

MINUTES

LEGISLATIVE EDUCATIONAL PLANNING COMMITTEE

September 22, 2011
Room 152-S–Statehouse

Members Present

Senator Jean Schodorf, Chairperson
Representative Steve Huebert, Vice-chairperson
Senator Marci Francisco
Senator Terrie Huntington
Senator Bob Marshall
Senator Ruth Teichman
Representative Barbara Ballard
Representative Pat Colloton
Representative Owen Donohoe
Representative Lana Gordon
Representative Eber Phelps
Representative Jo Ann Pottorff

Members Absent

Senator John Vratil

Staff Present

Sharon Wenger, Kansas Legislative Research Department
Martha Dorsey, Kansas Legislative Research Department
Reagan Cussimano, Kansas Legislative Research Department
Jason Long, Office of the Revisor of Statutes
Eunice Peters, Office of the Revisor of Statutes
Debbie Bartuccio, Committee Secretary

Conferees

Dr. Diane DeBacker, Commissioner of Education
Dale Dennis, Deputy Commissioner of Education
Scott Brunner, Chief Financial Officer, Division of Health Care Finance, Kansas
Department of Health and Environment
John Allison, Superintendent of Wichita Public Schools
Julene Miller, General Counsel, Kansas Board of Regents

Others Present

See attached list.

Morning Session

The meeting of the Legislative Educational Planning Committee was called to order at 10:00 a.m. by Chairperson Schodorf. Sharon Wenger, Principal Analyst, Kansas Legislative Research Department, referred members to two attachments. The first document summarized the statutory charge to the Committee (Attachment 1).

The second document was a memorandum which included summaries of all legislation passed during the 2011 Legislative Session that would affect either K-12 or higher education. A quick reference of the various bills and the short titles also was provided (Attachment 2).

Dr. Diane DeBacker, Commissioner of Education, provided testimony concerning the status of the Common Core State Standards, Multi-Tier System of Support (MTSS), state assessments, and the status of a waiver request regarding No Child Left Behind.

Dr. DeBacker indicated "the new normal is 'Doing More with Less.'" The base state aid per pupil in 2011-2012 is \$3,780 compared to \$4,400 in 2008-2009. The schools are working toward making Adequate Yearly Progress (AYP) in mathematics and reading. She reviewed the preliminary mathematics and reading trends for all students from 2005-2011. The message from Dr. DeBaker was, even though the state is doing more with less, Kansas children continue to achieve (Attachments 3 and 4).

Highlights of Dr. DeBaker's further comments include the items below.

Game Changers in Kansas

- *Reauthorization of the Elementary and Secondary Education Act (ESEA) or No Child Left Behind (NCLB).* On September 23, President Obama will make an announcement giving states flexibility to redo their accountability plan. Dr. DeBacker stated it is believed the plan will include adopting common core standards and teacher evaluations. Also, it is believed a student accountability system will be a requirement and there will be assessments tied to the new system.
- *Common Core Standards in English Language Arts and Mathematics.* Kansas already has adopted the common core standards. By the 2013-2014 school year, the common core standards will be required. There was a question concerning a national curriculum to which Dr. DeBacker commented she does not believe there will be a national curriculum. There are currently no discussions concerning this in Kansas.
- *Multi-Tier System of Support (MTSS).* MTSS is not a mandate but a best practice. One-third of Kansas schools have adopted MTSS.
- *Next Generation Assessments.* The periodic assessments of students will be adaptive and occur more frequently.
- *21st Century Accreditation of Districts and Schools.* As outlined in Attachment 4, schools will need to look at Relationships, Relevance, Rigor, Results, and Responsive Culture. Schools will get points based on how the school is

performing in these areas. Note: Results are only one-fifth of what matters in schools. This allows the schools to look at other factors of importance.

- *Teacher and Leader Evaluations (Kansas Educator Evaluation Protocol – KEEP).* Ten percent of school districts are piloting KEEP, which is a newly developed teacher evaluation tool. KEEP does not include student performance as an evaluation indicator for teachers.
- *Race to the Top – Early Learning Challenge Grant.* The state will apply for the grant. The Governor has given permission to apply and the Kansas Department of Education will be the lead organization. Kansas is eligible for up to \$50.0 million.
- *Career and Technical Education.* There are many jobs available for Kansans with postsecondary education so it will continue to be an area of interest.
- *Teacher Preparation Programs.* The demographics of Kansas students are continually changing, so it is important to prepare teachers for these changes.
- *Early Warning Systems.* Teachers will be able to tap into a system and see if a student is at-risk (*i.e.*, through poor attendance, poor grades, or disciplinary issues). Approximately 3,000 students drop out of Kansas schools every year. Schools are working to provide prevention methods to assist children who are at risk of dropping out.

State Reforms Being Discussed and Implemented Across the U.S. (See Page 7 of Attachment 4)

- *Vouchers and School Choice.* There is renewed interest in these approaches.
- *Charter School Expansion.* Kansas has charter schools. There is more interest in charter schools when federal money is available to implement them, though Kansas has not been successful in acquiring charter school funding.
- *Teacher Tenure, Evaluation, Pay, and Certification (Licensure).* There is an interest in expanding certification to allow people with business backgrounds, for example, to be able to achieve certification in order to provide important information to students.
- *Collective Bargaining.* This area is being reviewed in many states.
- *Academic Standards and Achievement.* Some states are grading schools using an A-to-F scale.

Questions from the Committee were addressed throughout the presentation.

Dale Dennis, Deputy Commissioner of Education, provided testimony concerning the status of education funding, including a review of school districts' ending balances; the status of special education maintenance of effort issues; and a review of 2011 education legislation.

Deputy Commissioner Dennis first reviewed the cash balances for unified school districts on July 1, 2011. Due to minor audit adjustments, the cash balances totaled \$1,567,862,072 on July 1, 2010. The total cash balances for all districts on July 1, 2011, were \$1,710,164,224. This was an increase of \$142,302,152. In a few cases, the cash balances were inordinately high due to consolidation and insurance claims. A chart listed the cash balances as of July 1, 2008 (\$1,369,156,886); July 1, 2009 (\$1,498,902,978); July 1, 2010 (\$1,567,862,072) and July 1, 2011 (1,710,164,224). A spreadsheet showing detailed information for each school district was provided ([Attachment 5](#)).

The next item for discussion was the transfers from school districts' special funds to the General Fund. House Sub. for Sub. for SB 111 authorizes school districts to transfer cash balances from the following funds back to the general fund: at-risk education, bilingual education, contingency reserve, driver training, parent education, preschool-aged at-risk, professional development, summer school, virtual school, and vocational education. The textbook and student materials revolving fund is the second priority with the special education fund the last priority for use. Local boards of education are not limited to using the funds in the priority list and are not required to expend the total unencumbered balance before utilizing the unencumbered balance in another fund.

The maximum amount a district may transfer is \$232 times the adjusted enrollment of the district. Theoretically, this would bring the base state aid per pupil (BSAPP) from \$3,780 up to \$4,012, if the district chose to do so. Some districts will choose to spend the balances by reducing transfers from the general and supplemental general funds to special funds. A computer printout (SF12-010) provided the amounts school districts budgeted to transfer from special funds to the general fund during the 2011-12 school year, which totals \$23,386,406. A copy of Form 149 also was provided, which is a worksheet given to school districts to assist in the preparation of their 2011-12 ([Attachment 6](#)).

Deputy Commissioner Dennis also reviewed the local option budget for low valuation districts. An example showed the effects when the supplemental general state aid (local option budget) is prorated at 85.7 percent for a district with low assessed valuation. This is the estimated prorated percentage for the 2011-12 school year. He also provided a computer printout (SF12-006), which provided an indication of the effects on the property tax of underfunding the local option budget (LOB) state aid. The state always funded the LOB state aid program until the 2009-10 school year. It appears that the prorated amount will be even lower in the 2011-12 school year. The mill levy is much higher for school districts with low assessed valuation ([Attachment 7](#)). The supplemental general state aid (local option budget) for 2009 through 2012 is as follows:

<u>School Year</u>	<u>Supplemental General State AID (LOB)</u>	<u>Percent</u>
2009-10	\$336,440,519	100.0
2010-11	\$338,729,552	91.7
2011-12	\$339,212,000	85.7 (estimate)

Deputy Commissioner Dennis discussed the effects on the local budget state aid and bond and interest state aid for school districts with large virtual school enrollments. The law provides that state aid is computed based on the assessed valuation per pupil. If a district has a large number of virtual students, it has the effect of reducing its assessed valuation per pupil, which, in turn, increases state aid. He provided an example of how it might work if a school district had 300 virtual students in addition to its regular enrollment of 1,250. There are very few districts with a large number of virtual students. Therefore, if these students are excluded in computing the assessed valuation per pupil, it will impact very few districts (Attachment 8).

Mr. Dennis provided a brief summary of the provisions of 2011 Senate Bill 21 related to a uniform reporting system (Attachment 9). Key points included:

- Development and maintenance of a **uniform reporting system** for receipts and expenditures for school districts to begin on July 1, 2012;
- Requirement that each school district annually submit a report to the State Board of Education on all **construction activity** undertaken by the school district that was financed by the issuance of bonds;
- Requirement that the State Department of Education annually publish on its internet website a copy of **Budget Form 150** (Attachment 10) for each school district, the estimated legal maximum general fund budget, or any successor document containing the same, or similar information, submitted by each school district; and
- Requirement that the State Department of Education annually publish the following **expenditures** for each school district on a per pupil basis: (1) total expenditures; (2) capital outlay expenditures; (3) bond and interest expenditures; and (4) all other expenditures not included in (2) or (3).

He provided a copy of the contingency reserve law (KSA 72-6426). The contingency reserve fund will drop from 10 to 6 percent July 1, 2012 (Attachment 11).

2011 HB 2191 allows school districts to offer employment contracts to teachers for one or up to two additional years (that is, a fourth or a fourth and fifth year contract) at the end of the teacher's probationary period, thus extending until the sixth year of employment the ability of the teacher to attain due process rights. Prior law stated that a new teacher in a school district, area vocational-technical school, or community college cannot attain due process rights in less than three years with no provision to extend that time.

Any teacher offered a contract under the provisions of the bill will be evaluated, and a plan of assistance will be written to assist the teacher in meeting areas needing improvement as noted in the evaluation. Before signing or rejecting the contract, a teacher will have not less than 48 hours from the time the contract is offered to review and consider the contract and plan for assistance.

In addition, the bill requires school districts to annually file a report with the State Board of Education, and the House and Senate Education committees, concerning information about teachers being offered contracts under the provisions above. The provisions related to the additional two years of probationary employment and reporting requirements will expire on July

1, 2016. The State Department of Education plans to collect the appropriate information for the 2011-12 school year during the fall of 2012 ([Attachments 12 and 13](#)).

On August, 17, 2011, a letter was sent to Secretary Arne Duncan, U.S. Department of Education, Washington, D.C., from Governor Sam Brownback requesting that the U.S. Department of Education accept the letter and supporting documents as the official request of the State of Kansas for a waiver of state maintenance of financial support under 34 CFR 300.163(c), Waivers for Exceptional or Uncontrollable Circumstances, in the amount of \$34,193,605 for State Fiscal Year 2011 (SFY 11) ([Attachment 14](#)).

Questions from the Committee were addressed throughout the presentation.

Afternoon Session

Scott Brunner, Chief Financial Officer, Division of Health Care Finance, Kansas Department of Health and Environment, provided a review of issues related to Medicaid reimbursement to school districts ([Attachment 15](#)). The discussion centered on the change regarding reimbursement to school districts for attendant care. Attendant care was removed from covered services on July 1, 2009. This reduced school districts' fee for service payments by about \$10.0 million. Some districts were hurt more than others depending upon the amount of dependent care a district provided. Mr. Brunner presented a spreadsheet listing the total Medicaid special education payments for FY2010 and FY2011 by school district ([Attachment 16](#)).

Questions from the Committee were addressed throughout the presentation.

John Allison, Superintendent, Wichita Public Schools, provided a presentation regarding district ending cash balances, what the funds represent, and how they are used ([Attachment 17](#)).

He discussed the role of cash balances in the annual district budget, stating it is not just "extra money" and is critical to cash flow throughout the year. He wanted to dispel the myth that the district is unwilling to use fund balances. The total cash balance of all operating funds has been reduced by eight percent from a year ago. A contingency reserve of \$14.9 million is eight days of operating cash. The district has 34 state-mandated funds. Three are unrestricted (general fund, local option budget, and contingency reserve). The remainder are restricted. Mr. Allison went on to make the following points.

For Purposes of Required State Reporting, the Public Will See 25 Funds Reported

- Textbooks and Student Revolving Materials include, not only the parent-paid fees for textbooks, but also music instrument rental, student fees, and athletic activities.
- Bonds that have been sold, which are held in order to pay for planned bond construction, are not represented on the year-end report in the budget book.

- The special reserve fund includes district health insurance and workers compensation.

The Role of June 30 Fund Balances

- The financial activity in these funds throughout the year supports budgeted expenditures.
 - The unencumbered cash reflected as the year-end balance in each of these funds is essential to ongoing operations;
 - Unencumbered cash does not mean “extra money”;
 - If these funds are depleted permanently, then significant cuts would have to be made in budgeted expenditures;
- What is reported as a June 30 balance is only a point-in-time measure, which changes dramatically during the year; and
- Fund balances are critical for cash flow. For example, the June 30 balance each year pays special education bills until the first aid payment in October.

How SB 111 Factors In

- SB 111 allows for 12 funds to have temporary flexibility for a period of one year in order to make up for the funding cut by the Kansas Legislature.
 - Limited to the amount lost due to state funding cuts - \$232 per student; and
 - Wichita is permitted to use a maximum of \$16.4 million.
- Other Limitations:
 - Federal requirements do not allow districts to have special education funding lower than the prior year;
 - Parent-paid fees for specific purposes (textbooks, instrument rental); and
 - A source that replaces funds if used for a different purpose (for example, professional development has no on-going revenue source).

SB 111 Provisions

- Eight of the 12 funds include: 4-year-old; bilingual; eSchool; Driver's Education; Professional Development; Parents as Teachers; Summer School; and Vocational. Combined balances of these eight funds dropped by 67 percent from June 30 to December 31.
- Remaining four funds covered by SB 111 represent 94 percent of the balance in these 12 funds.

- At-risk
 - Funds teachers in classrooms.
- Textbooks and student revolving funds
 - Parent-paid fees, with the expectation money will be used for the stated purpose;
 - Includes textbooks, student materials, music instrument rental, and athletics; and
 - Takes several years to save up for a major textbook adoption.
- Special education
 - Balance required to cover salaries until first special education payment is received in October; and
 - Must meet “maintenance of effort” requirements
- Contingency reserve
 - District saving account; and
 - Amounts to just eight days of operating cash.

2011-12 Budget

- Status of Local Option Budget (LOB) presents concerns for 2011-12.
 - LOB is a property tax funding source for districts;
 - Includes LOB “state aid” to help equalize tax burden across the state;
 - Legislature capped funding for LOB aid, resulting in a prorating of state aid for 2011-12. The estimated shortfall next year is \$3.5 million; and
 - Sedgwick County anticipates tax collections will be down, reducing the base amount on which the LOB is calculated. The estimated shortfall next year will be \$1.6 million.
- Cash balances are being used in a limited, fiscally responsible way to balance the 2011-12 budget.
 - Entire Drivers' Education Fund balance will be swept (\$267,944);
 - \$1 million from Virtual Education Fund balance. Note: not “new” funding, accounting change required recognition in a different fund balance - \$1,145,584; and
 - \$3.5 million from Special Education Fund balance.

In Conclusion

- As planned, cash balances are being used in a limited, fiscally responsible way to balance the budget;

- Cash balances will remain to support cash-flow through the operating year, support budget when state payments are late, and allow for prompt and timely payment of employees and vendors; and
- Conservative and responsible use of fund balances will allow Board of Education to keep local property taxes flat in 2011-12.

Questions from the Committee were addressed throughout the presentation.

Julene Miller, General Counsel, Kansas Board of Regents, presented an update regarding the pending litigation between three plaintiff community colleges, five intervenor community colleges, and the Board of Regents. Dr. Andy Tompkins, President and CEO, Kansas Board of Regents also was available for questions.

In 2009, the board of trustees of Pratt Community College, Cowley County Community College, and Dodge City Community College sued the Board claiming that the Board had misinterpreted the statutes providing for Postsecondary Aid to certain institutions, and that these three colleges should have been deemed institutions eligible to receive that type of state aid. They claimed that had they been included in this funding source, they would have received significantly more total state aid since 1999 than they have been receiving. The Board responded with a motion to dismiss, denying those claims, and explaining that the relevant statutes had been interpreted consistently by the Board of Education and the Board of Regents since their enactment (1974 for Postsecondary Aid), and that to interpret them in any other way at this point in time would be to the detriment of all the institutions that now share in the distribution of those funds. In fact, the three colleges pursued legislation during the 2009 Legislative Session that would have clearly stated their eligibility for Postsecondary Aid; the Legislature chose not to act on their proposed legislation. The Court refused to dismiss the case.

During the 2011 Session, the Legislature enacted SB 143. 2011 SB 143 and a bill that was passed in 2010 repealed the Postsecondary Aid statutes and the provisions for calculating Community College Operating Grant, replacing them with a new structure for determining state aid for technical education based on the cost of providing those courses. The bill was passed resoundingly, but there were no funds made available to implement its provisions. Instead, the Legislature attached *provisos* to the two relevant appropriations bills: Postsecondary Tiered Technical Education State Aid and Non-tiered Course Credit Hour Grant, thereby requiring the Board to total for each institution the primary state appropriations it received in FY2011, reduce the amount by approximately 1 percent, and distribute the difference. Under these appropriation *provisos*, each institution would receive the same amount of state aid it received in the previous year for Community College Operating Grant and Postsecondary Aid less approximately 1 percent.

On July 7, 2011, the Shawnee County Court (Judge Theis) issued a ruling against the plaintiff community colleges for any back damages (fiscal years up to and including FY2011) and found that the passage of 2011 SB 143 addressed the plaintiffs' complaints going forward, but retained jurisdiction and indicated that if prior years' amounts (that had been calculated using the pre-SB 143 methodology) would be used by the Board in determining the FY2012 appropriation, he might take action to affect that distribution.

On July 22, 2011, during a telephone conference call, the Judge indicated his intent to remand the case back to the Board of Regents with instructions to recalculate the FY2011 allocation of Other Institutions Aid for Technical Education as though plaintiffs had been treated

the same as the intervenor community colleges and included in the distribution of that fund for that year, for the sole purpose of establishing a new base from which the legislative *proviso* set forth in HB 2014 (the 2011 appropriations bill) could be calculated for FY 2012. The plaintiffs have claimed a total of \$1.3 million for that fiscal year, so such a recalculation would result in several colleges receiving less in FY 2012 than had been anticipated, even after the Community College Operating Grant is recalculated to net out the plaintiffs' difference between what they received, and what they claim they should have received.

As of the writing of this update, the Court has not yet issued a written order to this effect. However, the Board is taking steps in anticipation of the case being remanded to them. Statutes require the Board to distribute 50 percent of the appropriation to eligible institutions on August 1 and 50 percent on January 1. The Board authorized the August 1 distribution, which, in effect, was approximately a 1 percent across-the-board reduction from the FY 2010 amount distributed to the eligible institutions. Board staff has requested information from the plaintiffs regarding their course offerings and credit hours for the years that were used to calculate the Other Institutions Aid for Technical Education distribution for FY 2011 that could be used to calculate the January distribution (Attachment 18).

Questions from the Committee were addressed throughout the presentation.

Chairperson Schodorf requested Committee members provide Sharon Wenger with topics for discussion at the next meeting on December 7, 2011. Chairperson Schodorf adjourned the meeting at 3:15 p.m.

Prepared by Debbie Bartuccio
Edited by Sharon Wenger

Approved by Committee on:

December 7, 2011
(Date)