

MINUTES OF THE HOUSE EDUCATION COMMITTEE

The meeting was called to order by Chairman Clay Aurand at 9:00 a.m. on March 16, 2010, in Room 711 of the Docking State Office Building.

All members were present, except:

Representative Barbara Craft - excused  
Representative Don Hill - excused  
Representative Valdenia Winn - excused

Committee staff present:

Theresa Kiernan, Office of the Revisor of Statutes  
Sharon Wenger, Kansas Legislative Research Department  
Amanda Nguyen, Kansas Legislative Research Department  
Dale Dennis, Kansas State Department of Education  
Janet Henning, Committee Assistant

Conferees appearing before the Committee:

Scott Frank, Deputy Legislative Post Auditor, Kansas Legislative Post Audit  
Bill Reardon, Kansas City, Kansas Public Schools  
Diane Gjerstad, Wichita Public Schools  
Terry Collins, Director, Doniphan County Education Cooperative/Interlocal #616  
Cheryl Semmel, United School Administrators of Kansas  
Representative Sheryl Spalding  
Bob Vancrum, Blue Valley USD #229

Written testimony:

Katherine Kersenbrock-Ostmeyer, Northwest Kansas Education Service Center  
Kevin Shepard, Tri-County Special Education Cooperative/Interlocal #607  
Chris Hipp, North Central Kansas Special Education Cooperative/Interlocal #636  
Bruce Givens, Director of Special Education, Derby Public Schools USD #260  
Tim Rooney, Manager of Budget and Finance, Shawnee Mission USD #512  
Dr. Gary George, Assistant Superintendent, Olathe School USD #233

**SB 359 - Special education; catastrophic state aid**

Chairman Aurand opened the hearing on **SB 359**.

Scott Frank, Deputy Legislative Post Auditor, told Committee members the 2010 Commission members became concerned about the recent increase in special education catastrophic aid claims. He told Committee members that the Commission was concerned the district may not have been including the same types of costs when applying for catastrophic aid and wanted to know what might happen to catastrophic claims if the law isn't changed.

Mr. Frank told Committee members that when calculating catastrophic costs, districts and cooperatives can include all costs, even those costs already covered by special education transportation and teacher aid, which means they are paid twice for some costs.

Mr. Frank told Committee members the audit question asked was:

- Why has the number of "catastrophic" special education claims increased in recent years, and how many claims are likely over the next several years?
  - Claims submitted to cover the "catastrophic" costs for very expensive special education students, those costing more than \$25,000 per year, jumped from 276 to 758 between 2008 and 2009, and catastrophic aid jumped from \$6 million to \$12 million.
  - Historically, districts submitted claims only for their very expensive students who required full-time teachers, expensive contracted services, etc. The big increase in 2009 occurred mostly because the Shawnee Mission school district decided to prorate costs for all its special education students, even its less expensive ones. In recent years, several other large districts also began prorating costs for their most expensive students.
  - If the law doesn't change for 2009-10 and if all districts and cooperatives were to follow Shawnee Mission's practice of prorating costs and submitting all the claims they could, the

## CONTINUATION SHEET

Minutes of the House Education Committee at 9:00 a.m. on March 16, 2010, in Room 711 of the Docking State Office Building.

Legislative Post Audit estimated claims would jump to 5,500 and aid to nearly \$48 million for 2009-10. This worst-case scenario represents a 625% increase over the claims filed in 2008-09.

- Proposed changes to the requirements for qualifying for catastrophic aid, including raising the threshold for qualifying, and requiring districts to deduct the State special education aid they already receive when calculating catastrophic costs, would reduce catastrophic aid claims significantly.

Mr. Frank told Committee members the Legislative Post Audit study recommended the Legislature increase the \$25,000 threshold amount, adjust it for inflation in the future, and require districts and cooperatives to deduct the State Special Education aid they've already received for a student transportation and teacher aid when calculating costs for catastrophic aid. ([Attachment 1](#))

A question and answer session followed the presentation.

An explanation of **SB 359** was distributed to Committee members and prepared by Theresa Kiernan, Senior Assistant Revisor, Office of Revisor of Statutes. ([Attachment 2](#))

Bill Reardon, Kansas City, Kansas Public Schools USD #500, spoke to Committee members as a proponent of **SB 359**. Mr. Reardon told Committee members that four studies have been completed regarding this topic. Mr. Reardon stated that under current law, catastrophic aid is paid out of the categorical state aid fund for Special Education first before Special Ed funding is distributed to the school districts and Special Ed cooperatives. He stated that left unchecked, this catastrophic aid program could, in time, swamp the entire Special Education funding program in Kansas. He urged the Committee members to pass **SB 359** without amendment. ([Attachment 3](#))

Diane Gjerstad, Wichita Public Schools, spoke to Committee members as a proponent of **SB 359**. Ms. Gjerstad told Committee members that catastrophic aid was added to the school finance formula in 1994 for those rare yet extraordinarily expensive students. She stated that families sometimes move into districts who will best serve their disabled child and communities which provide services such as medical and dental. It is believed it is appropriate state policy to have a safety net for districts who serve the most expensive students.

Ms. Gjerstad told Committee members that Wichita Public Schools supports the proposed changes to catastrophic aid to return the formula back to its intent. ([Attachment 4](#))

Terry Collins, Director Doniphan County Education Cooperative/Interlocal #616, spoke to Committee members as a proponent of **SB 359**. Mr. Collins told Committee members that **SB 359** would restore the law on catastrophic aid to its original intent which was to help educate a few extraordinarily expensive children. He urged Committee members to work **HB 2409** and **SB 359** together with an increase to the eligibility criteria and with no grandfather clause or amendment. ([Attachment 5](#))

Cheryl Semmel, Executive Director, United School Administrators of Kansas, spoke to Committee members as a proponent of **SB 359**. Ms. Semmel told Committee members that **SB 359** addresses three key issues that administrators supported:

- **Intent** - Administrators believed this was absolutely necessary to restore the original intent of the law - to offset costs associated with those students with extraordinary needs.
- **Integrity** - Administrators believe that districts should not be reimbursed twice for the same expense(s) and that "double dipping" should be eliminated.
- **Stability and predictability** - Administrators supported capping the total amount of catastrophic aid spent annually. There is a belief that this will help contain costs and maintain a stable and predictable funding source for special education ([Attachment 6](#))

A question and answer session followed the presentations.

Written testimony was received from the following as proponents of **SB 359**:

Katherine Kersenbrock-Ostmeyer, Northwest Kansas Education Service Center ([Attachment 7](#))

Kevin Shepard, Tri-County Special Education Cooperative/Interlocal #607 ([Attachment 8](#))

Chris Hipp, North Central Kansas Special Education Cooperative/Interlocal #636 ([Attachment 9](#))

CONTINUATION SHEET

Minutes of the House Education Committee at 9:00 a.m. on March 16, 2010, in Room 711 of the Docking State Office Building.

Bruce Givens, Director of Special Education, Derby Public Schools USD #260 ([Attachment 10](#))

Representative Sheryl Spalding, 29<sup>th</sup> District, spoke to Committee members in opposition of **SB 359**. Representative Spalding told Committee member the bill was written as a response to and a punishment for one district, especially Shawnee Mission District. She advised that in one year, the Shawnee Mission district went from no catastrophic aid students to 333.

Representative Spalding told Committee members that for years, Shawnee Mission did not “double dip” which is the term for counting the first dollar instead of subtracting out other moneys like transportation. She advised there are other districts who received catastrophic aid and did the same thing. It is how the law had been written and interpreted for years.

Representative Spalding stated there are five distinct problems with the Special Education (SPED) funding:

- It is an unfunded mandate by the federal government;
- “Double dipping” language needs to be clarified;
- The correct amount of minimum costs over and above what the schools get per child needs to be determined;
- There is a wide disparity between those who get 92 percent of their excess costs paid and those who do not; and
- There is a wide disparity between the number of identified students per district.

Representative Spalding recommended the Committee deal with “double dipping” this year. She also recommended the Committee hold off on changing the minimum \$25,000 threshold. ([Attachment 11](#))

Bob Vancrum, Government Relations Consultant, Blue Valley USD #229, spoke to Committee members as an opponent of **SB 359**. Mr. Vancrum told Committee members their district is opposed to **SB 359** primarily because of its isolated focus on catastrophic special education funding.

Mr. Vancrum told Committee members that if the threshold for catastrophic aid is raised retroactively as **SB 359** proposes, approximately \$7.4 million more dollars will be taken from districts who have already budgeted and spent most of it on the very high cost students and distributed to districts already receiving more than the 92% reimbursement the statute calls for.

Mr. Vancrum told Committee members the retroactive nature of **SB 359** allows for an impact in the current budget year. This would truly challenge their district as the Blue Valley district has been hit with over eleven million dollars in cuts since this time last year. ([Attachment 12](#))

Mr. Vancrum distributed to Committee members a memorandum regarding catastrophic aid proposal. ([Attachment 13](#))

Mr. Vancrum also distributed to Committee members a report entitled “[Special Education Catastrophic FAQ](#)” ([Attachment 14](#))

A question and answer session followed the presentations.

Written testimony was received from the following as opponents of **SB 359**:

Tim Rooney, Manager of Budget and Finance, Shawnee Mission USD #512 ([Attachment 15](#))  
Dr. Gary George, Assistant Superintendent, Olathe School USD #233 ([Attachment 16](#))

Chairman Aurand closed the hearing on **SB 359**.

Chairman Aurand told Committee members there would not be a sub-committee appointed for **SB 359**. However, Committee members were told there would be a meeting on Thursday, March 18, 2010 and this would be the last meeting for the 2010 session.

The meeting was adjourned at 10:15 a.m. The next meeting is scheduled for March 18, 2010.



# Legislative Post Audit Performance Audit Report Highlights

## K-12 Education: Reviewing Issues Related to Catastrophic Funding for Special Education

### Report Highlights

October 2009 • 09PA13

#### Audit Concern

2010 Commission members became concerned about the recent dramatic increase in special education catastrophic aid claims. Specifically, they were concerned that districts may not have been including the same types of costs when for applying for catastrophic aid, and wanted to know what might happen to catastrophic claims if the law isn't changed.

#### Other Relevant Facts

The Legislature created catastrophic aid in 1994 to keep school districts and special education cooperatives from being financially devastated if they had to serve students with extremely expensive special education needs. Under current law, the State pays 75% of a student's special education costs that exceed the \$25,000 threshold.

When calculating catastrophic costs, districts and cooperatives can include all costs—even those costs already covered by special education transportation and teacher aid—which means they are paid twice for some costs.

Because they are paid twice for the same costs, we found that, for 100 of the 758 catastrophic (continued on the next page)

**AUDIT QUESTION:** Why has the number of "catastrophic" special education claims increased in recent years, and how many claims are likely over the next several years?

#### AUDIT ANSWER and KEY FINDINGS:

- Claims submitted to cover the "catastrophic" costs for very expensive special education students—those costing more than \$25,000 per year—jumped from 276 to 758 between 2008 and 2009, and catastrophic aid jumped from \$6 million to \$12 million.
- Historically, districts submitted claims only for their very expensive students who required full-time teachers, expensive contracted services, etc. The big increase in 2009 occurred mostly because the Shawnee Mission school district decided to prorate costs for all its special education students, even its less expensive ones. In recent years, several other large districts also began prorating costs for their most expensive students.
- If the law doesn't change for 2009-10 and if all districts and cooperatives were to follow Shawnee Mission's practice of prorating costs and submitting all the claims they could, we estimated claims would jump to 5,500 and aid to nearly \$48 million for 2009-10. This worst-case scenario represents a 625% increase over the claims filed in 2008-09.
- Proposed changes to the requirements for qualifying for catastrophic aid—including raising the threshold for qualifying, and requiring districts to deduct the State special education aid they already receive when calculating catastrophic costs, would reduce catastrophic aid claims significantly. The various proposed changes and our estimated results are summarized in the **figure on the next page**.

#### We Recommended

We recommended that the Legislature increase the \$25,000 threshold amount, adjust it for inflation in the future, and require districts and cooperatives to deduct the State special education aid they've already received for a student (transportation and teacher aid) when calculating costs for catastrophic aid.

House Education Committee  
Date 3-16-10  
Attachment # 1

**Other Relevant Facts** (continued)

claims filed in 2008-09, districts and cooperatives received an estimated \$1 million in aid over and above the actual cost of providing special education services for these students.

Regardless of what happens to catastrophic aid, the total amount of State special education aid will stay the same, although less aid will be available to distribute as teacher aid. That's because the catastrophic aid formula only affects how special education funding is distributed, not the total amount of aid available.

Proposed Changes to Catastrophic Aid Requirements and Our Estimated Results					
Proposed Change:	Threshold	Accounts for inflation?	Eliminates Double-Dipping?	Est. 2009-10 Catastrophic claims/aid	Est. 2009-10 Teacher Aid per Teacher
Scenario #1 No change to current law	\$25,000	no	no	5,490 claims \$47.7 million	\$20,026
Scenario #2 House Bill 2606	\$36,000 (a)	yes	no	1,270 claims \$14.2 million	\$22,661
Scenario #3 Eliminate Double-Dipping (b)	\$25,000	no	yes	530 claims \$3.9 million	\$23,470
Scenario #4 2010 Commission	\$56,400 (2 times prior year's aid per teacher) (c)	yes	yes	10 claims \$420K	\$23,744
Scenario #5 Special Education Directors' Proposal	\$59,550 (2 times prior year's avg cost per special education FTE) (d)	yes	yes	10 claims \$390K	\$23,746

(a) House Bill 2606 proposed the threshold be modified to \$36,000 in 2008-09, and adjusted for inflation in subsequent years.  
 (b) Scenario was created by LPA as it seemed a logical extension of the other proposals, but we don't endorse this over any other proposed change.  
 (c) This amount is tied to the prior year's special education aid per teacher. For example, the 2007-2008 aid amount per teacher was \$28,200, so the threshold for 2008-09 would be \$56,400.  
 (d) This amount is tied to the prior year's Statewide average cost per special education FTE. For example, the 2007-08 Statewide average special education cost for 1.0 FTE was \$29,775, so the threshold for 2008-09 would be \$59,550.  
 Total catastrophic aid would be capped at \$4 million.  
 Source: LPA analysis of KSDE and district expenditure and revenue data.

**Agency Response:** The Department of Education agreed with our report.

**LEGISLATIVE DIVISION OF POST AUDIT**

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Barbara J. Hinton,  
 Legislative Post Auditor

For more information about this audit report, please contact  
**LAUREL MURDIE**  
 (785) 296-3792  
[Laurel.Murdie@lpa.ks.gov](mailto:Laurel.Murdie@lpa.ks.gov)

**DO YOU HAVE AN IDEA FOR IMPROVED GOVERNMENT EFFICIENCY OR COST SAVINGS?**

If you have an idea to share with us, send it to [ideas@lpa.ks.gov](mailto:ideas@lpa.ks.gov), or write to us at the address shown. We will pass along the best ones to the Legislative Post Audit Committee.

MARY ANN TORRENCE, ATTORNEY  
REVISOR OF STATUTES  
JAMES A. WILSON III, ATTORNEY  
FIRST ASSISTANT REVISOR  
GORDON L. SELF, ATTORNEY  
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES  
KANSAS LEGISLATURE

Legal Consultation—  
Legislative Committees and Legislators  
Legislative Bill Drafting  
Legislative Committee Staff  
Secretary—  
Legislative Coordinating Council  
Kansas Commission on  
Interstate Cooperation  
Kansas Statutes Annotated  
Editing and Publication  
Legislative Information System

TO: House Education Committee  
FROM: Theresa Kiernan, Senior Assistant Revisor of Statutes  
RE: Senate Bill No. 359  
DATE: March 16, 2010

Senate Bill 359 amends the provision of law concerning catastrophic state aid for special education and related services: The bill increases the expenditure thresh hold at which a district qualifies for the state aid. The thresh hold would be two times the amount of state aid paid per special teacher in the preceding school year. When calculating the amount expended on a child, amounts received for federal special education aid and state aid for special education under K.S.A. 72-978 would be deducted. The state would pay for 75% of the amount over the thresh hold.

Under current law, the state pays for 75% of the amount over \$25,000; there is no deduction for amounts received as federal aid or other state aid for special education.

The bill would become effective upon publication in the *Kansas Register* and would apply in school year 2009-2010.

The fiscal note on the original bill indicated the bill would reduce state special education catastrophic aid from \$12.0 million in FY 2009 to \$2.0 million in FY 2010. Special education state aid paid for special teachers would increase by the same amount.

The bill passed the Senate on a vote of 33 to 7.

RS- C:\Documents and Settings\tkiernan.RS\Desktop\Explnrs\SB359Expr.wpd (tkiernan)

House Education Committee  
Date 3-16-10  
Attachment # 2  
300 SW TENTH AVE - STE 24-E, Statehouse—TOPEKA, KANSAS 666  
PHONE (785) 296-2321 FAX (785) 296-6668 E-mail: Revisor's Off



# Kansas City, Kansas Public Schools

Unified School District No. 500

## HOUSE EDUCATION COMMITTEE

SB 359

March 16, 2010

The Kansas City Public Schools supports SB 359. The bill would serve to reduce the recent dramatic increase in the state's catastrophic aid program. From 2008 to 2009 the number of catastrophic aid claims increased from 273 to 758. In this one year, the cost to the state to fund this program doubled, from \$6 million to \$12 million. In 2005, the Catastrophic Aid was \$1.1 million.

Even more alarming is the October, 2009 projection by Post Audit that in 2010 claims could increase from 758 to 5,500 and that the states' cost could soar from \$12 million to \$48 million.

Under current law, catastrophic aid is paid out of the categorical state aid fund for Special Education first before Special Ed funding is distributed to the school districts and Special Ed cooperatives. Left unchecked, this catastrophic aid program could, in time, swamp the entire Special Education funding program in Kansas.

SB 359 addresses the two major causes of this unprecedented increase. First, it increases the \$25,000 threshold to approximately \$46,000. This threshold has not been adjusted since the catastrophic aid program was implemented in 1994.

The second key component is a provision which prohibits districts from counting the funding received from the state and federal government in the calculus to reach the threshold. Currently, the three districts with the highest number of "catastrophic" students (584 of the total of 758) count all dollars spent – state, federal and local - to reach the \$25,000 threshold. The Kansas City District believes this practice is a form of double dipping that would be eliminated with the passage of SB 359.

It should be noted that the three districts that account for 77% of the entire state expenditure for catastrophic aid are currently operating entirely within the law. Nevertheless, the projected increase in the cost of catastrophic aid is clearly unsustainable and jeopardizes Kansas' capacity to fund our Special Ed program in the future.

I will use our district as an example of what may happen across the state if the current catastrophic funding provisions remain in the law. Kansas City currently has 4 students receiving catastrophic aid. Without legislative action, the Post Audit report projects Kansas City could legally claim 240 students for next year.

On Thursday, March 11, SB 359 passed on Final Action in the Senate 33-7. Earlier on Thursday on General Orders, an amendment to grandfather one half of the current year funding for Catastrophic Aid was defeated. One reason for the amendment's failure, I suspect, is that state reimbursement for Catastrophic Aid is not paid until late June. Consequently, districts use the dollars generated in the current year for the next year's costs. Passage of this amendment would have, *de facto*, extended these inequities for another school year.

For these reasons, Kansas City, Kansas Public Schools urges passage of SB 359 without amendment.

Bill Reardon, KCKPS Lobbyist



## Senate Education Committee

### Representative Aurand, Chair S. B. 359 – Special Education Catastrophic Aid

*Submitted by Diane Gjerstad  
Wichita Public Schools*

March 17, 2010

Mr. Chairman, members of the Committee:

Catastrophic aid was added to the school finance formula in 1994 for those rare yet extraordinarily expensive students. Families sometimes move into districts who will best serve their disabled child and communities which provide services such as medical and dental. We believe it is appropriate state policy to have a safety net for districts who serve the most expensive students.

The Post Audit shows as recently as 2006, 130 students statewide were claimed for catastrophic aid yet in 08-09 758 claims were made. As the audit explains in 08-09 a few districts increased their claims dramatically – the result being all districts lost “categorical aid” for all special education teachers and para’s. Post Audit explains “the pie stays the same” – when catastrophic aid climbs, categorical aid for the special education teachers decreases.

Wichita Public Schools supports the proposed changes to catastrophic aid to return the formula back to its intent. We support S.B. 359 which puts the threshold at two times prior year’s aid for special education teachers. LPA estimates (page 16 of the audit) this proposal would lower claims to 40 claims statewide with a cost of \$650,000 (compared to 758 claims costing \$12m in 2009).

Catastrophic aid should be unique to those students with extraordinarily high costs. We support the changes found in S.B. 359.

#### 2008-09 Actual and 2009-10 Estimated Catastrophic Claims If Law Remains the Same (figure 1-5)

	Special Ed FTE	08-09 Actual claims	09-10 Estimated claims
233 Olathe	5785	122 \$2,989,972	441 \$6,028,000
512 Shawnee Mission	6163	333 \$3,772,482	456 \$4,647,000
229 Blue Valley	4308	129 \$2,171,072	361 \$4,640,000
259 Wichita	8229	61 \$779,013	762 \$4,573,000
501 Topeka	3374	11 \$211,695	324 \$2,980,000
497 Lawrence	2473	0 \$0	171 \$1,600,000
<b>Statewide totals</b>		<b>758 \$12,003,400</b>	<b>5491 \$47,657,000</b>

House Education Committee  
Date 3-16-10  
Attachment # 4



Janet Henning

*Proposed*

**From:** Terry Collins [dcec616@rainbowtel.net]  
**Sent:** Friday, March 12, 2010 3:13 PM  
**To:** Clay Aurand  
**Cc:** Dcec

Honorable Representative Aurand,

Senate Bill 359 has passed with no amendments. As you know, it is very similar to HB 2409. The main difference is the lower eligibility criteria in the House Bill. This will be a great financial benefit to Northeast Kansas and most of the rest of the State. SB 359 will return millions of dollars from the "catastrophic aid" fund to the "teacher aid" fund. The money will then be equally distributed to all districts across the State including Johnson County. SB 359/HB 2409 will restore the law on catastrophic aid to its original intent which was to help educate a few extraordinarily expensive children. Last year \$12.0 million dollars were spent on catastrophic aid largely due to the outdated, low eligibility criteria. Most of that money went to Johnson County. Under SB 359 that \$12.0 million will drop to approximately \$1.0 million.

As you recall, in 2008 Johnson County pushed to convince the legislature to cap excess cost of special education at 92%. Teacher aid has always been calculated by a state-wide average. Everyone gets the same amount of money per teacher. There has never been a guarantee of 92% to any given district. Spending would likely spiral out of control if there was a guarantee of 92% of excess costs. Several weeks ago, Johnson County advocates attempted to amend SB 359 in the Education Committee Hearing to do just that. A 92% cap in 2008, would have reduced aid to Doniphan County by well over half a million dollars. Now, if excess costs were to be capped, 284 school districts will lose special education funding and a few will reap millions of dollars. The North Central Kansas Special Education Cooperative stands to lose over \$1.5 million dollars. In Northeast Kansas, Brown County will lose 50% of its teacher aid and Doniphan County will lose over 30%. Please help us by working HB 2409 and SB 359 together with an increase to the eligibility criteria and with no grandfather clause or amendment. Feel free to contact by mail or by telephone if you need more information.

Thank you Representative Aurand  
Terry Collins  
Director DCEC # 616  
785-741-2202

House Education Committee  
Date 3-17-10  
Attachment # 5

**House Education Committee**

**Testimony on SB 359**

March 16, 2010

Presented by:

Cheryl L. Semmel, Executive Director  
United School Administrators of Kansas

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The mission of United School Administrators of Kansas (USA|Kansas\*), through collaboration of member associations, is to serve, support, and develop educational leaders and to establish USA|Kansas as a significant force to improve education.

Education administrators remain committed to ensuring that each and every child in Kansas receives a quality education that will help them reach their potential and become successful, productive adults. There are 465,000 students in our public schools that we strive to impact positively every single day. As you know, Kansas students are making unprecedented academic achievement and we are on a path of continuous improvement.

I am here today in support of SB 359, a bill to amend the special education catastrophic aid formula. The intent of the original Catastrophic Funding Law was to provide additional financial support to districts providing services to students with extraordinary needs. These students often require intensive services and supports that are expensive for districts.

When the Catastrophic Funding Law that was passed in 1994, it is unlikely that anyone could have anticipated the limitations of the law, the level of inflation or the increased costs associated with special education services. Special education funding and reimbursement is, of course, directly related to the class size and the salaries paid to both teachers and paraeducators. It goes without saying that these factors vary significantly between districts, interlocals and cooperatives across the state.

Over the past five years, the number of claims for catastrophic special education aid has continued to increase rather significantly from 85 students in FY 2004 to 758 students in FY 2009. The total catastrophic aid has increased nearly \$12 million during that same period. Legislative Post Audit (October 2009) projected that claims for FY 2010 could increase to nearly 5,500, costing the state nearly \$48 million.

House Education Committee  
Date 3-16-10  
Attachment # 6

The significant increase in catastrophic claims in recent years is the result of a few districts that changed their process of making claims. This has resulted in the unexpected diversion of funding from categorical aid to catastrophic aid. As a result, nearly 98 percent of districts and the students they serve will be negatively impacted. The bottom line is increased catastrophic special education aid costs result in not only decreased reimbursement for categorical aid, but reduced services for special needs children.

In August 2009, Derby special education director Bruce Givens – representing USA|Kansas and the Kansas Association of Special Education Administrators (KASEA) – volunteered to convene special education directors and identify viable solutions to the “catastrophic aid” issue. Throughout Kansas, KASEA convened and discussed the complex issues of special education funding. While not everyone agreed, a proposal was drafted and overwhelmingly endorsed by the KASEA membership. That proposal was shared with the 2010 Commission, the Legislative Education Planning Committee (LEPC), the USA|Kansas School Finance Task Force and Board of Directors.

SB 359 addresses three key issues that administrators supported:

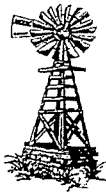
- **Intent.** Administrators believed that it was absolutely necessary to restore the original intent of the law – to offset costs associated with those students with extraordinary needs.
- **Integrity.** Administrators believe that districts should not be reimbursed twice for the same expense(s) and that “double dipping” should be eliminated.
- **Stability and predictability.** Administrators supported capping the total amount of catastrophic aid spent annually. There is a belief that this will help contain costs and maintain a stable and predictable funding source for special education.

Finally, USA|Kansas’ position on SB 359 is not a judgment on any school district in Kansas. We understand that all school districts have a responsibility to advocate for programs that will support programs and services for the students they serve. We believe that those districts that have increased their claims for catastrophic aid have operated in accordance with the current law. We do, however, believe that the law needs to be restored to its original intent.

In closing, I would like to thank you for your continued support of education. We know that you share our commitment to ensuring a quality education for each child.

\*USA|Kansas represents more than 2,000 individual members and ten member associations:

Kansas Association of Elementary School Principals  
Kansas Association of Middle School Administrators  
Kansas Association of School Administrators  
Kansas Association of School Business Officials  
Kansas Association of School Personnel Administrators  
Kansas Assoc for Supervision and Curriculum Development  
Kansas Association of Special Education Administrators  
Kansas Association of Secondary School Principals  
Kansas Council of Career and Technical Education Administrators  
Kansas School Public Relations Association



Northwest Kansas Educational Service Center  
703 W. 2nd Ave  
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(785) 672-3125 (785) 672-3175 (fax)

House Education Committee

Testimony concerning SB 359

March 16, 2010

Submitted by: Katherine Kersenbrock-Ostmeyer, Director Special Education,  
Northwest Kansas Educational Service Center (NKESC)

As the Director of Special Education at the Northwest Kansas Educational Service Center located in Oakley and serving 19 rural school districts in a twelve county area, I am submitting this testimony in support of SB359.

As mentioned in my testimony of HB 2409---this bill (SB 359) best addresses the needed changes in catastrophic aid for high cost special education students. As you recall: Last year a couple school districts turned in an extremely large number of catastrophic student claims, which substantially reduced the overall special education reimbursements received across the entire state. Most entities receiving special education categorical aid experienced significant reductions in monies, which affected this years' budget. NKESC lost around \$140,000 or 3.5 full time staff positions. In the study and findings by the Post Audit concerning what happened with catastrophic aid, it was made clear in the "Answer and Key Findings" that:

"If the law doesn't change for 2009-10 and if all districts and cooperatives were to follow Shawnee Mission's practice of prorating costs and submitting all the claims they could, we estimated claims would jump to 5,500 and aid to nearly \$48 million for 2009-2010. This worse-case scenario representing a 625% increase over the claims filed in 2008-09."

My support of SB359 comes from the bills use of a calculation that presents a high or larger dollar amount needed before extraordinary costs could be submitted for additional reimbursement. This calculation is based upon student cost calculations supported by a large majority of special education directors and the Kansas Association of Special Education Directors (KASEA). The previous \$25,000 base amount has not increased for many years and the proposed calculation in SB359 sets forth a method for the base amount to reflect a proportional representation to other special education cost factors annually. I also feel it is imperative that any state reimbursements generated by staff, materials, etc. be deducted from the overall base calculation as to not allow duplicated state funds.

Some Opponents to SB 359 will purport that the entire system for funding special education in Kansas needs to change, or that a grandfather clause is needed for next year for any legislative changes set forth concerning catastrophic aid legislation---To this I adamantly disagree. Last year a legislative Special Education Task Force studied and addressed the Kansas special education funding formula and did not come up with a more equitable plan without adding a significant amount of new money. As for grandfathering catastrophic aid practices for one more year to prevent budgeting problems--I again disagree! Numerous correspondences and meetings occurred as early as May 2009 to address what had happened in special education catastrophic aid payments. These meetings and correspondences informed school entities that categorical aid was going to be reduced significantly from earlier provided amounts due to unusually high catastrophic aid claims. The communications also informed school districts of both a special education directors' initiative to change the way catastrophic aid calculations should occur and of a post audit study to review what had occurred causing such a large increase in

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catastrophic aid claims. From this information as well and numerous correspondences among special education directors, superintendents, and other education department officials--districts knew of a probable change in calculations for catastrophic aid to occur in 2009-10.

Thank you once again for the opportunity to provide feedback and for your attention to this matter.

## Janet Henning

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**From:** Kevin Shepard [kevins@tricounty607.com]  
**Sent:** Monday, March 15, 2010 2:35 PM  
**To:** Janet Henning  
**Subject:** SB 359 Proponent Testimony

House Education Committee  
Hearings on SB 359  
March 16, 2010

Dear Committee Members,

I am contacting you in regard to SB 359, the "catastrophic aid" bill for special education passed recently by the Senate. This past Fall, I participated in the Kansas Association of Special Education Administrators (KASEA) committee that was charged with developing a recommendation on catastrophic aid to the legislature. Our recommendation is embodied in SB 359. Consequently, I would urge you to support SB 359 as it was passed last week by the Senate.

The vast majority of the state's special education administrators are in agreement that more stringent standards for catastrophic aid need to be employed. It is imperative that you recognize that the original purpose of catastrophic aid was to assist special education entities with those occasional special needs students whose costs were significantly above and beyond ordinary day-to-day expenses for this population. This past year, due to actions by some districts to circumvent the intent of the original law, it became imperative to redraft language and criteria regarding access to these funds for this current fiscal year.

I realize there is immense political pressure being brought forth by certain legislators in the Johnson County area to establish a "grandfather" clause in this bill as well as influence similar language in HB 2600. They argue that some of their districts had already budgeted for continued access to these funds for this fiscal year and that the absence of a "grandfather clause" would create a significant financial hardship on them. However, as they portray their potential losses in revenue, they fail to mention that these districts could potentially realize a sizeable portion of these dollars back should this money be redirected into the overall special education funding via categorical aid as indicated by Brad Neuenswander, KSDE Director of School Finance.

Consequently, recent comments that I have heard, such as Shawnee Mission potentially losing \$3 million in special education funding due to this loss of catastrophic aid, needs to be tempered with what their actual loss will be after the categorical aid funding is recalculated and infused back into their overall funding. Moreover, I do not recall the Johnson County delegation expressing concern at my loss in categorical aid funding last year when their districts contrived this action to go after the catastrophic funds at the expense of the rest of their rural colleagues.

Since catastrophic aid comes "off the top" of the special education funding as depicted by Dale Dennis, one of the significant factors that played into my reduction in categorical aid at the end of last year was the increased payments issued for catastrophic aid. The state categorical aid dropped from \$29,600 to \$28,760 per FTE at the end of last year, resulting in a loss of \$169,000 for my agency alone. In addition, because of the increased demand on catastrophic aid, Mr. Dennis had to increase his estimate for this year. He budgeted \$18 million for catastrophic aid

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for FY 09-10, which is \$6 million above last year's appropriation. That also played a part in why our categorical aid for FY 09-10 was reduced to \$23,000 per FTE.

According to officials for the Finance Division at KSDE, if SB 359 is passed as it was initially drafted, categorical aid could be increased as much as \$1,100 per FTE. For the majority of special education entities in Kansas, this increase in funding would help immeasurably in addressing the current fiscal plight facing us for this current year and next school year.

In closing, I would ask that you please support SB 359 as it was drafted and without any amendments.

Thanks for considering my comments.

Kevin J. Shepard, Director

Tri-County Interlocal 607

220 East Chestnut - P.O. Drawer 668

Independence, KS 67301

Ph: (620) 331-6303

Fax: (620) 331-7016

Email: [kevins@tricounty607.com](mailto:kevins@tricounty607.com)

# North Central Kansas Special Education Cooperative

PO Box 369, 205 F Street, Suite 235  
Phillipsburg KS, 67661

## Interlocal #636

Phone: 785-543-2149

Fax: 785-543-6654

### **Member Districts**

**USD 110 Thunder Ridge, USD 211 Norton, USD 212 Northern Valley, USD 213 Lenora, USD 237 Smith Center,  
USD 269 Palco, USD 270 Plainville, USD 271 Stockton, USD 324 Eastern Heights, USD 325 Phillipsburg,  
USD 326 Logan, USD 392 Osborne, USD 399 Natoma**

Kansas House Education Committee – 3/16/2010

Written Testimony in support of Senate Bill 359

Provided by Chris Hipp, Special Education Director

Thank you for the opportunity to provide written testimony in support of SB 359. As indicated in my previous testimony regarding HB 2409, I strongly support change to the current catastrophic aid formula. While I support common components of HB 2409 such as eliminating double dipping and implementing the new formula within this fiscal year, I support SB 359 over HB 2409 for one reason, SB 359 bases the threshold amount for claiming catastrophic aid reimbursement on the previous years per teacher entitlement amount. This would insure that the catastrophic aid threshold is self-adjusting over time and more directly related to the cost of providing special education services. Other considerations should be to use the threshold calculation suggested by the Kansas Association of Special Education Administrators organization which is 2 times the previous year's average special education student cost and to implement a total catastrophic aid cap of 4 million. I believe this would return the catastrophic aid funding formula to the original intent of the law.

Some will argue that a grandfather clause should be added to protect those districts that filed large catastrophic aid claims last year. This would simply serve to deviate further from the original intent of the law and financially reward the few districts that exploited the current system at the expense of every other district in the state.

It may also be suggested that the catastrophic aid formula should not be revised without investigating the entire special education funding system. To this I would argue catastrophic aid was added to the funding formula in 1994 and the requirements for claiming have not been updated to reflect inflation or the cost of providing special education services. Therefore, it only makes sense that the legislature should look at it separately from the overall funding methodology. Multiple studies of the current Kansas special education funding formula have been conducted over the years and all have failed to identify a more feasible method at this time.

The intent of catastrophic aid is to offset the cost in extreme cases. In the current form it is being exploited as an alternative funding source. By passing SB 359 you would insure the intent of the original law is honored and that funding is available to provide appropriate services to all children with disabilities in Kansas.

Thank you,

Chris Hipp, Special Education Director

House Education Committee

Date 3-16-10

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## Janet Henning

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**From:** Bruce Givens [bgivens@usd260.com]  
**Sent:** Monday, March 15, 2010 6:56 PM  
**To:** Clay Aurand  
**Subject:** Cat aid

Clay, I took three days off and am skiing with my wife in Breckenridge, CO.

I hear you are taking up SB 359. I want you to know that KASEA and United School Administrators supports this bill. However, it is essential that some forgiveness be written to this bill, then I have an idea. An amendment that allows the Johnson County Schools, will probably never pass. Johnson County truly hurt all the districts (except those in Johnson County). Therefore there is a great deal of resentment (resentment may may be a light term in describing the anger). If it would be politically correct to allow the threshold to be \$36,000 for one year then go to the threshold of SB 359, we would support it.

If there is anything I can do to help you on HB 2600 let me know. At the end of year, I am retiring from education and have no fear from my other directors. As mentioned (in testimony) I have always loved the idea of moving from the resource model to some sort of census base model.

Please share this with the other House Ed members. My cell is 316-377-6605, but I might be on a ski lift!

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STATE OF KANSAS  
HOUSE OF REPRESENTATIVES

STATE CAPITOL  
300 S.W. TENTH STREET  
TOPEKA, KANSAS 66612  
(785) 296-7689  
spalding@house.state.ks.us



12119 BLUEJACKET  
OVERLAND PARK, KS 66213  
(913) 681-8491

**SHERYL SPALDING**  
29TH DISTRICT

Testimony before the  
**House Education Committee**

On

**SB 359 - Special education; catastrophic state aid**

**March 16, 2010**

Mr. Chairman and members of the committee

I appreciate this opportunity to speak before you in opposition to this bill. This bill was written as a response to and a punishment for one district especially; that is the Shawnee Mission District. In one year they went from no catastrophic aid students to 333. This caught all of us by surprise. And now, every district that works with the most expensive of students is being punished. We are all paying what Ramsey would refer to as their 'stupid tax'. I am not defending what they did, but it can be explained in less evil terms than greedy. For years Shawnee Mission did not 'double dip' which is the, again egregious, term for counting the first dollar instead of subtracting out other moneys like transportation. However, I have a printout that shows all districts who received CAT aid did the same thing. It is the way the law had been written and interpreted for years, by all except Shawnee Mission.

Shawnee Mission had interpreted it the way they did excess costs, that is you should not count transportation and BSAPP etc. in the mix. Instead of calling them greedy we should really thank them for all the years they did not get the funding due them under the general interpretation of the law. However, I understand that districts are afraid and are surprised at the sudden and of course suspicious uptick in numbers by SM, so some retribution must be paid. I have a suggestion, but before I get to that here are some other things we must consider in the mix.

There are five distinct problems with SPED funding. First we should all agree that it is an unfunded mandate by the federal government who promised to pay 40% of SPED mandated costs and have never reached half of that. It is one of the main reasons we are all scrambling for every dollar, but not a problem to be addressed here. There are four other problems, however that are ours.

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I have already mentioned what has been termed 'double dipping' or counting first dollar for students. If we need to clarify that language so that it is clear that language referring to excess costs also applies to categorical aid then by all means let's do that.

The second problem is what is the correct amount of minimum costs over and above what the schools get per child should be. Should every district be prepared to spend \$25,000 or as the new language is, much more than \$25,000 per pupil out of their own pockets before seeing any state aid? That is what is being proposed. In other words, subtract all the money we get for that student as a regular student including BSAPP, transportation and Medicaid. Then begin counting up additional dollars spent on a student, and when you hit \$25,000 then only money over and above that will the state will begin paying for Cat aid. The response by some is that it should be raised to double or more with the effect of nearly extinguishing the program, a program that, by the way, is federally mandated. Do you think the federal government would believe we went from hundreds of CAT aid students to 4 in one year?

The third problem is the wide disparity between those who get 92% of their excess costs paid and those who do not. The range is over 200% down to 67%. The legislature said we would pay 92% but that isn't the case. In fact we are cost shifting over \$60,000,000 dollars per year to those districts who receive over 92% of excess SPED costs. We are choosing not to address this.

That leads to problem number four. There is a wide disparity between the number of identified students per district. It goes from a little over 8% to nearly thirty percent. With the system as skewed to excess costs the way it is, there is little wonder that there may be incentives to over-identify.

Finally, my recommendation. I would recommend that we deal with 'double dipping' this year. I would also recommend that we hold off on changing the minimum \$25,000 until we can find a real rationale related to actual cases and facts, not on just getting even with Shawnee Mission. The print out I have shows that a great deal of money will still be lost by Johnson County, most by Shawnee Mission and everyone else is a winner in that there is a large amount of money left to distribute per teacher and we lose on that because we are one of those not getting close to 92%.



TESTIMONY TO HOUSE EDUCATION COMMITTEE  
IN OPPOSITION TO SB 359

By Bob Vancrum Blue Valley USD 229 Government Relations Consultant  
March 16, 2009

(originally prepared by Sue Denny, Executive Vice Superintendant of Special Services for BVSD  
229

Chairman Aurand and other Honorable Representatives:

We remain opposed to SB 359 primarily because of its isolated focus on catastrophic special education funding. The *entire* special education funding formula is inequitable. These inequities are actually highlighted in a Legislative Post Audit Report dated December 2007, which shows some districts receiving 45% of their excess costs of special education costs during the 2005-2006 school year, while one district received 207 percent of its excess costs reimbursed. More disturbing, nearly a third received over 100%.

This inequity still exists today. In fact, if the threshold for catastrophic aid is raised retroactively as SB359 proposes, about \$7.4 million MORE dollars will be taken from districts who have already budgeted and spent most of it on very high cost students and distributed to districts already receiving more than the 92% reimbursement the statute calls for. We wouldn't be opposed to taking the Catastrophic education threshold to a higher number even though we would lose nearly all of it we get if the REGULAR special education formula were adjusted to eliminate this blatant discrimination against areas with higher teacher costs.

A specific feature of this legislation is particularly troubling. The retroactive nature of the Senate 359 allow for an impact in the *current* budget year. This truly challenges our district. Blue Valley has been hit with over eleven million dollars in cuts since this time last year. The retroactive language in this bill would send us scrambling for about 1.5 million dollars more. The cuts required will be deep and will impact ALL of our students in teacher layoffs and class sizes.

On September 18, 2009 Region 1 of KASEA including Johnson County, KCK and Lawrence voted unanimously (31 votes) to oppose the newly proposed KASEA formula. Opposition to the KASEA proposal was largely due to the insolated focus on catastrophic aid and the failure of the KASEA proposal to address the larger formula and the inequities inherent to that formula.

- Region 1 membership believes that the catastrophic aid formula has serious shortcomings and needs to be modified but it is only one variable in a flawed special education funding system. The total distribution of special education funding in Kansas is not equitable.

- Region 1 membership cannot support a modification to catastrophic aid without a serious attempt to remedy other major inequities in special education funding. Region 1 proposes that the discussion of the catastrophic aid formula continue in context of overall special education funding.

What fundamental changes have led us to this point? During the course of the past few years an increasing number of students with severe disabilities have created an increased need for high-cost programming. The majority of the increase has been due to a significant up-tick in the incidence of autism but there are other factors that have played a role. Medical advances have allowed babies who would not have otherwise survived to thrive and to enter school. While we celebrate these advances, we now often see young students arrive with the need for significant learning supports; therapies, specialized transportation and in some cases even the support of a full time nurse. The migration of families to urban areas where medical services and private therapies are more available to children on the autism spectrum is widely reported by health professionals and parents. That migration has had an impact on special education growth patterns and has impacted our district.

Please let me tell you about just three of the nearly 130 students in Blue Valley who qualified for catastrophic aid and who will no longer meet the criteria under this proposed legislation....because, in fact under the proposed legislation only eight of our students would qualify and these students are not among the eight. I have changed their names, but I have not altered their needs.

*Sara has a diagnosis of Sanfilippo Syndrome, a degenerative disorder that affects her cognitive and physical development and results in a loss of developmental milestones. Sara requires instruction with an alternate curriculum. Based on her disabilities and risk for flight, she requires attendant care throughout her day to maintain safety, health and behavior.*

*Sara is impulsive and will run outdoors if not watched carefully. A gait belt prevents this and is also used to assist her back into a standing position when she drops to the ground. Sara sometimes is aggressive; she makes demands by repeatedly saying a word or by grabbing an item that she wants. Sara needs assistance completing daily living skills such as feeding and toileting. Sara needs hand over hand assistance to wash and dry her hands and her face after eating, and to take off and put on her clothes. She is able to feed herself finger foods, but requires assistance to not overstuff her mouth creating a choking hazard.*

*Sara requires speech-language services. Through occupational therapy she participates in daily motor activities to maintain her current skills. Adaptive physical education consults with the physical education teacher on modifications and special group activities. Assistive technology staff provides consultative services. Sara requires the support of one adult at all times and many adults throughout the day. She rides a special education bus to school.*

***Last year the total cost of Sara's special education exceeded \$35,000. However, under the proposed legislation Sara will not qualify for catastrophic aid.***

*Evan has diagnoses of Cerebral Palsy, Beckwith-Weidman Syndrome, cortical visual impairment, optical atrophy, and seizure disorder. Due to his physical communication and cognitive needs, an alternate curriculum is required. Attendant care is required to meet his physical, self-care, safety and medical needs. He also requires speech-language services, occupational therapy, nursing care, vision services, and physical therapy. Evan is dependent on adults for all his physical and personal care needs. He continues to have low tone in his neck and trunk, but is able to lift his head briefly. A kneeler and tilt table stander are used daily. Evan is accessing a switch with his head by tilting to the side. Evan receives one tube feeding and two water boluses at school. Adaptive physical education, OT, PT, and Vision consult with the teachers regarding programming, and work one-on-one with Evan to improve his skills.*

***Last year the total cost of Evan's special education exceeded \$35,000. However, under the proposed legislation Evan will not qualify for catastrophic aid.***

*Michelle is an 18-year old girl diagnosed with Cerebral Palsy, Intellectual Disability, Autism, Seizure Disorder, and ADHD. She requires a highly structured environment. Michelle needs supervision at all times as she may wander off and put non-edible objects in her mouth. She requires one-to-one assistance for communication, vocational tasks, and school mobility. Any time she eats, her food must be cut into bite-sized pieces and she may need prompts to prevent choking.*

*Michelle is non-verbal and uses gestures, body language, picture communication symbols, and voice output AAC to communicate. She is able to walk independently with assist needed for directionality. She has a shuffling gait pattern with center of gravity forward. Physical therapy provides an exercise program for strengthening trunk and legs. Michelle participates in direct speech-language service focused on communication, and social interactions in the school and community. She receives occupational therapy services focusing on self-help and computer skills. Michelle has the support of numerous adults throughout the day.*

***Last year the total cost of Michelle's special education exceeded \$35,000. However, under the proposed legislation Michelle will not qualify for catastrophic aid.***

Legislation that reduces catastrophic aid without addressing the inequities of the entire special education funding formula will be damaging to the districts that are serving so many of these students with multiple and severe disabilities. The services are mandated federally and are morally and ethically the right thing to do for our children, but to continue these services without the benefit of catastrophic aid will require the transfer of significant general fund dollars to special education at a time when all school funding is mightily challenged.

**So what is the solution?**

- **A legislative remedy should address not only catastrophic funding, but should consider the cumulative damaging effect on districts that due to excess cost inequities have been underfunded for many years and should address the total funding formula.**
- **Implementation of varied appropriation methods for large and small districts similar to other weighting measures should be considered.**
- **The current funding formula is unpredictable, loaded with fiscal minutia and inequitable. Adopt a system that distributes Special Education funds in a predictable, understandable and equitable manner.**
- **Historically, the legislature has not typically removed dollars from select districts to give to other districts. We acknowledge a formula change is needed but a phased-in or grandfathered approach to change would mitigate the most serious fiscal damage to any particular district or group of districts.**

# REGION 1

*Kansas Association of Special Education Administrators*

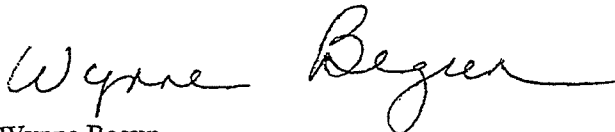
TO: Gay Younkin, KASEA President  
CC: Bruce Givens  
FROM: Wynne Begun, Region 1 Representative  
DATE: September 21, 2009  
RE: Catastrophic Aid Proposal

On Friday, September 18, 2009, Region 1 voted on the proposed changes to the catastrophic aid formula. Region 1 commends the efforts that have been taken by Bruce Givens and the other members who attended meetings to try to resolve the problems with the catastrophic aid formula. After a lengthy discussion, Region 1 voted unanimously (31 votes) to oppose the proposal. The opposition to these proposed changes is based on the following factors:

- a. Region 1 membership believes that the catastrophic aid formula has serious shortcomings and needs to be modified but it is only one variable in a flawed special education funding system. The distribution of special education funding in Kansas is not equitable. According to a study published by the Legislative Post Audit, the percentage of excess costs that is reimbursed to districts ranges from a low of 45% to 207%. Region 1 membership cannot support a modification to catastrophic aid without a serious attempt to remedy other major inequities in special education funding. Region 1 proposes that the discussion of the catastrophic aid formula continue in the context of overall special education funding.
- b. The proposal as presented was incomplete. The example that was included did not back out categorical aid and other state revenue. The catastrophic aid total that was included in the example was not accurate and would result with a significantly less disbursement than shown on the document.
- c. The catastrophic aid proposal was hastily constructed with very little rational basis. The formula as written would for all practical purposes do away with funding to support very high cost students and is still unpredictable.

The members of Region 1 acknowledge that this has become a potentially divisive issue for KASEA. We urge KASEA members to keep in mind that we are all trying to serve our students with limited resources. We would appreciate additional opportunities to come together as an organization to further the understanding of the concerns we face in our respective districts and to reach consensus on special education funding.

Respectfully Submitted,



Wynne Begun  
KASEA Region 1 Representative

House Education Committee  
Date 9-16-10  
Attachment # 13





## Special Education Catastrophic FAQ

### What is Special Education Catastrophic Aid?

- Catastrophic aid is a fund to assist with the high costs of services for certain students with severe disabilities.
- Catastrophic aid was legislated in Kansas in 1994 with a \$25,000. threshold.
- Districts pay first \$25,000 of cost and file claim for 75% of cost over \$25,000.

### How is Special Education funded in Kansas?

- The amount of Special Education aid is computed on excess cost but is not distributed in that manner. It is distributed through categorical aid including
  - Transportation Aid (80% reimbursement of cost)
  - Catastrophic Aid
  - Teacher Aid (Estimated \$23,000 per certified Special Educator; \$9,200 per SPED Paraeducator)

### What is excess cost?

- Excess cost is defined as the total costs incurred for serving special education students less other funding sources already available such as general education funding, federal special education and Medicaid. Kansas law requires the State to pay 92% of the excess cost of special education.

### Why has the issue of catastrophic aid recently been raised?

- The number of claims increased from 85 claims in 2004 to 758 claims in 2009.
- The cost of the claims increased from \$1.2 million to \$12.0 million in that same time frame.
- The catastrophic funds are drawn from the same pool as the other two funds and the sharp increase caused a decrease in teacher aid impacting all Kansas districts.

### What has caused the increase in claims?

- A shift in the number of students with disabilities from mild to severe especially the rise in the incidence of autism results in more service time.
- More districts filed more claims to offset the increasing costs of serving students with multiple and severe disabilities.

### How would LEPC and 2010 Commission recommendations impact catastrophic aid?

- Statewide claims would drop from 758 to 14 for a total estimated cost of \$400,000 in 2010.

### Wouldn't that increase teacher aid?

- Yes, and that would exacerbate the inequities in the distribution of excess cost funds that was cited by Legislative Post Audit in 2007. The disparity of excess cost distribution is vast. The top five funded districts received from 181% to 207% of excess cost while the bottom five funded districts ranged only from 45% to 69% creating a huge funding gap.

### *What is the solution for these Special Education Funding Issues?*

*Avoid singling out one aspect of the current formula for change without revising the entire formula increases inequities and harms districts and students. Further study as opposed to a knee-jerk, short-term and harmful solution is recommended.*

*Formulas that allow for weighting such as those used in other Kansas funding formulas have the potential to balance variables such as district size, cost of living, and even level of disability severity.*

*Special Education funding needs to be distributed through a predictable, understandable and equitable mechanism.*

House Education Committee

Date 3-16-10

Attachment # 14

## House Education Committee

### Testimony in Opposition to Senate Bill 359

March 16, 2010

Chairman Aurand and Members of the Committee,

My name is Tim Rooney and I am the Manager of Budget and Finance for the Shawnee Mission School District 512. I appear today on behalf of the Shawnee Mission School District #512 in opposition to Senate Bills 359.

I'd like to focus my comments on three major points:

1. Discuss how the current special education formula, as a whole, does a poor job of allocating state resource to reimburse excess costs.
2. Explain why Shawnee Mission went from no catastrophic claims in fiscal year 2008 to a claim for 334 students with a total reimbursement of \$3.8 million.
3. Lastly, explain why this bill should not be passed in its current form and make suggestions for improvement.

The special education appropriation is based on funding 92% of the excess costs of school districts throughout the state. KSDE estimates the aggregate excess costs and the appropriation of funds is based on that estimate. The distribution is done in three steps. First, catastrophic aid claims are taken from the appropriation. Second, special education transportation is reimbursed at 80%. Lastly, the remaining funds are allocated to school districts based on the number of special education teachers and paraprofessionals employed by each district.

The Legislative Post Audit report released December 2007 indicated that the special education formula resulted in a range of reimbursements from 45% to 207%. Shawnee Mission had a reimbursement of 65%. A reimbursement above 100% means that a district was reimbursed more than their excess costs. On page 9 of their report, they indicate that 24 districts or cooperatives out of 69 had reimbursements in excess of 105%. This alone is evidence that the special education reimbursement formula is flawed.

The report also indicated that larger districts, or cooperatives with larger districts, tended to have lower reimbursements. They also indicated that districts or cooperatives with higher costs tended to be reimbursed at a low level. Some have tried to dismiss this argument by indicating that the higher costs are due to higher salaries in these districts or unnecessarily expensive programs. It is true that large, urban districts typically have higher teacher salaries and an argument can be made that districts near urban areas have students with more severe disabilities. A more poignant question is why the state special education formula would include these higher costs in the 92% appropriation and then distribute the funding to districts with lower costs.

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Using information provided by KSDE to the Special Education Task, Shawnee Mission would have received an additional \$6 million if districts were merely reimbursed at 92% of excess costs. Similar results would apply to other underfunded districts.

Next, I'd like to talk about the Shawnee Mission claim. The district did not submit a catastrophic aid claim in school year 2008. After the FY2008 reporting window closed, we discovered that catastrophic aid claims could be submitted on a gross cost basis. Previously we assumed that claims must be made net of any reimbursement the district received. After confirming the gross-cost rule with Mr. Dennis, we started developing a process to track special education costs by student. As indicated before, our final claim included 334 students for a total reimbursement of \$3.8 million. This gross-cost versus net-cost issue is now commonly referred to as double dipping. It is interesting that some districts are critical of the KSDE gross-cost rule, calling it double dipping, when many of the districts are receiving a reimbursement well in excess of their costs.

When the KSDE auditors arrived, we spent a considerable amount of time explaining the process we used. The normal approach used by districts was to identify a group of students and then attempt to document the costs. Our approach was to allocate direct costs to all students and then identify those with costs in excess of \$25,000. This approach brought up issues that the auditors had not dealt with previously. The major issue was how to allocate the cost of a provider that travels around the district serving many students. In some cases, the provider spent less than 50% of the time directly serving the students in his/her caseload. The remainder of the time was spent completing evaluations, writing IEP's, instructional planning, supervising paraprofessionals and travel between schools and job locations. Although it was not in the catastrophic aid guidelines, the district and the auditors agreed not to count costs for providers that had direct service time less than 50% even though the provider spent 100% of the time on the student caseload. This lowered the reimbursement to about \$3.1 million

In closing, Shawnee Mission believes it is unfair to remove one provision of the special education funding formula without considering the other parts. The catastrophic aid provision has allowed Shawnee Mission to reduce its special education underfunding from \$6 million to \$3 million. If no changes are made to catastrophic aid, other districts may be able to reduce their underfunding as well. Unlike the categorical aid component of the formula, catastrophic aid claims are based on the actual cost. Over time, more catastrophic aid claims may result in a more uniform distribution of state funds.

You should also be aware that these bills virtually eliminate catastrophic aid funding. When a district receives a student that requires costly services, it is unlikely the district will receive much support from this new catastrophic aid funding.

Lastly, formula changes typically include hold harmless provisions. If you are inclined to make changes to the catastrophic aid funding, we encourage you to protect existing funding, at least for districts like ours that are funded well below the state target level. We also encourage you to take additional steps to solve the overall special education

funding issue. If you send this back to the Special Education Task Force, we believe a stated goal should be to develop an allocation plan that:

1. more closely matches the reimbursement with the actual excess cost and
2. prohibits a reimbursement that exceeds the excess cost.



**Olathe School District**  
**Dr. Gary George, Assistant Superintendent**  
**Testimony Regarding Senate Bill 359**  
**March 16, 2010**

We are submitting written testimony to express our opposition to Senate Bill 359. This bill would raise the threshold for catastrophic aid, stipulates that only net expenses can be claimed, and the new provisions would go into effect upon publication in the Kansas Register.

As you are aware, in 1994 the Kansas Legislature adopted a catastrophic aid provision for special education. This provision requires that districts pay the first \$25T in expenses and the state reimburses districts for 75 percent of the expenses beyond \$25T. However, even with categorical special education aid and catastrophic aid, we still have to make significant transfers to the special education fund each year. This year the transfer is projected to be \$9.8M.

Our overall special education percentages are in line with what you would expect of a larger district. As of December 1, 2008, we had 3,131 disabled students and 832 gifted students; total 3,963 special education students. Our disabled percentage is approximately 11.6 percent of our total enrollment (27,000). We are a growing district and our special education student population has grown proportionally. In 2008-09, the average (mean) cost of the students for which we applied for assistance was \$55,544.

Why does our community have these high numbers of students requiring these costly services? The answer lies in the following:

- With an enrollment of over 27,000 students, a large number of special education students would be expected.
- Our community and the surrounding metropolitan area provide an excellent job market.
- Parents with special education students have access to major medical centers including KU Medical Center and Children's Mercy Hospital.
- The Olathe School District has an excellent reputation of providing quality programs for special education students and parents have

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sought our district because of the services we offer. A letter from one of our parents is included for your reference on this point.

The 2010 Commission proposed a change in the calculation of catastrophic aid. Hearings were held this past summer before the Legislative Education Planning Committee. We now have Senate Bill 359.

Catastrophic aid is one component of special education aid for school districts. Other components are transportation and categorical aid. The district receives approximately 80 percent of its transportation costs for special education students. Categorical aid is the reimbursement amount per teacher unit. We receive \$23,000 - \$28,000 for each teacher. The amount varies each year. We receive .4 of the teacher reimbursement for each paraprofessional. These three components make up the vast majority of special education aid from the state. Catastrophic aid is a reimbursement for expenses the district has already incurred for students who have profound needs. These claims are carefully audited by the Kansas Department of Education. Inaccurate or claims insufficiently documented can and are denied.

Catastrophic aid has become an issue in the Legislature due to several recent developments.

- The number of students qualifying has increased this year (758 students across the state), and the amount of reimbursement has significantly increased; \$12,023,698 this year.
- The rapid increase occurred at a time when all district budgets were reduced in regular and special education aid.
- Due to the significant increase in catastrophic aid, districts received less money in categorical aid than they were expecting.

The data below provides the number of students in each category in the Olathe School District in our most recent catastrophic aid claim.

- Autism: 44 students
- Mental Retardation: 24 students
- Multiple Disabilities: 13 students
- Developmentally Disabled: 12 students
- Hearing Impairment: 10 students

- Other Health Issues: 7 students

Based on the number of students, autism is our largest single driver of catastrophic claims. Students in the above categories need extensive services throughout the school day.

Further analysis of the data indicates that the Blue Valley, Shawnee Mission and Olathe School Districts have 20.43 percent of the autistic children in the state. However, the combined enrollment of these three districts is only 15.85 percent of the state's enrollment. These three districts also have 17.39 percent of the deaf/blind students in the state. These three districts appear to have more exceptional students with a greater severity in these two areas. In addition, these three districts have a disabled population that on a percentage basis is less than the state of Kansas. The percentage is 10.82 percent for the three districts while the state's, as a whole, is 13.89 percent. This clearly indicates that these three districts are not over identifying students as needing an IEP.

We have concerns with Senate Bill 359 for the following reasons:

We believe the entire formula for special education aid should be reviewed. Legislative Post Audit outlined the tremendous variations in categorical aid in a December 2007 report. That report pointed out that one district received 207 percent of excess costs while another received only 45 percent of excess costs. Legislative Post Audit outlined some proposals to narrow this wide reimbursement variation. A committee looked at this but did not propose any changes so this glaring flaw remains in the current formula and Senate Bill 359 does nothing to address it. We firmly believe that changing only the catastrophic portion of the special education formula, without addressing the wide variations in "excess costs" and the wide variations in identification rates, is the wrong approach. The entire formula should be reviewed, revised as appropriate and properly funded.

If Senate Bill 359 passes, it will be another \$1.8M - \$2M reduction for our district. This would be in addition to all the other budget reductions we have experienced over the past year.

In addition, if this bill passes, we will lose the revenue but still have the students to educate and parents who still expect the same level of service.

Senate Bill 359, as currently written, appears to penalize us for the current year. In most cases, legislative funding decisions apply to future years not the current year.

We recommend the following:

1. Review the entire formula and the wide variation in identification and reimbursement rates among districts. This is a systems issue and is greater than just catastrophic funding.
2. Place more money in the formula, when possible.
3. Until there is a comprehensive review and adequate funding, consider grandfathering districts at their 2008-09 catastrophic claim amounts if they can justify the reported expenses.

Thank you.



To Whom It May Concern:

My son has a traumatic brain injury as a result of a car accident. Prior to moving to Olathe, we lived in Colby, Kansas, a small town of about 5,000 people in Northwest Kansas. While we enjoyed the closeness of a small community, we knew things were lacking in his educational program and medical care.

We had just completed almost a year of driving 750 miles every month just for medical appointments, which was wearing on my family. My son had attended Colby schools for 7 years and everyone in the community knew him. The decision to move was not an easy one. He was educated in a private room within a resource room, with the same para all day long. While they educated in complete isolation, they also fostered "learned dependency". After countless interviews with school personnel asking questions about the kinds of educational programs offer for my son, we knew we wanted to find a district that knew the difference between community based instruction and work study programs, the difference between a lifeskills program and a resource room, that offered 18-21 year old programming choices other than another classroom. Olathe school district knows these differences! My son needed these differences. We also needed the staff that was knowledgeable of how to work with a traumatic brain injury child and could provide the necessary skills to afford him independence in his future. We found all of this and more here in Olathe. With this knowledge, we decided to move to Olathe.

Also, being in Olathe, so close to top-notch medical facilities, has allowed us to finally get my son's medical conditions controlled. Taking multiple days off of work and out of school is not an issue for us anymore. We are able to see doctors on a more regular basis and the continuum of care has been a huge benefit for his medical conditions.

Another benefit to being here in Olathe is we have been able to tap into the community resources such as day services, group homes and supported home care have never before been available to us within the community that we lived in. My son has recently graduated from Olathe Schools and he will be continuing his life in a day service program right here in Olathe! It is managed by the community developmental organization here in Johnson County. Prior to our move, we would have never been able to dream of this possibility. These resources were just not available to us. We are happy to say that educationally, medically and community-based- we are in a much better place!

Respectfully submitted,

Machele Fisher-Haskin