

MINUTES

LEGISLATIVE EDUCATIONAL PLANNING COMMITTEE

October 9-10, 2003
Room 514-S—Statehouse

Members Present

Senator Dwayne Umbarger, Chair
Representative Kathe Decker, Vice Chair
Senator Christine Downey
Senator Bob Lyon (October 9)
Senator John Vratil
Senator Mark Taddiken (October 9)
Representative Carol Edward Beggs
Representative Bill Mason
Representative Eber Phelps
Representative Larry Powell
Representative Bill Reardon (October 10)

Members Absent

Senator Lana Oleen
Representative Barbara Ballard

Staff

Mary Galligan, Kansas Legislative Research Department
Deb Hollon, Kansas Legislative Research Department
Carolyn Rampey, Kansas Legislative Research Department
Art Griggs, Office of the Revisor of Statutes
Theresa Kiernan, Office of the Revisor of Statutes

State Department of Education Staff

Dale Dennis, Deputy Commissioner

Conferees

Reggie Robinson, President and Chief Executive Officer, Kansas Board of Regents
Melinda K. Lewis, Special Projects Coordinator, El Centro, Inc.
Kristian Guzman, Sunflower Community Action, Wichita
Crystal Sanhueza, Educator, Newton

Mira Mdivani, Immigration Attorney, Klamann and Hubbard, PA
Jim Edwards, Governmental Relations Specialist, Kansas Association of School Boards
W. Paul Degener, Shawnee County Resident
Dr. Rud Turnbull, Co-Director, Beach Center on Disability, University of Kansas
Dr. Amy McCart, Beach Center on Disability, University of Kansas
Matt Stowe, Esq., Beach Center on Disability, University of Kansas
John Rios, Principal, Argentine Middle School, USD 500 (Kansas City)
Megan Cote
Michiko Kooken
Susan Keetle
Barb Klotzbach, USD 305 (Salina)
Rocky Nichols, Executive Director, Kansas Advocacy and Protective Services, Inc.
Darla Nelson-Metzger, Families Together
Helle Vander Yacht, Kansans for IDEA Compliance
Bill Perry, Director of Special Education, Southeast Kansas Interlocal #637 (Pittsburg)
Terry Collins, Director, ANW Special Education Cooperative #603 (Humboldt)
Soon Merz, Director of Institutional Research, Kansas Board of Regents
Dr. Larry D. Clark, Executive Director, Jones Institute for Educational Excellence,
Emporia State University
Dr. Connie Briggs, Director, Reading Recovery Program, Jones Institute for Educational
Excellence, Emporia State University
Linda Hazel, Director, National Board Certification Program, Jones Institute for Educational
Excellence, Emporia State University
Dr. Scott Waters, Director, Future Teacher Academy, Jones Institute for Educational Excellence,
Emporia State University
Hal Gardner, Director of KAN-ED, Kansas Board of Regents
Chad Mullet, Student Body President, Wichita State University
Blake Shuart, Student Body Legislative Director, University of Kansas
Jeff Wagaman, Assistant State Treasurer

Thursday, October 9

In-State Tuition Rates

The Committee addressed issues contained in 2003 HB 2145, which concerns in-state tuition rates at public postsecondary institutions for students who have attended Kansas high schools three years and graduated. Written testimony in support of granting in-state rates to such students was submitted by the Office of the Governor, Representative Sue Storm, and John M. Ybarra, Education/Information Representative for the Kansas Advisory Committee on Hispanic Affairs, Kansas Department of Human Resources (Attachments 1, 2, and 3, respectively).

Art Griggs, Committee staff, presented a memorandum identifying some of the legal issues surrounding HB 2145 and distributed a copy of the bill (Attachments 4 and 5, respectively). HB 2145 provides that anyone who has attended an accredited Kansas high school for three or more years and who has either graduated or obtained a general education development (GED) certificate in Kansas and who has been accepted for admission at a Kansas institution of postsecondary education would be eligible to pay in-state tuition and fees.

Mr. Griggs explained that federal law does not allow a state to give an undocumented alien a benefit that is not available to persons who are citizens or nationals. That is, it would not be

possible for Kansas to allow undocumented aliens who have satisfied the conditions of HB 2145 to be treated as in-state residents unless the same benefit were extended to all individuals, including residents from border states who attend school and graduate from Kansas high schools. Representative Mason told the Committee that it is estimated that slightly more than 600 students from other states would qualify for in-state rates under the bill. Senator Downey said that an amendment to the bill could make students ineligible who were residents of any other state for tuition purposes. Mr. Griggs informed the Committee that several states have enacted legislation similar to HB 2145 and other states are considering the issue.

Reggie Robinson, State Board of Regents, told the Committee that the State Board of Regents supports the concept embodied in HB 2145 (Attachment 6). He explained that the unintended consequence of the bill—giving residents of other states the benefit of in-state rates if they attend Kansas high schools or otherwise meet the conditions of the bill—is estimated to result in a loss of \$433,636 in out-of-state tuition revenues, based on information on 65 students in school year 2002-03. However, Mr. Robinson said he thought the door would open for students to attend the institutions who would not otherwise and thus generate additional tuition income to compensate for lost revenues. Mr. Robinson suggested that the period of attendance at a Kansas school in order to qualify for in-state rates under HB 2145 could be increased to five or six years. This change likely would not affect the group of students the bill is intended to help (undocumented aliens who have lived in Kansas for some time), but could reduce the number of residents of other states who qualify. In response to questions, Mr. Robinson pointed out that it is difficult to get information on the number of students who might attend postsecondary institutions if HB 2145 were enacted. He also explained that student tuition pays for only a part of educational costs and charging higher out-of-state tuition is intended to recoup more money from individuals who have not helped support Kansas educational institutions as taxpayers.

Melinda Lewis, El Centro, Inc., appeared in support of HB 2145 and told the Committee that foreign-born individuals make an important contribution to the state's economy and workforce and develop strong ties to the place in which they live (Attachment 7). She stressed the importance of an education and urged the Committee to remove barriers to education faced by undocumented aliens. She said that similar legislation enacted in other states has withstood legal challenges. In response to questions, Ms. Lewis said that only the United States Congress can enact legislation that affects immigration law. She said federal legislation currently under consideration would give minors independent status from their parents so that children's status would not be dependent on the status of their parents. When asked if students lie about their status to get into school at in-state rates, Ms. Lewis said that to do so would be a felony, which would prevent the student from ever becoming a citizen.

Ms. Lewis refuted some of the arguments against passing legislation similar to HB 2145, such as:

- The bill is illegal and would violate federal law. Ms. Lewis said federal law is unclear because no guidelines have been developed and that legislation similar to HB 2145 in other states has not been challenged by the federal government.
- Passage of HB 2145 would trigger lawsuits. Ms. Lewis said that other states that have similar legislation have not had a rash of litigation.
- Passage of the legislation would allow illegal aliens to qualify for state student assistance programs. Ms. Lewis said such programs are limited to residents of Kansas and, while illegal aliens would be considered residents for tuition purposes, they would not be residents for state financial aid purposes.

Kristian Guzman, a student from Hadley Middle School in Wichita and a member of Sunflower Community Action, urged the Committee to enact HB 2145 and told of his aspirations to become a space engineer, if he is given the chance to obtain an education in the United States (Attachment 8).

Crystal Sanhueza, a teacher at Newton High School and a member of Sunflower Community Action, described the frustration teachers face who have promising high school students who cannot further their education because they cannot afford to pay out-of-state tuition rates at Kansas postsecondary institutions (Attachment 9). She told the Committee that she knows of nine students last year and 11 the year before who graduated and probably would have gone to college if they had been able to afford the tuition. At the request of Senator Downey, Ms. Sanhueza agreed to try to find out how many graduating high school students would have gone on to college if they had been able to pay tuition at in-state, not out-of-state, rates. The Committee was informed that obtaining loans is more difficult for undocumented aliens because banks require them to have more collateral than is required for United States citizens.

Jim Edwards, Kansas Association of School Boards, told the Committee that his organization did not have a position on the issue during the 2003 Session, but the Association's Legislative Committee in August took a position in support of the policy in HB 2145. He said the recommendation of the Legislative Committee will be presented to the Association's Delegate Assembly for ratification in December (Attachment 10).

Mira Mdivani, an immigration attorney, informed the Committee that law regarding various classes of immigrants is very inconsistent. For example, some persons are granted asylum in the United States because our government has determined that it is unsafe for the individuals to live in their native country. Nevertheless, they are not given opportunities afforded citizens of the United States, resulting in a state of limbo in many respects. Ms. Mdivani explained that many immigrants do not have the money they need to hire an attorney to help them sort out the complicated legal issues surrounding their status. As the request of the Committee, Ms. Mdivani agreed to submit additional information that would identify various categories of immigrants.

W. Paul Degener, a resident of Shawnee County, appeared in opposition to the policy contained in HB 2145 (Attachment 11). Mr. Degener's position is that individuals who are in the United States illegally should not be allowed to attend college at in-state rates and to adopt such a policy encourages illegal behavior.

Positive Behavior Support

Conferees appeared in support of positive behavior support, a behavioral management system characterized by strategies to reduce inappropriate behavior by providing supports that are necessary to reward appropriate behavior. The concept emerged from dissatisfaction with traditional methods of addressing serious behavior problems. Dr. Rud Turnbull, Co-Director of the Beach Center on Disability, University of Kansas, told the Committee that the Beach Center has been conducting research on positive behavior support for the past 15 years.

Matt Stowe, Beach Center, made a power point presentation that explained the purpose of legislation advocates of positive behavior support would like the Legislature to enact (Attachments 12 and 13). The proposed legislation would authorize the creation of an incentive program for schools that wish to implement school-wide positive behavior support programs. Mr. Stowe emphasized that the bill would not impose a mandate on schools and that it would be up to the school district to decide whether it wants to implement the program and to determine the specific curriculum.

Dr. Amy McCart, Beach Center, told the Committee that the focus of positive behavior support is to teach new skills and to change the school environment so that behavior problems do not occur. (Testimony of Dr. McCart, Michiko Kooken, Megan Cote, Susan Keetle, Rocky Nichols, Barbara Klotzbach, Darla Nelson-Metzger, and Helle Vander Yacht was presented as a packet and is Attachment 14.) Dr. McCart said the system results in more instructional time for teachers because less time has to be spent on disciplinary matters. According to Dr. McCart, one measure of the success of positive behavior support is a reduction in the number of students who have to be referred to school officials for disciplinary reasons. In response to a question from Senator Downey, Dr. McCart said that positive behavior support as a disciplinary tool is part of the teacher preparation curricula at a number of universities across the nation, including the University of Kansas.

Dr. Turnbull told the Committee that the Individuals with Disabilities Education Act (IDEA) references positive behavior supports as a strategy for dealing with student behavior and he believes there will be an attempt in Congress to align the IDEA with the No Child Left Behind Act so that positive behavior support will have broader application to all students, not just children in special education. He said positive behavior support has a number of benefits for students, teachers, and families, including higher academic achievement and safer schools.

John Rios told the Committee that positive behavior support has made a big difference at his school since it was implemented three years ago. He said the system has truly made his school an "institution of learning." He said the Kansas City school district has moved ahead to implement positive behavior support in some of its attendance centers.

In response to questions, Mr. Rios said students are showing academic improvement, but changes in the state assessment since the implementation of positive behavior support in his school make it difficult to make comparisons from one year to the next. Positive behavior support also is just one strategy his school is using to improve behavior, along with other things such as requiring school uniforms and requiring students to take Spanish. He explained that implementation of positive behavior supports in USD 501 is not a district-wide decision, but is left up to individual schools and that the strategy is part of the special education program. However, he told the Committee he believes positive behavior support will make it easier for schools to help subgroups meet the standards imposed by the No Child Left Behind Act.

When asked how his school learned positive behavior support management techniques, Mr. Rios said that the University of Kansas provided doctoral students who came to the school to train teachers in sessions that lasted one afternoon for three weeks. As a followup, University of Kansas students visited classrooms periodically for several months.

Dr. McCart told the Committee that the University of Kansas would be happy to partner with other universities to teach positive behavior support training models. Mr. Rios said he would send members of his staff to other schools to help in the training effort. Senator Vratil asked Dr. Turnbull if the University of Kansas would be able to provide training, at no charge, across the state to schools that want to implement positive behavior support. Dr. Turnbull responded that there is an increasing group of people in the state who are able to provide training and that instruction also is available on-line. He said the University of Kansas has a five-year federal grant to provide technical assistance to schools to implement positive behavior support and other federal implementation grants are available. The University of Kansas website that provides assistance to implement positive behavior support also is federally-funded.

Dr. Turnbull proposed to the Committee that schools should make a one-year commitment to implement positive behavior support, using resources from the University of Kansas for training and resources of the individual districts and the State Department of Education.

Michiko Kooken told the Committee how beneficial positive behavior support had been in helping a student improve learning skills. Megan Cote testified in support of positive behavior support. Rocky Nichols, Kansas Advocacy and Protective Services, Inc., encouraged the Committee to consider the savings to the state in funding for correctional institutions as the result of bad behavior being altered by positive behavior support. Barbara Klotzbach, USD 305 (Salina), told the Committee that positive behavior support accounts for gains made by students and has an application to all students, not just children in special education. She said a big impact of the strategy is support for teachers and an increase in instructional time.

Ms. Klotzbach said that she would like to expand positive behavior support to all schools in the district. She said the necessary conditions for implementation are administrative support, fiscal and material resources, staff training, and ongoing consultation.

Susan Keetle told the Committee that provides staff development and oversees the reading curriculum. She expressed her support for school-wide participation in positive behavior support. Darla Nelson-Metzger, Families Together, also expressed support for positive behavior support and said she works with 85 children who are in foster care.

Helle Vander Yacht, Kansans for IDEA Compliance, made concluding remarks for the conferees who had appeared before her. She told the Committee that Kansas is at a point where the state has the opportunity to make the correct decision by supporting positive behavior support. She urged the Committee to endorse the proposed legislation, which would encourage school districts to implement the strategy.

Bill Perry, Director of Special Education at the Southeast Kansas Interlocal #637, told the Committee that his information about the Committee hearing was based on an earlier version of the proposed legislation, which would have mandated positive behavior support in schools. He said the current proposal, which would create an incentive grant program, is much more palatable, but he questioned why positive behavior support is being singled out as an exemplary program. He said there are a number of methods and strategies being used by schools that also obtain good results, such as "Project Achieve." He praised the Beach Center at the University of Kansas and said schools presently can implement positive behavior support if they want to. He estimated that it would cost his interlocal \$67,000 to pay for staff training to implement positive behavior support. He said an incentive grant program would help schools that want to implement the strategy, but he urged the Committee not to impose a blanket mandate on all districts using a single strategy such as positive behavior support.

Terry Collins, Director of ANW Special Education Cooperative #603, questioned whether adequate staff training can be provided in three training sessions, particularly considering that the children being dealt with often are the hardest to discipline or teach (Attachment 15). He said Kansas schools are a relatively safe environment in which to learn and that Kansas can be a leader in the nation in student attainment. He asked the Committee not to endorse a single behavior management strategy, but instead allow schools the flexibility to select from among the various strategies that are successful.

Jim Edwards, Kansas Association of School Boards, opposed the proposed bill draft for two reasons: First, he said local boards of education are in the best position to determine what strategies they should implement, not the Legislature. Second, the proposed bill says that positive behavior support in participating schools will be implemented by a "behavior support team" that includes parents and school employees." Mr. Edwards said local boards and their employees are legally responsible for the operations of the school district and authority should not be delegated to some other entity (Attachment 16).

Dale Dennis, State Department of Education, was asked whether the State Department would be willing to promote positive behavior support. Mr. Dennis said that the State Department would support the strategy, but would need money to assist schools in implementation. Senator Downey said that the first step for schools interested in positive behavior support is to work with local boards to build interest in the program and to train teachers. Mr. Edwards said his organization's interest in the proposal is seeing to it that local boards get to decide whether they want to implement positive behavior support and not have it mandated by the Legislature. Ms. Vander Yacht concluded that positive behavior support has a good record of success and is an example of a program that saves money by preventing problems that are more expensive to solve later on.

Friday, October 10

Postsecondary Education Data Base

Soon Merz, Kansas Board of Regents, presented information about the postsecondary education data base which became a responsibility of the State Board of Regents upon passage of 1999 SB 345 ([Attachment 17](#)). Ms. Merz explained that a pilot run was made to test the system using data from fall 2002. Of the 37 campuses (state universities, community colleges, technical colleges, and area vocational schools), 28 submitted data. Conversion problems prevented some institutions from submitting their data. Ms. Merz said the pilot project allowed the Regents staff to identify problems, such as incorrect formatting, worthless data, and inconsistencies in data between files.

Ms. Merz said current activities involve addressing security problems and redesigning a website. She said participating institutions will be able to access a variety of data using a single sign-on access code. Training sessions for institutional staff were conducted during the summer, which were attended by staff from 33 institutions. The first collection of "real" data will take place between November 15 and December 15 of 2003. The initial data collection will contain student and enrollment data for summer and fall of 2003, but plans are to add a number of additional reports over the next few years, including federal vocational education program data, reports on courses, student financial aid information, faculty and staff data, financial information, and information on unemployment insurance in order to determine the number of students who are unemployed. There are also plans to add information on proprietary schools and the general educational development (GED) certificate and possibly data on independent colleges and universities. The anticipated completion date for the data base is 2008.

In response to a question about whether the system will be able to access data from other states, Ms. Merz said federal laws prevent such access. The system also will not track students who leave the state. She told the Committee that the system only allows access to aggregate information and that public reports will not identify individual students. In response to a question from Senator Vratil, Ms. Merz explained that personally identifiable information will be collected because student social security numbers or student identification numbers will be used. However, personally identifiable information will be accessible only to the institution in which the student is enrolled or the State Board staff.

Jones Institute for Educational Excellence

Staff from the Jones Institute for Educational Excellence at Emporia State University discussed some of the Institute's programs and activities (Attachment 18). The Executive Director, Dr. Larry D. Clark, made introductory remarks and introduced the staff who talked about individual programs. (The staff presentation is Attachment 18.)

Dr. Connie Briggs discussed Reading Recovery, an intensive reading program for first graders. The program is short-term and involves one teacher working with one student for about 30 minutes. Lessons are discontinued when the student can read and write at grade level. According to Dr. Briggs, 1,211 students were served in Kansas in the 2002-03 school year. The number of reading recovery teachers is 149. The teachers are trained by Reading Recovery Teacher Leaders who complete a program at the Jones Institute that lasts one year and consists of graduate-level courses. There are nine Teacher Leaders in Kansas presently, who are counted as special education teachers for purposes of special education reimbursement to the employing school district.

Dr. Briggs was asked if Reading Recovery could be made part of the regular teacher education program and she responded that the training is more advanced than what is offered in teacher preparation programs and is intended to develop a special teaching area expertise. The training results in a teacher who is able to work with students who are the hardest to teach or who are having the most trouble reading.

Linda Hazel, Director of National Board Certification, discussed the program which prepares teachers to qualify for certification from the National Board for Professional Teaching Standards. National Board certified teachers in Kansas hold ten-year certificates and are paid an annual bonus of \$1,000 by their employing school district for each year their certificate is valid. The state also provides a stipend to assist teachers who are taking the program at the Jones Institute.

Ms. Hazel said that in order to participate in the program a person must have been a teacher for three years. The program includes a year-long assessment of classroom practice and the development of a portfolio that is assessed nationally. She said that the national certification rate for applicants is about 50 percent and that Kansas generally exceeds that, with a certification rate of about 60 to 65 percent. Ms. Hazel explained that current activities include implementing a renewal procedure for teachers who have held National Board certification for ten years. She said the renewal process will not be as extensive as the program to initially qualify, but will be rigorous. Ms. Hazel said there are 109 teachers in Kansas who hold National Board certification.

Dr. Scott Waters discussed the Future Teacher Academy, a five-day program that allows 50 high school students who are interested in becoming teachers to meet with extemporary teachers and other speakers. The program, which was begun in 1989, is held in the summer at Emporia State University and at a recently-added site in Dodge City. Dr. Waters said discussion is underway about adding a third site in the Kansas City area and about expanding the program to include younger students. Dr. Waters told the Committee that recruiting promising individuals into the teaching profession becomes increasingly important when there is a teaching shortage.

In discussion following the presentations, Senator Downey said she does not think there is enough preparation for teachers who must deal with special education and other difficult students who are in the regular classroom. She was told that Emporia State University has added two more courses (for a total of three) on dealing with exceptional children to the teacher preparation curriculum.

KAN-ED

Hal Gardner, Kansas Board of Regents, discussed ongoing implementation of KAN-ED, the technology-based network that links elementary-secondary and postsecondary schools, libraries, and hospitals (Attachment 19). The State Board of Regents is responsible for operating and maintaining the network, which provides Internet access and distance learning capabilities for users. Mr. Gardner told the Committee that Phase I, which involves linking hospitals, has been completed. It is his hope that other health facilities, such as clinics and mental health facilities, can be added to the network.

Mr. Gardner said the next step is to link educational institutions. The goal of the network, according to Mr. Gardner, is to make distance learning programs more universally available. Toward that end, he is working with the State Corporation Commission to set a user rate that represents true cost, not a cost with additional charges added. He told the Committee that KAN-ED will be operational later this fall. Additional features that will be added are access to Internet 2, which is an information data base for higher education that is accessible for a charge of \$38,000 per year.

Postsecondary Student Tuition

The staff presented a memorandum entitled *Trends in State University Tuition and Enrollment* (Attachment 20), which discusses recent increases in tuition at the state universities and identifies alternative pricing structures being considered by universities in other states. The memorandum includes a table showing, for each state university in Kansas, a ten-year history of undergraduate resident tuition rates and fees.

Reggie Robinson, State Board of Regents, told the Committee that, even though tuition rates for the state universities have increased, Kansas still is considered a low tuition state (Attachment 21). He said that, beginning in FY 2003 and FY 2004, the State Board of Regents has allowed each institution to propose tuition rates for their individual institution to reflect institutional roles and missions, rather than having the rates set uniformly by the State Board. However, Mr. Robinson pointed out that increases in student assistance have not kept pace with increases in tuition, leading to the characterization of Kansas as a "low tuition, low student assistance" state.

In discussion following his prepared presentation, Mr. Robinson said Kansas ranks 34th among the states on the amount of need-based student assistance it allocates and is the lowest among the surrounding states, except for Nebraska. He said that the state universities have designated 20 percent of the increase in tuition revenue for student assistance.

Senator Downey made the point that comparisons among states of tuition rates is not particularly illuminating unless it also is known what per capita income is, so that tuition is considered as a proportion of income.

Chad Mullet, Student Body President at Wichita State University, expressed concern for vulnerable students who may be priced out of an education by tuition increases and the failure of student assistance programs to provide support to all the students who need it (Attachment 22). In his remarks to Committee members, Mr. Mullet raised the question about the benefits of student assistance paid to students who enroll in independent colleges and universities.

Blake Shuart, Student body Legislative Director from the University of Kansas, made the point that students are more understanding of tuition increases when they can see that the revenues generated are being used for expenditures that directly benefit students (Attachment 23). He mentioned specific uses for student tuition money at the University of Kansas, such as a new engineering hall, the Dole Institute, new faculty positions, and a salary increase for graduate teaching assistants. Senator Vratil commented that in recent years, more of a burden has been placed on students to fund the cost of higher education. Mr. Shuart agreed and said that, while the shift is

bearable right now, if the trend continues, education will be unaffordable for some students in the future.

Amendments to Learning Quest Legislation

Jeff Wagaman, Office of the State Treasurer, told the Committee that the Learning Quest program currently has 52,000 active accounts and \$500 million in assets. He said, in order to make the program even more attractive, the State Treasurer has a proposed draft of legislation that will make the following changes (Attachment 24):

- Remove from the statute the basis for determining the maximum account balance (which is the average amount of educational expenses for five years of study at postsecondary education institutions in the Midwest) and instead allow the State Treasurer to set the cap, which could not exceed educational expenses for five years of undergraduate study at the highest cost institution eligible to participate in the program.
- Increase the amount of the income tax deduction for account owners from \$2,000 to \$5,000 for individual taxpayers and from \$4,000 to \$10,000 for married couples filing jointly.
- Delete the one-year waiting period requirement for a qualified withdrawal.
- Continue the existing policy of exempting Learning Quest accounts from bankruptcy and garnishment procedures, but move the language granting such exception from the Civil Code in the statute books to the section of law that deals specifically with Learning Quest.

Minutes

Upon a motion by Representative Phelps, seconded by Representative Miller, the minutes of the August and September meetings were approved.

Prepared by Carolyn Rampey

Approved by Committee on:

November 19, 2002

Note: The October 9 and 10 Minutes were approved as revised on November 19. The revision was to correctly show that Representative Eber Phelps attended both days of the October meetings.