

MINUTES

JOINT COMMITTEE ON CHILDREN'S ISSUES

September 27-28, 2006
Room 519-S—Statehouse

Members Present

Senator Kay O'Connor, Chairperson
Representative Willa DeCastro, Vice-Chairperson (Thursday only)
Senator David Haley
Senator Laura Kelly
Representative Marti Crow
Representative Sue Storm

Members Absent

Senator Roger Reitz
Senator Susan Wagle
Representative Bonnie Huy
Representative Frank Miller

Staff Present

Susan Kannarr, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Helen Pedigo, Office of Revisor of Statutes
Mike Corrigan, Office of Revisor of Statutes
Florence Deeter, Committee Secretary

Conferees

Nancy Pomeroy, Parents for Choices in Education, Salt Lake City, Utah
Ron Johnson, Gardner, Kansas, Parent of a Child with Autism, and President of the Kansas City Autism Training Center in Prairie Village
Greg Forster, Senior Fellow, Milton and Rose Friedman Foundation, Indianapolis, Indiana
Kathy Kist, Olathe, Kansas
Gary Daniels, Secretary, Department of Social and Rehabilitation Services
Tom Stratton, Project Director, Kansas Legal Services
Candy Shively, Deputy Secretary for Integrated Service Delivery, Department of Social and

Rehabilitation Services
Shawn Kane, American Adoptions, Overland Park
Michael Belfonte, Attorney, Kansas City, Missouri
Kent Vincent, Attorney, Topeka, Kansas
Dona Booe, Vice President of Programs, Kansas Children's Service League
Bev Wiebe, Marriage and Family Therapist, Hesston, Kansas
Ron Smith and Angela Spellman, Emporia, Kansas

Others Attending

See attached list.

September 27 Morning Session

The Chairperson called the meeting to order and welcomed the Committee members and guests.

Staff reviewed past Kansas legislation regarding Scholarships for School Age Children with Disabilities ([Attachment 1](#)). SB 169 was introduced in the 2005 Legislative Session and referred to the Senate Education Committee for hearings. However, no action was ever taken on the bill.

In answer to a question from the Committee regarding gifted students, Greg Forster, Senior Fellow, Milton and Rose Friedman Foundation, explained that, at least in the Florida McKay Scholarship program, those who are gifted; have an individual education plan (IEP); and qualify as special needs are eligible for scholarships. Chairperson O'Connor added that current Kansas law does not separate the gifted IEP and special education IEP. She further explained that the language for the bill, written by the American Legal Exchange Council (ALEC), did not contain the distinction and the language was left that way to allow discussion on the inclusion of gifted students when SB 169 was considered.

To clarify the question of whether a participating school must accept a student, staff explained that in order to obtain a scholarship, the student must apply and be accepted to the participating school prior to receiving a scholarship.

The Chairperson introduced Nancy Pomeroy, Parents for Choice in Education, Salt Lake City, Utah. Ms. Pomeroy presented testimony to the Committee about the Carson Smith Special Needs Scholarship program in Utah ([Attachment 2](#)).

In response to Committee questions, Ms. Pomeroy explained the following points about the Utah program:

- Parents pay for the Carson Smith program in addition to state taxes paid per child to the public school. Scholarship amounts are based on the cost to educate the child in the public school system. Any tuition costs over that amount must be paid by the parent. Ms. Pomeroy indicated that the average tuition of a private school

in Utah is approximately \$3,800 but that highly specialized schools like the Carmen Pingree School for Autistic Children are much higher.

- Teachers in private schools must be certified, but no requirement is made for certification in every student's specialty.
- Participating schools must demonstrate financial soundness verified by an independent CPA; be located in Utah; verify that teachers have experience, knowledge, and special skills; and be assessed on an annual basis. Additionally, the schools must give each child an academic progress report which then goes to each parent, faculty members, and the assessment team at the Utah State Office of Education.
- Various assessment teams meet together to determine if the child's needs are being met and progress is being made, and qualifying schools must show evidence of success in baseline education.
- Utah State Office of Education sets the standards and guidelines for the Carson Smith program.

Betty Lindsey, a grandparent providing care for an autistic child brought testimony concerning her grandson, Raymond ([Attachment 3](#)). Ms. Lindsey expressed concerns about whether the local public education systems are providing the services that have been recommended by her grandson's doctor. Specifically, she is concerned about the school lowering his goals and about the current IEP process. Ms. Lindsey is advocating for school choice for her grandson in order for him to have an appropriate education and a chance for an independent life.

Ms. Lindsey answered personal questions from the Committee members and received further information from them regarding the nature of IEP protocol, and encouraged her to find a suitable school for her grandson. The Chairperson asked Ms. Lindsey to provide the Committee members with a listing of the six goals she disagreed with in the IEP in order for the Committee to have a better understanding of the situation.

Ron Johnson, President of the Kansas City Autism Training Center in Prairie Village, Kansas, presented testimony to the Committee both as a parent of an autistic child and the co-founder of the training center ([Attachment 4](#)). His concern is for early and appropriate intervention for diagnosis of autism in children. Mr. Johnson's testimony included a number of reasons why the public schools are not providing the recommended services to autistic children. He also provided the Committee with a memorandum to the Kansas State Department of Education regarding recommendations for autism from the Kansas Special Education Advisory Committee ([Attachment 5](#)).

Mr. Johnson answered questions from the Committee regarding insurance coverage for autism services. He noted that some states have implemented insurance mandates for the coverage of services for both mental and physical components of autism.

In summary, Mr. Johnson told the Committee that if therapy is done according to the research, up to 50 percent of students with autism will be able to be integrated back into schools and perform as more normal children. The consensus is that 25 hours per week for an entire 12 months would be beneficial for success. However, this is not only very expensive but there is also a shortage

of trained personnel to provide the services. In the perfect world, it would be determined what services were needed in public schools and then those services would be funded.

Afternoon Session

The Chairperson directed the Committee's attention to a news release from the Kansas Association of School Boards regarding public education, staffing, and cooperation. It is included in the report as an informational page. A booklet available from the Heartland Institute, Chicago, Illinois, entitled, *Let's Put Parents Back in Charge*, was distributed to the Committee members and all interested parties.

Greg Forster, Senior Fellow, Milton and Rose D. Friedman Foundation, Indianapolis, Indiana, provided testimony on the impact of programs which provide vouchers for disabled students (Attachment 6). The testimony presented addressed four major misconceptions about vouchers for disabled students and provided research findings to dispute those misconceptions.

Mr. Forster responded to various questions from the Committee members regarding the McKay scholarship program, including evaluation research which has been performed. The following summarizes his comments:

- Even with the use of vouchers, public schools will retain the majority of students.
- In Florida, a system of tracking is used for the type and severity of disability for all students, including those in the voucher program. According to research, the characteristics and disabilities of students using the McKay program voucher were very similar on every standard demographic measurement to the overall disabled population.
- Funding in Florida is established before the school year begins because students must apply and be accepted into the program before the school year begins. If a student leaves in mid-year, the budget is then adjusted.
- Every child in Florida public schools who has a disability diagnosis is eligible for a voucher, which is worth almost the same amount of money the public school would have spent for the child.
- In general, the research has shown that the least advantaged student makes the greatest gain when given school choice.
- Eligibility requirements for a "receiving" school are: to be fiscally sound; to meet all health and safety regulations; and to have teachers with a Bachelor of Education degree, or three years' experience, or special qualifications. Schools are not subject to federal guidelines requiring Special Education degrees.
- Individual Education Plans (IEPs) are not required for students, but as many as one-half of students do have an IEP from the public system when entering the private schools.

- Assessment of progress is based on Math and English scores and not on No Child Left Behind criteria.
- There are three requirements for using a McKay Scholarship: a disability diagnosis; an IEP; and enrollment in a public school for one year.
- The McKay Scholarship program has not been sued to date, but other voucher programs have been the subject of litigation.
- Accountability of tax dollars is monitored by a yearly state audit to assure tax dollars are spent on educational services.

The Chairperson informed the Committee that all travel expenses for Nancy Pomeroy and Greg Forster were provided by private organizations and that no taxpayer dollars were used to bring these two speakers to Kansas. The Chairperson thanked the Milton and Rose Friedman Foundation and the Alliance for School Choice for their willingness to pay these travel expenses.

An informational piece taken from a book entitled, *“Education Myths: What Special Interest Groups Want You to Believe about Our Schools—And Why It Isn’t So,”* was provided to the members.

Kathryn Kist, a teacher from Olathe, spoke to the Committee of her concerns for disabled students in Kansas ([Attachment 7](#)). She advocated for school choice stating that parents really do know what is the best way to help their child educationally. In response to questions from the Committee, Ms. Kist commented on the value of one-to-one learning and having classes smaller than 25 students. Addressing the question of how to best support teachers, she advocated having better teacher training with an emphasis on practical tools, such as methods for keeping control of a class at the high school level.

Gary Daniels, Secretary of the Department of Social and Rehabilitation Services (SRS), briefed the Committee on the Grandparents as Caregivers program, which was passed in SB 62 during the 2006 Legislative Session ([Attachment 8](#)). The new program is slated to begin on January 1, 2007, with marketing to begin in late November 2006. The application process has been simplified in a one-page document. Informational materials and a resource book will soon be available to grandparents who are caring for their grandchildren.

In response to questions, Mr. Daniels agreed that the cost of placing a child in foster care is higher than compensating a grandparent under this program. The Secretary discussed various reasons why a grandparent might choose to remain a care giver rather than become a foster parent, even though they would receive additional funding for becoming a foster parent. It may be considered a temporary measure for the benefit of the child with the hope of possibly reuniting the child with his or her parents. Other reasons are to eliminate the stigma attached when a child is placed in foster care and to preclude the state having custody of the child and overseeing the care of the child. Finally, the Secretary indicated that medical coverage may be available for children in this program through Medicaid, if the child is eligible.

Tom Stratton, Project Director, Kansas Legal Services, presented information to the Committee regarding the Children’s Advocacy Resource Center (CARC) operated by Kansas Legal

Services ([Attachment 9](#)). CARC provides legal and comprehensive support for persons in the foster care system who have no other means to secure representation. Services provided by CARC assist individuals in understanding and navigating the complexities of child welfare laws. CARC operates the statewide *Guardian Ad Litem* Support Center.

Mr. Stratton presented a notebook containing four publications available from the Support Center. The following publications provide pertinent information: *Alex Goes to Court*, *The Road Ahead*, *Planning Your Future*, and *It's Not Easy Being a Kid*. The goal of each of these books is to provide information for the child, and each one is intentionally interactive. The goal of the center is to secure sufficient funding to make these books available to all children in Kansas who may need them.

Prior to recessing the meeting, the Chairperson directed the Committee members to peruse the portfolio from the Department of Education in Florida on School Choice Options ([Attachment 10](#)), along with a memorandum from staff describing the McKay Scholarships for Students with Disabilities ([Attachment 11](#)).

The meeting was recessed at 4:10 p.m.

September 28 Morning Session

The meeting was called to order at 9:15 a.m. by the Chairperson. The Chairperson requested that in addition to providing their prepared testimony regarding changes to adoption laws, conferees were asked to comment on the desirability of implementing a putative/birth father registry in Kansas.

Staff reviewed adoption laws in Kansas ([Attachment 12](#)) and responded to Committee questions regarding inheritance provisions and international adoptions. In response, staff clarified that under Kansas law, an adopted child has the right of inheritance from the birth parent, but the parents do not have the same right of inheritance from the child. Also, staff clarified that Kansas law does not speak to international adoptions and that citizenship issues are governed by federal law.

Candy Shively, Deputy Secretary for Integrated Service Delivery, SRS, presented testimony on how Kansas might facilitate and safeguard adoptions ([Attachment 13](#)). Ms. Shively addressed questions from the Committee regarding reimbursements for adoption costs incurred by families who adopt children who are in state custody. A reimbursement of up to \$2,000 is available, based on the actual expenses incurred. Additionally, there is a monthly adoption subsidy available for families who adopt special needs children in state custody. The amount of subsidy is negotiated at the time of the adoption with a maximum of \$600 per month. The average amount of subsidy is \$285 per month. Annual reviews are conducted to determine the level of needs as the child progresses to the age of 18. She further stated that Medicaid coverage for health services could be part of the adoption subsidy. The purpose of the adoption subsidy is to remove the financial barrier so that persons of modest means will be able to meet the special needs of children adopted from foster care. Between 70 percent and 90 percent of children receive some amount of subsidy.

Martin Bauer, an attorney from Wichita and Past President of the American Academy of Adoption Attorneys, presented testimony regarding several problem areas in Kansas adoption laws

and made suggestions for changes. First, Mr. Bauer commended the Legislature for including a permanent guardianship option, as stated in KSA 38-1501 *et seq.*, in conjunction with termination of rights of parents. However, one must go through the child in need of care procedures and not through probate court to gain permanent guardianship

Second, Mr. Bauer commented on the passage in 2006 of a provision which says that the judge may consider the best interest of the child in determining whether to grant an adoption in stepparent adoptions under KSA 59-2136. However, this same provision is not included in laws governing non-step-parent adoptions. He further commented that he believes it is important that judges understand that the law states "may" rather than "shall" in order to balance constitutional rights. Constitutionally, there must be a balance among the birth father, the birth mother, and the interest of the state.

A third area Mr. Bauer addressed was the new Interstate Compact for the Placement of Children. Several of the key provisions which would have addressed the time line, the resolution of conflicting laws of interests between states, and the remedies for eliminating delays are not in the new act submitted for consideration to state legislatures. The lack of these items and other considerations brings up the question of whether the new Compact is worth adoption in states.

Mr. Bauer elaborated on contested adoptions and suggested the Legislature look at KSA 59-2124 (d), second sentence, stating that the phrase in question is based on a belief that the other parent would relinquish the child to the agency. The conferee suggested that in KSA 59-2124(d), the part of the sentence relating to the belief that the other parent would relinquish the child should be stricken.

A final issue relates to a developing artificial reproductive technology law with respect to surrogacy and gestational carriers. KSA 38-1114 (f) refers only to the fact that a sperm donor has no parental rights. Mr. Bauer suggested that the language should also refer to egg donors. In most states where surrogacy and gestational carriers are in place, the two donor characteristics are uniform; there are no parental rights for either.

The Chairperson requested that Mr. Bauer put together written testimony regarding the recommendations he presented and that they be given to the Committee.

Mr. Bauer addressed the putative father registry and clarified the issue by stating its importance in relation to child support enforcement. There is a registry in Kansas, but only in relation to child support enforcement. Staff from SRS commented that there were very few names in the registry. The federal Proud Father Act was passed to encourage states to have a putative father registry that would be associated with adoption. This registry is rarely used in Missouri and other states. The conferee commented that there is currently a system in place to find and notify fathers and that birth registries do not solve all of the problems. He further stated that the biggest difficulty in identifying birth fathers is the untruthful birth mother.

When asked about open versus closed adoptions, Mr. Bauer stated that Kansas has no statutory restrictions on open adoptions. He further stated that the determination of whether an adoption is open or closed and what information will be available to the child is generally handled through written contracts and letters of agreement which can be enforced through the courts. These would be handled as breach of contracts and the probate court system has no jurisdiction. Other states that have open adoption maintain very specific guidelines as to any modifications in the adoption procedures. Mr. Bauer further commented that the adoptee, even at the age of maturity,

can still feel a great sense of having lost connection with the biological parent so that any process of reintegration must be carefully weighed.

Committee members asked questions directed to any of the conferees about the use of DNA testing to determine paternity. Candy Shively addressed the issue and indicated that SRS does use DNA testing but it is used primarily for child support and not for adoption. Also, children adopted from SRS custody are rarely infants and paternity is rarely an issue. Mr. Bauer commented on a follow-up question about the amount of delayed time in DNA testing for determining the paternal parent. He stated that often there are multiple possibilities of who the father really is and, should the birth mother not be in the picture, a swab of the child and the father is all that is needed. Results can be obtained within a few days. He believes it is imperative that a genetic and medical history be acquired at the first hearing in case the mother decides to be unavailable. Family history needs to be recorded for the benefit of the child. As discussion ensued, an SRS representative addressed a Committee member's question of the return time of DNA testing results by stating that SRS has a contract for testing DNA for child support purposes, and it has been amended for parental rights termination. Most reports are returned in about one week.

Answering further questions, Mr. Bauer clarified the difference between adoption and permanent guardianship. A permanent guardian has all the rights of an adoptive parent, including the prerogative of changing the child's name. The exception is with the child's birth certificate; the name of the child's mother and or father remains on that document. An SRS representative advised the Committee that as of January 1, 2007, the acceptable designation will be changed to read permanent custodianship, which allows additional flexibility.

A Committee member asked the SRS representative what happens to the adoption subsidy when a child begins college. According to the conferee, the 2006 Legislature passed the Foster Care Education Act which provides a waiver of tuition for children 15 years of age and older for post-secondary education. In addition, the child is eligible for some additional support from the Department.

Shawn Kane, American Adoptions, Overland Park, addressed the Committee, requesting it consider broadening the requirements for supervisors and case workers in Kansas. He submitted a proposal for specific qualifications for the role of supervisor of placement services and licensing of case workers ([Attachment 14](#)).

Michael Belfonte, Attorney, Kansas City, Missouri, presented testimony on the issue of compensation of a court-appointed attorney when representation has been given to indigent parents, and regarding advertising ([Attachment 15](#)). His written testimony included suggested statutory changes to address both of these issues.

Mr. Belfonte responded to a member's question about the legality of prospective adoptive parents' advertising. He indicated that, although he believed the statute is unconstitutional, KSA 59-2123 prohibits them from doing so. Facilitators who are attempting to match a birth mother with an adoptive family, and who are charging a fee up front, are in violation of selling services. However, a judge has no recourse but to approve the fees. Additionally, the judge is not obligated to grant the adoption.

Finally, Mr. Belfonte indicated that even though a \$50 fee on adoptions had been instituted in Missouri in 2004 to assist in encouraging people to participate in the birth father registry, to date there have been few registrations.

Kent Vincent, Attorney, Topeka, presented testimony regarding suggested changes to adoption laws regarding the undisclosed father and his right to overturn a finalized adoption (Attachment 16). Mr. Vincent's testimony also included written testimony from Rachael Pirner, an adoption attorney in Wichita. Her information contains specific statutory language regarding the disclosure of paternity and remedies in the event a mother knowingly provides false information. Mr. Vincent commented that information garnered from the birth mother may not include the truth as to who the birth father is and, should he come forward after the adoption has been finalized to contest that adoption, it is imperative to have a defined and reasonable amount of time he is given to declare his paternity. At this point, there is not a great deal of leverage to get the mother to tell the truth about the birth father.

With regard to birth father registries, Mr. Vincent said that Kansas has a good system for identifying and locating birth fathers. He continued by saying that he did not see registries as a solution, at least partially because registries are seldom utilized in most states that have them.

Dona Booe, Vice President of Programs, Kansas Children's Service League, (KCSL) presented testimony to the Committee regarding suggestions for adoption law changes (Attachment 17). Ms. Booe referred the Committee to an addendum giving information on an adoption Internet site used by KCSL. She cited Senator Laura Kelly as the person who worked to achieve the development of the website.

In answer to questions from the Committee, Ms. Booe stated that KCSL does not have a foster care contract. KCSL is an accredited and licensed 501 C3, not-for-profit child placement agency in Kansas and Missouri, and is allowed to recruit, train, and identify available families. Fees for home studies and inspections are \$250 and preparations for prospective families include the required MAPP training for all foster homes, routine visitation to those homes, monitoring and maintaining the quality of the home, Kansas Bureau of Investigation background checks, and registry checks for child abuse and neglect. She further stated that both foster care families and prospective adoptive families could go through the same training process.

Ms. Booe gave statistics on the number of child placements in 2006: from January through August there were service requests for 126 children; 79 children have been placed with matching families; 64 more children have completed adoption placements; 83 have been finalized (this number includes children from July 2005 through December 2005). A Committee member asked if a link could be made on the website to connect the American Academy of Adoption Attorneys with helping people find a qualified attorney. Ms. Booe acknowledged that it could be considered.

Bev Wiebe, Marriage and Family Therapist, Hesston, presented testimony regarding her view of updating the adoption law (Attachment 18). Specifically, she is advocating for a change to be made which would allow licensed mental health practitioners to perform home adoption studies. In a question directed to the American Adoptions representative, he responded by saying where home studies are required, a case worker need not be the only entity involved, and the inclusion of licensed mental health practitioners could alleviate the shortage of people to perform the needed services. He agreed that having a master's degree was not necessarily advantageous in the position and that those with a bachelor's degree and some years of experience often have more merit and better qualifications than those persons who have only schooling.

Ron Seeber, representing the Hein Law Firm, presented comments to the Committee from testimony prepared by Ron Hein (Attachment 19). The firm provides legislative counsel for the Mental Health Credentialing Coalition. He spoke in support of Bev Wiebe's testimony and urged the

Committee to support her recommendations, including amending KSA 59-2132, to expand the list of health care providers who are allowed to conduct home studies. The request is for all individuals who are licensed by the Behavioral Sciences Regulatory Board.

Ron Smith and Angela Spellman from Emporia, Kansas, brought personal testimony in the matter of mediators and case managers in family law cases (Attachment 20). Specifically, their concerns are about the licensing and oversight of individuals who provide these services for the court system. Additionally, they expressed concerns about their inability to change case managers after experiencing financial and other difficulties with the current case manager. After answering clarifying questions from Committee members, the conferee was given several suggestions for finding a remedy for her situation and closure for her circumstances.

The Chairperson thanked the conferees for their attendance and presentations. The next meeting is scheduled for November 16 and 17, 2006.

Senator David Haley commended Senator Kay O'Connor for her years of service in representing the constituents of her district. He further expressed deep appreciation for the enrichment in the lives of her colleagues and for her leadership in the Legislature.

The meeting was adjourned at 1:30 p.m.

Prepared by Florence Deeter
Edited by Susan Kannarr

Approved by Committee on:

November 16, 2006

(date)