

HOUSE BILL No. 2236

By Representative Kinzer

2-8

1 AN ACT creating the special education scholarship program; amending
2 K.S.A. 2010 Supp. 72-6407 and repealing the existing section.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 New Section 1. As used in sections 1 through 8, and amendments
6 thereto, unless the context otherwise requires:

7 (a) "Department" means the Kansas department of education.

8 (b) "Eligible student" means an exceptional child who: (1)
9 Has in effect or is eligible for an individualized education plan; and (2)
10 was enrolled in public school in the school year in which a scholarship
11 application was first submitted for the child pursuant to section 2, and
12 amendments thereto.

13 (c) "Exceptional child" has the same meaning ascribed thereto
14 in K.S.A. 72-962, and amendments thereto, but shall not include gifted
15 children, as that term is defined in K.S.A. 72-962, and amendments
16 thereto.

17 (d) "Individualized education plan" or "IEP" has the same
18 meaning ascribed thereto in K.S.A. 72-962, and amendments thereto.

19 (e) "Parent" includes a guardian, custodian or other person
20 with authority to act on behalf of the child.

21 (f) "Participating entity" means: (1) Any elementary or
22 secondary school operated by a school district or other public entity; and
23 (2) any nonpublic school or institution that has notified the department of
24 such school or institution's intention to participate in the program, and
25 which complies with all requirements of the program.

26 (g) "Program" means the special education scholarship
27 program established by section 2, and amendments thereto.

28 (h) "Resident school district" means the school district in
29 which the student resides.

30 (i) "State board" means the state board of education.

31 New Sec. 2. (a) There is hereby established the special education
32 scholarship program. The program shall be administered by the
33 department.

34 (b) Any parent of an eligible student shall qualify for a
35 scholarship pursuant to the program if:

36 (1) the eligible student has been accepted for admission at the

1 participating entity; and

2 (2) the parent has submitted an application for a scholarship in
3 the manner specified by the state board.

4 (c) Except as provided in subsection (d), any student receiving
5 a scholarship under the program shall comply fully with a participating
6 entity's written code of conduct and shall remain in attendance
7 throughout the school year, unless excused by the participating entity for
8 illness or other good cause.

9 (d) A parent may transfer an eligible student to another
10 participating entity at any time. In the event of such transfer, the
11 scholarship amount shall be prorated between the participating entities
12 according to the period of attendance at each entity.

13 (e) A parent's decision for their student to participate in the
14 program constitutes a nonpublic placement for purposes of the
15 individuals with disabilities education act (20 U.S.C. § 1400 et seq.).

16 New Sec. 3. (a) Upon approval of an application for a scholarship,
17 the department shall notify the resident school district that an eligible
18 student has requested a scholarship under the program. Such notice shall
19 include the name of the eligible student. Within three business days of
20 receipt of such notice, the resident school district shall provide the parent
21 of such eligible student a copy of the eligible student's current IEP.

22 (b) The maximum scholarship amount that may be granted
23 under the program to an eligible student shall be an amount equal to the
24 amount of general state aid and supplemental state aid the resident school
25 district is entitled to receive per pupil for the immediately preceding
26 school year, or the cost of tuition and fees to attend the participating
27 entity, whichever is less.

28 (c) The scholarship shall remain in full force and effect until
29 the eligible student graduates from high school or reaches the age of 21,
30 whichever occurs first.

31 (d) The department shall certify to the director of accounts and
32 reports the amount of the scholarship to be awarded for each eligible
33 student. The director of accounts and reports shall issue a warrant on the
34 state treasurer payable to the parent of each eligible student awarded a
35 scholarship under the program in the amount certified by the department.
36 Upon receipt of such warrant, the parent to whom the warrant is made
37 shall restrictively endorse the warrant to the participating entity for
38 deposit into the account of the participating entity.

39 (e) If the participating entity is a public school operated by a
40 school district, then any funds received by the school district pursuant to
41 the program shall be deposited in the special education fund of such
42 school district, and shall only be expended for the purposes of providing
43 special education or related services to the eligible student in accordance

1 with the student's IEP.

2 New Sec. 4. (a) A resident school district shall annually notify the
3 parent of an eligible student, who is not already participating in the
4 program, of the special education scholarship program and provide such
5 information as required by the department to give the parent an
6 opportunity to have the student participate in the program. However, it
7 shall be the parent's responsibility to apply for admission to the
8 participating entity, and to apply for a scholarship under the program.

9 (b) The resident school district shall provide a participating
10 entity that has enrolled an eligible student with a complete copy of such
11 student's educational records. Such production of documents shall be in
12 compliance with the family educational rights and privacy act (20 U.S.C.
13 § 1232g).

14 (c) Transportation for eligible students receiving a scholarship
15 under the program shall be provided and funded in the same manner as
16 transportation for exceptional children under K.S.A. 72-961 et seq., and
17 amendments thereto.

18 (d) Except for the purposes of complying with subsection (c),
19 an eligible student receiving a scholarship under the program shall not be
20 counted as a pupil by the resident school district for the purposes of
21 determining enrollment pursuant to the school district finance and quality
22 performance act.

23 (e) If the parent of an eligible student receiving a scholarship
24 under the program requests that the student take the statewide
25 assessments, the resident school district shall provide locations and times
26 for the student to take such assessments if such assessments are not
27 offered at the participating entity.

28 New Sec. 5. (a) The state board shall not be liable for claims based
29 on the award of or use of a scholarship awarded pursuant to sections 1
30 through 8, and amendments thereto.

31 (b) The state board may bar an entity from participating in the
32 program if the state board establishes that the entity has intentionally and
33 substantially misrepresented information required under section 6, and
34 amendments thereto.

35 (c) The state board shall notify eligible students and their
36 parents of any decision to bar an entity from participating in the program.

37 New Sec. 6. (a) In order to participate in the special education
38 scholarship program, an entity shall operate in this state and demonstrate:

39 (1) That it is in compliance with all health and safety laws,
40 regulations and other codes applicable to such entity;

41 (2) that it holds a valid occupancy permit, if required;

42 (3) that it will comply with the nondiscrimination policies set
43 forth in 42 U.S.C. § 1981; and

1 (4) that it is in compliance with all applicable state laws
2 regarding criminal background checks for employees.

3 (b) All participating entities shall submit to the state board a
4 financial information report prepared by a certified public accountant.
5 Such report shall:

6 (1) Be limited in scope to those records that are necessary for
7 the state board to verify the expenditure of scholarship funds on special
8 education and related services provided to the eligible student;

9 (2) comply with generally accepted uniform financial
10 accounting standards; and

11 (3) certify that the financial information report does not
12 contain any material misstatements.

13 (c) If the participating entity is to receive an amount equal to
14 or greater than \$50,000 during any one school year under the program,
15 and such entity is a nonpublic school or institution, then the participating
16 entity shall demonstrate its ability to pay any funds that may become due
17 and owing to the state by:

18 (1) Filing with the state board, prior to the start of the school
19 year, a surety bond payable to the state in an amount equal to the
20 aggregate amount of funds the entity anticipates it will receive during the
21 school year under the program; or

22 (2) filing with the state board, prior to the start of the school
23 year, financial information that demonstrates, to the state board's
24 satisfaction, that the entity has the ability to pay an amount equal to the
25 aggregate amount of funds the entity anticipates it will receive during the
26 school year under the program.

27 (d) All participating entities shall regularly report on the
28 student's progress to the parent.

29 (e) A participating entity that is a nonpublic school or
30 institution is autonomous and is not an agent of the state. The state board
31 or any other state agency may not in any way regulate the educational
32 program of such participating entity. The creation of the special
33 education scholarship program does not expand the regulatory authority
34 of the state, its officers or any school district to impose any additional
35 regulation of such participating entities beyond those reasonably
36 necessary to enforce the requirements of the program. Such participating
37 entities shall be given the maximum freedom to provide for the
38 educational needs of their students without governmental control.

39 New Sec. 7. (a) The state board shall conduct a study of the
40 program with funds other than state funds. The state board may accept
41 grants to assist in funding this study.

42 (b) The study shall assess:

43 (1) The level of the participating student's satisfaction with the

1 program;

2 (2) the level of the participating parent's satisfaction with the
3 program; and

4 (3) the fiscal impact to the state and resident school districts
5 affected by the program.

6 (c) The study shall apply appropriate analytical and behavioral
7 sciences methodologies to ensure public confidence. A final report
8 evaluating the program shall be submitted to the legislature. The data and
9 methodology used in the study shall be made available for public review
10 while complying with the requirements of the family educational rights
11 and privacy act (20 U.S.C. § 1232g).

12 (d) The participating entities shall provide the number of
13 eligible students enrolled in participating entity schools.

14 (e) An eligible student's or such student's parent's participation in
15 any study conducted pursuant to this section shall be voluntary.

16 New Sec. 8. The state board shall adopt rules and regulations that it
17 deems necessary to implement the provisions of sections 1 through 8, and
18 amendments thereto, including, but not limited to:

19 (a) Requirements relating to the eligibility and participation of
20 participating entities;

21 (b) the calculation and awarding of scholarships under the
22 program;

23 (c) procedures relating to the submission and approval of
24 applications for scholarships; and

25 (d) procedures and safeguards relating to the issuance of
26 vouchers to ensure that moneys awarded for scholarships are used for the
27 purposes set forth in sections 1 through 8, and amendments thereto.

28 Sec. 9. K.S.A. 2010 Supp. 72-6407 is hereby amended to read as
29 follows: 72-6407. (a) (1) "Pupil" means any person who is regularly
30 enrolled in a district and attending kindergarten or any of the grades one
31 through 12 maintained by the district or who is regularly enrolled in a
32 district and attending kindergarten or any of the grades one through 12 in
33 another district in accordance with an agreement entered into under
34 authority of K.S.A. 72-8233, and amendments thereto, or who is regularly
35 enrolled in a district and attending special education services provided for
36 preschool-aged exceptional children by the district.

37 (2) ~~Except as otherwise provided in paragraph (3) of this subsection,~~
38 (A) *The following shall be counted as one pupil:*

39 (i) *A pupil in attendance full time shall be counted as one pupil. ;*
40 *and*

41 (ii) *except as provided in subparagraph (B), a pupil enrolled in a*
42 *district and attending special education and related services, provided*
43 *for by the district.*

1 (B) *The following shall be counted as $\frac{1}{2}$ pupil:*

2 (i) *A pupil attending kindergarten;*

3 (ii) *a pupil enrolled in a district and attending special education and*
4 *related services for preschool-aged exceptional children provided for by*
5 *the district; and*

6 (iii) *a preschool-aged at-risk pupil enrolled in a district and*
7 *receiving services under an approved at-risk pupil assistance plan*
8 *maintained by the district.*

9 (C) *The following shall be counted as two pupils:*

10 (i) *A pupil in the custody of the secretary of social and rehabilitation*
11 *services or in the custody of the commissioner of juvenile justice and*
12 *enrolled in unified school district No. 259, Sedgwick county, Kansas, but*
13 *housed, maintained and receiving educational services at the Judge*
14 *James V. Riddel Boys Ranch; and*

15 (ii) *a pupil in the custody of the secretary of social and*
16 *rehabilitation services or in the custody of the commissioner of juvenile*
17 *justice and enrolled in unified school district No. 409, Atchison, Kansas,*
18 *but housed, maintained and receiving educational services at the youth*
19 *residential center located on the grounds of the former Atchison juvenile*
20 *correctional facility.*

21 (D) *A pupil in attendance part time shall be counted as that*
22 *proportion of one pupil (to the nearest $\frac{1}{10}$) that the pupil's attendance*
23 *bears to full-time attendance. ~~A pupil attending kindergarten shall be~~*
24 *counted as $\frac{1}{2}$ pupil.*

25 (E) *A pupil enrolled in and attending an institution of postsecondary*
26 *education which is authorized under the laws of this state to award*
27 *academic degrees shall be counted as one pupil if the pupil's*
28 *postsecondary education enrollment and attendance together with the*
29 *pupil's attendance in either of the grades 11 or 12 is at least $\frac{5}{6}$ time,*
30 *otherwise the pupil shall be counted as that proportion of one pupil (to the*
31 *nearest $\frac{1}{10}$) that the total time of the pupil's postsecondary education*
32 *attendance and attendance in grade 11 or 12, as applicable, bears to full-*
33 *time attendance.*

34 (F) *A pupil enrolled in and attending an area vocational school, area*
35 *vocational-technical school or approved vocational education program*
36 *shall be counted as one pupil if the pupil's vocational education*
37 *enrollment and attendance together with the pupil's attendance in any of*
38 *grades nine through 12 is at least $\frac{5}{6}$ time, otherwise the pupil shall be*
39 *counted as that proportion of one pupil (to the nearest $\frac{1}{10}$) that the total*
40 *time of the pupil's vocational education attendance and attendance in any*
41 *of grades nine through 12 bears to full-time attendance.*

42 (G) *A pupil enrolled in a district and attending a nonvirtual school*
43 *and also attending a virtual school shall be counted as that proportion of*

1 one pupil (to the nearest $\frac{1}{10}$) that the pupil's attendance at the nonvirtual
2 school bears to full-time attendance. ~~Except as provided by this section~~
3 ~~for preschool-aged exceptional children and virtual school pupils, a pupil~~
4 ~~enrolled in a district and attending special education and related services,~~
5 ~~provided for by the district shall be counted as one pupil.~~

6 (H) A pupil enrolled in a district and attending special education and
7 related services provided for by the district and also attending a virtual
8 school shall be counted as that proportion of one pupil (to the nearest $\frac{1}{10}$)
9 that the pupil's attendance at the nonvirtual school bears to full-time
10 attendance. ~~A pupil enrolled in a district and attending special education~~
11 ~~and related services for preschool-aged exceptional children provided for~~
12 ~~by the district shall be counted as $\frac{1}{2}$ pupil. A preschool-aged at-risk~~
13 ~~pupil enrolled in a district and receiving services under an approved at-~~
14 ~~risk pupil assistance plan maintained by the district shall be counted as~~
15 ~~$\frac{1}{2}$ pupil. A pupil in the custody of the secretary of social and~~
16 ~~rehabilitation services or in the custody of the commissioner of juvenile~~
17 ~~justice and enrolled in unified school district No. 259, Sedgwick county,~~
18 ~~Kansas, but housed, maintained, and receiving educational services at the~~
19 ~~Judge James V. Riddel Boys Ranch, shall be counted as two pupils.~~
20 ~~Except as provided in section 1 of chapter 76 of the 2009 Session Laws~~
21 ~~of the state of Kansas, and amendments thereto, a pupil in the custody of~~
22 ~~the secretary of social and rehabilitation services or in the custody of the~~
23 ~~commissioner of juvenile justice and enrolled in unified school district~~
24 ~~No. 409, Atchison, Kansas, but housed, maintained and receiving~~
25 ~~educational services at the youth residential center located on the grounds~~
26 ~~of the former Atchison juvenile correctional facility, shall be counted as~~
27 ~~two pupils.~~

28 (3) *The following shall not be counted:*

29 (A) A pupil residing at the Flint Hills job corps center ~~shall not be~~
30 ~~counted. ;~~

31 (B) *except as provided in paragraph (2), a pupil confined in and*
32 *receiving educational services provided for by a district at a juvenile*
33 *detention facility shall not be counted. ;*

34 (C) *a pupil enrolled in a district but housed, maintained, and*
35 *receiving educational services at a state institution or a psychiatric*
36 *residential treatment facility shall not be counted. ; and*

37 (D) *a pupil that has been awarded a scholarship under the special*
38 *education scholarship program, section 1 et seq., and amendments*
39 *thereto.*

40 (b) "Preschool-aged exceptional children" means exceptional
41 children, except gifted children, who have attained the age of three years
42 but are under the age of eligibility for attendance at kindergarten.

43 (c) "At-risk pupils" means pupils who are eligible for free meals

1 under the national school lunch act and who are enrolled in a district
2 which maintains an approved at-risk pupil assistance plan.

3 (d) "Preschool-aged at-risk pupil" means an at-risk pupil who has
4 attained the age of four years, is under the age of eligibility for attendance
5 at kindergarten, and has been selected by the state board in accordance
6 with guidelines consonant with guidelines governing the selection of
7 pupils for participation in head start programs.

8 (e) "Enrollment" means: (1) (A) Subject to the provisions of
9 paragraph (1)(B), for districts scheduling the school days or school hours
10 of the school term on a trimestral or quarterly basis, the number of pupils
11 regularly enrolled in the district on September 20 plus the number of
12 pupils regularly enrolled in the district on February 20 less the number of
13 pupils regularly enrolled on February 20 who were counted in the
14 enrollment of the district on September 20; and for districts not specified
15 in this paragraph (1), the number of pupils regularly enrolled in the
16 district on September 20; (B) a pupil who is a foreign exchange student
17 shall not be counted unless such student is regularly enrolled in the
18 district on September 20 and attending kindergarten or any of the grades
19 one through 12 maintained by the district for at least one semester or two
20 quarters or the equivalent thereof;

21 (2) if enrollment in a district in any school year has decreased from
22 enrollment in the preceding school year, enrollment of the district in the
23 current school year means whichever is the greater of (A) enrollment in
24 the preceding school year minus enrollment in such school year of
25 preschool-aged at-risk pupils, if any such pupils were enrolled, plus
26 enrollment in the current school year of preschool-aged at-risk pupils, if
27 any such pupils are enrolled, or (B) the sum of enrollment in the current
28 school year of preschool-aged at-risk pupils, if any such pupils are
29 enrolled and the average (mean) of the sum of (i) enrollment of the
30 district in the current school year minus enrollment in such school year of
31 preschool-aged at-risk pupils, if any such pupils are enrolled and (ii)
32 enrollment in the preceding school year minus enrollment in such school
33 year of preschool-aged at-risk pupils, if any such pupils were enrolled
34 and (iii) enrollment in the school year next preceding the preceding
35 school year minus enrollment in such school year of preschool-aged at-
36 risk pupils, if any such pupils were enrolled; or

37 (3) the number of pupils as determined under K.S.A. 72-6447 or
38 K.S.A. 2010 Supp. 72-6448, and amendments thereto.

39 (f) "Adjusted enrollment" means: (1) Enrollment adjusted by adding
40 at-risk pupil weighting, program weighting, low enrollment weighting, if
41 any, high density at-risk pupil weighting, if any, medium density at-risk
42 pupil weighting, if any, nonproficient pupil weighting, if any, high
43 enrollment weighting, if any, declining enrollment weighting, if any,

1 school facilities weighting, if any, ancillary school facilities weighting, if
2 any, cost of living weighting, if any, special education and related
3 services weighting, and transportation weighting to enrollment; or (2)
4 adjusted enrollment as determined under K.S.A. 2010 Supp. 72-6457 or
5 72-6458, and amendments thereto.

6 (g) "At-risk pupil weighting" means an addend component assigned
7 to enrollment of districts on the basis of enrollment of at-risk pupils.

8 (h) "Program weighting" means an addend component assigned to
9 enrollment of districts on the basis of pupil attendance in educational
10 programs which differ in cost from regular educational programs.

11 (i) "Low enrollment weighting" means an addend component
12 assigned to enrollment of districts pursuant to K.S.A. 72-6412, and
13 amendments thereto, on the basis of costs attributable to maintenance of
14 educational programs by such districts in comparison with costs
15 attributable to maintenance of educational programs by districts having to
16 which high enrollment weighting is assigned pursuant to K.S.A. 2010
17 Supp. 72-6442b, and amendments thereto.

18 (j) "School facilities weighting" means an addend component
19 assigned to enrollment of districts on the basis of costs attributable to
20 commencing operation of new school facilities.

21 (k) "Transportation weighting" means an addend component
22 assigned to enrollment of districts on the basis of costs attributable to the
23 provision or furnishing of transportation.

24 (l) "Cost-of-living weighting" means an addend component assigned
25 to enrollment of districts to which the provisions of K.S.A. 2010 Supp.
26 72-6449, and amendments thereto, apply on the basis of costs attributable
27 to the cost of living in the district.

28 (m) "Ancillary school facilities weighting" means an addend
29 component assigned to enrollment of districts to which the provisions of
30 K.S.A. 72-6441, and amendments thereto, apply on the basis of costs
31 attributable to commencing operation of new school facilities. Ancillary
32 school facilities weighting may be assigned to enrollment of a district
33 only if the district has levied a tax under authority of K.S.A. 72-6441, and
34 amendments thereto, and remitted the proceeds from such tax to the state
35 treasurer. Ancillary school facilities weighting is in addition to
36 assignment of school facilities weighting to enrollment of any district
37 eligible for such weighting.

38 (n) "Juvenile detention facility" has the meaning ascribed thereto by
39 K.S.A. 72-8187, and amendments thereto.

40 (o) "Special education and related services weighting" means an
41 addend component assigned to enrollment of districts on the basis of
42 costs attributable to provision of special education and related services for
43 pupils determined to be exceptional children.

1 (p) "Virtual school" means any school or educational program that:
2 (1) Is offered for credit; (2) uses distance-learning technologies which
3 predominately use internet-based methods to deliver instruction; (3)
4 involves instruction that occurs asynchronously with the teacher and
5 pupil in separate locations; (4) requires the pupil to make academic
6 progress toward the next grade level and matriculation from kindergarten
7 through high school graduation; (5) requires the pupil to demonstrate
8 competence in subject matter for each class or subject in which the pupil
9 is enrolled as part of the virtual school; and (6) requires age-appropriate
10 pupils to complete state assessment tests.

11 (q) "Declining enrollment weighting" means an addend component
12 assigned to enrollment of districts to which the provisions of K.S.A. 2010
13 Supp. 72-6451, and amendments thereto, apply on the basis of reduced
14 revenues attributable to the declining enrollment of the district.

15 (r) "High enrollment weighting" means an addend component
16 assigned to enrollment of districts pursuant to K.S.A. 2010 Supp. 72-
17 6442b, and amendments thereto, on the basis of costs attributable to
18 maintenance of educational programs by such districts as a correlate to
19 low enrollment weighting assigned to enrollment of districts pursuant to
20 K.S.A. 72-6412, and amendments thereto.

21 (s) "High density at-risk pupil weighting" means an addend
22 component assigned to enrollment of districts to which the provisions of
23 K.S.A. 2010 Supp. 72-6455, and amendments thereto, apply.

24 (t) "Nonproficient pupil" means a pupil who is not eligible for free
25 meals under the national school lunch act and who has scored less than
26 proficient on the mathematics or reading state assessment during the
27 preceding school year and who is enrolled in a district which maintains
28 an approved proficiency assistance plan.

29 (u) "Nonproficient pupil weighting" means an addend component
30 assigned to enrollment of districts on the basis of enrollment of
31 nonproficient pupils pursuant to K.S.A. 2010 Supp. 72-6454, and
32 amendments thereto.

33 (v) "Psychiatric residential treatment facility" has the meaning
34 ascribed thereto by K.S.A. 72-8187, and amendments thereto.

35 (w) "Medium density at-risk pupil weighting" means an
36 addend component assigned to enrollment of districts to which the
37 provisions of K.S.A. 2010 Supp. 72-6459, and amendments thereto,
38 apply.

39 Sec. 10. K.S.A. 2010 Supp. 72-6407 is hereby repealed.

40 Sec. 11. This act shall take effect and be in force from and after its
41 publication in the statute book.