

MINUTES

LEGISLATIVE EDUCATIONAL PLANNING COMMITTEE

July 19-20, 2004
Room 514-S—Statehouse

Members Present

Representative Kathe Decker, Chair
Senator Christine Downey, Ranking Minority Member
Senator Bob Lyon (July 20)
Representative Tom Holland
Representative Eber Phelps
Representative Larry Powell

Members Absent

Senator Lana Oleen
Senator Mark Taddiken
Senator Dwayne Umbarger
Senator John Vratil
Representative Barbara Ballard
Representative Carol Edward Beggs
Representative Bill Mason

Legislative Committee Staff

Carolyn Rampey, Kansas Legislative Research Department
Kathie Sparks, Kansas Legislative Research Department
Deb Hollon, Kansas Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes

Conferees

Rod Bieker, General Counsel, State Department of Education
Dr. Alexa Pochowski, Assistant Commissioner, Division of Learning Services,
State Department of Education
ZoAnn Torrey, Director of Special Education, State Department of Education
Carol Rupe, Member, State Board of Education
Dr. Diane DeBacker, Director, School Improvement and Accreditation,
State Department of Education
Rocky Nichols, Executive Director, Kansas Advocacy and Protective Services, Inc.

Monday, July 19

Special Education

The staff informed the Committee that two proposals involving special education have been approved by the Legislative Coordinating Council for interim study. The plan is to consider matters relating to Individualized Education Programs (IEPs), state and federal laws, and special education due process procedures at the July meeting, how special education programs are delivered at the August meeting, and special education funding at the September meeting. It is the intention of the Chairperson that the Committee's recommendations relating to special education will be available for consideration by the Select Joint Committee on School Finance later in the fall.

State and Federal Special Education Laws

Rod Bieker, State Department of Education, presented an overview of laws pertaining to special education ([Attachment 1](#)). Mr. Bieker told the Committee that state and federal special education laws are conforming, except that Kansas law mandates services for gifted students and federal law does not, parents have more rights under Kansas law than under federal law, and Kansas law allows for more special education services being provided private school students than does federal law. In other respects, state and federal laws are characterized by the following principles:

- ☐ Special education students must be provided a free appropriate public education.
- ☐ Proper evaluation and identification must be provided for.
- ☐ Special education students must be provided an appropriate written IEP.
- ☐ Special education students must be placed in the least restrictive environment.
- ☐ Parental rights must be provided for.
- ☐ There must be procedural safeguards.

Mr. Bieker elaborated on some of the principles by saying that "free appropriate public education" has been interpreted by the U.S. Supreme Court to mean "specialized instruction and services that are individually designed to provide educational benefit to the handicapped child." The law requires that such an education be available to all children with disabilities from the age three through 21 who reside in the state, including students with disabilities who have been suspended or expelled from school. Mr. Bieker said that, in order to fulfill the mandate, states must have in place a continuum of placements available, ranging from instruction in regular classes to special classes, special schools, home instruction, and instruction in hospitals and institutions. In response to a question, Mr. Bieker said that the School for the Deaf and the School for the Blind serve as alternative placement options and help Kansas meet the requirement that there be a continuum of services. However, he said that the law does not specifically require that there be separate schools for the deaf and blind in the state.

Mr. Bieker said the law gives school districts an "affirmative duty" to identify children who have disabilities. Once a child is located who may have a disability, a formal evaluation is made to see whether the student qualifies for services. Mr. Bieker stressed that not all children with disabilities require special education services and used as an example a child who has a vision problem that is correctable with glasses. Once identified, a child with a disability must be evaluated

by the school, using a variety of assessment tools. Once the evaluation process is completed, a team is assembled to determine whether the child fits the definition of a child with disabilities under the law and to develop the IEP. The team consists of the child's parents, a regular education teacher, a special education teacher, a representative of a public agency that provides special education instruction, an individual who can interpret evaluation results, other individuals included at the request of the school or the parent, and, if appropriate, the child.

Mr. Bieker told the Committee that parents have rights that include being able to examine their child's records, participate in meetings about their child, obtain an independent educational evaluation of their child, and receive written notice about their child's progress. A parent who is aggrieved may file a complaint with the State Department of Education, request mediation of disputes, request a due process hearing if they disagree with any action taken by the school, or appeal to the courts. Mr. Bieker said the State Department receives about 50 special education complaints a year, which he considers to be a low number compared to other states. He said mediation generally is a preferable alternative to requesting a due process hearing because it is much less expensive for all parties and generally is effective. (In a due process procedure, the school district must pay all costs if it loses. If it wins, it does not have to pay the cost of the parents.)

At the Committee's request, Mr. Bieker provided a list of definitions for special education terms (Attachment 2) and a copy of a U.S. Supreme Court decision in which the Court found that, except for medical services that had to be provided by a licensed physician, all other "medical services" are related services that school districts must provide (Attachment 3).

Presentation by Kansas Advocacy and Protective Services, Inc.

Rocky Nichols, representing Kansas Advocacy and Protective Services, Inc., expressed his organizations interest in accountability in the special education system (Attachment 4). Mr. Nichols told the Committee a coalition of organizations that advocate for disabled persons and parents of students with disabilities has been formed to discuss ways to improve the special education system. Of particular concern to the coalition are concerns that the rights of special education children and their parents are not being recognized. Mr. Nichols told the Committee that the coalition would have recommendations to present to the Committee at its September meeting. Representative Decker told Mr. Nichols she hopes the coalition considers the matter of suspension and expulsion of special education students.

Individualized Education Programs (IEPs)

Dr. Alexa Pochowski and ZoAnn Torrey, State Department of Education, presented information related to IEPs. (Copies of their presentations are Attachments 5 through 10). Dr. Pochowski discussed the growth in numbers of children served nationwide (4.1 million children in school year 1983-84 compared to 6.6 million in school year 2003-04) and said the incidence rates in Kansas, compared to national rates, are the following:

Disability	Incidence Rate in Kansas	Incidence Rate in the United States
Learning Disabled	44%	51%
Speech/Language Impaired	18%	22%
Mentally Retarded	9.0%	11%
Emotionally Disturbed	8.0%	9.0%
Hearing or Visually Impaired, Orthopedically Impaired, Autistic, Traumatic Brain Injured, or Multiply Disabled	21%	7.0%
TOTAL	100%	100%

Dr. Pochowski told the Committee that 62 percent of special education children in Kansas are in the learning disabled or speech/language impaired categories, compared to 73 percent nationwide, and that the three fastest growing categories are learning disabled, autism, and "other health impaired."

Dr. Pochowski said the State Department of Education has sample IEP forms for school districts to follow, but does not mandate that the districts use the form. In spite of leeway granted to local boards to develop their own procedures within the context of state and federal requirements, Dr. Pochowski said guidelines for determining eligibility for special education services are fairly consistent across the state.

Dr. Pochowski outlined the IEP process, as follows:

- *The child is identified as possibly needing special education and related services.* This may be through an effort made by the school district, such as "Child Find" or may be the result of a referral or request to the school district for evaluation.
- *The child is evaluated.* The evaluation must assess the child in all areas related to the child's suspected disability. Evaluation results are used to decide the child's eligibility for special education programs and services. If the parents disagree with the evaluation, they may ask for an independent evaluation at the school district's expense.
- *Eligibility is decided.* A group of professionals and the child's parents consider the evaluation results and decide whether the child qualifies for special education services, as defined by federal law. Parents have the right to request a hearing to challenge the eligibility decision.
- *If the child is found eligible for services, the school district has 30 days to convene an IEP team to meet and write an IEP for the child.*
- *The IEP meeting is scheduled.* To conduct the meeting, the school staff must contact the participants, including the parents; schedule the meeting at a time and place agreeable to parents and the school; tell the parents who will be attending the meeting; and tell the parents that they may invite people to the meeting who have knowledge or special expertise about the child.

- *The IEP meeting is held and the IEP is written.* The child begins to receive services as soon as possible after the meeting. The parents must give consent before services are provided. If they do not agree with the IEP and placement, they may discuss their concerns with other members of the IEP team to try to reach agreement. If no agreement is reached, they or the school may suggest mediation. Parents also may file a complaint with the State Department of Education or request a due process hearing. At that time, mediation must be available.
- *Services are provided.* Parents and teachers have copies of the IEP and the school is responsible for making sure that services are provided.
- *Progress is measured and reported to parents.* Parents are informed of the child's progress toward meeting annual goals as stated in the IEP.
- *The IEP is reviewed.* The IEP team conducts reviews at least once a year or more often if requested by the parents or the school. Revisions are made in the IEP as necessary. Parents who do not agree with the IEP may try to reach agreement with team members, may ask for additional testing or for an independent evaluation, or may ask for mediation or a due process hearing. They also may file a complaint with the State Department of Education.
- *The child is reevaluated.* At least every three years the child must be reevaluated to determine whether the child continues to be a "child with a disability," as defined by federal law. The child must be reevaluated more often if conditions warrant or if the child's parent or teacher asks for a new evaluation.

Ms. Torrey reviewed the accountability process whereby the state must make reports to the federal government to demonstrate compliance with federal special education law. Compliance is assessed in several areas, including state supervision procedures, accuracy of data, and the system for assessing students with disabilities; the extent of parental involvement and compliance with the requirement that free appropriate public education in the least restrictive environment be provided; evidence of secondary transition programs and services; and school completion rates. Ms. Torrey said Kansas has not yet been selected for a federal compliance visit, but, sooner or later, all states are visited. Ms. Torrey said Kansas is in noncompliance in the area of secondary transition and three other areas. Regarding secondary transition programs, Kansas was cited for not having appropriate transition plans for older students, not inviting students to meetings, and not beginning transition discussions when the child is 14 years of age.

In addition to demonstrating compliance with federal law, the State Department of Education monitors school districts to ensure they are complying with state and federal law. Based on self-assessments performed by the districts, 34 percent of the districts need to improve graduation rates; 22 percent need to improve dropout rates, 64 percent need to decrease suspension rates, 31 percent need to improve on educating preschoolers with nondisabled peers, and all districts need to improve secondary transition procedures.

In response to a question about why special education teachers leave the field, Ms. Torrey said the reasons include too much paperwork, relationships with parents, and lack of administrative support. Ms. Torrey and Dr. Pochowski also explained that federal funding pays for operating expenses of the special education division in the State Department of Education, in recognition of the fact that much of the division's work is the consequence of federal requirements.

Dr. Pochowski discussed the assessment of special education students and told the Committee that all special education students participate in the state assessments, with accommodations, modifications, or alternative assessments provided for as necessary. For example, a student with a vision difficulty that is corrected by glasses would be able to take the regular assessment. A student whose vision is not correctable with glasses could take the regular assessment that is printed in large print. A student who has difficulty in all subjects might be given a modified assessment with less advanced questions and be given more time to complete the assessment. A student with severe learning problems might be given an alternative assessment whereby the child is tested on items such as communicating “yes” and “no” or learning to express its needs through sign language.

Due Process Procedures

Mr. Bieker discussed procedures that occur when there is a disagreement between parents and a school district regarding special education services. In the case of a disagreement, the parent or the school district may request mediation or initiate a due process hearing. The processes are as follows:

Mediation

- If mediation is requested, both parties must participate.
- The State Board of Education appoints a mediator (usually an attorney) from a list it maintains.
- The State Board of Education pays for the mediator and related costs.

Due Process

- If mediation fails or is bypassed, a due process hearing may be initiated by the parents or the school.
- The school district must provide for the hearing and furnish to the parent a list of qualified due process hearing officers and written notification that the parent has the right to disqualify any or all of the hearing officers on the list and to request that the State Board appoint the hearing officer.
- Both parties present evidence by sworn testimony and written documents. The proceeding are recorded, verbatim, by a court reporter.
- The hearing officer renders a written decision.
- Either party may appeal the decision to an independent state review official and, if still dissatisfied, may file a civil action in either state or federal court.

Based on data provided by Mr. Bieker, in the five-year period from school years 1998-99 to 2002-03, when enrollment of special education students exceeded 75,000 in each year, there was a total of 190 mediations sought, of which 17 were withdrawn and 173 were conducted. Agreement was reached in 137 or 79 percent of the mediations.

The total number of due process hearing notices filed during the same period was 485, of which 58 were heard. (Mr. Bieker explained that the Wichita school district tends to file many due process hearing notices, but withdraws them prior to hearing.) Of the issues in the due process hearings that actually were heard, 86 were resolved in favor of the school district and 15 in favor of the parent.

Tuesday, July 20

Early Childhood Readiness Standards

The staff presented a memorandum entitled *Early Childhood Standards*, which described the importance of early childhood education and reported on two national studies that indicate Kansas is among the states that do not have school readiness guidelines ([Attachment 11](#)).

Dr. Alexa Pochowski, State Department of Education, explained to members that a group of agency representatives, educators, and others involved in services for young children began meeting in the 1990s and developed early childhood standards applicable to a variety of settings—the home, school, and community. (The name of the group is the Kansas Stakeholders Advisory Committee on Early Childhood Education and its publication is *Quality Standards for Early Childhood Education for Children Birth Through Eight*.) Those standards, or global principles, identified conditions that had to exist in order for children to be nurtured and to develop properly. Various state agencies, including the State Department of Education, the Department of Social and Rehabilitation Services, and the Department of Health and Environment, currently are in the process of developing guidelines that would apply and make operational those global standards to the services and programs they provide.

Dr. Pochowski presented information showing the advantages children have due to early childhood education ([Attachment 12](#)). She said that Kansas children will be ready to learn when:

- Each child has a safe, healthy, nurturing learning environment from birth to school age;
- an integrated, comprehensive system of programs and services are available for all families and children; and
- strong financial support is provided that ensures readiness to learn.

Dr. Pochowski told the Committee that specific benchmarks for learning readiness have been identified and are the following:

- By 8 months, a child exhibits some sense of size, color, and shape recognition.
- By 18 months, the child shows some awareness of the working relationship of objects.
- By 36 months, the child shows increasing understanding of spatial and form discrimination (puzzles).

- By 4 years, the child attempts to draw imperfectly circles, squares, and some letters.
- By 5 years, the child forms shapes or objects out of clay.

At the Committee's request, Dr. Pochowski provided a chart of Kansas early childhood programs and initiatives showing the number of children impacted by each program, a brief description of the program, and the age ranges of the children impacted by the program ([Attachment 13](#)).

Personal Financial Literacy

Carol Rupe, a member of the State Board of Education, told the Committee about efforts made to implement personal financial literacy programs in Kansas schools. As a result of these efforts, legislation was passed in 2003 directing the State Board of Education to develop a curriculum, materials, and guidelines for use by local boards of education in implementing programs of instruction on personal financial literacy. Ms. Rupe credited Jill Docking with identifying a need for young people in Kansas to begin learning about managing money at an early age, noting that the greatest number of bankruptcies involve persons under 25 years of age and that many people reach retirement without savings. She said Ms. Docking is a member of the Kansas Financial Fitness Foundation, whose mission is to educate youth about principles that will promote financial success, to integrate financial planning principles into education curriculum, and to inspire youth to build solid financial futures for themselves and their families. Ms. Rupe told the Committee that the Docking Institute at Fort Hays State University currently is preparing educational materials on financial management that will be available shortly to students, beginning at the kindergarten level.

Dr. Diane DeBacker, State Department of Education, told the Committee that information on financial literacy is being aligned with mathematics, history, government, economics, and geography standards ([Attachment 14](#)). For example, a fifth grade student in economics would be expected to learn that banks are institutions where people who save money earn interest and where people who borrow money pay interest. Ms. DeBacker explained that information about personal financial literacy is being integrated into existing curricula and is not being treated as a new subject to be added on.

Topics for Interim Consideration

Committee members indicated the following items for study during the 2004 interim. (These topics are in addition to proposals assigned by the Legislative Coordinating Council.)

- Scheduling hours at schools that are more convenient to parents (having schools open earlier and later in the day).
- Explanation for high cost of certain special education exceptionalities.
- Report on private schools (including home schools), including the state role and responsibilities with regard to such schools. Also, what state standards may apply to home and private schools.
- Current student tuition policies at Regents institutions and suggestions for changes.

- □ Extent to which the state universities offer remedial education.
- □ Involvement of businesses in providing day care programs for employees.
- □ Policies relating to reporting by private schools of assessment results.

The meeting was adjourned.

Prepared by Carolyn Rampey

Approved by Committee on:

August 16, 2004

(date)