

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS



1420 Arrowhead Road | Topeka, Kansas | 66604-4024
785-273-3600 | 800-432-2471 | 785-273-7580 FAX
www.kasb.org

Testimony before the
House Education Committee
on

HB 2263

by
Tom Krebs, Governmental Relations Specialist, KASB
February 16, 2013

Mr. Chairman and Members of the Committee,

I am before you today regarding **HB 2263**, which would create a special needs scholarship program. We believe such a program would be unconstitutional under Article 6 of the Kansas Constitution, would sanction discrimination against disabled students, and would not provide accountability for student achievement. In addition, it would likely cause the state and local school districts to violate IDEA. Most importantly, however, **HB 2263** is simply not good for all Kansas children. Accordingly, we must oppose the bill.

I. **HB 2263** Would Be Unconstitutional

HB 2263 defines a “participating school” as either a public school outside of the resident district or “any nonpublic school that: (1) Provides education to elementary and secondary students; (2) has notified the department of their intention to participate in the program; and (3) complies with the requirements of the program.” This very broad definition of eligible nonpublic schools would allow public education funds to be given to private religious schools that wanted to participate in the program. The Kansas Constitution does not allow religious schools to receive public education funds.

Specifically, Article 6, Section 6 of the Kansas Constitution states, in relevant part, as follows: “No religious sect or sects shall control any part of the public educational funds.” This crystal clear constitutional mandate simply would not permit the type of special needs scholarship program as **HB 2263** seeks to create.

II. **HB 2263** Would Sanction Discrimination Against Disabled Students

Under **HB 2263**, the participating schools would be required to certify that they will not discriminate in admissions on the basis of “race, color, national origin or religion.” Notably, disability is missing from this list of certifications.

HB 2263 would be applicable to any “eligible student,” which has been defined as any public school elementary or secondary student who has an IEP. The definition goes on to include a non-exhaustive list of potential disabilities that would be covered. However, what this bill fails to recognize is that gifted students also have IEPs.

HB 2263 would also require that any eligible student attending a participating school must comply with the student code of conduct. Furthermore, the participating school would not be required to follow the student’s IEP. The net effect of these two items is that participating schools would likely accept only the gifted students or those with the least severe disabilities, such as those with learning disabilities. Those students who are emotionally disturbed (including those with behavior disorders) and those who are more severely disabled and require more specialized (and more expensive) educational services will remain behind in the resident district, which will now have less money to serve them due to the subtraction of these scholarship funds from the state aid the resident district receives.

Furthermore, **HB 2263** would provide disparate services for disabled students in that it applies only to students with an IEP. It would not provide scholarships for disabled students who are provided additional educational supports and accommodations under Section 504 of the Rehabilitation Act.

HB 2263 also provides that the Kansas State Department of Education would determine the amount of each scholarship on the basis of its review of the student’s IEP. Unfortunately, it is unclear what relationship the student’s IEP would have on the amount of the scholarship. Would the State Department of Education be determining whether the IEP is appropriate for students for whom it only has limited information and has never met? Would students with more severe disabilities receive larger scholarships or vice versa? Due to the completely subjective nature of this provision, **HB 2263** is fraught with the potential for discrimination among the disabled students seeking to obtain the scholarships.

III. **HB 2263** Does Not Provide Accountability for Student Achievement

While **HB 2263** has included provisions which attempt to provide accountability for state funds received by the participating schools, it does not require that the participating schools have a proven track record of success with student achievement prior to receiving scholarship funds. Likewise, participating schools will not be required to follow the student’s IEP, and we see no requirement that the participating school provide any specialized educational services for the special education students. Will these students be expected to meet the academic requirements of the participating school without additional support? Or, will the resident district be expected to provide special education services at the participating school? If it is the latter, how can the resident district ensure that appropriate special education services and accommodations are being provided when the participating school has no obligation to follow the IEP? Moreover, how would the resident district pay for special education services to be provided in the participating school when its state aid is being reduced to pay for the scholarship?

The only accountability for student achievement in this bill is the provision that would allow parents to remove their child and place him or her in another participating school at any time. The participating school has no accountability to the state regarding student achievement.

However, it does appear that the resident district may be held accountable for the student’s achievement, or lack thereof, while attending the participating school. **HB 2263** provides that the parents may request that the student take state assessments at the resident district. Will these scores then be counted against the resident district, even though it is no longer responsible for the student’s education?

IV. **HB 2263** Would Violate IDEA Regarding Transportation

HB 2263 provides that the resident district shall provide transportation to and from the participating school “in the same manner as the resident school district is required by law to provide transportation of other resident students to nonpublic schools.” The portion of the sentence set forth in quotation marks is somewhat problematic as school districts are not currently required to provide transportation for resident students to nonpublic schools unless the students live along or gather along an established bus route, as set forth in K.S.A. 72-8306.

Assuming that the intent of **HB 2263** is to require the resident district to provide transportation for the scholarship students to their respective participating schools, the bill would violate the IDEA. The federal regulations applicable to the states specifically provide that school districts “are not required to provide transportation from the child’s home to the private school.” 34 C.F.R. §300.139 (b) (1) (ii). Rather, school districts are only required to provide transportation as necessary to another site at which services will be provided.

Furthermore, **HB 2263** would provide for the resident district to claim state transportation aid for any scholarship students so transported. It is possible that this provision would run afoul of the IDEA regulations which prohibit federal special education funds from being used to support a private school or the federal regulations requiring that special education funds provided to a state be used to supplement, not supplant, federal, state and local funds. *See* 34 C.F.R. §300.141; 34 C.F.R. §300.162.

V. **HB 2263** Would Cause Public Schools Who Are Also Participating Schools To Violate IDEA

HB 2263 states that public schools in another district can be participating schools and further states that admission to the participating school is considered a nonpublic placement for IDEA purposes. It would be impossible for a public school district to treat the scholarship students as they would be treated in a nonpublic placement.

Public schools are required to comply with procedural and disciplinary safeguards of the IDEA and Section 504. In addition, public schools are required to comply with state law regarding the suspension and expulsion of students – private schools are not. Public schools that accepted the scholarship students would be required to comply with the IEP from the resident district, at least until such time as the participating school’s IEP team met to determine whether the IEP needed to be revised. These are but a few of the many statutory and regulatory requirements with which public schools must comply and with which private schools are not required to follow. Given the many requirements that public schools must meet, it is unclear how a public school could possibly treat one small subset of special education students differently than all of its other special education students without violating federal and state laws.

VI. **HB 2263** Is Not Good For All Kansas Children

While **HB 2263** may have some limited benefit for a small subset of special education students, such as the gifted students, it would be detrimental to other Kansas children. The scholarship would not be available to Section 504 students, at-risk students, or English language learners. In fact, **HB 2263** would serve to take money away from these students by requiring that funds for scholarship recipients would be deducted from the resident district’s state aid.

Likewise, **HB 2263** is silent as to what happens if the parents move out of the resident district in which they lived at the time they obtained the scholarship. **HB 2263** provides that the scholarship will

continue in effect until the student returns to a public school, graduates from high school, or turns 21. Will the resident district continue to have this scholarship amount deducted from its state aid even after the parents move to another district? Will the new resident district ever have a chance to provide a Free Appropriate Public Education (“FAPE”) to the scholarship student before having the scholarship amount deducted from its state aid? Does the “return to public school” include attendance at a public school in another district that is considered a “participating school”? Will the scholarship amount ever be adjusted? Is there a mechanism by which the resident district would be able to conduct reevaluations that are required by IDEA? If so, what if the student is no longer eligible for special education? Does the scholarship still continue?

Even for those students who receive the scholarship, we believe the fact that the participating schools are not required to follow the IEP will have a detrimental impact on the progress those students will make. We do not believe it is appropriate to conduct such an experiment with the educational outcomes of the student population most in need of educational services. We fear that students who take advantage of such a scholarship and no longer receive their IEP services and accommodations across their entire school day will soon fall behind in the participating school and, ultimately, will return to the resident district having regressed in areas on the IEP for which they had previously made progress.

Thank you for the opportunity to speak to you today and share our position on this bill.