

SB 427 Proponent Testimony – in person
School Board Transparency and Speech Issues
Senate Education Committee
Dave Trabert – CEO
March 13, 2024



Madam Chair and Members of the Committee,

We appreciate this opportunity to testify in support of SB 427, which removes barriers that prevent school board members from representing their constituents and ensures that parents can advocate for their children.

Each provision of the bill is prompted by requests for help from parents and school board members who have been frustrated by policies often adopted long ago by previous boards. For example,

- **Board members cannot place a discussion item on board agendas without permission from the board president or a majority of the board.** A board member in USD 489 Hays has repeatedly tried to have a board discussion and vote on a controversial issue dealing with boys and girls sharing restroom facilities. Many community members have expressed concerns, but the board member cannot get the issue on the agenda.

We have been informed that some districts do not have a New Business section on the agenda, and there is a concern that Section 1 (5)(A), as written, could be used to prevent a member from adding a discussion item. For this reason, we suggest striking “under the category of new business” and replacing it with “to the board agenda.”

- **Board members in some districts are not allowed to visit schools unless escorted by a staff member.** It is not unusual for staff members to confidentially contact board members about issues within a school, and board members must be able to make unannounced visits to explore potential problems with no interference from district officials.
- **Public comment is not held as part of recorded board meetings, so patrons who cannot attend are unaware of issues brought to the board.** Some districts have separate meetings for public comment that are not broadcast, so patrons watching online cannot hear public comments. The regular board meeting has no public comment section.
- **Board policy prevents a board member from discussing a concern raised in the public comment section of a meeting “except to ask clarifying questions.”** I have personally witnessed board members being gaveled down in what appeared to be efforts to silence discussion of important issues like student achievement.
- **Board members’ email addresses are not published by every district, requiring parents’ email communications with board members to be sent to the district office for forwarding, creating at least the possibility of censorship.**

School board members are elected officials with oversight responsibilities, and they should not be restricted or prevented from doing the job they were elected to do by the school employees they oversee or by board policy.

Rebuttal of invalid objections

A similar bill, HB 2382, had a hearing last year in the House K-12 Budget Committee. Several opponents made unsubstantiated allegations of violating state law and the Kansas Constitution, and this section of our testimony offers pre-emptive rebuttals in anticipation that the same allegations arise this year.

1. SB 427 does not violate any constitutional provision. Article 6 Section 5 says, “ Local public schools. Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature.”

The constitution does not require an individual board member only to do or say what the majority approves, and it does not convey authority on board members or district policy to restrict the speech or actions of an elected official. It also does not specify any limits on a board member’s authority, so allegations that SB 427 exceeds board members’ constitutional authority are invalid.

Allegations of “legislative overreach” are also invalid.

Article 6 §1 of the Kansas Constitution states: “The legislature shall provide for intellectual, educational, vocational, and scientific improvement by establishing and maintaining public schools, educational institutions and related activities, which may be organized **and changed in such manner as may be provided by law.**”

Article 6 §2 says, “The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and **all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law.**”

The Kansas Supreme Court in *State v. Miller*, 212 Kan. 482, 511 P. 2d 705 (1973) addressed the meaning of “supervision:”

“Considering the frame of reference in which the term appears both in the constitution and the statutes, we believe ‘supervision’ means something more than advise but something less than control. The board of regents has such control over institutions of higher learning as the legislature shall ordain, but not so the board of education over public schools; its authority is to supervise.”

Proposals and statutes challenged as unconstitutional intrusions on the powers of the State Board of Education or local boards often run counter to court rulings. Courts universally agree that **the Kansas Constitution limits rather than confers power, and any power and**

authority not limited by the constitution remains with the people and their legislators.
NEA Ft. Scott, supra.

2. State laws are subject to change, which renders moot general allegations that SB 427 contradicts state law.
3. Adding a discussion item to the agenda does not violate the Kansas Open Meetings Act, as there is nothing in state law saying announced agendas cannot be amended. School officials cannot argue state law requires a majority to add a discussion item to an agenda and simultaneously contend that agendas cannot be amended.

Conclusion

The student achievement crisis in Kansas will not be resolved with policies that prevent school board members from doing their jobs.

Less than 10% of low-income, Black, and Hispanic students in the 10th Grade are proficient in Math, compared to 30% of students who are not low-income and 26% of White students. Achievement gaps of this magnitude have existed for a long time, and closing them requires unfettered collaboration with all district staff and parents.

2023 State Assessment All Grades		Math		ELA All Grades		
Student Cohort	Below Grade Level	Grade Level, Needs Remedial Training	Proficient	Below Grade Level	Grade Level, Needs Remedial Training	Proficient
Low-Income	46%	36%	18%	46%	34%	20%
Not Low-Income	20%	35%	44%	20%	34%	46%
African American	57%	31%	12%	55%	30%	16%
Hispanic	48%	35%	17%	47%	34%	19%
White	26%	36%	38%	26%	34%	40%

Source: KSDE; all students tested, rounded to the nearest whole number

2023 State Assessment 10th Grade		Math		ELA 10th Grade		
Student Cohort	Below Grade Level	Grade Level, Needs Remedial Training	Proficient	Below Grade Level	Grade Level, Needs Remedial Training	Proficient
Low-Income	62%	29%	9%	50%	35%	15%
Not Low-Income	32%	37%	30%	24%	40%	36%
African American	72%	22%	7%	60%	29%	11%
Hispanic	65%	26%	8%	50%	36%	14%
White	37%	37%	26%	29%	39%	32%

Source: KSDE; all students tested, rounded to the nearest whole number

SB 427 ensures that school board members can effectively address achievement issues and other challenges, and we encourage the Committee to approve it.