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HB 2486- Requiring children to be toilet trained to enroll in and attend kindergarten in any public school and providing certain exceptions thereto  
Opponent Written Testimony  
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Chairwoman Estes and members of the Committee-

The Kansas School Nurses Organization (KSNO) stands in opposition to HB 2486. While we understand the intent is to alleviate the burden on classroom teachers, school nurses and other school staff, this bill creates significant legal, ethical, and logistical liabilities for school districts and ultimately harms the health and developmental trajectory of Kansas children.

We have identified several critical areas where this legislation fails to account for the realities of pediatric health, school staffing, and federal law.

### 1. Violation of FAPE and Discrimination Risks

Under federal Child Find mandates (IDEA) and Section 504 of the Rehabilitation Act, public schools have an affirmative duty to identify and evaluate children suspected of having a disability.

- **The Catch-22:** Lack of toilet training at age 5 is often a "red flag" for developmental delay, autism, or other medical conditions. By denying enrollment *because* of this symptom, the district is effectively punishing a child for a potential disability before it has been identified.
- **Denial of FAPE:** If a student is excluded from school for a behavior related to an undiagnosed disability, the district is liable for denying a Free Appropriate Public Education (FAPE). This bill places school districts in a legal "double bind": adhere to state law and exclude the student, or adhere to federal law and educate them. Federal law will prevail, likely resulting in costly litigation for districts.

### 2. The Unfunded Mandate of Medical Evaluations

The bill provides exceptions for medical conditions or exceptionalities, but it assumes every family has the resources to obtain these diagnoses *prior* to school entry.

- **Who pays for the evaluation?** Many families rely on the school system to identify these issues. If a low-income family cannot afford a specialist to "verify" the condition as required by this bill, their child is simply denied an education.
- **District Liability:** If the school requires a medical evaluation to allow attendance, does the financial burden of that evaluation fall on the district under Child Find obligations? The bill offers no guidance or funding for this.

### 3. Logistical Impossibility:

The bill suggests that schools can designate an adult to aid in toilet training. This ignores the current staffing crisis in Kansas schools.

- **Nurses are stretched thin:** School nurses are often covering multiple buildings or managing high caseloads of diabetics, seizure disorders, other chronic health conditions and daily medications. We do not have the capacity to act as toilet trainers.
- **Teachers must teach:** Asking an educator to leave a classroom of 20+ students to supervise toilet training compromises the education of every other child in that room.
- **Paraprofessionals:** Most paraprofessionals are assigned to specific students via IEPs. Pulling them away to assist general education students with toileting may violate the IEPs of high-needs students.

#### 4. Subjectivity and Lack of Guidance

The bill allows a district to remove a student if accidents occur with "sufficient frequency." This language is dangerously vague.

- **Who decides?** Does the decision to expel a 5-year-old rest with the principal, the nurse, or the classroom teacher? This subjectivity opens the door to unequal application of the law, where some children are extended grace and others are removed.
- **No Protection for Districts:** This bill does not offer immunity to districts. If a district excludes a student and is sued by parents for discrimination or FAPE violations, the district stands alone.

#### 5. The "Kicking the Can" Problem: Kindergarten vs. First Grade

Perhaps the most critical aspect of this bill is the long-term trajectory.

- **What happens in 1st Grade?** If a student is denied kindergarten entry due to toileting issues, they miss a critical year of socialization, routine, and developmental support. When they reach the age of mandatory attendance (often age 7 or upon 1st grade entry), the school **must** enroll them regardless of toileting status.
- **The Result:** Instead of entering 1st grade prepared, the district will now receive a larger, older child who has missed a year of instruction and likely still faces the same toileting challenges, but now with added academic deficits. Excluding them from Kindergarten does not solve the problem; it merely delays and compounds it.

#### Conclusion

Toilet training is indeed a developmental milestone, but it is one that varies wildly based on trauma, physiology, and neurodevelopment. Schools need resources—paraprofessionals, smaller class sizes, and accessible medical referrals—not a mandate to keep students out of Kindergarten.

We urge you to vote **NO** on HB 2486 to protect our districts from liability and ensure our youngest students receive the support, not exclusion, they need.

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