Brown, the parents of a child who is severely developmentally delayed (Attachment 8).

Kathy Cook, Kansas Families United for Public Education, testified in opposition to **SB 169**. She pointed out that National PTA provides a very useful resource for parents of children with Individual Education Plans wherein parents can discuss successes and failures within our public school systems across the country (Listserv). She noted that she sent a message to the Listserv asking for an opinion of the bill. Even though some of the parents who responded have students in school districts that do not provide nearly the level of service that Kansas does, she did not receive one positive response to the bill. She noted that bill provides that tax dollars will be spent with no oversight. She argued that spending of taxpayer dollars should always be subject to government oversight. She went on to say that Kansas does not currently fund the full cost of special education for students in public schools. She reasoned, if private institutions are to be provided with full costs for educational programs, the state should do so only after providing the full cost for public school educational programs. In her opinion, the bill is simply an attempt to introduce vouchers in Kansas. In conclusion, she noted that there is nothing in the bill which guarantees parents that their children will be admitted to any participating private school they choose. In her opinion, funding services for students with special needs at 100% in public schools would be a better approach to improve services. (Attachment 9)

Michael Donnelly, Disability Rights Center of Kansas (DRC), testified in opposition to **SB 169**. He expressed DRC's concern that the proposed program would likely cause children with disabilities who are eligible for special education to be denied their rights under the Individuals with Disabilities Education Act (IDEA). In addition, DRC was concerned that students with disabilities would not receive the related and supplemental services provided under IDEA. In conclusion, he said that the bill would allow discrimination on the basis of disability. He commented, "The state cannot contract or donate away its responsibility to suitably educate all of its students, including students with disabilities in need of special education services." (Attachment 10)

Due to time limits, Senator Schodorf closed the hearing on **SB 169** and requested that conferees in opposition to the bill submit their written testimony. Written testimony in opposition to **SB 169** was submitted by Mark Tallman, Kansas Association of School Boards (Attachment 11), Mark Desetti, Kansas National Education Association (Attachment 12), Don Willson, United School Administrators (Attachment 13), and Kevin Siek, Topeka Independent Living Resource Center (Attachment 14).

Senator Schodorf turned the Committee's attention to a previously heard bill, **HB 2059** concerning enrollment increases relating to military-connected personnel. She noted that the bill adds a second count of the number of pupils enrolled on February 20. She quoted subsection (c) on page 5 of the bill, "If the number of pupils enrolled in a district on February 20, 2007, has increased from the number of pupils enrolled in the district on September 20, 2006, by at least 25 pupils or by a number equal to 1% or more than district's enrollment, the enrollment of the district for school year 2006-2007 shall be determined on February 20, 2007." She noted that the bill has a soft fiscal note of \$3 million and that she was told that it was difficult to estimate how many children of military personnel would be coming in.

Senator Vratil moved to recommend **HB 2059** favorably for passage, seconded by Senator Pine. The motion carried.

The meeting was adjourned at 2:25 p.m.

The next meeting is scheduled for February 22, 2005.

**SENATE EDUCATION COMMITTEE
GUEST LIST**

DATE: February 21, 2005

NAME	REPRESENTING
Suzanne C Bagas MD	(parent/pediatrician) SB169
Elizabeth Bowers, MS. Ed	parent / special educator SB169
Sharyl Kennedy	Horizon Academy
Bob Jitter	Horizon Academy
Amelia McIntyre	self
Ben Carlson	student
Gami Rutherford	Little Girl 4 Rel.
Mark Tallman	KASB
Janis McMillen	KWV-TV
MARK DEBETTI	KNEA
Bob Vancrum	Blue Valley USD 229
Ronald L Johnson	Parent Test.
Kevin Bukaty	self
RUSSELL MILLS	RACHES
Elaine Frisbie	DIVISION of the Budget
TERRY HOLOREN	KANSAS FARM BUREAU
Don Wilson	USA
Bob Corkins	KLEAR Inc.
Jimmie Ross	KACCT

**SENATE EDUCATION COMMITTEE
GUEST LIST**

DATE: Aug 21, 2005

NAME	REPRESENTING
Ron Hall	self
Hedi Hall	self
Larissa Hall	self
John Jurey	KSDE
TERRY FORSYTH	KNETH
Kay Heley	parent
Bill Brady	SFFF
Val DeForn	SQE
Diane Gjerstad	USD 259 Wichita
David Stevens	SELF
STEPHEN COOK	PARENT
MAC COOK	STUDENT
Kathy Cook	Ks FAMILIES, UNITED FOR PUBLIC EDUCATION
Mrs. J Taylor	Ks. Families United for Publ. Education



TOPEKA

KAY O'CONNOR

SENATE DISTRICT 9
LENEXA, DESOTO
AND NORTHWESTERN OLATHE

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TESTIMONY ON SB 169

MADAM CHAIRPERSON AND MEMBERS OF THE COMMITTEE:

Senate Bill 169 is model legislation from ALEC (American Legion Exchange Council) which was put together by over 20 individuals including some legislators from Florida where the McKay Scholarship Program has been in effect for a number of years.

I had two special needs children. Many of you know of my daughter, Bonnie, who died nearly twenty years ago. She was a good student, sometimes making principal's honor roll. Because she had so little energy, she wanted to drop physical education. When we inquired, we were told that she could not graduate from high school without the Physical Education credits. Had we known she would be dead in another year, we would have told them to forget it. But, the last year of her life she had the aggravation of attending physical education and being unable to participate with her classmates.

I also had a son who "mirror imaged." We learned of this when he was in high school. He reads a printed paper or blueprint either just as most of you and I or he can "turn it over" in his mind and read it equally well. He can also write "inside out" so that most of you and I must use a mirror to read it. Because of his difficulties, I taught him the entire sixth grade and he went back into public school where he graduated with his class.

I would have loved to have had the ability to make some other choices, but we were unable to afford that choice. Please join me in supporting SB 169.

Kay O'Connor
Kansas State Senator
District No. 9

*Senate Education Committee
2-21-05
Attachment 1*

Testimony of Dr. Greg Forster to the Kansas Senate on February 21, 2005

Senators:

My name is Dr. Greg Forster. I am a senior research associate at the Manhattan Institute for Policy Research, where I conduct empirical evaluations of education policies. I would like to thank you for the opportunity to address you on this important question.

The issue before you today is vouchers for disabled students. I would like to present the findings of my empirical research on this topic. While many people make claims about whether vouchers help or hurt disabled students, these claims are almost never based on any kind of empirical research. But your decisions should be based on what position is vindicated by the evidence, not which side tells a better story or what answers feel more plausible at first glance. Very often, when we find out the facts we discover that they are not what we expected them to be. When Columbus set out across the Atlantic, he expected to find India on the other side, but the facts turned out to be quite different.

I say this because many people have a strong but unfounded expectation that vouchers will hurt disabled students. When disabled students use vouchers to attend private schools, they exit the system created by federal law to govern the education of disabled students in public schools. This system creates a legal process that is supposed to guarantee that public schools deliver appropriate services to disabled students. Many people feel that exiting this regulatory system couldn't possibly be good for disabled students.

But although this system does do much good, it has serious shortcomings. It creates a legal process under which parents must sue their children's schools if they are not getting the services they are entitled to get under federal law. The only way to hold public schools accountable under this system is to sue. And there are many obstacles that make it difficult for parents to bring such a lawsuit. Parents must be sophisticated enough to maneuver through the legal system. They must have the financial resources to hire a lawyer. And they must be willing to sue the very same schools that care for their children every day. These barriers seriously limit the ability of parents to hold schools accountable for serving disabled students.

Because of these problems, there are many disabled students who do not get the services they should. For these students, vouchers can provide an escape hatch – a way to get better services by attending private schools. Other students who are well served by the existing public system can stay where they are and be no worse off.

Vouchers offer an alternative model for holding schools accountable for serving disabled students. Under federal law, public schools are held accountable under a legal-compliance model that works through the courts, with all the barriers that implies. Vouchers offer a parental-choice accountability model, under which parents can hold schools accountable by withdrawing their children from schools that don't provide adequate services. When parents are armed with vouchers, schools know that they will

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lose students if they don't perform well. That gives them a strong incentive to provide better services.

So much for our expectations. Now let's take a look at the evidence and see how well private schools are actually doing when they serve disabled students with vouchers.

All existing voucher programs are open to disabled students, but there is one that is particularly important for this question because it only serves disabled students. This is the McKay Scholarship Program in Florida, which offers a voucher to every disabled student in Florida public schools. The voucher is good for the entire amount that public schools would have spent on each student, which means private schools can accept students who need special services without having to worry that there won't be any money to pay for those services. The program currently enrolls about 12,000 students and is one of the largest voucher programs in the nation.

The McKay program is similar to the bill you have before you that would offer vouchers to disabled students in Kansas. Thus, the experiences of students in the McKay program will provide you with the best evidence of what results you should expect to see if you adopt this bill.

My colleague Jay Greene and I have conducted the only empirical research that has been done on the McKay program. We contacted a scientifically representative sample of parents participating in the program and collected data on the services they received in their previous public schools, before they left with the McKay voucher, and the services they received in their McKay schools.

We found that disabled students were better served by their McKay schools than by their previous public schools on virtually every measure. For example, 93% were satisfied or very satisfied with their McKay schools, compared to 33% with their prior public schools. They saw class sizes drop dramatically, from an average of 25 students per class in public schools to an average of 13 students per class in McKay schools. The McKay schools were also more accountable for the services they are supposed to provide; while only 30% said their previous public schools provided all the services they were required to provide under federal law, 86% said that their McKay schools provided all the services they promised to provide. McKay schools also outperformed public schools on a variety of other measures. This evidence indicates that private schools deliver better services to disabled students than public schools.

Students were also victimized by their peers much less often and had fewer behavior problems in McKay schools. While 47% of current participants were bothered often at their previous public schools because of their disabilities, and 25% were physically assaulted because of their disabilities, at McKay schools only 5% were bothered often and 6% were physically assaulted. At previous public schools, 40% had behavior problems at school; at McKay schools, only 19% had such problems. The evidence indicates that private schools do a better job of protecting disabled students from harassment and victimization, and are also better at teaching them appropriate behavior.

We also find that the population of students participating in the McKay program is broadly similar to the statewide population of disabled students, and that the program produces very similar outcomes for students of different races, different income levels, and different kinds of disabilities.

In addition to contacting parents who were currently participating in the program, we also contacted parents who had previously participated in the program and then left. If anyone were going to identify problems with services at McKay schools, it would be these parents. But the results for former participants were similar to the results for current participants – McKay schools decisively outperformed public schools.

Perhaps the most striking piece of evidence on the performance of the McKay program is that 90% of former participants – those who had left the program – said that they thought it should continue to be available to those who wish to use it. While they themselves no longer wanted to participate in the McKay program, they overwhelmingly agreed that the program should continue.

The results of our empirical research on the McKay program are presented in much greater detail in our study, “Vouchers for Special Education Students: An Evaluation of Florida’s McKay Scholarship Program.” The executive summary of that study and a graph of its most important findings are attached to my testimony; the full study is available online at www.manhattan-institute.org/html/cr_38.htm.

These findings are very positive. Students participating in the McKay program received much better services than they did in public schools. The parental-choice model of accountability gives parents the ability to seek out better services on their own without facing the barriers that are inherent in the legal-compliance model that public schools use.

There is much more I would like to address in my testimony, but unfortunately time is limited. I hope that my testimony will be helpful to you, and I will be happy to answer any questions you may have.

Vouchers for Special Education Students: An Evaluation of Florida's McKay Scholarship Program
By Jay P. Greene, Ph.D., and Greg Forster, Ph.D., Manhattan Institute
Complete study available at http://www.manhattan-institute.org/html/cr_38.htm

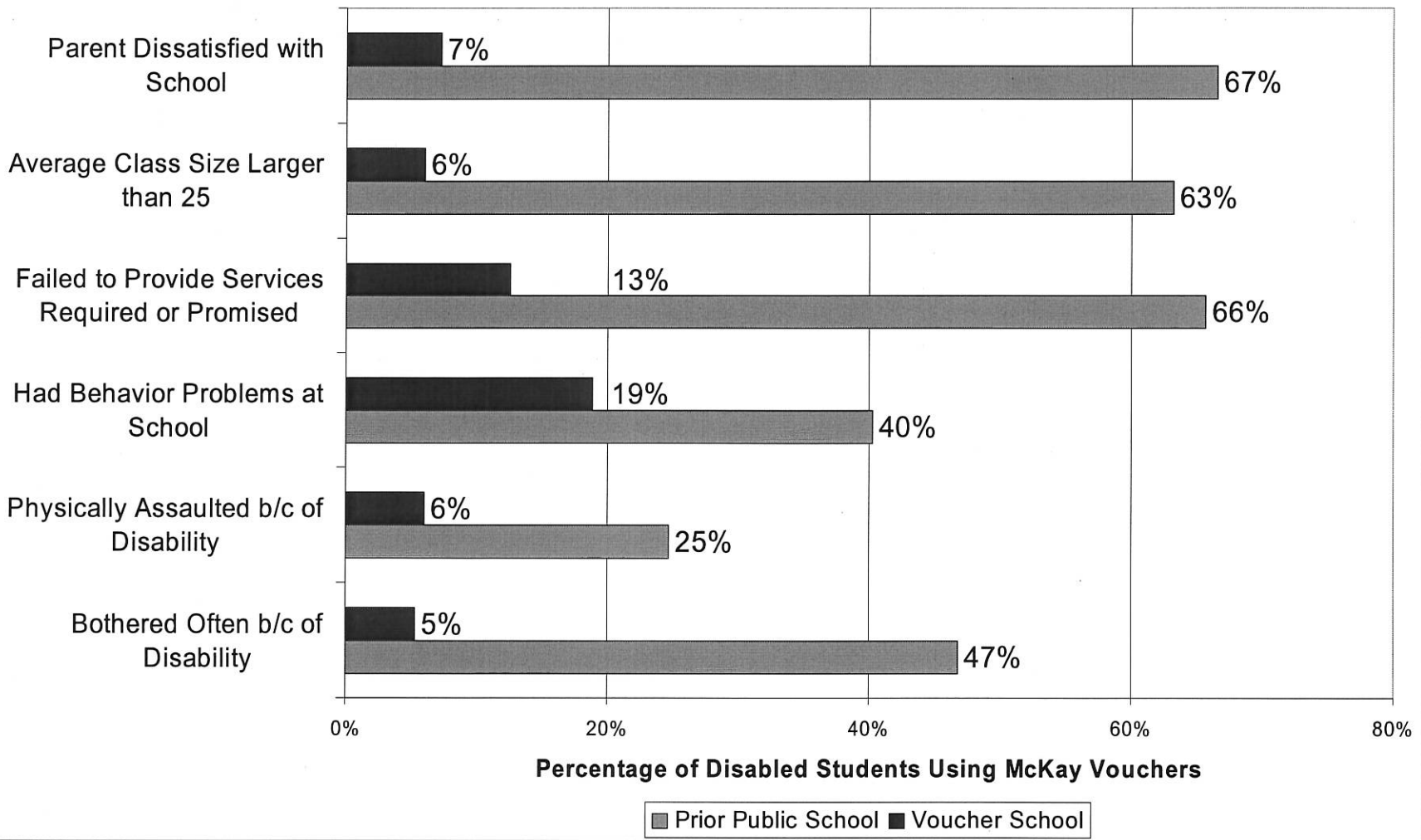
The McKay Scholarship Program for Students with Disabilities makes a school voucher available to any special education student in Florida public schools... This study is the first empirical evaluation of the McKay program's performance. Based on two telephone surveys – one of parents currently using a McKay voucher and the other of parents who previously used a voucher but no longer do – this study shows that parents are much more satisfied with their experiences in private McKay schools than they were with their experiences in the public schools. This is true both for currently participating parents and for parents who have left the program.

Highlights of this study include:

- 92.7% of current McKay participants are satisfied or very satisfied with their McKay schools; only 32.7% were similarly satisfied with their public schools;
- Those participants also saw class size drop dramatically, from an average of 25.1 students per class in public schools to 12.8 students per class in McKay schools;
- Participating students were victimized far less by other students because of their disabilities in McKay schools. In public schools, 46.8% were bothered often and 24.7% were physically assaulted, while in McKay schools 5.3% were bothered often and 6.0% were assaulted;
- McKay schools also outperformed public schools on our measurement of accountability for services provided. Only 30.2% of current participants say they received all services required under federal law from their public school, while 86.0% report their McKay school has provided all the services they promised to provide;
- Behavior problems have also dropped in McKay schools. 40.3% of current participants said their special education children exhibited behavior problems in the public school, but only 18.8% report such behavior in McKay schools;
- Former McKay participants provide similar responses. 62.3% were satisfied with their McKay school, while only 45.2% were satisfied with their old public school. Their class sizes also dropped from an average of 21.8 students to 12.7 students. Former participants also reported that their McKay schools performed better than their public schools on almost every other measure;
- This superior performance by McKay schools was largely provided for the same or only slightly more money per pupil than is spent in public schools. Even though the McKay program allows participants to choose schools that charge tuition over and above the amount of the voucher, 71.7% of current participants and 75.8% of former participants report paying either nothing at all or less than \$1,000 per year above the voucher;
- Perhaps the strongest evidence regarding the McKay program's performance is that over 90% of parents who have left the program believe it should continue to be available to those who wish to use it.

The results of these surveys indicate that participants in the McKay program are being significantly better served by McKay schools at no additional cost to the taxpayer and no or little additional cost to their families.

Private Schools Serve Disabled Students Better



Source: "Vouchers for Special Education Students," Jay P. Greene, Ph.D., and Greg Forster, Ph.D., Manhattan Institute
Available at http://www.manhattan-institute.org/html/cr_38.htm

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February 21, 2005

Testifying today is Ms. Sharyl Kennedy, Executive Director

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Senate Education
Committee
2-21-05
Attachment 3

2/21/05

Hello, my name is Sharyl Kennedy and I am the Executive Director of Horizon Academy in Roeland Park, Kansas. I have a bachelor degree in elementary education, a master's degree in special education, another master's degree in outdoor education and a certificate of advance study in general administration all from Northern Illinois University in De Kalb, Illinois. I have taught for 23 years and been in school administration for 15 years.

For the 29 years before I moved to Kansas, I taught and was the principal at a private school for children with learning disabilities in the Chicago area. I loved my job and had planned to finish out my career there. Students were sent to this private school for children with learning disabilities by 45 different public schools districts for intense help and then after a few years, they were returned to their home schools where they could then be successful.

In 1999, my life changed. A group of parents had been given my name by Dr. Don Deshler, from the University of Kansas. They wanted me to start a private school for students with learning disabilities in the Kansas City area. Even though I was willing to help them get started, they would not be satisfied until I accepted the challenge of moving to Kansas to start a school. These parents were insistent because they wanted a quality program for their children and others that could address student's specific learning disabilities, using researched based methodologies. They did not feel these services could be found in their public schools. They had hired Midwest Research Institute to do a study for them to see if there truly was a need for such a school in the Kansas City area. The research showed that a school like this was needed in Kansas City and this city was

one of the only cities of its size that did not have a special private school for children with learning disabilities.

On September 7, 1999, the school, named Horizon Academy, opened its doors to 12 students. The parents were responsible for the expensive tuition and transportation of their students to school. The board of directors raised money to help scholarship students to the school. The school started with two teachers (I was one of them) and an occupational therapist/physical education instructor. These three staff members worked alone with these students until November when more students and staff members were added (because of the request of more parents for placement of their children in the Horizon Academy program). The school grew over the years and had to move locations to accommodate the demand. The population grew from 12 students to 70 students. The staff grew from 3 full time staff members to 15 full time staff members and 14 part time staff members. Presently the school is at full capacity. This will be the case until we are able to raise funds to renovate more space at our existing building in Roeland Park, a former Shawnee Mission Junior High School. The demand for enrollment is there and the board of directors is moving quickly to be able to accommodate more students. The current tuition is \$18,500 for elementary and middle school children and \$19,500 for students in the high school program. The mission of the school is to teach the students basic skills and strategies so that they can go back to traditional schools and be successful. Over the past five years, over 60 students have gone through the program and returned to their home schools. A recent survey done by an outside person shows these students, that have returned to 13 different schools, are being successful and are involved in their school communities.

The force behind starting and growing Horizon Academy has been the parents' passion to provide a quality education for their children, with special learning needs. Many community people have gotten behind this cause because they have seen the difference in the students and families that have been served by Horizon Academy. Students have made significant gains, in a relatively short time, in the areas of academics, social skills, self advocacy and organizational skills. The average stay at Horizon Academy is three years.

Please consider helping the parents of these students with the expense of providing the special instruction needed for their children.

Hello my name is Bob Fritsch. I have been a teacher for students with learning disabilities for thirty-five years. I have a bachelor's degree from Augustana College, a master degree from the University of Iowa in Education, and another from Aurora University in Organizational Development.

I work at Horizon Academy, a school that enrolls students who have average or above average intelligence but are struggling with learning disabilities, attention deficit disorder with or without hyperactivity, and a small number of students with Asberger's Syndrome. Many of our students have severe reading problems (dyslexia), severe fine and gross motor problems (dysgrapha), and/or severe language development problems. Many of our students have sensory deficit problems and several struggle with picking up appropriate social skills. Any combination and intensity of the preceding problems may exist. No two children are the same. As you can see there are many variables for a teacher to deal with. Our goal is to equip our students with basic skills at a level that they can participate in a traditional school and to teach them strategies so that they can be more effective, efficient learners. When the student acquires a reasonable mastery of these skills they are returned to their traditional school. The average stay at Horizon Academy is three years.

In order to teach these students we must use diagnostic-prescriptive teaching. Additionally, we must provide a highly-structured classroom environment with intense, multi sensory small group and one-to-one direct instruction, organized systematically. In this process we provide validated strategies and interventions for understanding content, organizing ideas, effective planning, writing and speaking clearly, appropriate self-advocacy and social skills, and using learning materials and tools effectively.

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2-21-05
Attachment 4

Now, here are some typical results of our instruction and interventions:

Andrew came to Horizon with a severe auditory processing problem. He could not accurately perceive what he was hearing, and consequently misunderstood words, speech, directions from the teacher and the social information so necessary for building relationships. He was confused, depressed and had just about given up. By working with the speech and language therapist and his teachers, he learned how to compensate for his challenges by using various strategies. Andrew has taken these strategies and is applying them in his current mainstream classrooms back in a Blue Valley High School. He made mostly A's during the first year he had returned, and he continues to do well. He is also out for sports and has an active social life.

Eli was enrolled at Horizon Academy diagnosed with LD (dyslexia and extreme dysgraphia), ADD, and Tourettes Syndrome. He could not write or print effectively, could read very little, was disorganized and had a difficult time attending to his learning tasks. With medication monitoring, and hands-on, multi-sensory instruction, he began quickly to learn to read, slowly learn to write and use the computer to help him, and showed a great thirst for knowledge in the content areas such as science and history. Over a year ago, he returned to his home school and with accommodations, is now successfully engaged in his high school studies.

Joseph, a 7th grader, has been with us since the beginning of this school year. He is diagnosed with a LD (dyslexia) and ADD. He is also very impulsive and very creative. He could barely read a second grade book and was very inconsistent and disorganized regarding his daily tasks. His writing was illegible. Now, Joseph reads 4th grade books and receives 100% on his comprehension tests. His writing (cursive) is graceful and legible. He sits down and does his studies eagerly. At this pace he will internalize the patterns, knowledge and strategies necessary for school and life success.

In closing, please consider helping the parents that see their children need an intense special program to give them the skills to be successful back in a traditional school. Horizon Academy could be one of the options available in the state of Kansas. In the five years of existence, over 60 students have been returned to their traditional schools where they are now successful learners.

Senate Bill 169

Madam Chairperson, Members of the Committee, my name is Elizabeth Bowers. My son and I reside in Lenexa, Kansas. We are in the Olathe School District. I have a Masters in Special Education with an emphasis in autism from the University of Kansas. I am also a single mother of an only child with autism who has been diagnosed with eosinophilic gastroenteritis, a rare and often painful stomach condition that is exacerbated by stress. My son, BJ, has an IEP and has been medically homebound twice over the last five years due to an exacerbation of his condition, the last of which was ordered by three separate physicians, and in part, resulting from circumstances related to training and service changes at school.

I'd like to show you a news clip of our story for the benefit of brevity. While this story is specific to the district disagreeing with my son's physicians over the necessity of homebound services, and the legal action that ensued, I think it will provide you an example of where Bill 169 would have provided an alternative of significant benefit to my son and me. (news clip)

In December 2004, the Due Process Hearing Officer dismissed the case filed against me declaring the issue moot. She failed to provide any resolution to the loss of education or to any of my financial losses while protecting my son. Three weeks ago, after just nine days short of a year without an education, my son finally started receiving homebound services. In my opinion, this happened only because of pressure on the district from a complaint I filed with the Office of Civil Rights in order to get *any* resolution for my son. BJ is now scheduled to be transitioned back to school within the next 30 days. Medically he could have gone back to school eight months ago if the district had not continued to frivolously pursue due process against me.

The financial damage to me over this last year I have estimated to be approximately \$75,000 to date, through loss of income, medical, educational, and litigation expenses. As for the School District, I am certain it cost the taxpayer's more than if the district had simply provided BJ homebound services for the time they were needed,

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Elizabeth Bowers Testimony

or if I'd had the option available to me that Bill 169 would have provided. Besides due process, this situation is resulting in extensive investigations from complaints I've filed with the Office of Civil Rights and the State Department of Education. These costs are all at taxpayer's expense and in my case were necessary to force the district to provide the education for which my son is entitled. I have provided you copies should you be interested in this information.

My relationship with the school district can never again be one of trust. It is difficult for me to send my son back into the same environment that led to the pain that you witnessed on the video. My son has a right to an appropriate education, to be with his friends, and he wants to go back to school. We should not be forced to uproot our lives and to move in order to attend a public school that is responsive to our circumstances and provides a quality education for our children.

What happens to special needs kids affects the whole family. Often the results are devastating. I was fortunate that I had a family farm I could sell to avoid bankruptcy and the potential loss of our home. Senate Bill 169 will help parents who become "trapped" in circumstance like mine where the district attempts to "strong arm" parents into submission. This bill will benefit *all* special education children by creating competition between districts. Moreover, it will raise the bar on quality control within each district, by forcing standards and expectations that, sadly to say in my experience as a professional in the field, are virtually non-existent at this time within the area of special education in most districts.

Thank you for your consideration of this very thoughtful and progressive bill, and thank you for the opportunity to testify here today on behalf of all parents like me.

Elizabeth Bowers, M.S. Ed.

913-422-3399

Description of alleged discrimination from the Olathe Public School District:

- 1) The district changed my son's education plan, a legal document, without my knowledge or consent, from the annual version to the ESY version, that resulted in the denial of the district to provide me weekly contact with my son's direct care providers at the school. OSD unilaterally made on the document without the benefit of a discussion in a meeting with me. This resulted in the district forbidding me to speak with or provide important behavioral and medical information about my son to the direct care staff that, in part, resulted in his eventual need for medical homebound services. Other parents in the district have the benefit of discussing changes to their children's IEP in an IEP meeting, as required by law.
- 2) My son, Benjamin VanderWaal, has autism and was not provided by his school district, medical homebound services as directed by three individual medical providers. Another family in the school district was granted medical homebound status with only a single letter from the student's physician and no other "required" paperwork by the district, including an IEP team decision to determine the necessity of such services. Services were denied in two IEP team meetings held in March and April, and are still being withheld to date, and again denied after in a face-to-face meeting August 17, 2004, between my son's physician and a district administrator. Because the physician is maintaining his position for the need for homebound services at this time, the district is moving to seek out an independent medical evaluator in order to discredit his recommendations.
- 3) I was restricted by the school principal from observing my son in the school setting. When I requested a copy of the school's policy for observation from the school, the guideline was very restrictive in nature. When I questioned other parents with typical children at the same school regarding this document, they had never been seen it before, nor had they been restricted in any way from observing their children in the school setting.
- 4) I requested Extended School Year (ESY - special education summer school) for educational summer services for my son in the homebound setting, even though I was not in agreement with the latest proposed IEP the district has presented to me. The district would only provide ESY in the school setting despite doctors' orders for homebound status. Another parent in the district received an offer for ESY in the district without consent to the proposed IEP, based on last year's ESY IEP. My son's IEP last year from ESY included services in the homebound setting. In a conversation with the lead attorney for the State Department of Education, Mr. Rod Bieker, ESY services and placement should have been provided in accordance with the last signed IEP.
- 5) The district denied my right to an IEP meeting and the right to bring anyone who had knowledge of my son, when they cancelled an IEP meeting on April 12, 2004. They cancelled the meeting, on the spot, when they did not like the guest I brought to the meeting. I had been turned down for medical homebound status at a previous IEP meeting, and I had two additional doctors' orders to present to the team to consider at this meeting. This guest had educational and medical knowledge of my son, was invited to attend the meeting at my request, and had been provided a confidentiality waiver signed by me which he presented to administrators. He also happens to be a TV journalist by profession. When he appeared he was asked to leave school property, then district administrators proceeded to cancel my meeting without justification. Other parents in the district are allowed to bring their invited guests to their IEP meetings as well

as the right to an IEP meeting not being unilaterally controlled by district administrators. I signed a district document prior to the meeting acknowledging I had been informed of this right by the district, but later that day I was denied the right to a meeting, and to bring anyone I deemed could contribute to the meeting. Contrary to these actions, the district was okay with me inviting an individual to this meeting who has information regarding my son, but is an attorney by profession. It is discriminatory for the district to be able to designate who they will allow me to have in attendance at my son's IEP meetings. After canceling my meeting, the next day the district then proceeded to attempt to have a due process hearing officer rule who I can and can not have in attendance at my meetings.

6) The district invited an individual to my IEP meeting on April 12, 2004, for which they did not give me notice, in writing or otherwise, per their legal obligation. Other parents in the district are informed through the district's 10-Day Notice of Meeting paperwork, legally required notification of IEP guests the district intends to have at a student's IEP meetings. They did not do this despite an email to me from Mr. Gerry Reynaud the day of the meeting acknowledging that if he was able to attend the meeting, this notification would be required and need to be waived officially.

7) The district denied my right to privacy when they violated the restrictions of an Authorization for Release of Information to my son's physician. The order was to discuss only and specifically "Health and Information regarding BJ's physical needs in relation to the request for physical therapy services in the school setting, including aquatic therapy." The district overstepped its authority and discussed other issues, such as staffing and behavioral issues with the physician that resulted in their justification for denial of medical homebound status for which I did not give my consent to discuss. Moreover, this discussion, that included slanderous remarks toward me to the physician, and resulted in her removing herself as my son's physician. In addition, I discovered the school nurse made an inquiry to this same doctor regarding my son, without my consent, a release of information, and without my knowledge. This too, added to the deterioration of my relationship with my son's physician.

8) I am being taken to due process based on fraudulent paperwork submitted to the State Department. The district's letter listing the reasons for due process states, twice, that I unilaterally removed my son from school. This is untrue. He was removed after notification from his health care provider for the need for medical homebound status. In addition, the letter states that I removed him in mid-January. He did not leave school until February 3, 2004. It also states the district was required to take me to due process because they had not heard from me regarding consent paperwork. I had signed and faxed this paperwork well in advance of the date of the due process notification. In addition, the district did not even bother to list the issue of "unilaterally" removing my son from school as a part of the due process issues once the process began. In fact the only two issues they listed were my non-consent to a proposed placement at school they developed after my son had been medically homebound three weeks, and a proposed behavior plan, both of which I disagreed with.

9) Fraudulent information was provided to the superintendent and president of the school board regarding my pursuit of filing due process against the district in the past, or the information provided to my "agent," who spoke with them on my behalf, was misled by them in that meeting. I have never filed due process against the district. I've only been taken to due process, this year, once, and under false allegations as explained earlier. In addition, in the meeting it was stated to my agent, I would have access to a facilitator that was being hired by the district for

these purposes. Since that time, the district has designated the process administrator would not act "solely" on behalf of the district or intervene once "formal" processes had been filed, as is in my case and only one other. However, the process administrator has intervened "solely" representing the district's position in a formal complaint in another parent's case, and there has been no response from the district for this individual to intervene on my behalf per a recent request. I consider this discriminatory.

10) Upon attempting to present to the team in an IEP meeting, newly obtained medical evidence for the need for homebound services, I was never allowed to make that request in the meeting. Instead, the Executive Director of Special Education, Gerry Reynaud, refused to allow my question to stand and insisted on presenting his own version. I stated I felt Mr. Reynaud's question did not address the issue at hand. This is a direct quote, from an audiotape of the meeting, of Mr. Reynaud's question to establish team consensus on whether or not to provide homebound services based on the medical evidence I provided:

"Given the resources and parent cooperation, can BJ return to school and be successful in the school environment? And that is the question! And it's my question, not yours! Then your request for homebound is rejected! You'll get a notice of action."

There was no team consensus as the issue of whether or not the medical evidence was compelling or not, because the question was never allowed to be posed to the team because of Mr. Reynaud's control of the meeting and his attitude. This is discriminatory in the fact I was never allowed to request homebound services from the IEP team, based on the medical evidence I provided at the meeting. He would not allow my parent participation, as is indicated with his reprimand when I attempted to clarify the question in order for it to be valid to the issues being discussed. Other parents have a right to ask questions and participate in their IEP team meetings. Other parents, as evidenced earlier, do not have to prove their physicians position to district personnel. The district is seeking an independent medical evaluation to discredit my son's gastroenterologist. No other parent in the district has had his or her physician evaluated by an outside source in order to discredit him/her.

Email from Beth Bowers to Jay Hastert, Olathe Schools Business Manager, with response from Gerry Reynaud, Ex. Director of Special Education, to Hastert on discussion of how to answer questions. The email sent from Reynaud, meant for Hastert, was also forwarded on to Bowers in error.

>>> <Rx4autism@aol.com> 10/08/02 03:29PM >>>

Dear Mr. Hastert,

Thank you so much for the information on the transportation of students in employee's personal vehicles.

I have two more questions if you please. When did this policy go into effect and when were employee's notified?

Thank you very much. I think this is all I need. Have a great week.

Sincerely,

Beth Bowers

Subj: **Re: hello**
Date: 10/10/2002 8:35:46 AM Central Standard Time
From: REYNAUD@mail.olathe.k12.ks.us
To: Rx4autism@aol.com
Sent from the Internet

Jay: Since I really don't know the specific date as to when employees were informed and I understand from our conversation you, don't either we probably just need to make up something:

Such as:

I am not aware of any specific date that these vehicle procedures went into effect since they have been a long standing practice. In my conversation with the Superintendent, the District has never recommended or supported the practice of staff transporting students in there personal vehicles. We are aware that there are occasions in which staff have transported students and always issue reminders throughout the district when we become aware that staff are not following procedures.. When we last reviewed our insurance policy with our carrier (give date) we again were directed to adhere strictly to the policy and have therefore issued this the statement I provided you.

How do you think this sounds and works for you? By the way, please send me a copy of the letter you sent Beth. I can't seem to find my copy. GR

Subj: **complaint**
Date: 2/7/2005 12:44:41 PM Eastern Standard Time
From: Rx4autism
To: JWMSBACON

Dear Mr. Bacon,

Please respond that you are in receipt of my complaint from February 4, 2005, and provide me information regarding my questions of time frame and what process I can expect from the Board on this issue.

Thank you,
Beth Bowers

Subj: **complaint attached**
Date: 2/4/2005 6:09:51 PM Eastern Standard Time
From: Rx4autism
To: JWMSBACON
File: **2-4-05 State complaint on Boorday.doc, Gerry's email blunder.doc**

February 4, 2005

Elizabeth Bowers
8601 Redbud Lane
Lenexa, Kansas 66220

Mr. John Bacon
Kansas State Board of Education
Third District
15831 W. 136th Street
Olathe, KS 66062

VIA ELECTRONIC MAIL

Re: Benjamin VanderWaal, Olathe School District, USD 233

Dear Mr. Bacon:

This letter is to notify you of violations of Federal disability law that have denied my son, Benjamin (BJ) VanderWaal, referred hereafter as "the student," a Free Appropriate Public Education, and fair due process through the State. The student is recognized by the State as having a disability and attends school in the Olathe School District. The federal statutes and regulations have been violated are those that are designated to protect students, and their parents, with disabilities.

The State Department of Education and the Olathe School District, as recipients of federal financial assistance, must be in compliance with Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and IDEA, as determined by the U.S. Department of Education. I, referred to hereafter as "the parent," am requesting this letter of complaint be filed by your office with the U. S. Department of Education and to copy said parent with that correspondence at the address above.

Because of your position as an official on the Kansas State Board of Education, it is your obligation to investigate this complaint and report to the parent with your results. Please provide the parent the time line for which she can expect to hear from you on this issue, and when a final decision might be anticipated. In addition, you have the authority to order the correction of any wrongdoing that your investigation reveals, and to file copies of these complaints with the appropriate associated professional agencies under which these individuals are required to meet a level of professionalism and ethics. The parent expects the State to seek an equal amount of information from her in its investigation, and in the same manner, as you seek from the individuals cited in this complaint in order for this investigation to be viewed as non-discriminatory.

The parent's complaint is as follows: The State Board of Education, through its hearing officer, Carol Boorady, failed to provide the parent an impartial due process hearing and ruling when taken to due process by the Olathe School District (OSD). OSD has discriminated against the student, a student with a disability, by denying him his rights under Section 504, the ADA, and IDEA, in addition to acting in bad faith through retaliatory and fraudulent actions throughout the course of the due process proceedings.

This has occurred in the following ways:

By OSD initiating due process against the parent for following three separate doctor's orders to keep her son at home due to his medical condition;

By OSD listing a fraudulent reason for taking the parent to due process that, if true, should have been reported to SRS as a truancy case;

By OSD discriminating against the student by not providing him homebound educational services as requested by three separate physicians and their own independent medical evaluator;

By Boorady's reframing of the parent's issue in such a way as to limit the parent's ability to present evidence for her issue during the due process hearing;

By Boorady not allowing ongoing retaliatory acts and procedural violations, that continued to occur after OSD filed due process against the parent, to be added to her issue or used as evidence in her issue, that clearly encompassed these type of actions.

By Boorady discriminating against the parent by not allowing her to participate in her own independent evaluation and limiting the parent's rights during OSD's independent evaluation, while giving OSD full authority in their own independent evaluation as well as in the parent's independent evaluation.

By Boorady discriminating against the parent by enforcing an unreasonable discovery request, even after both attorney's had agreed to limit the discovery, in addition to forcing an unreasonable time-frame for the parent to produce those documents, while never forcing the district to abide by any time-line on the parent's discovery request.

By Boorady failing to file an extension to the 45-day rule to expedite and finalize the due process, until such a time that the student had been without educational services for nine months.

By Boorady allowing discrimination to occur by OSD against the mother of the student when Boorady refused to include the father of the student as a party to the due process proceedings, even though both parents legally have equal residential and decision making rights of the student. Boorady then allowed the father to participate and exercise his full rights in the mother's due process proceedings, against her objection, without any of the responsibilities required of the mother in these proceedings. By allowing the district to sue only one legally responsible parent, and not the other, Boorady allowed the father to remove himself from the legal financial responsibility he would otherwise incur, to pay 50% of all educational costs for the student per the parent's equal custody decree. This would have included all due process costs that the parents would have incurred and any cost to provide education at their own expense.

By Boorady's allowing OSD to interfere and manipulate the results of the parent's independent evaluation despite the objection of the parent;

By Boorday allowing the district to have an unfair advantage during her request for statements of justification for the parties due process hearing issues, when she allowed OSD and their attorney to review the parent's independent evaluation report, before the statements were due, and not allowing the parent the same opportunity.

By Boorady having an *ex parte* communication with the parent's independent evaluator, then interfering in the finalization of the report by forbidding him to complete the report;

By Boorady fabricating a statement to the parties that the finalization of the parent's independent evaluation report would not change the results of the report when, if allowed to be finalized with an "opinion" attached, would clearly have forced Boorady to rule against the district and in favor of the parent.

By Boorady, immediately after having an *ex parte* communication with the parent's independent evaluator, dismissing OSD's due process case against the parent, even after the district's position continued to maintain that their issue was still valid.

By Boorday's fraudulent claim that the *parent* requested the dismissal of the due process as the reason for her ruling, a due process for which the parent did not initiate, a due process for which the parent did not have any authority to dismiss.

By Boorady writing her final report in a way that misleads the factual events of the dismissal of the due process and in a way that could also result in a dismissal of the parent's Office of Civil Rights complaint against OSD.

This was an open hearing at the parent's request. All conversations and correspondence therefore remain non-privileged. All telephone conferences and conversations were audiotaped to protect the parent against impartial judgments by the hearing officer and those involved in these proceedings. Between the audiotapes and the correspondence in writing and email, all allegations can be verified.

The State Board of Education exercises control over the special education sites where this discrimination and acts of bad faith has occurred. Further, the State Board clearly exercises control over the personnel who committed these discriminatory acts. Arguable, any one of these points by themselves may not be enough to warrant an investigation, but the fact there are so many in one single case certainly should warrant concern by the State and contributes to amounts of true damage to the student and financial loss to the parent.

This parent expects the State to investigate these allegations in a prompt manner and to take appropriate corrective action resolving this problem. This would include the immediate disqualification of the state appointed hearing officer, Carol Boorady, from presiding over any future complaint hearings. She should also be sanctioned for improper judiciary conduct. It should sanction OSD for bad faith actions in filing a frivolous lawsuit against the parent and order compensation to the parent for all expenses and financial loss that were incurred because of this due process, as well as order educational compensation for the student. It should order the removal of the director and executive director of special education in OSD from their current positions in the district for their persistent and ongoing acts of bad faith, that include deceitful practices and retaliatory acts against parents of children with special needs. I have attached just one example of this types of action by these administrators. These types of individuals have not responded to the multiples complaints against them from parents and continue to act unbridled by any authority in the system, at any level, that are designated to stop abuse of power and enforce correction of wrongful acts against individuals who are vulnerable. It is my utmost desire to see *any* organization in this state stand up and do the right thing, for once, and once and for all. I hope, Mr. Bacon, that you are strong enough to do what it takes to right these wrongs, and to set the tone for appropriate behavior by all individuals in positions of power, whose salaries are paid for by taxpayers, in regard to special education in this state.

Thank you for your consideration of these issues. I look forward to your response.

Sincerely,

Elizabeth Bowers

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Dr. Suzanne C. Bagas, M.D
8316 High Drive
Leawood, KS 66206

February 21, 2005

Senator Kay O'Connor
300 Southwest 10th Street, Room 521 South
Topeka, KS 66612

Dear Senator O'Connor,

I am writing to support senate bill number 169 which would establish a special needs scholarship program in the state of Kansas. I am a pediatrician in the community who cares for typical children as well as children with special needs and I am a parent of a four and one half year old boy with autism.

As a pediatrician, I have listened to the stories of many parents who were struggling to fund an appropriate education for their children. Their disabilities include Downs Syndrome, Autism, Williams Syndrome, Apraxia and Pervasive Developmental Disorder among others. Insurance companies in many cases refuse to pay for services such as speech therapy and occupational therapy because they feel it is the responsibility of the schools. The schools state they have inadequate funds to provide the number of hours of such services that these children need. This leaves the parents struggling to fund the gap in services for their children or to forgo the services all together. We as pediatricians find this tragic because it results in children not reaching their full potential.

As a parent of a child with autism, I have also shared in this frustration. The level of services offered to our son by the school district and the level of expertise of those delivering the educational services is so far below the standard of education recommended for young autistic children by the National Research Council that he cannot possibly make the progress that

Dr. Suzanne C. Bagas
Dr. Herbert V. Davis
Dr. Julia T. Ehly
Dr. David N. Holleman
Dr. Michael L. Kasper
Dr. Katherine L. Knapp
Dr. Charles V. Moylan
Dr. Anthony P. Pecoraro
Dr. Elbert E. Smith
Dr. Jeffrey A. Waters
Dr. Debra L. Williams
Dr. Mary Therese Woody
Kathryn McConahay, Ph.D.
Dr. Eric J. Friedlander

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64111
(816) 561-8100

701 N.W. Commerce Dr.
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Lee's Summit, MO
64086
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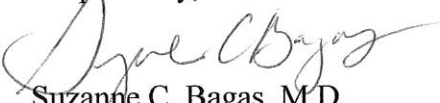
1 of 2
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Attachment 6

he should be making. Numerous studies show that 25 hours or more of one on one instruction per week by an individual trained in applied behavior analysis and delivered in a highly structured environment is needed to educate young children with autism. In contrast, our son is receiving only 4 hours of one on one therapy which is being delivered by a therapist with no formal training in ABA. Our son's functional use of language is extremely poor. He is able to communicate some basic needs and has a number of single words but cannot converse with others. Despite this deficit, he is receiving only one hour of time with a speech therapist per week through the public school system. He should be writing his name but he is still working on learning to make a circle. Still, the occupational therapist is only scheduled to work with him for one hour a week. The lack of appropriate services for his disability has left us to question whether the money designated for special needs in our district is actually being used for that purpose. For these reasons we have chosen to supplement his education with our own privately paid therapists and have spent approximately \$30,000 a year to do so.

We are fortunate enough to be able to purchase other services for our child to provide him with the education that he needs and that his school is not delivering. To be able to do this, my husband and I must both work full time which means spending long hours away from home and sacrificing time with our son and his two siblings. Most other parents of children with special needs don't even have this option. They are forced to fight for what little the schools reluctantly provide.

As parents, we all want our children to be able to succeed in their education and to grow up to lead independent lives. Public school is not necessarily the best place for educating all children with special needs. The passage of SB169 would enable each child with special needs to receive the education most appropriate for them. This would offer each child the best opportunity to learn and maximize their potential. I fully endorse the bill and the establishment of the scholarship program.

Respectfully,


Suzanne C. Bagas, M.D.
bagas@kc.rr.com

February 21, 2005

Madam Chairperson, Members of the Committee, my name is Ron Johnson from Olathe, Kansas. My wife Susan who is with me today has been teaching in Kansas for over 20 years has been nominated twice as KS teacher of the year by her peers, my daughter graduated last year as a State of Kansas Scholar and is currently attending the engineering program at Kansas State University.

We are here today to discuss my 17 year old son Ben who has autism and to voice our support of Senate Bill 169.

In the past 4 years our family has spent over \$68,000 in due process attempting to secure an appropriate public education for our son and professional consultants to correct behavioral damage created by an inappropriate education.

When Ben was in the 5th grade our son began to regress both academically and behaviorally as indicated by the graphs we have provided because of an inappropriate education. The District Executive Director of Special Education advised us that he knows our son has regressed, "but he has not regress totally because I've seen data that indicates he's made progress". That data was never produced.

His plan to remedy our son's regression was to provide our son the same teachers and program that were causing the regression.

Because of our dissatisfaction with the school district's response to our son's regression we had no choice but to remove our son from school, implement an appropriate educational program in our home and file due process.

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February 21, 2005

After 2 days of hearing, the District settled with us. The settlement outlined an autism consultant, an educational plan; a behavior plan and a transition plan back to school.

During the transition back to school, the district refused to provide the necessary behavioral supports to make the transition successful. Daily data sheets were sent home for 2 weeks documenting "hit teacher, bite teacher, kick teacher, teacher in a headlock, battle, punch to chin".

The School District then filed due process against us, 3 months after our settlement, because we did not agree to their revised transition plan which offered our son 2.5 hours of school a day, when he required a full day, provided for no behavior plan, despite obvious aggressive behavior, and wanted us to pay for the home consultant to be used at school.

After 15 days of hearing in due process, we lost on all issues as a result of the hearing officer overlooking significant legal violations, and instead only considering the minimum standards of progress in Kansas.

The District spent over \$145,000 in these due process actions.

We personally spent over \$18,000 to undo the behavioral damage to our son and regain control over his aggressive behavior. We returned our son again to the school and the District hired the expert in autism and behavior analysis, a PhD consultant we used in our home.

February 21, 2005

After 2 years of meaningful progress which is documented in the Reading and Spelling graphs enclosed, in April of 2004 the district cancelled the contract with the PhD consultant based on the input of Para professionals who did not have a college degree in Autism or Behavior Analysis.

Without the PhD. consultant our son engaged in the Self Injurious Behavior (SIB) of hitting himself 103 times in the last 17 days of summer school. This was a behavior that was document only 1 time the previous year.

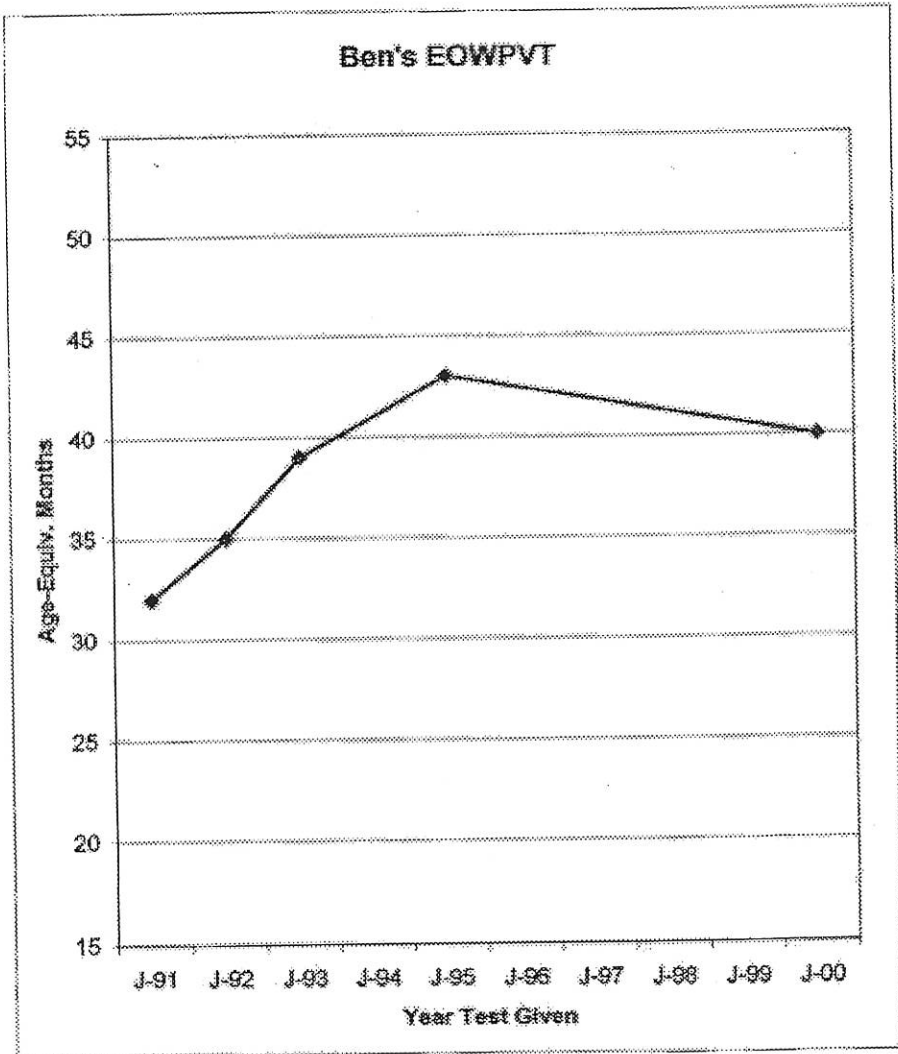
Because of the change of our son's placement we filed a third due process. We have since entered into a settlement agreement with the district.

Our son is now in the 11th grade. -

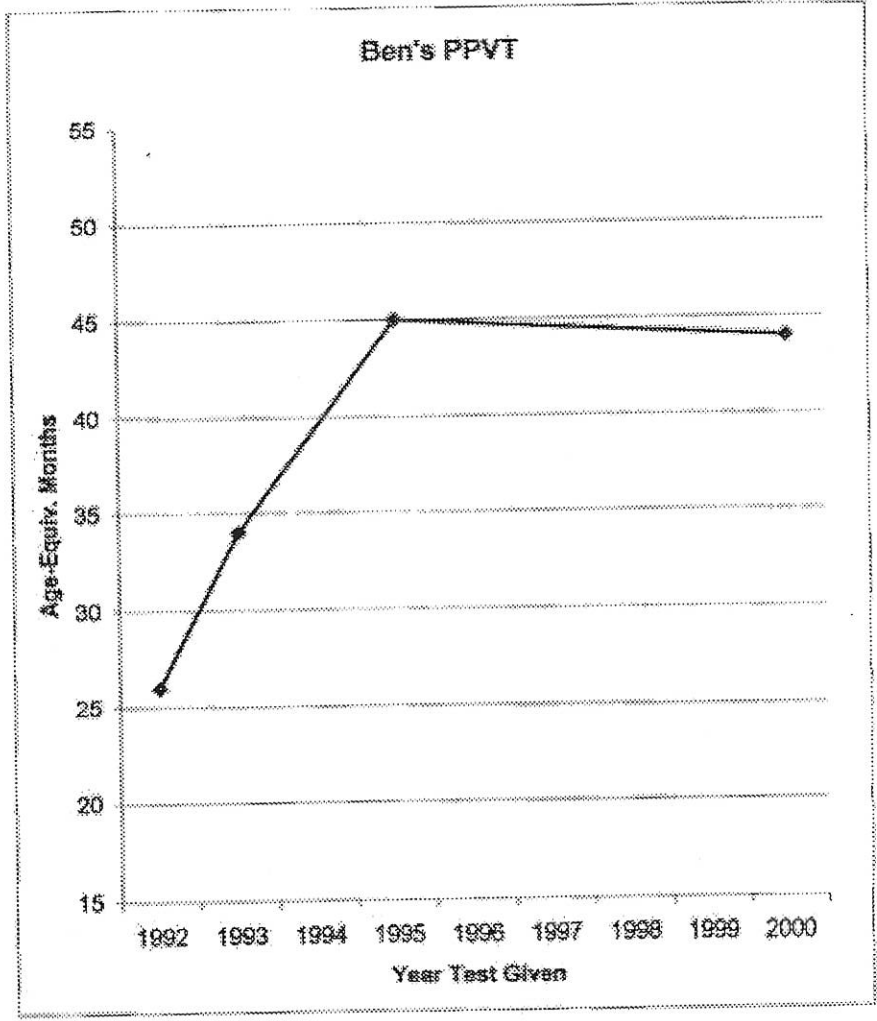
Senate Bill 169 will not help my family recover from the experiences we have endured. Senate Bill 169 will not help my son recover his lost education. We do believe that Senate Bill 169 will help change the lives of Kansas families and children with special needs. Parents will now have a choice between accepting an inappropriate educational program and mortgaging their homes to pay attorneys to handle due process actions. This bill will give Kansas families a third option and create an opportunity for true collaboration between parents and districts focusing on the needs of the child.

Thank you for the opportunity to provide this testimony. Are their any questions?

Expressive One Word Picture Vocabulary Test



Peabody Picture Vocabulary Test



(Tape #1, Side 1)

★ Gerry Reynaud:IEP meeting. The date is 7/25. My name is Gerry Reynaud,
Executive Director of Special Services:

Karey Ficken, Assistant Principal, Pioneer Trail.
Tracy Orr, Special Services Coordinator
Carol Affolder, Music Therapist
Roger Pitts, School Psychologist
Susan Johnson, Ben Johnson's mother
Mary Smith, Speech Pathologist, Pioneer Trail
Debbie Dunbar, Elementary Lifeskills Teacher, Indian Creek
Denise Herd, Lifeskills Teacher, Pioneer Trail
Kim Auspurger, Art at Pioneer Trail
Erin Dugan, Assistant Director of Special Services

(Note: A lot of humming on tape, making it very hard to hear)

Reynaud: Okay. In order to assist us in making the best use of our time today, we're going to go through the same procedures. We don't require, Susan, a consent, because we gave a 10-day notice, so we won't be doing that (*inaudible*)

Dugan: Did you sign (*inaudible*)...?

S. Johnson: Did I return it? I don't know. I mean, I've got it, but I don't...

Dugan: (mostly *inaudible*) ...just check mark....

S. Johnson: So, you need that back?

Dugan: If you can.

Reynaud: And let's be sure we all speak up with our loud voices, without actually yelling, so that the tape recorder of our interactions today (*inaudible*)... We certainly are kind of hoping to finish this IEP today. I know the Johnsons are certainly anxious to do that (*background noise*) ...been a marathon experience. As a result of our last meeting, had any opportunities that parents or you, as Team members, have had to look over what our work has been so far, such as goals and objectives. Are there any additions or changes or corrections that anybody would want to make? And recognizing that the district has engaged the services of Dr. Dunlap, as a consultant, we're going to have a

this IEP bet (inaudible). So, I open it up for conversation related to the various options that we feel Ben needs to be (inaudible)....

Reynaud: I guess we could start with the most restrictive, and that would be the residential placement, and it's my understanding, Susan, that you still wish to consider residential placement, in the continuum?

S. Johnson: He needs a 24-hour IEP. We have working very hard this summer at getting that in place, and it's slowly building, and slowly building, and the task hasn't been that easy. He needs a 24-hour IEP, directed by someone skilled and knowledgeable in the ABA, and it would be our desire to keep him at home. As we've gone through this summer, the difficulty of putting that in place, we are concerned whether it could be place, and if it's something – We are highly motivated to put it in place, and if we do not feel that we have adequately got it in place, up and running, then we request the New England Center for Children. It is not our desire to ship our son off. It is our desire for our son to receive a 24-hour IEP, to displace the autistic behavior that has solidified the last two years.

Dugan: Describe a 24-hour IEP for me, what that looks like, what that takes for Ben...?

S. Johnson: It would be a seven-hour school day, with various components, you know, similar to these. Definitely not exactly like these. It would have the Lifeskills components of chores and – what typical 12-year-old boys do. He would walk normally, he would not make noises, he would not engage in self-stimulatory behavior. All autistic behaviors would not be allowed, and he would be expected to act like a 12-year-old boy. Not like a 12-year-old boy with autism. And it is my belief that this needs to be directed by someone who is skilled in ABA, at this time, in Ben's career, because of what's happened the past two years. So, I guess there's a question that I would like to direct to the Team. Does the Team still believe that Ben has not regressed? After Dr. Dunlap's visit?

Reynaud: I think the discussion here is placement, not what he has or has not done in the past.

S. Johnson: So, placement...Determining placement isn't going to be based on whether he's regressed and what has happened the past two years? We shouldn't be basing...?

Reynaud: I think the placement is based upon this IEP, as it is developed here. Placement is based upon the goals and objectives and how you're going to reach them.

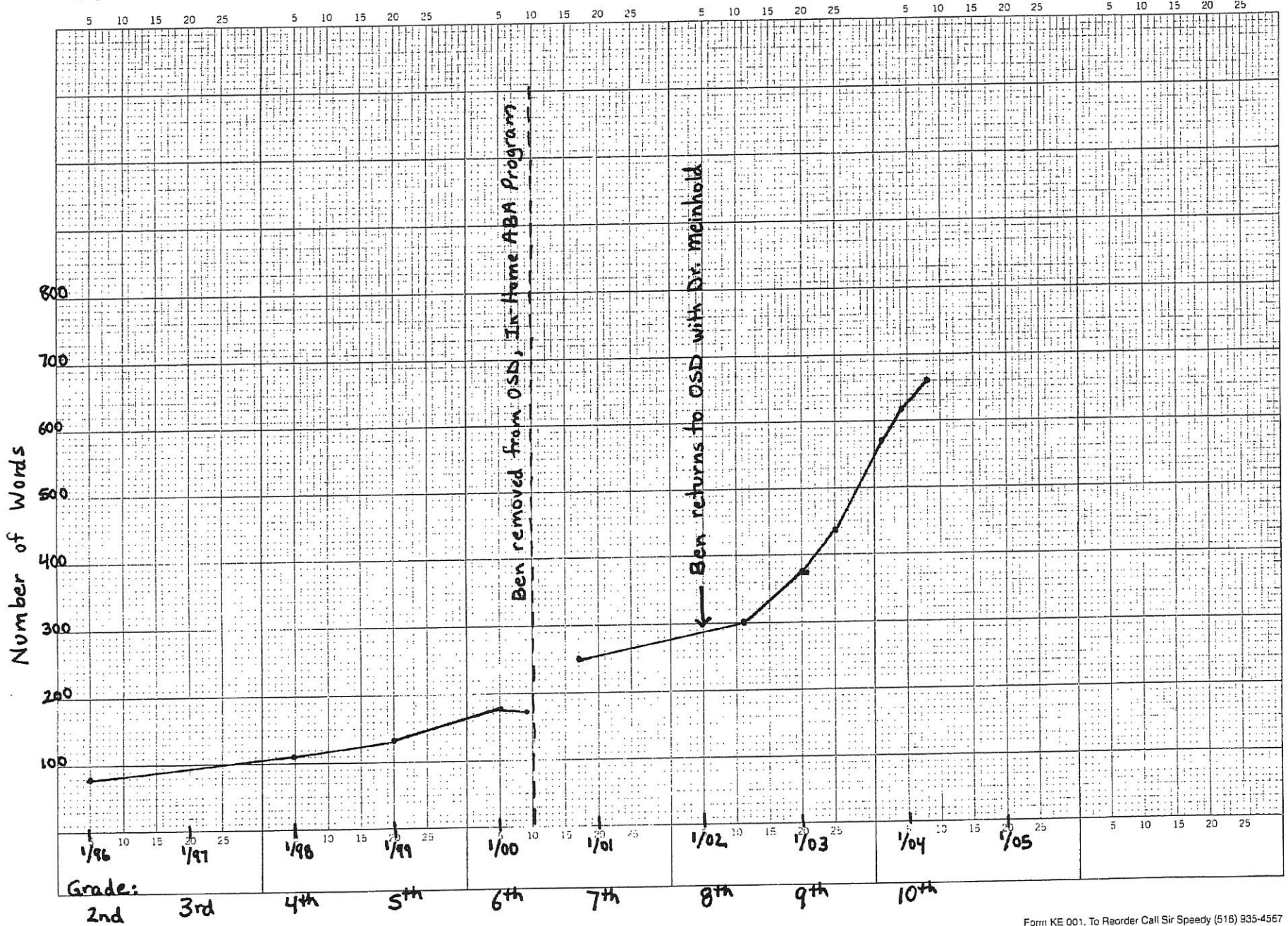
S. Johnson: So, are you going to answer me? Does the team feel like Ben has regressed the past two years? Am I going to get a direct answer to that, or not?

★ Reynaud: Well, I'll say, from my perspective, there certainly might be areas in which Ben has been regressed, but Ben has not regressed totally because I've seen data that indicates that he's made progress.

Reading: Sight Words

graphed by
Susan Johnson

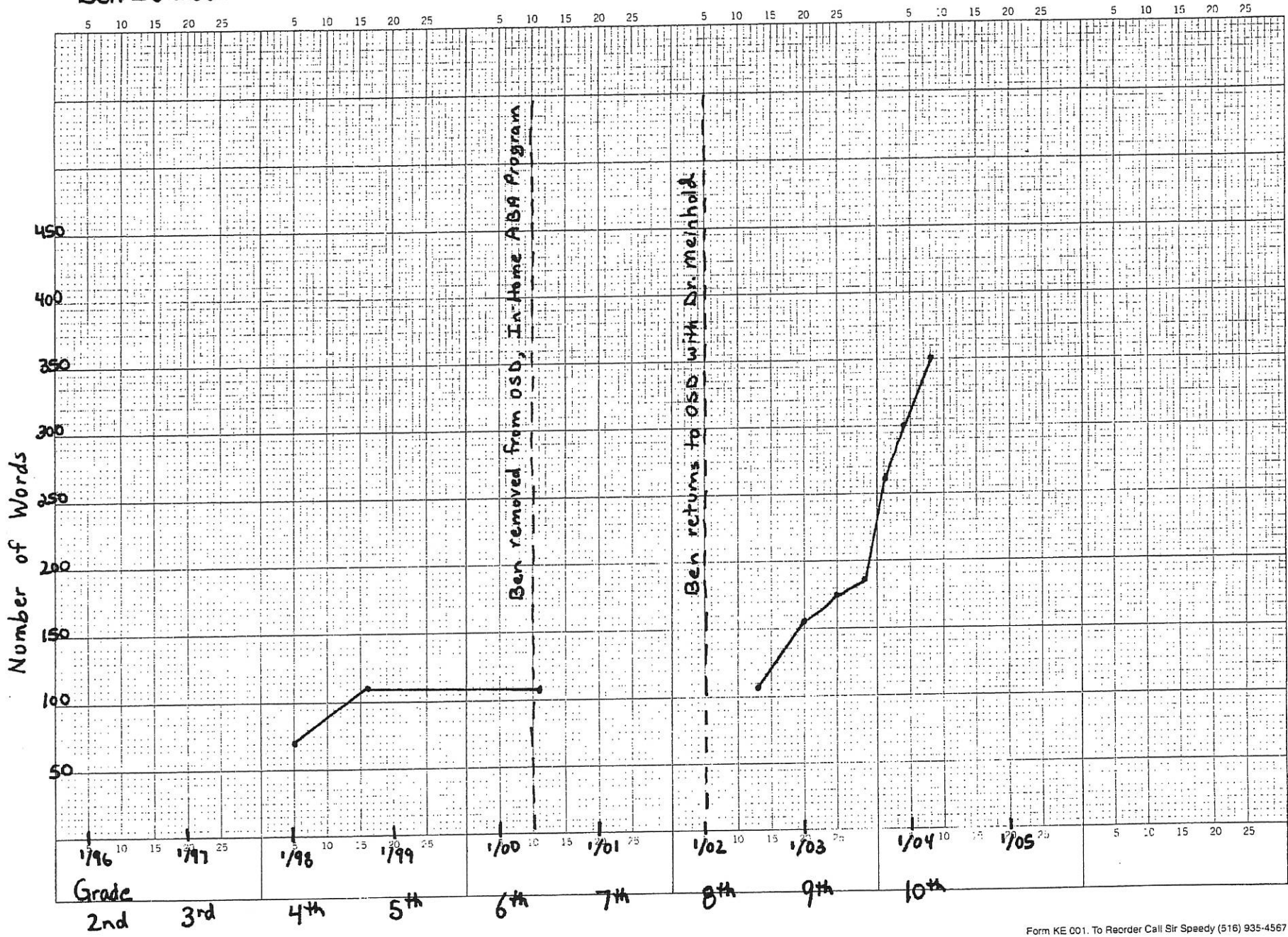
Ben Johnson



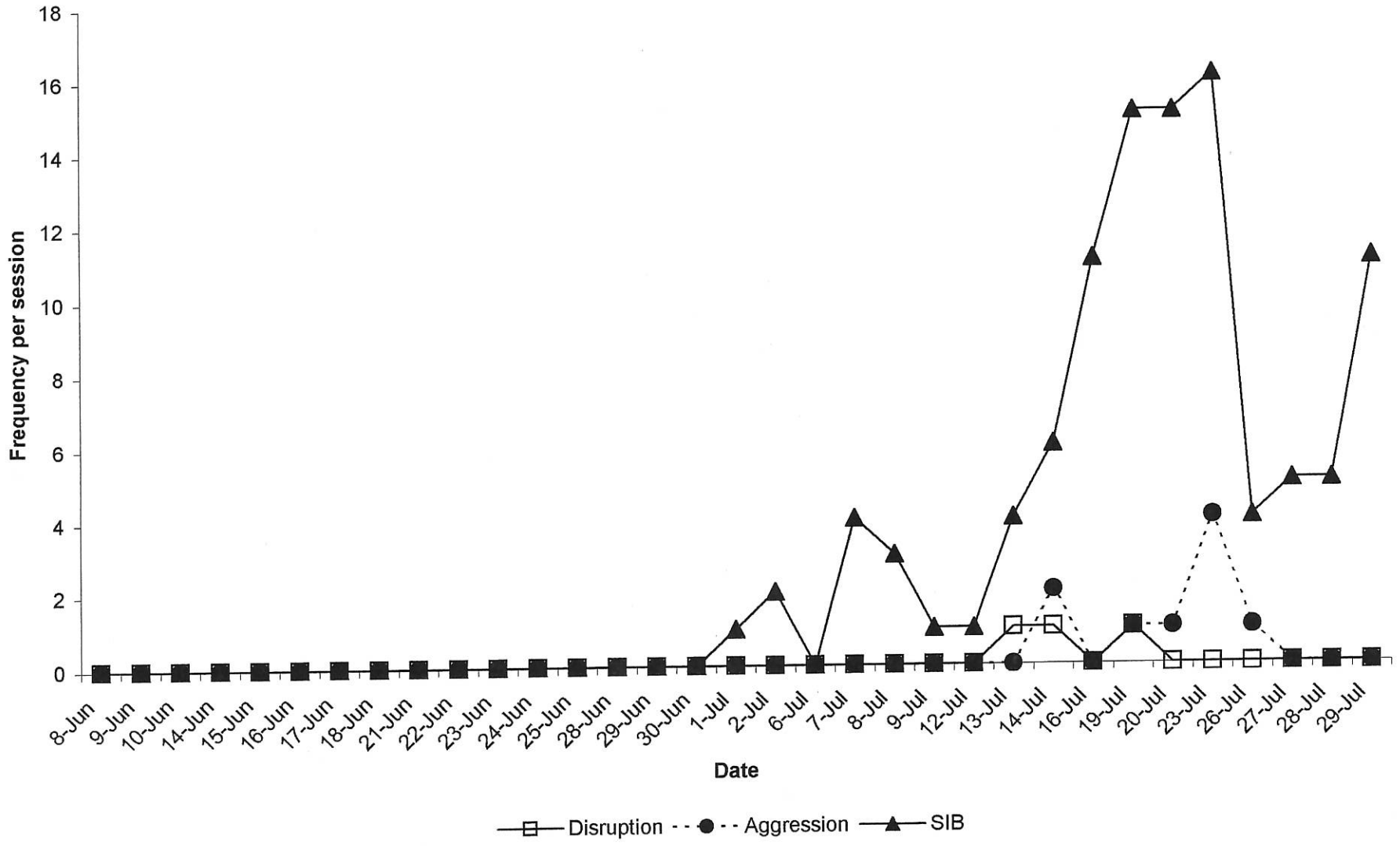
Ben Johnson

Spelling Words

Graphed by
Susan Johnson



Frequency of Serious Behavior during ESY



The Honorable Kay O'Connor
Kansas Senate Republican
1101 North Curtis
Olathe, KS 66061

Re: Support of Senate Bill 169

Dear Senator O'Connor:

We have had the opportunity to review the proposed Senate Bill 169 and our family is in support of this scholarship program.

We have a child who is severely developmentally delayed and is currently in a public school special education program with an IEP. We are educated parents and our desire is to provide an appropriate educational program for our special little guy.

It is very important to us as parents and voting taxpayers to be satisfied with the education of our children and to see significant educational outcomes. Currently the majority of parents only have two options with a resident public school if they are dissatisfied with their child's educational program: 1) accept an inappropriate program or 2) hire an attorney and enter into a legal due process with the school district to change the program. These are not good options for the family or the resident school district and are a waste of funds, resources, and precious time.

As parents concerned with the use of these funds, we appreciate the design of the scholarship program, which allows for the use of currently allocated funds for special education to be utilized meeting the individual unique needs of the child.

We believe because of the unique and special needs of our child this bill will be very beneficial. We also believe it will assist many other parents we've met as a result of our efforts to get the best services for our disabled child and we look forward as do they to its implementation. This bill will give parents and school districts a new way to collaborate in the education of children in the state of Kansas.

Sincerely,



Jim and Trisha Brown
11966 South Clinton
Olathe, KS 66061

Senate Education Committee
2-21-05
Attachment 8

Testimony to Senate Education Committee

RE: SB 169

February 21, 2005

Kathy Cook, Executive Director (913) 825-0099
Kansas Families United for Public Education

I would like to thank the committee for the opportunity to address you this afternoon.

Last week I testified before this committee and urged you to fund 100% of the excess costs of Special Education services. If we truly want to better serve our students with Individual Education Plans, this is what will be required.

I will admit that I am not an expert in Special Education Services, although my child does have an Individual Education Plan. Every child with an IEP has an individual need, so I will not base my testimony solely on my personal experience.

National PTA provides a very useful resource for parents of children with Individual Education Plans; it is a listserv where parents can discuss successes and failures within our public school systems across the country. We sent a message out about SB169 to that listserv and asked for opinions. Please keep in mind that many of these parents have students in school districts that do not provide nearly the level of service that Kansas does, and some reside in districts that provide far more resources than we do. Now, with that in mind: we did not receive one positive response to this bill.

This bill states that the participating school receiving public funds for the scholarship "shall be given the maximum freedom to provide for the educational needs of their students without governmental control." What that really means is our tax dollars will be spent with no oversight. In a democracy, spending of taxpayer dollars should **always** be subject to government oversight. Otherwise, you get taxation without representation, the very concept our founding fathers fought a revolution, and established this nation, to prevent.

*Senate Education Committee
2-21-05
Attachment 9*

This bill reads, "the maximum scholarship granted an eligible student shall be an amount equivalent to the **cost** of the educational program that would have been provided for the student in the resident school district." The state of Kansas is currently not providing the full cost of these programs for students in public school; we are in fact only funding 82% of the excess cost of Special Education. If we are to provide private institutions with the full cost of these educational programs, we should only do so after providing the full cost to our public schools. Perhaps if the state was adequately funding Special Education in our public schools there would be no need for a "scholarship" program.

It is our opinion that this bill is simply an attempt to introduce vouchers in the state of Kansas. This bill allows public funds to be used in private institutions free of public control and oversight. Parents may think they are being allowed a choice; however, there is nothing in this bill that guarantees parents that their children will be admitted to any private school wishing to participate. The only choice they have is the choice of where to apply. That choice may also be uninformed, since private institutions have no requirement to provide information on teacher qualifications or parental involvement.

Our organization opposes this bill and I, as a parent of a child with an Individual Education Plan, oppose this bill.

If this body wishes to improve services to students with special needs, then I urge you to fund Special Education in our public schools at 100% of the excess cost.



Disability Rights Center of Kansas

3745 SW Wanamaker Road ♦ Topeka, KS 66610

785.273.9661 ♦ 877.776.1541 (V/TDD)

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info@drckansas.org

Testimony to the Senate Education Committee

February 21, 2005

Chairwoman Schodorf and members of the committee, my name is Michael Donnelly. I am the Director of Policy and Outreach for the Disability Rights Center of Kansas, formerly Kansas Advocacy and Protective Services (KAPS). The Disability Rights Center of Kansas (DRC) is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As such, DRC is the officially designated protection and advocacy system for Kansans with disabilities. DRC is a private, 501(c)(3) nonprofit corporation, independent of both state government and disability service providers. As the federally designated protection and advocacy system for Kansans with disabilities our task is to advocate for the legal and civil rights of persons with disabilities as promised by federal, state and local laws, including children using special education services.

Among our 2005 Annual priorities is disability rights advocacy for students with rights under the Individuals with Disabilities Education Act (IDEA). DRC assisted approximately 100 families by providing special education related disability rights advocacy services in FFY 2004. DRC expects that number to increase in FFY 2005.

DRC opposes SB 169 the Special Needs Scholarship program. DRC's opposition is based in the probability that this program would likely cause children with disabilities who are eligible for special education to be denied their rights under IDEA (Individuals with Disabilities Education Act). Two principals provide the foundation for the rights provided a student with disabilities

under IDEA, Free Appropriate Public Education (FAPE) and Least Restrictive Environment (LRE).

Under this proposal, the IEP team would develop an educational plan that meets requirements for FAPE and LRE and the school that the child attends has no obligation to implement the plan, including the assurances of FAPE and LRE. The IEP team can at its discretion recommend alternative placements for a student it believes would best serve the student with disabilities. The parent is supposed to be an integral member of the team and must sign off on its recommendations before they can be implemented. When an IEP team recommends the placement of a student in an alternative placement, or private school it is with assurances that FAPE and LRE have been considered.

Secondly, DRC is concerned that students with disabilities would not receive the related and supplemental services provided under IDEA. These services would include communication devices, interpreter services, assistive technology, various therapies, etc. These services are related to the educational goals of the student, and are necessary in order for the student to participate fully in the education process. Under this proposal, the private school appears to have no obligation to related and supplemental services.

There are lots of other concerns with this legislation, e.g., discrimination on the basis of disability. IDEA is a law that implements certain rights to students with disabilities in need of special education services and supports, and their parents. The state can not, and must not erode or deny those rights by providing a scholarship under which the student's needs are not addressed. The state can not contract, or donate away its responsibility to suitably educate all of its students, including students with disabilities in need of special education services.



Testimony on
SB 169 – Special Needs Scholarships

Before the
Senate Committee on Education

By Mark Tallman, Assistant Executive Director/Advocacy
February 21, 2005

Madam Chair, Members of the Committee:

Thank you for the opportunity to comment on **SB 169**. We appear in opposition to this bill.

SB 169 would establish a private school voucher program for special education students. KASB's position on vouchers is very simple. If a school receives public funding, it must serve all students without any preconditions or eligibility requirements, as public schools do; it must be governed by the same rules and regulations that the Legislature, the Kansas State Board of Education and the federal government has established for all other public-funded schools; and it must be accountable to the public and taxpayers through the locally elected school board (as provided in the state constitution.) This bill falls far short of any of those standards.

The first section of the bill says the purpose is to provide special needs students with the option to attend the public or non-public school of their choice. Yet it does nothing to guarantee that option beyond current law. The bill does not require public schools to accept children that do not reside in their district; nor does it require private schools to accept all children who apply; nor does it limit the cost of tuition to private schools. Nor does the bill require private schools to accept students with all exceptionalities, which seems to mean that a school could accept only gifted students, or gifted students who have no behavior problems, or gifted students with whatever attribute the school finds desirable.

Section three of the bill makes this clear. Any parent who is "dissatisfied with student's progress" is eligible, presumably even if the student is meeting the Individual Education Plan goals that the parent agreed to. However, the student must also be accepted by a participating school, which may not discriminate on the basis of race, color, national origin or religion, but may presumably discriminate on the basis of anything else.

The amount of the scholarship or voucher will be determined by the Kansas State Department of Education, based on what it would have cost to provide the IEP in the public school, or the estimated cost of serving the student in the private schools, even though the private school is not required to follow the IEP. The private school's cost of serving the child does not appear to be limited to special education services.

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In other words, the parent can demand a high level of special education services from a public school, transfer to a private school that provides a lower level of special services, and receive a special needs scholarship for educational costs not related to special education. Therefore, the special needs scholarship may simply subsidize the regular educational costs of the private school. Public schools, on the other hand, must use special education funds only for special education, and must follow the IEP.

Private school students in Kansas are already entitled to receive special education services from public schools. **SB 169** does not appear to address this issue. It may be possible for a student to continue to receive free special education services from the student's public school district, and at the same time, receive a voucher to cover the "regular" costs of attending the private school. There does not appear to be anything in the bill that actually requires the private school to provide any special education services.

Section 3(h) allows a parent to remove the child from the private school "at any time." Consider a public school that has been providing expensive special services – special staffing, equipment, etc. – required by a student's IEP. If the parents announce they are "dissatisfied" and transfer the child to a private school, which charges tuition equal to the scholarship (or more) and does not have to provide these services if the parent agrees. Perhaps the school district is able reduce staff and related costs because the child is no longer attending. Several months (or weeks, or days) later, if the parents are dissatisfied with the private school, they can immediately return the child to the public school, which must immediately restore the services required by law, regardless of cost.

Section 6 (b) and (c) specifically states that the private school is not subject to public oversight or regulation, despite the fact that it is accepting public education dollars.

Finally, Section 8 requires an evaluation of the program that seems to be designed to produce a biased result. First, it requires a study to be done with non-state funds, meaning the state cannot pay for an evaluation of its own program. Among the likely contributors to such a study would be those with a bias for, or a vested interest in, the expansion of private school vouchers. Second, it requires assessment of parent and student satisfaction with the program without defining how satisfaction is to be measured. Third, it requires assessment of students who were "victimized" because of their special needs at their resident school compared to the percentage so victimized at the participating school. Not only does this fail to define what is meant by "victimized" or how this is to be measured, it ignores that fact that public schools are required to report certain incidents to law enforcement and many private schools are not.

The same is true for a comparison of "behavior problems." We readily concede that a public school which is legally required to accept all students, including those with behavior problems, will have more students with behavior problems than a private school which can exclude or expel such students. We really don't need a study to tell us that.

In fact, this study of a special needs scholarship program is not required to assess anything having to do with "special needs" or "scholarship," such as academic performance or providing special services to students.

What **SB 169** would really do is allow private schools to enroll only such students as they wish to educate, who happen to have an IEP, receive public funding in the form of scholarships, and provide a lower level of special services, with virtually no oversight or accountability. This could reduce funding for public schools that are required to educate all children, regardless of disability, at a level provided in the IEP, with extensive oversight and accountability. We urge you to reject this bill.

Thank you for your consideration.



Mark Desetti, Testimony
Senate Education Committee
February 21, 2005
Senate Bill 169

Madame chairman, members of the committee, thank you for the opportunity to come before you today to discuss Senate Bill 169.

I would like to lay out our concerns regarding this legislation.

First, this bill is carefully crafted to ensure that you can never get an accurate fiscal note. On page 2, lines 6 and 7, it says the Department of Education shall determine the voucher amount by looking at the IEP – every voucher is different. Lines 10 through 12 on the same page say the amount shall be “equivalent to the cost of the educational program that would have been provided for the student in the resident school district.” It goes a little further though on lines 14 and 15 to say that, while the voucher is equivalent to the cost of implementing the IEP, the private school has no obligation to honor the IEP at all. The school gets paid for all the services, but is obligated to provide none of them.

The proponents I am sure will argue that there is no fiscal note to the state. I suppose that’s because the money for the voucher comes from the resident school district, not the state. The child is not enrolled in the resident school district so the district gets no funding for the child – no base state aid, no special education funding. But on page 2, lines 23 through 25, the bill says, “the funds needed to provide a scholarship shall be subtracted from the state school aid payable to the student’s resident school district.” The cost of this voucher is drained directly off the general education program of the resident district.

What other bills will the district be given?

- Section 3 (c) bills the resident school district for transportation. Yes, the district gets transportation weighting for the child but the costs could significantly outweigh the funding if one considers that transporting one student to a distant private school could require private transportation arrangements. Perhaps a private school bus, a taxi, or a daily ride from a district employee is the solution. (p2, lines 40-43; p3, lines 1-2)
- Section 3 (d) bills the resident school district if the parent wants the child to take the state assessment. (p3, lines 3-6)
- Section 7 (c) says that participation in this program is “a nonpublic placement for purposes of the individuals with disabilities education act.” You know that public schools, under IDEA, must provide special education services to resident students in private schools. This bill drains the money away from the resident school district, giving it to the private school, and then holds the public school responsible for providing services. (p4, lines 38-40)
- If the private school wants to give the student assessments to determine his or her needs, the public school must foot the bill; “the costs of any assessment by the participating school of the student’s special needs may be included in the scholarship amount.” (p2, lines 20-21)

Senate Education Committee

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Attachment 12

Sure with this dramatic amount of resources being drained from the resident school district for the benefit of a private school, the accountability measures must be great. That's what one would think, however, the opposite is true.

Section 6 (a) beginning on page 3 spells out what a school must do to be eligible. There are 12 requirements. And there is one telling omission. The school does not have to be accredited. We assumed that back in section 3 (d) in which we learned these schools were under no obligation to give state assessments. Accredited schools must give state assessments.

This is further spelled out in section 6 (b) where the authors say, "The department and any other state agency may not in any way regulate the educational program of a participating school that accepts a special needs scholarship."

And how will the state know this is a successful program. That is assured by the carefully crafted "study of the program." First of all, this study cannot be funded by the state – private funding only. I'm sure the money will be readily available from voucher enthusiasts. See section 8 (a).

Five of the six issues to be assessed are designed to show perfect results. Are the students satisfied? Are their parents satisfied? "The percentage of participating students who were victimized because of their special needs status at their resident school compared to the percentage so victimized at their participating school." "The percentage of participating students who exhibited behavioral problems at their resident school compared to the percentage exhibiting behavioral problems at their participating school." That one is easy to calculate since section 7 (b) allows the voucher school to throw out any student who does not "comply fully with a participating school's written code of conduct." We can tell you now, it will be 0% at the voucher school.

Senate Bill 169 is a terrible idea. Its sole purpose is to drain funds from public schools under the guise of helping special needs students. And those funds will go to unaccredited, unaccountable private schools – perhaps home schooling parents who wish to bring in a few extra children and their accompanying state aid. It is bad public policy and we urge you to reject Senate Bill 169.

James L. Menze
Executive Director
jmenze@usa-ks.org

M. Katharine Weickert
Director of
Administrator Services
kweickert@usa-ks.org



Kansas Association of
Elementary
School Principals
(KAESP)

Kansas Association of
Middle School
Administrators
(KAMSA)

Kansas Association of
School Administrators
(KASA)

Kansas Association of
School Business
Officials
(KASBO)

Kansas Association for
Supervision and
Curriculum Development
(KASCD)

Kansas Association of
Special Education
Administrators
(KASEA)

Kansas Association of
Secondary School
Principals
(KASSP)

Kansas Council of
Career and Technical
Education Administrators
(KCCTEA)

Kansas School
Public Relations
Association
(KanSPRA)

Feb. 21, 2005 -- SB 169

Madam Chair, Members of the Senate Education
Committee

A student with an IEP

While the bill infers special needs students would be students with a handicap, the way the bill is written, it also applies to all gifted students.

Federal Law requires the public school to presently provide services.

Federal law clearly delineates that students who attend a private/parochial school in a school district have the right to services from the school district where the private school is located. SB169 takes this further in that now the public school must provide services and provide a scholarship to the private school for the honor of providing services.

This bill should be rejected.

Don Willson
Governmental Relations
United School Administrators

Senate Education Committee
2-21-05
Attachment 13



Topeka Independent Living Resource Center

785-233-4572 V/TTY • FAX 785-233-1561 • TOLL FREE 1-800-443-2207
501 SW Jackson Street • Suite 100 • Topeka, KS 66603-3300

Testimony on SB 169 Before the Senate Committee on Education

February 21, 2005

Chairwoman Schodorf and members of the committee thank you for the opportunity to provide testimony on SB 169 today. My name is Kevin Siek and I am a disability rights advocate for the Topeka Independent Living Resource Center. Our agency is a civil and human rights organization, with a mission to advocate for justice, equality and essential services for all people with disabilities.

We have several concerns with this proposed legislation.

First, as an agency that advocates for the full inclusion of people with disabilities in American society we must oppose SB 169 because it will move kids with disabilities out of the mainstream and into segregated programs.

Secondly we are also concerned that this program will take much needed money for special education programs away from public schools and could have the affect of limiting responsibility for public schools to provide a free and appropriate public education (FAPE) for kids with disabilities.

Lastly, we are concerned that Section 6 of the bill, which describes what nonpublic schools must do to be eligible for the program, appears to excuse these schools from any requirement to provide an education comparable to FAPE or that they cannot discriminate in admissions on the basis of disability.

Advocacy and services provided by and for people with disabilities.

Senate Education Committee

2-21-05

Attachment 14