

Date: February 18, 2013
From: Kevin Shepard, Assistant Director
Tri-County Special Education Cooperative/Interlocal No. 607
To: Representative Kelly and the House Education Committee

Tri-County Interlocal No. 607 would like to express our concerns with the proposed legislation identified under HB 2263. Many elements of this particular bill are troublesome when viewing it in light of current regulatory requirements under the federal law, specifically the Individuals with Disabilities Education Act (IDEA).

This bill appears to provide parents of students with disabilities a voucher system as an alternative to their current public education opportunities. It suggests that if a parent believes their child is not progressing to their satisfaction under the public school model, they can be awarded a scholarship to pursue services with a private or parochial school entity. This scholarship would be equivalent to the cost of those educational resources provided in the resident public school district and paid by the resident school district to the parent's private/parochial school of choice. In addition, any costs associated with transporting that child to the selected private/parochial school will be borne by the resident public school district.

Several questions come into mind regarding this bill. First and foremost is the idea that a bill for school choice is being lobbied on behalf of disabled students only and not for non-disabled students. That appears discriminatory and begs the question as to why the disabled population was specifically singled out?

We are also concerned about the litany of infractions to IDEA that this bill proposes to allow. There is no accountability of either the private or parochial school to adhere to the mandated service requirements of IDEA. Under IDEA, public school districts must adhere to requirements for a Free Appropriate Public Education (FAPE) within the Least Restrictive Environment (LRE) and provide every child with a disability an Individual Education Plan (IEP) grounded in those requirements. If a parent believes these requirements have not been fulfilled, they may act through their child's due process rights to challenge the services of the public school district in order to remedy the situation. This remedy can include the public school district being ordered to help fund the cost of a placement outside the public school district. Given that, why is there any need for what is being proposed in this piece of legislation?

There is also the issue of the state department of education being allowed to override a local school district's IEP decision. Again, this appears to defy IDEA regulations, which already outline a very specific set of legal remedies available to both parents and the public school district. This action also appears to strip public school districts from their right to challenge unreasonable claims by parents and defend their position on services/programming for disabled students guaranteed to them under IDEA. Just because a parent "feels" their child is not making progress, does not make that so.

It is also important to understand that no federal VI-B funds could flow to these private or parochial schools unless compliance with IDEA was guaranteed. Under these funds, public school districts have to comply with a Maintenance of Effort provision to ensure a continuation of appropriate services for students with disability. This bill does not indicate any such requirement for private/parochial schools. Furthermore, we would be remiss if we did not point out that when this state was determined to be non-compliant with this MOE requirement in the past, our current governor and legislature had to immediately inject approximately \$25 million dollars in special education funding to prevent a wholesale reduction of federal funds to the state of Kansas.

Finally, we take issue with the idea that a parent could withdraw their child at any point of the school term and seek a scholarship. As with any other fiscally prudent entity, we strive to operate the best quality services at the least expense to our patrons. We make decisions about staffing these services prior to the start of our school term. The idea that at any point we may have several students opt out for these scholarships would seriously compromise our fiscal solvency and create numerous issues for us including complications stemming from current Kansas regulations regarding continuing contract law, unemployment costs, potential litigation/challenges to possible reductions in force, etc.

In closing, this bill lacks an understanding of IDEA and those provisions that already allow a parent to seek out a remedy if they believe their child has failed to make the necessary gains they has hoped for through the IEP established by a public school entity. If there are concerns over the federal mandate, those changes should be sought at the federal level rather than initiate an attempt to bypass them through actions by our state legislature. Given our concerns, we would encourage the House Education Committee to withdraw HB 2263 at this time.