



## Disability Rights Center of Kansas

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House Committee on Education  
HB2486 - Requiring children to be toilet trained to enroll in and attend kindergarten  
Opponent Written-only Testimony  
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### **Chair Estes and members of the committee:**

My name is Liz Hueben. I am an attorney at the Disability Rights Center of Kansas (DRC). DRC is a public interest legal advocacy organization that is part of a national network of federally mandated organizations empowered to advocate for Kansans with disabilities. DRC is officially designated by the State of Kansas as Kansas' protection and advocacy system. DRC is a private, 501(c)(3) nonprofit corporation, organizationally independent of state government and whose focus is the protection and enhancement of the rights of Kansans with disabilities.

### **DRC opposes HB 2486 for the several reasons we state below.**

DRC has concerns regarding sections of the proposed House Bill No. 2486 amending K.S.A. 72-3118, specifically section (1)(e) of the Bill, regarding toilet training in kindergartners. Our concerns stem from the possibility of children with as-yet-undiagnosed disabilities or exceptionalities being barred from attending kindergarten

Section (1)(e)(2), taken together with Section (1)(e)(1), say that a parent cannot enroll a child in kindergarten if that child is not toilet trained, with certain exceptions. One exception is when the child has a recognized exceptionality described in the child's IEP or 504 plan. However, children who are not enrolled in school cannot be evaluated for an IEP or 504 plan, so that exception is predicated on a child being enrolled. It leads to a circular logic problem: a child cannot be enrolled unless he has an exceptionality on an IEP or 504 plan, but he cannot get an IEP or 504 plan unless he is enrolled. A better wording of this section would include the language "when a child has a recognized exceptionality described in the child's IEP or 504 plan, or it is suspected the child has an exceptionality subject to federal child-find requirements."

There is a second exception listed in Section (1)(e)(2), which takes into account a situation in which a child has a "condition that is verified" by a medical professional. A problem with this language can be foreseen in situations in which a child has toileting issues and is under

the care of a doctor to try to diagnose a reason for the lack of toilet training. In that example, the medical professional would not be able to verify a condition, but may be testing and evaluating the child to try to determine the cause of the toileting issues. One scenario in which this may come into play would be a suspected food allergy that leads to incontinence. A child's medical team may be trying to get an understanding of what is triggering the incontinence. In that case, a family would not be able to provide a doctor's note verifying a particular condition.

To remedy that, we suggest language be added to section (e)(2) of the Bill to the effect of "due to a medical condition that is verified, or due to ongoing care verified by a medical professional to attempt to diagnose a medical condition. In this section, the term 'medical professional' shall be an individual licensed by the state board of healing arts to practice medicine and surgery or a mid-level practitioner as defined in K.S.A. 65-1626, and amendments thereto."

Another issue we see with this Bill as written is in the potential for schools to remove children from kindergarten without sufficient evaluation beforehand. As written, Section (1)(e)(3) of the Bill states that each school district shall establish a policy and procedures to address a kindergarten student who is found to not be toilet trained. Those policies and procedures "[s]hall: (A) Require the school **to consider** whether a child's delay in toilet training **may be** a sign of an exceptionality" and **to consider** "whether the child should be referred for an initial evaluation or a reevaluation" (Emphasis added). This is not very strong language. We would push for a more mandatory assessment of the situation, especially since this same section of the Bill allows for a school to remove the child from kindergarten. It is our position that all angles should be explored before this drastic step is taken.

To that end, we suggest amending that section as written, to say, "(A) **Require** the school to conduct an initial evaluation or reevaluation to determine whether the child's delay in toilet training may be a sign of an exceptionality." (Emphasis added). And finally, in Section (1)(e)(3)(D), in order to take into account children who may not yet have a medical diagnosis or who may have an as-yet-unidentified exceptionality, we suggest tightening that language to say "(D) only after an evaluation for an exceptionality or sufficient time for ongoing medical investigation into the child's lack of toilet training, authorize a school district to remove the child from kindergarten and reintegrate the child into kindergarten once the child has become toilet trained."

In addition, it would be helpful in avoiding the removal of children from kindergarten for this Bill to include what steps would be taken to keep parents abreast of a school district's consideration of removing the child to allow parents the time to perhaps seek more medical input into the child's delay in toilet training.

In summary, DRC wants to ensure that school districts exhaust all medical or intellectual/developmental explanations for a child's toilet training delays before they can remove the child from kindergarten, subject the child to further delays and perhaps deny a child with disabilities the equal access to kindergarten education enjoyed by their peers.

Thank you for the opportunity to share our concerns with HB 2486.