

Approved: \_\_\_\_\_

Date

BL 3/4/99

## MINUTES OF THE SENATE EDUCATION COMMITTEE.

The meeting was called to order by Chairperson Senator Barbara Lawrence at 9:00 a.m. on February 17, 1999 in Room 123-S of the Capitol.

All members were present except:

Committee staff present:     Avis Swartzman, Revisor  
                                      Jackie Breymeyer, Committee Secretary

Conferees appearing before the committee: Bob Voboril, President, Kansas Association of Independent And Religious Schools (KAIRS)  
  Chuck Weber, Parent, Wichita  
  Jacob Johnson, Most Pure Heart of Mary School, Topeka  
  Jim Johnson, Parent, Topeka  
  Tom and Kathy Johansen, Parents, Wichita  
  Winston Kenton, Teacher, Wichita  
  Shirley Armentrout, Special Education Teacher, Topeka  
  John Schyler, Wichita  
  Mary Kay Culp, Associate Director of Education,  
  Kansas Catholic Conference

Others attending:     See Attached List

Senator Lawrence called the meeting to order and stated the agenda for the meeting was the opponents to: **SB 8—special education; services for exceptional children attending private schools**

Bob Voboril, KAIRS, led off with testimony ([Attachment 1](#)), stating that this is the third time this bill has been proposed. It failed in 1996 and 1998. Both the original federal law and current state law are clear that special education is a program for all children. The public school serves as the agent, not merely the recipient, of special services and funding.

Chuck Weber appeared next on the bill and presented his testimony ([Attachment 2](#)) Mr. Weber told of his visiting with many legislators when he was at the capitol a couple of weeks ago. He stated that Catholic schools save state and local taxpayers tens of millions of dollars each year by educating their children at their own expense. This type of issue makes it very hard for parents to get motivated about generating additional financial support for public education. He urged defeat of the bill as a bad piece of legislation.

Jacob Johnson, student, addressed the bill, reading his testimony ([Attachment 3](#)) Jacob is 9 years old and has Spina Bifida. Jacob read that having kids with disabilities leave the classroom is like going back to Martin Luther King Jr.; not having the freedom of staying with friends and classmates.

Jim Johnson, Topeka, the father of Jacob, was next to address the bill. ([Attachment 4](#)) He expressed concern about the bill that would allow the school district to dictate the services Jacob receives at his school, Most Pure Heart of Mary, to a public school setting. Two years ago this was attempted, but the bill did not pass. He sees no reason to create more limits on his son than already exist.

Tom and Kathy Johansen shared their testimony ([Attachment 5](#)) and introduced their son, Andy, who has Down Syndrome. They stated that for what it would cost to provide an aid for one hour in the public school system they are able to provide services for four hours per day at his current school. They urged continued partnership between public and private schools.

Winston Kenton addressed the bill. ([Attachment 6](#)) He is a social studies teacher at Bishop Carroll Catholic High School in Wichita. He stated that the bill would mandate that all parents of exceptional children would have no choice but to send their children to public schools, despite the fact that all parents who send their children to private schools pay both local and state taxes to fund public education. He mentioned a disabled student, Warren, who has enriched his life.

## CONTINUATION SHEET

MINUTES OF THE SENATE EDUCATION COMMITTEE, Room 123-S Statehouse, at 9:00 a.m. on February 17, 1999.

Shirley Armentrout, special education teacher, spoke next to the bill. Her son, Robbie, also needs special education services. At the school where she is currently employed, there are currently 43 IEPs involving over 50 services that are done with the collaboration, conferencing and teamwork of 5 separate school districts. She is paying for the enrollment, curriculum, special equipment for assistive technology and a paraprofessional while the public school is providing her son's needed therapies at a different location. Some private schools are close to public schools and may obtain services within walking distance, while others would require transportation. The academic time that is taken from the children for transportation is an added burden to the struggles they daily live. (Attachment 7)

John Schyler, Wichita, gave a few brief comments. He spoke of "CRAB"s, children in school who are currently regarded as able-bodied. He spoke of Pete, a boy he spends time with in the classroom on Thursday. At first the children stood back from Pete, but now he has been included in their lives. They realize that each person in this world has something to offer.

Mary Kay Culp addressed the bill (Attachment 8) The Kansas Catholic Conference represents 30,000 students who attend Catholic schools statewide. They oppose the bill because it would remove the mandate that public school districts provide special education services to private school students on-site at private and religious schools, when practical. There is no evidence of cost savings to public school districts if this bill passes.

A paper from Families Together, Inc. (Attachment 9) was distributed.

Chairperson Lawrence thanked the conferees and adjourned the meeting.

# SENATE EDUCATION COMMITTEE GUEST LIST

DATE: February 17, 1999

NAME	REPRESENTING
Jacob Johnson	Topeka
Bonni Bennie	Families Together, Inc.
Rosli Auard	Families Together, Inc.
Vesie Torres	Ks Council on Developmental Disabilities
Dennis Apt	USA - KCR
Brilla Smith	USA
Elaine Frisbie	Div. of the Budget
David O'Leary	TAXPAYERS
G.L. Johnson	USA
Chuck Weber	Billy Weber - special ed child
Kathy Johansen	Andy Johansen - Special ed child <sup>over</sup> all children
Tom Johansen	"
Jacqui Cole	Sen. Johnson - Jeter
Mark Haydman	School Administrator
Tom Moseley	NKFSL - Oakley
Cerry Stewart	USD 259 / Sp Ed Dir.
Diane Gjerstad	USD 259
Winston Brooks	USD #259
Rod Bieber	KSDE



SENATE BILL 8

Bob Voboril, President

Kansas Association of Independent and Religious Schools (KAIRS)

Testimony in Opposition

February 17, 1999

KAIRS represents the 40,000 children whose rights are threatened by Senate Bill 8.

This is the third time this bill has been proposed to you. It did not pass in 1996 or 1998. It should not pass now.

In Monday's Wichita Eagle Senator Lawrence stated that this bill is needed to contain costs. In fact, however, the Federal District Court decision in the Fowler case limits the cost of services at a non-public school site to no more than the cost of providing the same service at a public school site. For example, the District Court limited the school district's liability in the Fowler case to about \$15,000, less than half of the actual cost. The Fowlers or the non-public school pays the rest.

An interim committee spent much of last summer examining the costs of special education. As nearly as I can tell, the cost of providing special education services to non-public school children did not even surface as an issue.

So if the courts have already limited public school costs, what is this bill really about? I believe the question is: Should parents of children with special needs have the right to send their children to a non-public school and receive special services there.

The answer is another question: Is special education a public school program or a program for all children with special needs?

Both the original federal law and current state law were clear: special education is a program for all children. The public school serves as the agent, not merely the recipient, of services and funding.

*Senate Education  
Attachment 1  
2-17-99*

State statute 72-5393 codifies this principle: "any school district which provides auxiliary school services to pupils attending its schools shall provide on an equal basis the same auxiliary services to every pupil...residing in the school district."

By changing that single word "shall to "may" Senate Bill 8 eliminates this principle of equality, and instead gives to the school district sole authority to determine where services will be provided. For some children with severe and multiple handicaps, this bill effectively eliminates the right of the parent to enroll such children in a non-public school because without appropriate on-site special education services, the children can not succeed.

It has been suggested by the lobbyist for USD 259 that there are many non-public school parents who will now demand expensive services because of the Fowler case. Where are these children hiding? Why aren't they being served now? Why haven't they surfaced in the two years since the Fowler decision? They haven't surfaced because they don't exist. Parents of special needs children begin utilizing every available service the day their child is born. They don't wait until the child is ten.

Members of the Senate Education Committee, there are real problems associated with providing and funding special education, especially in areas where a high percentage of the students are high risk, as in Wichita, and they deserve attention. This bill doesn't address a single one of them. It wasn't worthy of being passed in 1996 or 1998. It wasn't even worthy of discussion last summer. It won't solve any problems now. Please oppose Senate Bill 8.

*Handwritten notes:*  
Cristina B. [unclear]  
1-11-98  
pp 11-12



## VOTE NO ON SENATE BILL #8

Statement by Chuck & Cindy Weber, presented by Chuck Weber  
Senate Education Committee, February 17, 1999  
Opposition to S.B. 8.

Senator Lawrence and members of the Senate Education Committee, thank you for allowing time for testimony on Senate Bill 8. On behalf of my wife Cindy, and our son Billy, neither of whom could make it here this morning, I would like to thank you for your service to the State of Kansas as elected representatives. Yours is a mostly thankless job, addressing issues and making decisions that effect the lives of many people. Your efforts are appreciated.

We also know you understand the hardship involved for people like myself who must travel to Topeka for hearings like this one. But the issue of special education services for our son is critically important not just for him, but for our entire family.

I wish each of you could have a chance to meet Billy. He was here a couple of weeks ago and met Senator Lawrence, along with most of the staff and visitors in just about every office in that wing of the Capitol. He is an outgoing, energetic and motivated little boy. He also has Down Syndrome.

Ever since Billy was born three years ago it has been our desire and intention that he attend our parish school in Bel Aire, Resurrection Catholic School. That is the place he has known since he was old enough to stay in the church nursery, eat donuts in the school gym after Sunday Mass, and make his first visit to the other kids in the classrooms. His three sisters Rebekah, Rachel, and Libby, ages 8, 7 and 5 attend Resurrection, as will Billy's younger brother David. They too look forward to the day, not too far into the future now, when Billy will go to school with them in the morning.

However, If Senate Bill #8 becomes law, it will become very difficult for us to exercise our rights as parents to enroll Billy with his brother and sisters at Resurrection, the learning environment that we feel is best for him.

Billy now receives, and will continue to need special education services like speech and occupational therapy. Our long-term goal for him is to live as an adult in an assisted living or even independent living situation. For him to achieve that goal, and to achieve the best quality of life possible each and every day until then, he needs the best possible learning environment. That environment is attending Resurrection Catholic School, a place he knows and loves, a place that reflects our own values and beliefs, a place where he will be loved and cared for by his brothers, sisters and friends. The same place, it stands to reason, is where he should receive his special education services.

*Senate Education  
Attachment 2  
2-17-99*

If Senate Bill #8 becomes law, we face two equally difficult choices:

The first is enrolling Billy at Resurrection where he will most likely struggle more than he should have to, very possibly without special education services provided for him at school. Yes, we could opt to receive special ed. services at a public school in the city, but frequent shuttling between Resurrection and wherever the special education services would be provided would be highly disruptive to his schedule and more importantly, to his entire learning process.

The other option would be enrolling Billy full-time in a public school. In one sense, this would be the easier option for us as parents and for Resurrection Catholic School. There are no transportation issues since the taxpayers will pay for a bus to come pick him up and take him to a school where he receives his special ed. services. Teachers at Resurrection would not have to deal with a special education student in their classroom.

But there's more to the picture. Billy's siblings, friends, classmates and even teachers at Resurrection will miss out on what Billy has to offer *them*. Billy Weber and other special needs kids are critical to the entire learning community. Believe it or not, we've been preaching diversity and inclusion in our schools for a long time--and we're trying to follow through on that philosophy more and more. But just like the special needs kids in public schools, kids in our schools--kids like my son--need special education services provided in an environment where they'll be most effective.

I want to address for a moment the issue of cost. I would like you and people from the public schools to know that we are critically aware of the cost involved in providing special education services. It is indeed an expensive proposition. Some kids--public school students and non-public school students alike--need more services and different services than others. But as a society of people, we have decided there is some common responsibility to provide special education services to all of our children, regardless of circumstance. There are always going to be extraordinary circumstances involving certain cases, but if you talk with the parents and the service providers, in the vast majority of instances both parties work together to find reasonable solutions to those situations.

As you move forward with this bill, there are some key questions that need to be addressed:

How much money, specifically, will Senate Bill #8 really save? At who's expense? What will the overall quality of education be for children like Billy Weber if this bill becomes law? Do parents who send their children to non-public schools have the same rights as public school parents? If not, why not?

I would like to go on record as saying I believe in our public schools, our public school teachers, and particularly our public school special education teachers. They need and deserve the support of everyone. And public education certainly has many issues that need to be addressed. But this is the kind of issue that makes it very difficult for parents

like me to get motivated about generating additional financial support for public education.

Catholic school parents in Kansas save state and local taxpayers tens of *millions* of dollars each year by educating our own children at our own expense. Now we find ourselves fighting for special education services to help just a fraction of those children who, like Billy Weber, happen to be the most vulnerable, disadvantaged and needy of our society.

I strongly urge you to defeat Senate Bill #8 as a bad piece of legislation.

Thank you Senator Lawrence and other members of the Senate Education Committee for your time.

Jacob Johnson  
2508 Randolph  
Topeka, KS 66611  
785-232-1042

Senator Barbara Lawrence,  
Chairwoman, Senate Education Committee  
Room 255 - East  
State Capital  
Topeka, KS 66612

February 17, 1999

Dear Senator Lawrence,

My name is Jacob Johnson. I am 9 years old and I have Spina Bifida. I am in the 3rd grade at Most Pure Heart School in Topeka, Kansas. I think Senate Bill # 8 is wrong.

I like Most Pure Heart of Mary because I have allot of friends there, it is a nice place and it is fun. I want to stay at Most Pure Heart because they make sure things get done, like medicines. When a kid needs medicine they call them to the office if they are not on time.

When I am at Most Pure Heart and we are playing, sometimes people help me, like pushing my wheelchair so I can go faster. Sometimes they let me play, like kick back, they just wait and let me get it if the ball is coming towards me. I have friends at Most Pure Heart that have been there sinse kindergarten. I want to go to school with them and play with them.

I want to have PT at Most Pure Heart because it is closer. I want to go to the bathroom at Most Pure Heart because if I had to go to a different school or building I would be late for lunch. I would miss more things than I already do. Or I would have to leave class-time early, and if we are learning something new, like we never had before, like fractions, I would not be able to learn it because I would have to leave early. I want to stay at Most Pure Heart and not have to leave Most Pure Heart to go to the bathroom or have PT. My Physical Therapist is Eric and he wants me to have PT at Most Pure Heart too.

I think having kids with disabilities leave the classroom is like, it goes back to Martin Luther King Jr. It's like not having the freedom of staying with my friends and my classmates. It's like getting split up. It's like segregation.

I think in dealing with kids and Senate Bill # 8, it is not right to change this law.

Thank you for listening to me,

JACOB JOHNSON

Jacob Johnson

Senate Education  
Attachment 3  
2-17-99

Jim Johnson  
2508 Randolph  
Topeka, KS 66611  
785-232-1042

Senator Barbara Lawrence  
Chair, Senate Education Committee  
State Capitol, 255- East  
Topeka, KS 66612

February 17, 1999

Dear Senator Lawrence and members of the Senate Education Committee,

My name is Jim Johnson. I am the father of Jacob Johnson who you just heard testify. Jacob decided that he wanted to testify on his own accord and in his own words. Obviously, we are very proud of him. The reason why we are here today is because we are opposed to Senate Bill # 8 and the changes that it would impose on children.

Jacob is in the third grade at Most Pure Heart of Mary (a catholic grade school) in Topeka. He has done well academically with minimal special assistance in that area. Because of his disability he is considered a "Special Education Student" and receives special education services through the I.E.P. process. He receives physical therapy for 30 minutes twice a week, assistance using the restroom facilities for 10 minutes daily, and his classroom teacher at Most Pure Heart can consult as necessary with an occupational therapist and special education teacher. Our concern about Senate Bill # 8 is that it would allow the school district to dictate that the services Jacob currently receives on site at Most Pure Heart could be moved to a public school setting.

Two years ago USD 501 did attempt to terminate the services Jacob receives at Most Pure Heart. They were willing to provide those services at a public school location. This would have resulted in Jacob being transported to a public school site to use the restroom. This was not an acceptable alternative to us and we did not accept it. Removing Jacob from his school to receive bathroom assistance would have escalated a 10 - 15 minute procedure into a 30 - 60 minute complex operation. This would have resulted in unnecessary disruptions to Jacob's academic and social opportunities in the classroom, in the lunchroom and on the playground. It would take away precious time Jacob had with his peers. Procedures have been developed to minimize the amount of time Jacob misses from classroom time and activities with his peers. This is critical because a child with a disability is so much more vulnerable to loose ground on those accomplishments they have achieved. In short, denying academic and socialization opportunities from an already at risk child is not consistent with any educational mission of providing for the needs of the child.

I'm sure you will agree with me that a parent wants the best for their child. We want Jacob to have a happy childhood and to be able to attend school with his family and friends. Likewise, like any parent, we want Jacob to have the best educational opportunities so that he can have the best chance to be a successful and productive adult who contributes to the world around him. Jacob talked about Martin Luther King Jr. and the importance of not being set a part or segregated. The concept of freedom is a rather simple one. One is free when one has the opportunity to make choices for himself. Jacob is showing that he is internalizing that concept as a child. We want him to be able to continue to internalize that concept, so that one day he will have a full range of vocational and professional choices available to him. There will be limits to what he can do physically, but I see no reason to arbitrarily create more limits than already exist.

*Senate Education  
Attachment 4  
2-17-99*

We are Tom and Kathy Johansen, and this is our son, Andy. Andy has Down Syndrome. He is here today to show you that Senate Bill 8 affects real children in real ways.

Andy, who is 10, is in the third grade at St. Margaret Mary, a private school in Wichita. As any parents, we want what is best for him. Participating in a regular third grade classroom in the same school as his brothers is what is best for him. In addition to his regular curriculum, he has been identified to receive occupational therapy and individualized attention to help him learn. Part, but not all services (by agreement with our public school district), are provided at his private school site.

Andy is very high functioning, and with the assistance of a classroom aid, he has made tremendous achievements in his education. For what it would cost to provide an aid for one hour in the public school system we are able to provide services for four hours per day at his current school.

It is true that it is our choice to send Andy to St. Margaret Mary. The current federal and state laws support this and do not require Andy to attend public schools to receive services. Senate Bill 8 attempts to confiscate Andy back to public schools in order to receive special education services. If this bill passes, we as parents are forced into making one of three choices: **1)** enroll him in public school full-time, which takes him out of a comfortable and proven environment. **2)** keep Andy in private school but transport him every day to the public school for services, thus creating many interruptions in his day which do not contribute to learning). **3)** keep him in private school and refuse special education services. Obviously, none of these choices are what's best for Andy.

We oppose Senate Bill 8 for the following reasons:

1. It attempts to take away our choice of where Andy attends school in order to receive services. This holds us and other parents of special education children hostage to schools we did not choose.
2. It pits public schools versus private schools. We believe everyone wins when they work together for the good of children.

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3. Proponents of this bill argue that it will help public schools control rising costs. Yet, it costs no more to provide services at Andy's private school site. Andy is fully funded now in a public school he does not attend.
4. Current federal and state laws are fair and assure that special education services are available for all children. Educating special needs children is a public benefit . . . special education students in private schools are no less deserving of these benefits! Senate Bill 8 intends to treat these children unequally – in total contrast to the federal law.
5. Parents of special needs children in private schools are taxpayers... their taxes pay for the very special education services this bill attempts to deny them!

In summary, we oppose this bill because we are for special education for all children. This bill seeks to take away special education services for those that need them, and to limit choices for parents.

This is not an issue of public schools versus private schools. Yet, this bill, if enacted, will drive a wedge between them. It will fire the first shot of a war that doesn't need to be waged. It seeks to destroy the public/private partnership.

The issue is simply providing for special education opportunities for all children who need them. Proponents of this bill want the money and the control of special education. On behalf of special needs children in private schools, we're here to remind them: they're our children and, as taxpayers, it's our money too!

We urge you to consider Andrew and the few students like him who benefit from this partnership between public and private schools. Private schools do help ease some of the burdens our public schools face. Please let us continue to build bridges between the two school systems.

We urge you to defeat this bill. Thank you for your time and consideration.

JOHANSEN  
3425 S. Osage  
Wichita, KS 67217

SENATE BILL 8  
Winston E. Kenton  
Testimony in Opposition

Ladies and Gentlemen:

My name is Winston Kenton and I am a social studies teacher at Bishop Carroll Catholic High School in Wichita and a member of the Catholic School Parents League of Kansas. It is a great privilege to appear before you to speak on behalf of the over 800 students at Bishop Carroll, their families, our faculty, administration, and staff.

Today, I would like to speak in opposition to Senate Bill 8. This bill, as proposed, will take away the right of parochial school children with special needs to receive special education services in their schools. As a government teacher at Bishop Carroll, my alleged expertise lies in the study of constitutional issues and Federal law. I can tell you that the U.S. Constitution is rather moot on the issue of education, but I do understand that one of our Founding Fathers, Thomas Jefferson, was one of the greatest advocates of education this Nation has ever known. His greatest desire was that ALL children of this great Republic would have the opportunity to obtain an education. Jefferson, by the way, is probably single-handedly responsible for the questionable application of the Establishment Clause of the First Amendment as placing a wall of separation between Church and State, although the Constitution is also unclear on this point.

For the most part, public education remains under the auspices of the various states. Nevertheless, the Federal government has passed a number of significant laws regarding education. Of these was PL 94-142, The Education for All Handicapped Children Act of 1975. This law mandated that all states provide a free appropriate education for all children with handicaps between the ages of 3 and 18. Of particular note here are the words "All Handicapped Children". What I understand about Kansas State Law is that under K.S.A. 72-5393 every school district is required to provide special education services for exceptional children who reside in the school district and attend a private, nonprofit elementary or secondary school. Senate Bill 8 is designed to change this existing law to deprive parents of private school children the choice of where their children will attend school. K.S.A. 72-5392 recognizes that attendance at private, nonprofit elementary or

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secondary schools satisfies any compulsory school attendance laws of this state, but Senate Bill 8 would mandate that all parents of exceptional children would have no choice but to send their children to public schools. This, despite the fact that all parents who send their children to private schools also pay both local and state taxes to fund public education.

As I comprehend Senate Bill 8, I do not see it as an issue involving Church and State. Nor do I see it as issue of private vs. state control. What I do perceive this to be is an issue of equality, giving to each student what Federal and State law mandates, providing ALL students a free, appropriate education.

Ironically, as I recently e-mailed a number of Senators to voice my opposition to Senate Bill 8, I received an instant message on my computer from one of my government students, Warren. I don't know if Warren receives special services from our local school district for his physical disabilities, but I do know that Warren is an exceptional student in every sense of the word. Warren simply wanted to chat, he had no way of knowing that I was busily pursuing a matter which might very well effect his future at Bishop Carroll High School. But the instant message struck me like a two-by-four between the eyes. What would my life be like without students like Warren? If Senate Bill 8 had already been in effect, I would never have known. I do know that he has changed my life for the better, and I would have been a poorer man if I had never had the privilege of working with him.

Before I close, I ask you to consider the testimony of a segment of your constituency which so seldom has the opportunity to voice their opinions on matters effecting public policy. I have brought with me the written testimonies and pleas of over 160, 7th and 8th grade students of St. Francis of Assisi Catholic School in Wichita. I urge the members of this committee to take the time to examine their poignant and impassioned letters. Please see for yourselves how this issue reaches beyond mere dollars and cents and reaches a personal cord with these youngsters.

Winston E. Kenton  
Social Studies Teacher  
Bishop Carroll Catholic High School, Wichita

Senate Education Committee - Room 123  
February 17, 1999

**Shirley Armentrout**  
**Special Education Teacher**  
**Most Pure Heart of Mary School**  
**Parent of a child with a disability**  
6934 SW 33rd  
Topeka, KS 66614  
(785) 478-4090

**Concern: Passing of Senate Bill No. 8 - Request that the bill not be passed on behalf of the students that will be affected.**

It is with great honor that I join a former student, Jacob Johnson, to advocate for him, my son, Robbie, and the estimated 950 other students needing special education services across the state of Kansas.

Students with special needs have presented a unique educational challenge in a school system. As a special education teacher it my duty to be sure each student has the opportunity to learn within their own environment and that they are provided with the tools and therapies for their learning. Those will vary from student to student. Some will need speech, some physical therapy, occupational therapy, assistance in bathrooming, a learning disability teacher, etc.

Senate Bill No. 8 that is before you is taking away that opportunity when they choose to change wordings of "shall be" to "may be".

At my school we currently have 43 IEPs involving over 50 services that are done with the collaboration, conferencing and teamwork of 5 separate school districts. We have been able to work together for what is best for each individual student. Often the school districts feel hindered with the wording of what can be given and how rather than what the student needs. Some public schools have gone out of their way to accommodate the private schools but feel hampered by the law. A wording change from "shall be" to "may be" is another way of being hampered. We daily compromise and as an example I am paying for the enrollment, curriculum, special equipment for assistive technology and a paraprofessional while the public school is providing my son's needed therapies at a different location.

The therapists providing the direct services are contracted or hired by the public school district to be traveling even among the public schools in cities. The rural areas often require therapists to travel from town to town. But to ask the students to do this for the convenience of the therapist is not in the best interest of the student when they are needing services to be able to keep up with their peers in the first place. The environment of these students will likewise vary. Some private schools are close to public schools and may obtain services within walking distance while others would

*Senate Education  
Attachment 7  
2-17-99*

require transportation. The additional travel time is vital for the student to have for the purpose of being educated and would generally take 30 minutes of travel time which is the same length of time most therapy sessions are in the first place. What is gained in one area is lost in another. The academic time that is taken from these children for transporting is an added burden to the struggles they daily live.

It is for these reasons and the statements of Jacob, his father and others this morning that as a special education teacher and parent that I ask that you not support Senate Bill No. 8.

Jacob, my son, Robbie, and others needing special services may well be the ones who will be making the rules in the future. We should be the ones to set good examples for them to follow.

TESTIMONY IN OPPOSITION TO SENATE BILL 8

Senate Education Committee

by

Mary Kay Culp, Associate Director of Education, Kansas Catholic Conference

February 17, 1999

Thank you Madame Chairwoman and members of the Senate Education Committee for allowing me to address you this morning in opposition to Senate Bill 8. The Kansas Catholic Conference represents the four Catholic Bishops of Kansas and the 30,000 students who attend our schools statewide.

We oppose Senate Bill 8 because it would amend K.S. A. 72-5392, 93, and 94, passed in 1980 and remove the mandate that public school districts provide special education services to private school students on-site at private and religious schools, when practical.

Since 1980 when KSA 72-5392, 93 and 94 were passed, private school special needs students have received special education services "on an equal basis" with public school students. Senate Bill 8 would make it optional for districts to provide state funded services on site at private schools. While Senate Bill 8 would allow federally funded special education services to be provided on-site, federal funds make up only 9% of the costs involved and federal services would be delivered as a group entitlement instead of the individual entitlement state funded services currently deliver.

Most of the time public school districts, private and religious school officials and parents reach mutual agreement on where special education services are best provided. Two-thirds of the time, that ends up being at the public schools. However, when there is disagreement, S.B. 8 gives private school students and their parents backing in the law.

Mary Samms, principal of St. Margaret Mary School in Wichita credits the current law as the reason the Wichita School District agreed to provide on-site services to third grader Andy Johansen who has Down Syndrome, allowing him to continue to attend school with his two brothers. Andy and his family are with us today.

Currently 948 of the approximately 35,000 private and parochial students in Kansas receive state funded special education services. Approximately one-third or about 350 receive those services on-site at their own schools, as do many of the approximately 70,000 public school special education students. Many, if not most of the private school students receiving services on and off-site are speech or learning disabled students.

The point was made in testimony yesterday that current law gives private school special education students more rights to on-site services than their public school counterparts. While this may be true as far as explicitly stated law is concerned, it is hard to image that fewer than 350 of the 70,000 public school special education students receive services on-site at their schools. Our students have a stated guarantee in the law because it is our students who more often need that guarantee.

Yesterday, without citing any numbers, witnesses pointed to cost as the major factor prompting their support of S.B. 8. However, when we recently went to the Department of Education to gather statistics on the number of private school children receiving state funded special education services, no one knew. It took their statistician three days to find the information and get it to us. When I asked if he could further provide which students received which services, he said it would take him several more weeks before he could get us that information. Thus, it is unclear what the claim of excess costs is based on.

In addition and more importantly, the fiscal note prepared for S.B. 8 says that overall districts will not save any money as a result of the passage of S.B. 8, only that occasionally a district might see a slight savings.

This is probably because, as is unbeknownst to many, private school special education students dual-enroll at the public district which allows the district to receive \$3,720 in base state aid for each of these students, plus additional special education funds. This happens whether our students receive services at the private or public school.

When it comes to speech students, which make up a large number of our special education students, I am told by high officials at the state Department of Education, that districts actually make money by teaching these students. It seems unfair for a district to complain about the excess costs of providing services for an occasional student with developmental or physical disabilities when excess money goes to districts for numerous speech students.

*Senate Education  
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2-17-99*

to the point, is occasional "slight" increased cost to an individual district worth the heavy cost in well-being to a disabled child's life—a child who attends private school with his or her friends, and very often with one or more of their siblings—taking them away from their regular classroom to transport them to another building when it is equal, from a practical point of view, to provide them services at their own school? Is it worth making their tax-paying parents have to choose between their religion and provision of on-site special education services for their child?

Frankly S.B. 8 doesn't make sense, especially if everything else about the provision of special education in Kansas remains the same.

Yes, IDEA allows Kansas to limit or even end all state funded services to private school special education students, on site or otherwise, BUT does that make it right? IDEA certainly doesn't mandate this and even reassures states that they can continue to exceed federal minimums as they see fit.

Yes, the Supreme Court has said public school personnel can teach in religious schools, BUT that was true the first six years KSA 72-5393 was law, and there is no discernable increase in demand for on-site services by private schools. Certainly none was mentioned in testimony yesterday.

Yes, the Fowlers won their case, BUT this was a once in twenty year occurrence, on behalf of a child whose father is a lawyer, and the decision said that school districts need not pay more for on-site services than what they pay to provide services themselves.

And, again, there is simply no evidence of cost savings to public school districts if S.B. 8 passes.

The only thing that does make sense is that S.B. 128 is going to change the delivery of special education in the dramatic way that some have been warning us about—moving aggressively towards inclusion of special education into the general classroom.

If this is the case, perhaps the real motivation behind S.B. 8 is to allow districts to be able to refuse to provide on-site consultation services to private schools, or services themselves at private schools, as pull-out programs are ended at the public schools. In other words, even though S.B. 8 would allow our students to be transported to the public schools for services, what difference will that make if soon there are no services to be accessed there unless one attends public school full-time?

And, again, what of on-site consultation special education services, so that we too might incorporate services into our classrooms if that is the only option left for our students. S.B. 8 would allow districts to leave our students on the cutting room floor of even that option.

If indeed this is the real purpose of S.B. 129 and S.B. 8, were that such was more honestly stated and more widely reported. Much is at stake.

In closing, let me ask you please to vote to oppose S.B. 8. Under current special ed delivery services it is unnecessary. Under a new classroom inclusionary system, it is unfair.

It is hard to see the principle of "inclusion" and "least restrictive environment" alluded to in reference to public school special education students while passing laws that cause private school special education students to have to be excluded from their classroom and perhaps their school, thus "restricting" the environment where they learn best—a school in which they are comfortable—schools they share with friends, and more often than not, one or more siblings.

We know public resources are not infinite. We have no problem with the "as practical" standard in current law. We encourage our personnel and our parents to be reasonable when requesting on-site services. We do, however, have a problem with a watershed change in the delivery of special education services in Kansas when our students will be left stranded on the beach. Especially while their parents' tax money pays for the students waving from the departing ships.

Please vote against Senate Bill 8.

8-2

MARY KAY

55094

Federal Register / Vol. 62, No. 204 / Wednesday, October 22, 1997

IDEA

Proposed Rules

FAPE available to the child and the parents elected to place the child in a private school or facility.

(b) Disagreements about FAPE. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of §§ 300.500-300.515.

(c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment.

(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied—

(1) if—

(i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in § 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if—

(1) The parent is illiterate and cannot write in English;

(2) Compliance with paragraph (d)(1) of this section would likely result in physical or serious emotional harm to the child;

(3) The school prevented the parent from providing the notice; or

(4) The parents had not received notice, pursuant to section 615 of the Act, of the notice requirement in paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1412(a)(10)(C))

Children With Disabilities Enrolled by Their Parents in Private Schools

§ 300.450 Definition of "private school children with disabilities."

As used in this part, private school children with disabilities means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under §§ 300.400-300.402.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.451 Child find for private school children with disabilities.

Each public agency must locate, identify and evaluate all private school children, including religiously-affiliated school children, who have disabilities residing in the jurisdiction of the agency in accordance with §§ 300.125 and 300.220.

(Authority: 20 U.S.C. 1412(a)(10)(A)(iii))

§ 300.452 Basic requirement—services.

To the extent consistent with their number and location in the State, provision must be made for the participation of private school children with disabilities in the program assisted or carried out under Part B of the Act by providing them with special education and related services in accordance with §§ 300.453-300.462.

(Authority: 20 U.S.C. 1412(a)(10)(A)(i))

§ 300.453 Expenditures.

To meet the requirement of § 300.452, each LEA must spend on providing special education and related services to private school children with disabilities—

(a) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under sections 611(g) of the Act as the number of private school children with disabilities aged 3 through 21 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 21; and

(b) For children aged 3 through 5, an amount that is the same proportion of the LEA's total subgrant under section

619(g) of the Act as the number of private school children with disabilities aged 3 through 5 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 5.

(Authority: 20 U.S.C. 1412(a)(10)(A))

Note: SEAs and LEAs are not prohibited from providing services to private school children with disabilities in excess of those required by this part, consistent with State law or local policy.

§ 300.454 Services determined.

(a) No individual right to special education and related services. No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Decisions about the services that will be provided to private school children with disabilities under §§ 300.452-300.462, must be made in accordance with paragraphs (b), (c) and (d) of this section.

(b) Consultation with representatives of private school children with disabilities. Each LEA shall consult, in a timely and meaningful way, with appropriate representatives of private school children with disabilities in light of the funding under § 300.453, the number of private school children with disabilities, the needs of private school children with disabilities, and their location to decide—

(1) Which children will receive services under § 300.452;

(2) What services will be provided;

(3) How the services will be provided; and

(4) How the services provided will be evaluated.

(c) Genuine opportunity. Each LEA shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.

(d) Timing. The consultation required by paragraph (b) of this section must occur before the LEA makes any decision that affects the opportunities of private school children with disabilities to participate in services under §§ 300.452-300.462.

(e) Decisions. The LEA shall make the final decisions with respect to the services to be provided to eligible private school children.

(Authority: 20 U.S.C. 1412(a)(10)(A);)

§ 300.455 Services provided.

(a) Comparable services. The services provided private school children with disabilities must be comparable in

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8-3

# Court orders school to pay for sign-language interpreter

Associated Press

A federal appeals court on Friday ordered the Wichita school district to pay for full-time sign language interpretive services at a private school for a deaf child.

But the 10th U.S. Circuit Court of Appeals in Denver partially reversed a lower court decision that the district provide the services without regard to cost. The appeals court said the district must pay for services up to the average cost to provide the same service in public schools.

About two years ago, Michael Fowler had been attending classes at Caldwell Elementary School, where services already were being provided for 30 hearing-impaired students.

But his parents said tests showed

him to be gifted, and they were unhappy with public schools. They transferred Michael to a private school.

Because his parents chose to move Michael, the Wichita school district did not feel it should have to pay for the interpreter, said Terry Bachus, executive director of special education for the district.

A district court eventually ruled that the school district was required by federal and state law to provide an interpreter.

The appeals court said because his parents chose to move Michael, a fair interpretation calls for the district to pay the average amount it pays for such services in public schools, not the total cost.

Contributing: John Ellis of The Eagle

S.B. & would  
change this +  
leave it up  
to districts whether  
to provide or pay  
for on-site services  
at private/parochial  
schools.

Ed (15)  
8-4



# Families Together, Inc.

Parent Training & Information Centers for Kansas

Home Page:  
<http://www.kansas.net/~family>

Testimony to the Senate Education Committee

February 17, 1999

Senate Bill 8

Wichita Parent &  
Administrative Center  
3340 W Douglas, Suite 102  
Wichita, KS 67203  
Voice (316) 945-7747  
1-888-815-6364  
Fax (316) 945-7795  
e-mail: [fmin@feist.com](mailto:fmin@feist.com)

Families Together, Inc. is a statewide organization that serves families that include a son or daughter with a disability. One of our charges is to empower parents to advocate effectively for the special education needs of their child. Therefore, any reduction in services to any of the families in Kansas is of interest to Families Together.

Topeka Parent Center  
501 Jackson, Suite 400  
Topeka, KS 66603  
Voice/TDD (785) 233-4777  
1-800-264-6343  
Fax (785) 233-4787  
e-mail: [family@inlandnet.net](mailto:family@inlandnet.net)

Some of the families that we serve have chosen to send their children to private schools for various reasons. Most make this decision because their other children attend that particular school, and they want all of their children to go to school together. In the case of a child with special learning needs, these parents simply want the services necessary for their child to benefit from their education. If Senate Bill 8 is passed, any attempt to help their children in the school of their choice will be effectively taken away.

Garden City Parent Center  
111 Grant  
Garden City, KS 67846  
Voice/TDD (316) 276-6364  
1-888-820-6364  
Español (316) 276-2380  
Fax (316) 276-3488  
e-mail: [famtogether@pop.gcnnet.com](mailto:famtogether@pop.gcnnet.com)

These parents pay taxes to support public education, yet they choose to send their child/children to a school where they pay additional money to hire teachers, pay for electricity, etc. The only thing that they ask for from the public system is the support to enable their son or daughter to acquire the skills necessary to be a productive member of society. What a comparatively small sum that would be when compared to the price of providing the full education for the child in the public system. The parents who call us are not asking for more than other parents whose children attend public schools, they are paying double for their child's education and are only asking for additional support to enable their child with learning differences to be successful.

Kansas City Parent Center  
6333 Long, Suite 230  
Shawnee, KS 66216  
Voice (913) 962-9657  
Fax (913) 962-9690  
e-mail: [kcfam@kc.net](mailto:kcfam@kc.net)

Thank you.

Statewide Spanish Parent Line  
1-800-499-9443 (Español)

*Senate Education  
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Assisting Parents and Their Sons and Daughters with Disabilities*