KANSAS ASSOCIATION OF SPECIAL EDUCATION ADMINISTRATORS

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Date: February 18, 2013

From: Kansas Association of Special Education Administrators

To: Honorable Representative Kelley and Members of the House Ed. Committee

The Kansas Association of Special Education Administrators (KASEA), the United School Administrators of Kansas (USA|Kansas), and the Kansas Association of School Boards (KASB) believe that the Kansas State Department of Education (KSDE) is making great progress in assuring that all students with disabilities are learning and progressing in the general education curriculum including achieving proficiency or higher on state assessments. KSDE holds districts accountable for ensuring that every student with a disability takes the appropriate assessment and provides technical assistance to district staff if needed.

KASEA recognizes the critical importance played by both State and Federal legislators, and works to provide comprehensive and timely support for legislators as key decisions are made. Two important issues on our legislative platform are:

- 1. Kansas special education mandates should mirror those in Federal Individuals with Disabilities Education Act (IDEA) statutes and regulations.
- 2. Public funds should be used to fund Free and Appropriate Public Education (FAPE) as determined by the Individual Education Program (IEP) team.

KASEA concurs with KASB and opposes the use of public funds for private schools or schools not required to serve all students and schools that do not have to comply with the same rules and regulations as public schools under locally elected boards. In addition we believe the following issues are in opposition to our legislative platform and are not in the best interest of students with disabilities.

- 1. HB 2263 appears to circumvent federal regulations regarding IEP's and public schools.
- HB 2263 says a participating <u>public</u> school is not required to abide by an IEP. HB 2263 also states that the parent and participating school will determine the educational plan for the student.
- Federal regulations mandate, at 34 C.F.R. 300.101, that a free appropriate public education must be available to all children with disabilities in the state
- The term "free appropriate public education" is defined in 34 C.F.R. 300.17(d), as special education and related services provided in conformity with an IEP.
- Federal regulations require, at 34 C.F.R. 300.324, that the educational program for a child with a disability be developed by an IEP team with the participation of specific members, listed in 34 C.F.R. 300.321.

2. HB 2263 appears to circumvent federal regulations regarding IEP's and private schools

• HB 2263 says a participating private school is not required to abide by an IEP and allows the state to permit children with disabilities to attend a private school under state law and use <u>public</u> funds while not requiring the private school to provide special education and related services in conformance with the students IEP.

- Federal Regulation 34 C.F.R. 300.146 says each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency—
- (a) Is provided special education and related services-- (1) In conformance with an IEP that meets the requirements of sec 300.320-300.325

3. HB 2263 appears to circumvent 34 C.F.R. 300.148 and uses public funds to pay tuition to a private school.

- HB 2263 says that if a parent is dissatisfied with the student's progress, the parent can request scholarship funds to be awarded by the state department of education. These funds are subtracted from the state financial aid payable to the student's resident school district and used to pay tuition at a private school.
- 34 C.F.R. 300.148 does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility.

4. HB 2263 appears to deny school district's due process rights

- HB 2263 requires district to use their state financial aid funds to help fund education of children with disabilities in a private school without showing that the district failed to provide a FAPE.
- 34 C.F.R. 300.148 says Local Education Agencies are not required to pay the costs of education at a private school or facility if it has made a FAPE available to the child. The school district has a due process right to defend its position in a hearing and to have a right to appeal to the court system.
- HB 2263 denies the district's statutory right under the IDEA to a due process hearing.

5. HB 2263 appears to jeopardize Part B funding

- 34 C.F.R. 300.100 Eligibility for assistance A State is eligible for assistance under Part B of the Act for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets the conditions in §§ 300.101 through 300.176.
- 34 C.F.R. 300.149, which is titled "SEA responsibility for General Supervision." Paragraph (a) of this regulation says the State Education Agency (SEA) is responsible for "ensuring" that the requirements of Part B are carried out.

6. HB 2263 appears to permit discrimination against children with disabilities and handicapping conditions.

- HB 2263 state a school must certify that the school will not discriminate in admissions on the basis of race, color, national origin or religion but not on disability.
- Children with disabilities that do not have an IEP are not eligible for the scholarship.

The Kansas Association of Special Education Administrators urges you not to move forward with HB 2263. Thank you for allowing us the opportunity to speak here today.

Terry Collins, Ed.S. Legislative Chair, KASEA Director DCEC #616