

## MINUTES OF THE SENATE EDUCATION COMMITTEE

The meeting was called to order by Chairman Jean Schodorf at 1:40 p.m. on March 22, 2005, in Room 123-S of the Capitol.

Committee members absent: Barbara Allen- excused  
Pat Apple- excused

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

Conferees appearing before the committee: Representative Bill Otto  
Jane Rhys, Kansas Council on developmental Disabilities  
Karen Snell, Families Together, Inc.  
Kevin Siek, Topeka Independent Living resource Center  
Cynthia Kelly, Kansas Association of School Boards  
Josie Torrez, Statewide Independent Living Council of  
Kansas  
Jackie Miller, parent from Emporia  
Jennifer Schwartz, parent from Lawrence  
Kirk Lowry, Disability rights Center of Kansas

Continued hearing on:

**HB 2331—Special education complinace with federal law (IDEA)**

Representative Bill Otto offered amendments to **HB 2331** which would take the gifted program out of federal regulations. (Attachment 1) He explained that House Education Committee did not approve his original amendment because it was not clear that his intent was to eliminate unnecessary paperwork, not to kill the gifted program. Therefore, New Section 23 was added to make it very clear that expenditures for gifted children programs and services would not be decreased. He explained that his amendment was an attempt to ensure that the money is spent on children instead of being spent on paperwork and extra compliance with federal regulations.

Senator Teichman asked if the amendment would result in the funding for gifted children remaining at the current level and never being increased. Representative Otto responded, "That's a good question. It might need a little tweak." Senator Schodorf asked what the difference between gifted classes and enrichment classes would be. Representative Otto said, "Right now, definitions tie us more into IQs and things like that. My special education directors say that we could save possibly as much as half our money that is going to things that are not helping kids and change it to helping kids. I think that's a little high, but we could surely save a fourth." Carolyn Rampey, Legislative Research Department, clarified, "Two of the major changes mean you do not need to have a special education teacher. So, that would be one requirement. And you would not subject a gifted child to an IEP or the due process procedures—those kinds of things which are time consuming with heavy report requirements. So, you would have a regular teacher and you wouldn't have an IEP." Senator Lee commented that, in most schools, regular teachers would not have the time to teach gifted classes and that, without a teacher for gifted students, there would be no gifted program in most cases. In addition, she noted that an IEP is important for a gifted student because it provides a framework for their progress.

On behalf of Jane Rhys, Executive Director of the Kansas Council on Developmental Disabilities (KCDD), Kim Strunk, KCDD, testified in support of **HB 2331** as amended by the House Education Committee. She noted that the House amendment would keep the age that Kansas schools begin planning for transition services at 14. She also noted that KCDD strongly opposes any changes to parental consent, the so called 25% rule. She pointed out that the Division of Budget determined that the bill would have no appreciable effect on special education state aid. (Attachment 2) Ms. Strunk informed the Committee that KCDD was in support amendments proposed by Rodney Bieker, General Counsel for the State Department of Education.

## CONTINUATION SHEET

MINUTES OF THE Senate Education Committee at 1:40 p.m. on March 22, 2005, in Room 123-S of the Capitol.

Karen Snell, Families Together, Inc., testified in support of **HB 2331** as amended in the House without any additional substantive amendments. (Attachment 3) She noted that Families Together did not object to the amendments offered by Mr. Bieker but had some concerns that the amendments might slow the passage of the bill.

Kevin Siek, Topeka Independent Living Resource Center, testified in support of **HB 2331** as amended in the House and with no additional amendments. (Attachment 4)

Cynthia Kelly, Kansas Association of School Boards (KASB), testified in support of **HB 2331**. She emphasized that it was very important that the bill be passed this year because, without it, there will be numerous conflicts between state and federal special education requirements, which will make compliance with either law much more difficult. She pointed out that passage of the bill would allow teachers and service providers to spend more time with children and less time with paperwork, and schools would be given more flexibility needed in disciplinary situations. (Attachment 5) Ms. Kelly confirmed that KASB supports the amendments suggested by Mr. Bieker.

Josie Torrez, Statewide Independent Living Council of Kansas (SILCK), called attention to written testimony she prepared for the March 21 meeting in which she requested that **HB 2331** be held so that a stakeholder group would have time to meet with the State Department of Education to go over the changes that would affect Kansas students with disabilities. (Attachment 6) She went on to respond to Mr. Bieker's testimony of March 21. She disagreed with Mr. Bieker's statement that the bill must be passed this year. In her opinion, the State Department of Education should take more time to thoroughly review the federal law before taking action with state law. As to Mr. Bieker's request for two pilot programs, she noted that the first pilot program would reduce paperwork; however, paperwork is the only documentation parents have regarding their child's special education services. She emphasized that SILCK adamantly opposes the second pilot program for a three-year IEP because it would be difficult to see where the student may be in three years. As to Mr. Bieker's amendment to change the transition age from 14 to 15, she requested that the transition remain at age 14 because one year can make a significant difference in planning for transition and obtaining the services the student will need at age 16. In conclusion, she urged the Committee to keep students with disabilities in the forefront when considering legislation concerning Special Education. (Attachment 7)

Jackie Miller, the mother of three gifted children, testified in support of **HB 2331** and in opposition to amendments which would remove gifted children from the definition of "exceptional children." She noted that procedural safeguards, including the parents' rights and due process, are critical in ensuring that children's needs are met in the classroom. She emphasized that, without appropriate educational programs, all gifted students are at risk of not achieving their full potential. In her opinion, it is imperative that society acknowledge that gifted children have specific needs. (Attachment 8)

Jennifer Schwartz informed the Committee that she is employed by the Kansas Association of Centers for Independent Living (KACIL), and she called attention to written testimony submitted by Tanya Dorf, Chair of the KACIL Governmental Affairs Committee, requesting that the committee consider holding **HB 2331**. (Attachment 9) Ms. Schwartz went on to explain that her thirteen-year-old daughter was diagnosed with cerebral palsy and has qualified for special education services since age three. She followed with testimony in which she expressed her concern that the State Department of Education had not discussed the effect the bill with a group of stakeholders, which includes transition age students, parents, teachers and advocacy groups. In addition, she was concerned about the section of the bill which addresses transition services for students with disabilities. She urged the Committee to hold the bill until next year. (Attachment 10)

Kirk Lowry, Litigation Director for the Disability Rights Center of Kansas (DRC), noted that DRC is neutral on **HB 2331**; however, DRC does not agree that the Legislature must pass a conformity bill this year. He noted that it would be helpful to have an additional year to go over the 650 page federal law and the numerous state laws. He argued that the Legislature should delay action on the bill in order to ensure that Kansas has the best conforming special education law possible. He went on to discuss the following DRC issues with regard to **HB 2331**: (1) Transition planning at age 14 is imperative to Kansas children's success, (2) Foster parents should not be excluded, (3) Current law regarding parental consent regarding placement decision must be maintained, and (4) A statewide policy regarding the use of seclusion rooms and restraint and rules and

CONTINUATION SHEET

MINUTES OF THE Senate Education Committee at 1:40 p.m. on March 22, 2005, in Room 123-S of the Capitol.

regulations to carry out the policy should be established. (Attachment 11)

Mr. Bieker responded to Committee questions regarding his suggested amendments to **HB 2331**. Senator Vratil asked if his suggestion was to delete lines 28 to 36, page 22, which concern transition service needs. Mr. Bieker said, "Because of the importance of transition services and the need to make sure that we are consistent with federal law, we retain the language up above and add to it that language in lines 33 through 36, which will exceed the federal requirements. So, it's a marriage of the new law and old law." Senator Vratil asked if it was his intent to change 16 to 15 at each place it occurs in the bill. Mr. Bieker said, "Beginning at age 14 may be just the way to make it crystal clear that we are talking about 14. I said, if you change it back from 16 to 15, it means 14." Senator Schodorf commented that the amendment would put stricken lines 22 through 28 on page 22 back in, changing 16 to 15, omit (8) (A) and then start at (B), lines 33 (beginning at age 14, or younger) through 36.

Mr. Beiker clarified his proposed amendment as follows:

On line 22, "beginning at age 14, and updated annually thereafter. (A) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills, and (B) the transition services, including appropriate courses of study, needed to assist the child in reaching the stated postsceondary goals, and (dropping down to line 33, B becomes C) beginning at age 16, or younger, if determined appropriate by the IEP team, a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages." He noted that changing 16 on line 33 would be something new and in addition to what has already been done for eight years. He agreed with Senator Schodorf's explanation that students begin their transition outside the school at age 16.

Senator Schodorf asked conferees why they recommended that action on the bill be delayed for a year or two. She noted, "If it doesn't work, you can come back next year and say this isn't working, and it needs to be changed." Mr. Lowry responded, "My answer is that I agree with Mr. Bieker when he says that there was much more retained than there was changed. But it is still a 650 page federal law change, and there are many issues that we would just like to have more time to go over. We've had one hearing with Mr. Bieker and then one follow up, and the rest of the folks in the disability community have not gotten our heads together and really worked over this with a fine tooth comb. As far as the conflicts and problems, I don't see that, at least in my practice, as a big problem. Federal law trumps state law. And, if there are additions in state law, then those things that go above that are what you look to, but you always go to the federal law first, and that's going to trump it. And that's the way its going to be now too. At least from my perspective in representing children and families, I would rather have the Kansas law stay the way it is now and give us another year to look over the proposed changes. I don't see the compelling mandate that we have change the law this year."

Senator Teichman asked Mr. Lowry, "If we pass this this year, what is stopping you from coming back after you have had time to look at the 650 pages and saying, this is not good, we want it changed?" Mr. Lowrey responded, "Nothing. It's just more difficult."

Ms. Kelly responded, "In my opinion it is imperative that the bill pass this year. There's a big difference between this legislation and the legislation that you passed in 1999. The fact is, right now, federal law provisions are different than state law provisions, and people are going to have to look at both. If requirements are not conflicting, they will probably have to do both. If a requirements conflict, people will not understand which they have to follow, the federal or the state law. I think, at this point of time where we have substantive provisions in our laws that are now going to be in conflict with the federal law that goes into effect on July 1, it is going to be very confusing for people in the field. This is a different situation than what we had in 1999." With this, the hearing on **HB 2331** was closed.

Senator Steineger moved to amend **HB 2331** as written and described by Rod Bieker, seconded by Senator Teichman. The motion carried.

Senator Steineger moved to recommend **HB 2331** favorably for passage as amended, seconded by Senator Vratil. The motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate Education Committee at 1:40 p.m. on March 22, 2005, in Room 123-S of the Capitol.

Senator Schodorf called the Committee's attention to the minutes of the March 7, 8, 9, 10, 14, 15, and 16 meetings.

Senator Teichman moved to approve the minutes of the March, 7, 8, 9, 10, 14, 15, and 16, 2005, meetings, seconded by Senator Vratil. The motion carried.

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

No further meetings are scheduled.



**SENATE EDUCATION COMMITTEE  
GUEST LIST**

DATE: March 22, 2005

NAME	REPRESENTING
Rod Bisher	KSDE
Lmi Munk	DD Council
Val DeFever	SQE
Garry Cook	KFUP E
RUSSELL MILLS	GACHES
Elaine Frisbie	Div. of Budget
Buck Sawyer	SRS
Leo V Kerwin	Self
BILL REARDON	KCKS USD 500
Lynd Johnson	self
Ginger Lawson	KGTC
Kathy Jones	USD 413/ANW/KGTC
Ear Ford	/KNEA
Jackie Miller	parent
Andy Kelly	KASB
Karen Snell	Families Together
Jennifer A. Conway	KACIL
Josie Torres	SILCK
Kerri Sieko	TILRC

**SENATE EDUCATION COMMITTEE  
GUEST LIST**

**DATE:** March 22, 2005

NAME	REPRESENTING
Kirk Lowry	DRC
<del>Kathleen Skelton</del>	DRC
Denal Weber	w/ Senator Goodwin
Jess Cafferata	Keamey & Assoc.
MARK DESETTI	KNEA
Diane Gjerstad	USD 259

## STATE OF KANSAS

## HOUSE OF REPRESENTATIVES

MR. CHAIRMAN:

I move to amend HB 2331, as amended by House Committee, on page 1, in line 29, by striking "or gifted children"; in line 33, by striking "exceptional";

On page 32, following line 7, by inserting the following:

"New Sec. 23. The state board of education shall provide for programs and services for gifted children. Statutory provisions and rules and regulations relating to exceptional children shall not be applicable to gifted children except as may be provided by rules and regulations of the state board of education. The state board of education shall take no action that would result in a decrease of expenditures for gifted children programs and services.";

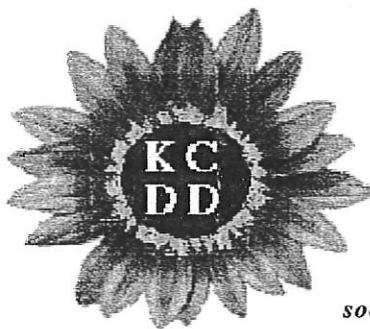
By renumbering the remaining sections accordingly;

In the title, in line 11, preceding "amending" by inserting "concerning gifted children;"

Rep. Bill Otto

\_\_\_\_\_  
District.

Senate Education Committee  
3-22-05  
Attachment 1



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

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KATHLEEN SEBELIUS, Governor  
DONNA BEAUCHAMP, Chairperson  
JANE RHYS, Ph. D., Executive Director  
kcdd@alltel.net

Docking State Off. Bldg., Room 141, 915 SW Harrison  
Topeka, KS 66612-1570  
Phone (785) 296-2608, FAX (785) 296-2861  
<http://nekesc.org/kcdd>

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

## SENATE EDUCATION COMMITTEE

March 21, 2005  
Room 123-S

Madame Chairperson and Members of the Committee, my name is Jane Rhys and I represent the Kansas Council on Developmental Disabilities. I am here as a proponent of House Bill 2331 as amended by the House Education Committee, an Act concerning school districts; relating to the provision of special education and related services.

The Kansas Council is federally mandated and federally funded under the Developmental Disabilities Assistance and Bill of Rights Act of 2000. We receive no state funds. The Council is composed of individuals appointed by the Governor, including representatives of the major agencies who provide services for individuals with developmental disabilities. At least 60% of the membership consists of individuals who are persons with developmental disabilities or their immediate relatives. Our mission is to advocate for individuals with developmental disabilities to receive adequate supports to make choices about where they live, work, and learn.

We appreciate the careful thought that went into this bill by both the Department of Education and the House Education Committee. The amendment by the House would keep the age that Kansas schools begin planning for transition services at 14. Transition services are those services, whether it be advanced placement, vocational, independent living or other training that prepare a child to enter the adult world. For some of our students, planning is very simple because they have already determined that they will enter the military, attend a post high school training program, college or something similar. For our children who are more severely disabled, transition involves much more training and the need to get adult service providers, such as Vocational Rehabilitation Services, Community Service Providers, and others involved in the planning and preparation. It is a very complex issue. In such cases, waiting until they are 16 is too late to begin planning for their needs.

Senate Education Committee  
3-22-05 Attachment 2



There is a lot of history involved in this topic. In 1992 Kansas determined that we would provide Transition services planning beginning at age 14. By 1997 Congress decided to move the federal requirement from age 16 to age 14. In last year's reauthorization, they inexplicably move it up to age 16. We believe we had it right in 1992. We applauded the decision of the 1992 Legislature to place Kansas transition services at age 14 and hope that the 2005 Legislature will concur.

The proposed changes in H.B. 2331 will not affect spending for special education. The changes are primarily to make our statute conform to the newly reauthorized Individuals with Disabilities Education Act.

We would also strongly oppose any changes to parental consent (page 4, lines 7 – 10), the so called 25% rule. Prior to 1999, Kansas law was even stronger requiring parental consent for any change in placement. The current 25% rule was the result of a compromise between parents, advocates, and the Kansas Association of School Boards, brokered by a Senator during the previous reauthorization. We respect that compromise and strongly oppose any changes to it.

There will be no additional costs to the bill as determined in the Fiscal Note by Duane Goossen, Director of the Budget, who stated that the proposed changes "would have no appreciable effect on special education state aid."

As always, we greatly appreciate the opportunity to speak to you and would be happy to answer any questions.

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



# Families Together, Inc.

*Parent Training & Information Centers for Kansas*

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

Wichita Parent &  
Administrative Center  
3033 W. 2nd, Suite 106  
Wichita, KS 67203  
Voice/TDD (316) 945-7747  
1-888-815-6364  
Fax (316) 945-7795  
[wichita@familiestogetherinc.org](mailto:wichita@familiestogetherinc.org)

Topeka Parent Center  
501 Jackson, Suite 400  
Topeka, KS 66603  
Voice/TDD (785) 233-4777  
1-800-264-6343  
Fax (785) 233-4787  
[topeka@familiestogetherinc.org](mailto:topeka@familiestogetherinc.org)

Garden City Parent Center  
1518 Taylor Plaza  
Garden City, KS 67846  
Voice/TDD (620) 276-6364  
1-888-820-6364  
Español (620) 276-2380  
Fax (620) 276-3488  
[gardencity@familiestogetherinc.org](mailto:gardencity@familiestogetherinc.org)

Kansas City Parent Center  
1333 Meadowlark Ln., Suite 103  
Kansas City, KS 66102  
Voice/TDD (913) 287-1970  
1-877-499-5369  
Fax (913) 287-1972  
[kansascity@familiestogetherinc.org](mailto:kansascity@familiestogetherinc.org)

Statewide Spanish Parent Line  
1-800-499-9443

## **Senate Education Committee Senator Schodorf, Chairperson**

**March 21, 2005**

### **Testimony in regard to HB 2331**

Madam Chair and members of the committee, thank you for the opportunity to speak with you today. My name is Karen Snell, and I represent Families Together, Inc. Families Together is a statewide nonprofit organization that assists parents and their sons and daughters that have disabilities. Families Together is the federally funded Parent Training and Information Center for Kansas as designated by the US Department of Education. We also receive funding through SRS, the Kansas State Department of Education, and the Kansas Department of Health and Environment for various programs and services designed to meet the needs of the families that we serve. Staff members of Families Together talk with families across Kansas daily about issues and concerns regarding their child's disability, including acceptance and awareness, education, service delivery, health needs, parents' rights, and funding sources.

I am here today to address HB 2331, the bill drafted to conform Kansas law to the recently reauthorized Individuals with Disabilities Education Act (IDEA) or Special Education for Exceptional Children Act. Families Together supports this bill in its current form and urges you to pass this bill onto the full Senate without any substantive amendments.

Thank you for your time and consideration. If you should have any questions regarding this testimony or our organization, please do not hesitate to contact me.

Karen Snell  
Regional Center Coordinator

Families Together, Inc.  
501 Jackson, Suite 400  
Topeka, KS 66603  
785-233-4777  
[karen@familiestogetherinc.org](mailto:karen@familiestogetherinc.org)

*Assisting Parents and Their Sons and Daughters with Disabilities  
Senate Education Committee  
3-22-05 Attachment 3*



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## 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

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### Testimony on HB 2331 Before the Senate Committee on Education March 21, 2005

Chairwoman Schodorf and members of the committee, thank you for the opportunity to appear before you 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.

I am here today to provide testimony on HB 2331. The purpose of this bill is to bring our state law into compliance with recent changes to the federal Individuals with Disabilities Education Act (IDEA).

The version of this bill that passed in the House of Representatives has addressed the major concerns of disability rights advocates. It restores language indicating that transition planning should begin at age 14 and retains the "25% rule" regarding parental consent when there are major changes proposed to a child's placement.

We ask that you pass the bill with no additional amendments and send it on to the full Senate for final passage.

*Senate Education Committee*  
*Advocacy and services provided by and for people with disabilities.*

*3-22-05 Attachment 4*



KANSAS  
ASSOCIATION



OF  
SCHOOL  
BOARDS

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

Testimony on H.B 2331  
before the  
Senate Education Committee

by

Cynthia Lutz Kelly, Attorney  
Kansas Association of School Boards  
March 22, 2005

Madam Chair, Members of the Committee, I appreciate the opportunity to appear in support of HB 2331. Without the passage of this law, there will be numerous conflicts between state and federal special education requirements, which will make compliance with either law much more difficult. Additionally, changes in federal law which reduce the amount of paperwork involved in special education, shift the focus to student achievement and give schools greater flexibility to ensure safe classrooms for all students are much needed improvements in the law.

Special education programs are costly and grossly underfunded at both the state and federal level. The new federal law explicitly encourages states to reduce the number of additional requirements contained in state law. Provisions of state law that require us to provide services or protections beyond what federal law requires only increase the cost and further dilute services we can provide for all children. It has long been the position of our association that except for the gifted mandate, state mandates should not exceed federal mandates, particularly when neither state nor federal funding come close to covering the excess cost of providing the services.

The House adopted amendments on page 22 of the bill which create transition service requirements in excess of what federal law requires. Additionally, the amendments contained in this bill do not address other state law requirements that continue to exceed federal requirements and drive up the cost of special education, including the parental consent for change of placement and service for children in private school provisions in K.S.A. 72-988(b)(6) and K.S.A. 72-5393.

Because we believe it is imperative that state law mirror federal law in the areas addressed by this bill, we ask you to recommend HB 2331 favorably for passage. However, we urge you to remain aware that additional requirements in state law result in the need for additional resources and additional costs. Thank you for your consideration.

*Senate Education Committee  
3-22-05  
Attachment 5*



Senate Education Committee

March 21, 2005

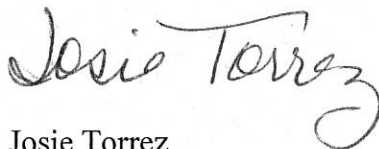
HB 2331

My name is Josie Torrez and I work for the Statewide Independent Living Council of Kansas and am a member of the Special Education Advisory Council (SEAC). I also have an adult son with autism, who received special education services and supports through his school years.

Our concern with HB 2331 is the expedient way the State Department of Education wants to get this passed this legislative session. We feel it would be best for the students that special education serves if the State Department of Education would convene a stakeholder group that would consist of parents, SEAC members, State Department of Ed staff, teachers and advocacy groups to go over the changes that would affect Kansas students with disabilities. We want to know "What's the hurry?"

We support the House Committee's amended bill to continue with current Transition planning at age 14. The State of Kansas has been out of compliance with "Transition" according to the Fed's. They have just, in the past year, come into compliance. When Joe was going through this transition, the IEP team believed, the earlier the better so that better planning would occur for him during his high school years. The transition plan helped us, as a family, to help him choose his classes for his first year of high school. We support keeping the transition age at 14. This would better serve the students with disabilities receiving special education services.

We ask for this committee's consideration of our request to hold this bill until the State Department of Education has met with all pertinent stakeholders regarding the changes this bill will have on students with disabilities in Kansas.



Josie Torrez  
Project Coordinator  
SILCK  
700 SW Jackson, Suite 212  
Topeka, Ks 66603  
785-234-6990

Senate Education Committee  
3-22-05  
Attachment 6

Senate Education Committee

March 22, 2005

HB 2331

Madame Chair and members of the committee. Thank you for allowing me to testify to your committee on HB 2331.

I would like to respond to Rod Bieker's testimony to your committee yesterday.

1. He stated that this bill must be passed this year by the Kansas Legislature. That is not true! The rules and reg's of IDEA at the Federal level have not been developed. Kansas would continue to receive financial assistance from the Fed's if this bill is not passed this legislative session. We feel the State Dept of Education should take it's time and thoroughly review the Federal law before taking any action with the State law. When action is taken, it must address the concerns of students, parents and advocates.
2. Mr. Bieker asked permission from the legislature for Kansas to apply for two pilot programs. The first pilot program is to "Reduce Paperwork". Paperwork is the **only** documentation parent's have regarding their child's special education services.
3. The second pilot program is for the "Three Year IEP". We are adamantly against this! Children change so quickly that we cannot imagine what parent would want to participate in this. The way it stands now, the IEP Team meets once a year to review what the student can do and what they need. The yearly IEP writes goals and objectives (or benchmarks) that will help the student achieve these goals to the best of their ability and what accommodations or modifications the student needs to achieve these goals. With a 3 Year IEP, it would be difficult to see where the student may be three years down the line.
4. Mr. Bieker also requested an amendment/balloon requesting Transition Age be changed to age 15 instead of age 14 as in current Kansas law. As many of your know, one year can make a huge difference in planning for transition and obtaining the services the student will need at age 16. We ask your committee to keep transition age at 14.

Thank you for your time and assistance in keeping students with disabilities in the forefront of anything your pass regarding Special Education.

Josie Torrez

Project Coordinator

Statewide Independent Living Council of Kansas (SILCK)

Senate Education Committee  
3-22-05  
Attachment 7

March 22, 2005

Testimony  
Of  
Jacquelyn S. Miller  
1769 Road F  
Emporia, KS 66801

Good afternoon. My name is Jackie Miller and I am the mother of three "gifted" children who attend public schools in Emporia, KS. We are here today to oppose removing gifted children from the definition of exceptional children. To further clarify, I support HB 2331, but I oppose any amendments.

About the time my husband and I were meeting with evaluation teams for our middle child, I began to examine the process for identifying and providing services for "gifted" children. Initially, I was surprised that provisions for enrichment services were handled the same as other special education services. As I explored further and became more in tune to my children's academic and intellectual needs, along with the knowledge that many states had cut gifted programs, I was convinced that gifted services belong with special education. The procedural safeguards including parent's rights and due process are critical to ensure children's needs are met in the classroom.

All gifted students, not just my children, have special needs and are "at risk" of not achieving their full potential. Research indicates that without appropriate educational programs gifted children are prone to behavioral and emotional problems.

It is imperative that Kansas continue to protect gifted children by the special education statute. These children are valuable to our society's future and we must demonstrate that by acknowledging that "gifted children" are "exceptional children" with specific needs.

Thank you for time and consideration.

*Senate Education Committee  
3-22-05  
Attachment 8*



**Senate Education Committee**

**Jean Schodorf, Chair**

**HB 2331**

**March 22, 2005**

**Member Agencies:**

**Center for Independent Living for Southwest Kansas**

Garden City, KS  
620/276-1900 Voice

**Coalition for Independence**

Kansas City, KS  
913/321-5140 Voice/TT

**ILC of Northeast Kansas**

Atchison, KS  
913/367-1830 Voice

**Independent Living Resource Center**

Wichita, KS  
316/942-6300 Voice/TT

**Independence, Inc.**

Lawrence, KS  
785/841-0333 Voice  
785/841-1046 TT

**Independent Connection/OCCK**

Salina, KS  
785/827-9383 Voice/TT

**LINK, Inc.**

Hays, KS  
785/625-6942 Voice/TT

**Prairie Independent Living Resource Center**

Hutchinson, KS  
620/663-3989 Voice

**Resource Center for Independent Living, Inc.**

Osage City, KS  
785/528-3105 Voice

**Southeast Kansas Independent Living, Inc.**

Parsons, KS  
620/421-5502 Voice  
620/421-6551 TT

**The Whole Person, Inc.**

Kansas City, MO  
816/561-0304 Voice  
816/531-7749 TT

**Three Rivers ILC**

Wamego, KS  
785/456-9915 Voice

Chairperson Schodorf and members of the Committee, thank you for the opportunity to provide testimony to you regarding HB 2331, an act concerning the provision of special education in Kansas. My name is Tanya Dorf, and I serve as the Chair of the Governmental Affairs Committee for the Kansas Association of Centers for Independent Living (KACIL). I am also the Executive Director of one of the twelve Centers for Independent Living (CILs) KACIL represents.

Centers for Independent Living provide services to people with disabilities of all ages. CILs also provide assistance to businesses and all other entities in the community to assist them in offering services to people with disabilities. We advocate at a state and national level for the rights of all people with disabilities to live in the communities of their choice.

Our greatest concern with HB 2331 is that stakeholders were not consulted or educated on this bill and the changes it makes to the current special education statute in our state. Centers for Independent Living receive many phone calls from parents that are very frustrated with the special education system, and often it is due to the lack of communication between schools and families. This legislation could be the same situation with lack of communication between KSDE and stakeholders. We would like to see the Department convene a stakeholders meeting to avoid this frustrating situation. We believe that this group should include transition age students with disabilities, parents, State Department of Education staff, teachers, and advocacy groups. This group would be able to look at the changes that are needed in the current statute and understand why those changes need to happen.

We have been fortunate in Kansas that we pride ourselves in education for **ALL** students. There are some parts of the current special education law that Kansas has chosen to go above what is required by the Federal government. We want to make sure that we can maintain this effort and continue to have the strong dedication to special education in our state.

KACIL would ask for this committee's consideration to hold this bill until the Kansas State Department of Education has held a meeting with key stakeholders concerning the changes this bill would have for students in Kansas that qualify for special education.

Thank you for your time

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*Senate Education Committee*

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*3-22-05 Attachment 9*



Senate Education Committee  
Jean Schodorf, Chair  
HB 2331  
March 22, 2005

Good afternoon, thank you for the opportunity to testify concerning HB 2331. This legislation works to bring the Kansas Special Education statute into conformity with recently passed federal special education law, IDEA (Individuals with Disabilities Education Act).

Let me begin with telling you a bit about our family. We have three children, Jessica; our oldest is 13 and a 7<sup>th</sup> grade student at Southwest Junior High in Lawrence. Jessica is diagnosed with cerebral palsy and has qualified for school special education services since the age of three. Before this she received Infant-Toddler services. We have worked diligently to be active members of Jessica's IEP team, and our family considers her education one of our top priorities.

We have two main concerns with HB 2331 as written:

First, the State Department of Education seems to have some urgency in having legislation passed this year. From our understanding the Office of Special Education Policy (OSEP) plan to have their first draft of regulations related to IDEA out by December 2005. The process has just begun! We would like to see the Kansas Department of Education pull together a group of stakeholders which would include transition age students, parents, State Department of Education staff, teachers, and advocacy groups. This group would go over the changes that IDEA and this bill would bring for students with disabilities. We would ask that the State Department of Education would be patient and thoughtful when putting together this bill, so that we can continue to have a good statute and that students with disabilities continue to receive an adequate education.

Our second concern is with the section that addresses transition services for students with disabilities. Currently Kansas begins transition planning for students in special education at age 14. This bill would change the age to 16 which would adversely affect students with disabilities. This is one section of the current law in which Kansas has gone above the letter of the law, and done what is right for students in our state. As I mentioned earlier our oldest, Jessica is 13. She began junior high school this year, and it has been quite a change. It is amazing to think that Jessica only has six years left in this educational system! Oh! My! Goodness!

Senate Education Committee  
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Attachment 10

At Jessica's IEP meeting this year we began to talk about transition, already! We know that things in Jessica's life typically take careful, thoughtful planning. Anything is possible for this child, but it usually takes some time. Last summer Jessica began to volunteer at places in Lawrence, so that she can experience certain career fields and we can evaluate if these are things she might be interested for a possible career. This is a young girl that is very capable of achieving her hopes and dreams, but needs folks in her life to help facilitate and plan this.

We appreciate the amendment added to this bill in the house to bring the transition age back to current statute, 14. We support this amendment.

In conclusion, our family would ask for this committee's consideration for our request to hold this bill. We would like for the State Department of Education to take time to convene a stakeholders group to review this bill and provide the most appropriate educational services that we can to the children in Kansas.

Thank you so much for your time

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## Disability Rights Center of Kansas

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**Testimony to the Senate Education Committee  
House Bill 2331  
March 21, 2005**

Chairperson Schodorf and members of the committee, my name is Kirk Lowry. I am the Litigation Director of 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, organizationally 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.

DRC remains somewhat concerned about passage of HB 2331, though we are far more supportive of the bill as it passed the Kansas House of Representatives than as it was originally introduced. KSDE has stated publicly, and we absolutely agree, that the Kansas Legislature does not have to pass a bill this year regarding “conformity” with the latest reauthorization of the Individuals with Disabilities Education Act (IDEA 2004). The last time that IDEA was reauthorized by Congress in 1997, the Kansas Legislature took two full years to pass the “conformity” legislation. Kansas lost no federal funding, and the Legislature took its time with the conformity legislation. Therefore, the Kansas Legislature should take the time to ensure that Kansas has the best conforming special education law possible. IDEA 2004 was signed into law only recently and the regulations have not even been developed. We continue our position that HB 2331 does not have to be passed this year, however, if the 2005 Legislature insists on

passing HB 2331 then it must fully address the concerns of students, parents and special education advocates identified below.

DRC strongly recommends that Kansas handles this IDEA reauthorization bill the same way it has handled the 1997 IDEA reauthorization – by taking the time to include all stakeholders in the development of new state policies, and taking the time to be certain that what is developed is in the best interest of students with disabilities. We have the time, let's do this right.

When it was initially proposed, this HB 2331 included a fairly significant policy change regarding Transition services and planning that is not required by IDEA 2004. In fact, the Transition services planning policy contained in HB 2331 as originally introduced was a new policy regarding Transition that was not required by IDEA 2004. Thankfully the House Committee amended the bill to continue with the current Kansas policy and we applaud their decision. DRC encourages this Committee to maintain that position.

### **DRC's Major Issues Specific to HB 2331:**

#### **1. TRANSITION PLANNING AT AGE 14 IS IMPERATIVE TO OUR CHILDRENS' SUCCESS; KEEP CURRENT LANGUAGE IN HB 2331 (keep current law):**

Page 22, Line 28 [KSA 72-987(c)(8)]. This section deals with Transition plans and services. IDEA 2004 states that transition services and planning must start “no later” than 16 years old. Current state policy, which we are told also pre-dates the reauthorization *before* IDEA 2004 in the form of pilot projects, has transition planning starting at age 14. IDEA 2004 allows for States to have transition planning start at age 14, which is the current policy of Kansas. Given the fact that the last on-site audit conducted by the U.S. Department of Education and KSDE's own 2002 self assessment cited Kansas for being non-compliant in Transition, it is important to keep current law on transition planning and transition services. These audits specifically found compliance issues with transition planning. DRC encourages the Committee to keep current policy and current law, which is in the version of HB 2331 before you today.



## **2. FOSTER PARENTS ARE PARENTS, AND SHOULD NOT BE EXCLUDED:**

Page 2, line 10, Section 1, (m) Foster parents. New Federal law allows foster parents to be involved in the planning and programming of special education services for foster children under their control. HB 2331 does not allow foster parents to have this higher level of involvement (which is allowed under federal law). All trained and educational advocates have the ability to be involved under HB 2331, regardless of whether they are a foster parent or not. Given the long, rich history in our state of trying to involve and support foster parents, this portion of HB 2331 seems out of sync with Kansas values and policy. Federal law now allows this important involvement by foster parents. DRC recommends that foster parents be allowed to act as a parent in those cases where the best interest of the child can be served. In many cases, the foster parent is the one person consistently advocating for the best interest of the child, are the only “parent” available to support the IEP and are connected to the child on a daily basis. The foster parent is very often able to meet the parenting needs of the child enrolled in special education programs without the appointment by KSDE as an educational advocate.

## **3. PARENTAL CONSENT REGARDING PLACEMENT DECISIONS MUST BE MAINTAINED – KEEP CURRENT LANGUAGE IN HB 2331 (keep current law):**

During the House Education Committee hearings the Kansas Association of School Boards proposed a change in parental consent requirements for changes in a student’s placement. The House rightly rejected that change. The disability community is very concerned about any proposed amendment to HB 2331 that would water down or strip the parental consent provisions from current law. We support current Kansas law on parental consent, and do not support amending the bill on parental consent.

Current Kansas State law requires that a school receive written parental consent prior to an initial evaluation, initial provision of services, a material change in services, or a substantial change of placement. The statute was enacted in the face of good public policy considerations. Parents should be involved in the education of their children with disabilities. A parent should have this minimal decision-making authority and input into whether the child is initially evaluated and placed into a special education program in the first place. The school has substantial control and

expertise over the development and implementation of the special education program, quantity of services, quality of services, discipline, and placement.

Once that program is in place, it is good public policy to keep the child in the status quo. Stability is very important for all children, but even more important for children with disabilities. This is evident in the stay put provisions of state law, K.S.A. 72-973(c). Stay put requires the student to remain in the current placement pending the outcome of due process. Requiring written parental consent prior to a substantial change of placement (e.g., more than 25% of the child's day) or a material change in services brings stability for the services of the child and much needed checks and balances to the current system where the school controls the facility, all of the staff, and all of the records.

**4. ESTABLISH POLICY AND REQUIRE KANSAS STATE BOARD OF EDUCATION TO ADOPT RULES AND REGULATIONS ON THE USE OF SECLUSION AND RESTRAINT BASED ON THE PRESIDENT'S NEW FREEDOM COMMITTEE RECOMMENDATIONS:**

As you know from your hearings on SB 241, many parents are strongly concerned about the current lack of a statewide policy regarding the use of potentially damaging interventions of seclusion rooms and restraint. Kansas currently has no policy and no limits on the use of seclusion rooms or restraint. We understand that SB 241 has numerous specific policy components, because we took specific parts of different state's policies to create SB 241. Given the feedback we have gotten from this Committee, we would recommend that this Committee develop the policy objectives of the statewide policy regarding the use of seclusion rooms and restraint, and have the State Board establish the rules and regulations to carry out the policy. We believe that this policy must respond to the concerns addressed by parents and must come directly from the President Bushes New Freedom Commission report, which states:

“ . . . It is inappropriate to use seclusion and restraint for the purposes of discipline, coercion, or staff convenience . . . Seclusion and restraint are safety interventions of last resort; they are not treatment interventions. In light of the potentially serious consequences, seclusion and restraint should be used only when an imminent risk of danger to the individual or others exists and no other safe, effective intervention is possible. It is also inappropriate to use these methods instead of providing adequate levels of staff . . . ”

We must answer the call of the President's New Freedom Initiative. We must take President Bush's New Freedom policy on seclusion and restraint and apply it to protect the 65,000 students receiving special education in Kansas schools.

DRC Would Recommend the following Amendment to HB 2331, taking the President's Report and concerns of parents to establish a policy, with SBOE adopting the regulations:

“The Kansas State Board of Education shall adopt rules and regulations to ensure the use of seclusion rooms and restraint are interventions of last resort, and are used only when an imminent risk of substantial harm to the individual or others exists and no other safe, effective intervention is possible. Such rules and regulations shall also ensure that:

- a. parents are accurately and timely informed regarding the use of seclusion and restraint on their children, including detailing the use of the intervention in the child's individual education plan,
- b. these interventions are not used for the purposes of discipline, coercion, or staff convenience,
- c. school staff utilizing these interventions receive training on the safest and most effective methods of implementing these techniques, including evidenced-based practices to prevent behaviors that lead to the need for seclusion or restraint, and
- d. adequate procedures and safeguards are established regarding the safe use of these interventions.

The Kansas State Board of Education shall provide an annual report and accounting to the Kansas Legislature on the numbers of occurrences, students and frequency of the use of seclusion and restraint in schools, along with recommendations to reduce or eliminate the need for seclusion and restraint. Chemical restraint, mechanical restraint and locked seclusion rooms are not allowed as interventions. All policy directives contained in this section are only for students receiving special education and related services.”

As stated above, no change is required in Kansas law this year regarding recent passage of IDEA 2004. Kansas should take the time to get these changes in special education law right.

The issues identified above are the most concerning to DRC and other education advocates. However, they are not by any means the only concerns we have with HB 2331. HB 2331 is a hurried piece of legislation. Parents, students and advocates, who know the system best, want to have a meaningful dialogue about how the special education system in Kansas and how Kansas should not only conform to IDEA 2004, but also meet the educational needs of students who use special education programs and services.

## **A Way to Protect Kids with the use of Seclusion and Restraint in Schools.**

### **President Bush's New Freedom Commission Report on Seclusion and Restraint:**

Limiting seclusion and restraint and making services "consumer and family-driven" are also key policy objectives of President George W. Bush and the President's New Freedom Commission. The President's report has identified the dangers and concerns of seclusion and restraint and the need for policy changes:

" . . . It is inappropriate to use seclusion and restraint for the purposes of discipline, coercion, or staff convenience . . . Seclusion and restraint are safety interventions of last resort; they are not treatment interventions. In light of the potentially serious consequences, seclusion and restraint should be used only when an imminent risk of danger to the individual or others exists and no other safe, effective intervention is possible. It is also inappropriate to use these methods instead of providing adequate levels of staff . . ."

We must answer the call of the President's New Freedom Initiative. We must take President Bush's New Freedom policy on seclusion and restraint and apply it to protect the 65,000 students receiving special education in Kansas schools.

### **Federal Agencies Urge Dramatic Reduction or Elimination of Seclusion and Restraint:**

Under President Bush's leadership, the US Department of Health and Human Services (HHS) has set out a detailed action plan to dramatically reduce, and eventually eliminate, the use of seclusion and restraint in all publicly funded treatment programs. HHS is trying to eliminate the need for these invasive tactics because "In addition to the very real risk of death and injury, individuals who have experienced previous physical or sexual abuse can suffer further traumatization when subject to these practices."

### **Potential Language on Seclusion & Restraint in Schools that would set the Policy, and still let the State Board of Education Adopt the Regulations / Potential Amendment to HB 2331:**

**Some Legislators have asked how they might scale back the specific, detailed measures in SB 241 & HB 2339 and instead create an effective and consistent state policy on seclusion and restraint in schools that is based on President Bush's New Freedom Initiative; however, the rules and regulations to implement these state policies would be left up to the State Board of Education. This is potential to do that:**

"New Section 1. The Kansas State Board of Education shall adopt rules and regulations to ensure the use of seclusion rooms and restraint are interventions of last resort, and are used only when an imminent risk of substantial harm to the individual or others exists and no other safe, effective intervention is possible. Such rules and regulations shall also ensure that:

- a. parents are accurately and timely informed regarding the use of seclusion and restraint on their children, including detailing the use of the intervention in the child's individual education plan,
- b. these interventions are not used for the purposes of discipline, coercion, or staff convenience,
- c. school staff utilizing these interventions receive training on the safest and most effective methods of implementing these techniques, including evidenced-based practices to prevent behaviors that lead to the need for seclusion or restraint, and
- d. adequate procedures and safeguards are established regarding the safe use of these interventions.

The Kansas State Board of Education shall provide an annual report and accounting to the Kansas Legislature on the numbers of occurrences, students and frequency of the use of seclusion and restraint in schools, along with recommendations to reduce or eliminate the need for seclusion and restraint. Chemical restraint, mechanical restraint and locked seclusion rooms are not allowed as interventions. All policy directives contained in this section are only for students receiving special education and related services."