

MINUTES OF THE SENATE EDUCATION COMMITTEE

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

Committee members absent:

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

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

SB 169—Schools; special needs scholarship program

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The next meeting is scheduled for February 22, 2005.

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