



Opponent Testimony before the  
House K-12 Education Budget Committee

On

**HB 2662 - Establishing the parents' bill of rights and academic transparency act.**

by

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Thank you for the opportunity to present testimony on **HB 2662**. Our members support the absolutely critical goal of involving and supporting parents in education. We should always strive to do better, but we believe that can be accomplished without this bill and without the additional burdens it could place on teachers and other school staff.

Every time we survey school board members, we find that most are parents, grandparents or parents of former students themselves. They are neighbors with, work with, shop with, go to games with and go to church with parents.

The average Kansas school district has about 550 students. Based on population data, the school-aged population is about 20 percent of the total population, that suggests each school district contains a population of around 2,750 people, represented by 7 school board members. By comparison, with a Kansas population of just under 3 million, that means each Kansas House member should represent about 24,000 people and each Senator 75,000. I would suggest Kansas parents have at least as much access to their local school board as their state legislators, and at least as much access to school government as any aspect of government. They can see their board members every day, can see their school board meet down the street in their hometown every month, and see what happens in school every hour with their own children.

Does that mean school boards or districts never make mistakes or always perfectly represent the concerns of parents and patrons? Of course not. The controversies we have seen in other states and some Kansas districts over curriculum, training, library books and other issues have been real and important. They have been the focus of school board meetings and election campaigns. Candidates have won and lost on these issues, and policies and materials have been changed or are under review. New school board members are working to make changes right now.



We would suggest that it means the system is working as it should. While there has been vigorous debate in some districts on some of the issues I just mentioned, the overwhelming majority of districts we have heard from have not had any problems in these areas, and if they had, they believe the place to resolve them is within their community and not by the state. While there has been vigorous debate in some districts on some of the issues I just mentioned, most districts we have heard from say there have not had any problems in these areas, and if they had, they believe the place to resolve them is within their community and not by the state.

I have attached a document to my testimony in which our staff has reviewed each section of **HB 2662**. Many of these provisions of this bill are already current law in statute or case law. Almost everything required by this law can already be done by local districts if four board members, elected by their voters and listening to parents, vote to do so. Much of the material required is already available as public records and in many cases to parents through their child's on-line access.

The concern is that the bill seems to suggest that absolutely everything taught, presented, made available or even mentioned must be placed on a district website by June 30 each year, either in advance or when presented by the teacher. That means every teacher must be constantly documenting and posting every new idea, flexible lesson, or classroom adaption.

The biggest concern we hear from our members is their struggle to find qualified staff, especially teachers, and that this bill will make that more difficult by devaluing creativity and overvaluing documentation, creating more non-instructional work, and simply suggesting a lack of trust.

When some legislators talk about hearing from parents who don't feel listened to about certain issues, we know there are probably another set of parents who are on the opposite side. One thing we tell new board members is this: you cannot make everyone happy. School board members, like legislators, must constantly balance competing interests, values and claims. Does the fact there are unhappy constituents with state action mean the federal government should step in? We think most Kansans think state issues should be resolved by the people of the state, and local issues by people in that community.

Of course there are times when the state must step into local matters. Education is, after all, fundamentally a state responsibility. But the people of Kansas in their constitution directed that local public schools should be "maintained, developed and operated by local elected boards." If they wanted the Legislature to manage schools, there would be no need for that provision. We think those words mean they want issues resolved locally to the greatest extent possible, consistent with constitutional directive for a system of public schools for "intellectual, educational, vocational and scientific improvement."

KASB is certainly willing to suggest ways to improve this bill, but fundamentally we do not think the requirements of this bill in cost, time and intrusion should be imposed on every district in the state, when each district is capable of responding to the concerns of its own parents and community,

Thank you for your consideration.

## KASB Review of Key Provisions of HB 2662 as introduced

**HB 2662 - Establishing the parents' bill of rights and academic transparency act, requiring school districts to establish parent transparency portals to provide information on materials that are used or made available in schools, removing the affirmative defense for schools for the crime of promotion to minors of material that is harmful to minors and prohibiting schools from non-renewing a teacher's contract for refusing to teach against certain beliefs or practices.**

### Section 1

<p><b>Legislative finding of parent rights in education</b></p> <p>“The legislature finds that a quality education is central to a child's development and long-term success in life and that a parent has a right to direct the upbringing, education and care of the parent's child. The legislature further finds that a parent shall have the right to play a central role in a child's education, to obtain critical information about what is being taught or provided in the classroom and to take action when a parent feels that the quality or content of a child's education does not align with the values and expectations the parent expects and deserves.”</p>	<p>These initial statements are mostly aspirational statements of ideals.</p> <p>KASB agrees with and supports the central role parents play in a child’s education.</p>
<p><b>Specific rights stated in the bill</b></p> <p>The bill states that “Every parent of a child in this state shall have a fundamental right to direct the upbringing, education, care and mental health of the parent's child,” and enumerates the following parental rights are reserved to each parent of a child in this state:</p> <p>(1) The right to direct the education and care of such child;</p> <p>(2) the right to direct the upbringing and the moral or religious training of such child;</p> <p>(3) the right to request, access and inspect all written and electronic records maintained by a school relating to such child;</p> <p>(4) the right to be informed of and inspect the curriculum, instructional materials and any other materials that are made available or taught to such child in the child's school;</p>	<p>Of the 12 enumerated rights, only three appear to be out of step with current practices or the law.</p> <p>(3) is acceptable in nearly all cases but conflicts with certain provisions concerning child abuse and child in need of care reporting under K.S.A. 38-2209.</p> <p>(5) contradicts present guidance about discussing individual non-elected personnel in open session of a board meeting, as it guarantees a parent’s right to “question and address school officials during designated public comment periods.” This raises privacy issues for school staff.</p> <p>This also raises the question whether public comment at board meetings would now become mandatory.</p> <p>(6) appears to allow parents to exempt students from all present immunization requirements, independent of whether a religious exception is</p>

<p>(5) the right to attend publicly designated meetings of the local school board and the right to question and address school officials during designated public comment periods or through letters, electronic communications or in-person meetings;</p> <p>(6) the right to make healthcare and medical decisions for such child, including the right to make decisions regarding vaccinations and immunizations;</p> <p>(7) the right to expect that such child, and each teacher and educator of such child, shall not be compelled to affirm, believe, profess or adhere to any idea that violates the civil rights act of 1964;</p> <p>(8) the right to expect that no course of instruction or unit of study shall direct or otherwise compel the child to personally affirm, adopt or adhere to any idea that violates the civil rights act of 1964;</p> <p>(9) the right to expect that the child's school shall not contract for teacher professional development with providers that promote racially essentialist doctrines or practices that have been held to violate the civil rights act of 1964;</p> <p>(10) the right to expect that each teacher and educator of such child will endeavor to present facts without distortion, bias or personal prejudice;</p> <p>(11) the right to expect that each teacher and educator of such child shall work to eliminate coercion that forces teachers and educators to support actions and ideologies that violate individual professional integrity; and</p> <p>(12) the right to assert any other inalienable or constitutional right that is reserved to the parent and the child pursuant to state or federal law.</p>	<p>at play. State law already allows exemptions from vaccination requirements for religious and medical reasons. However, school officials rarely, if ever, play a role in investigating religious exceptions.</p> <p>(10) and (11) are vague and will lead to arguments about interpretation. This is especially true if parents have different interpretations about what is best for their children.</p>
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**Required school board policies**

Next, the bill directs the board of education of each school district to develop and adopt policies to guarantee a parent's right to be involved in a child's education. Such policies shall be developed in consultation with parents, teachers and school administrators.

The following policies and procedures must allow parents to:

- (1) Be informed of and have the ability to inspect any materials, activities, curriculum, lessons, syllabi, surveys, tests, questionnaires, examinations, books, magazines, handouts, professional development and training materials and any other materials or activities that are required to be posted and included on the parent transparency portal of each school district;
- (2) inspect and review any educational or health records maintained by the school that pertain to the parent's child;
- (3) object to any learning material or activity on the basis that such material or activity harms the child or impairs the parent's firmly held beliefs, values or principles and withdraw such child from the activity, class or program in which the material is used;
- (4) request that the school designate any book, magazine or any other material that is made available to students in the school library that is not already so designated as an item for which parental review is recommended as provided in section 2, below; and
- (5) challenge the material or educational benefit of any book, magazine or any other material available to students in the school library such that a successful challenge results in the removal of the book, magazine or material from the school.

Many of these rights already exist in board policy recommended by KASB. Policy IF addresses textbooks, instructional materials and media centers and provides a procedure for challenge and review of all such materials. Student surveys on these topics are governed by the Federal Pupil Rights Act Amendment. Section 4 is new, requiring schools to designate items for parental review based on criteria provided later in the bill.

Section 2

<p><b>Information that must be provided on the district website through a parent transparency portal</b></p> <p>The bill requires the board of education of each school district to “establish an internet-based transparency tool titled the parent transparency portal on such school district's website with a link to such parent transparency portal prominently displayed on the website homepage of the school district and on each website homepage of each school of the school district that maintains a school website. Each school district's parent transparency portal shall provide the following information to the public:”</p> <p>(1) The parents' bill of rights established pursuant to section 1;</p> <p>(2) a list organized by school, grade level and area of instruction that includes the academic and social and emotional learning materials, activities and curriculum used for student instruction at any school of the school district. Such list shall include the title, author, organization, website address and any other information that is necessary for the identification of such materials, activities and curriculum;</p> <p>(3) a link to the curriculum standards established by the state board of education shall be associated with each applicable grade level and subject matter;</p> <p>(4) a list organized by school, grade level and area of instruction that includes the following information for each test, questionnaire, survey and examination referred to in K.S.A. 72-6316, and amendments thereto, that is administered in any school of the school district:</p> <p>(A) A copy of each test, questionnaire, survey or examination;</p> <p>(B) the name of the company or entity that produces or provides the test, questionnaire, survey or examination;</p> <p>(C) an explanation of the purposes of the data collection, how the collected data is intended to be used and whether the data will remain private or reported as aggregate data;</p>	<p>The parent transparency portal is an entirely new requirement and raises a number of concerns.</p> <p>First, while much of this material is already available to many parents through school websites and student learning portals, or could be provided fairly easily, any new requirements would place additional responsibilities on administrators, teachers and IT professionals. The responsibilities would either require additional time that would have to be compensated or divert time away from current teacher and support duties.</p> <p>For example, teachers’ associations would likely bargain for compensation if the requirement would entail work beyond that required in current contracts.</p> <p>Second, it is unclear if the intent of the bill is to simply require that planned curriculum and learning materials is to be provided, or if every single instructional activity must either be planned and documented at the beginning of the year, or continually updated during the course of the year as teachers teach.</p> <p>Posting everything in advance would remove the teacher’s ability to respond to different student needs, to teach creatively during the school and adjust curriculum – or would require constant website updating that would add to either teacher or support staff duties, with any missed update creating a possible cause of action.</p> <p>School leaders are deeply concerned this will harm their ability to retain staff and attract new educators into the profession.</p> <p>Third, the items in (4)(A) refer to tests, surveys and questionnaires that inquire about personal beliefs or practices. Under current law, such materials may not be presented to students</p>
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<p>(D) an explanation of how such test, questionnaire, survey or examination benefits student learning and academic achievement; and (E) an explanation of whether the school district will receive or maintain the resulting data and an explanation of how the school intends to use and maintain such data;</p> <p>(5) a list organized by school, grade level and area of instruction, if applicable, that includes the professional development courses, training materials and related activities that were provided or offered to any licensed teacher or administrator of the school district. Such list shall include the title, author, organization, website address and any other information that is necessary for the identification of the courses, materials and activities;</p> <p>(6) a link to the catalog or a list of the documented inventory of the resources available to students in each school library. Such link or catalog shall clearly provide whether any book, magazine or other material is an item that is designated that parental review is recommended in accordance with subsection (b). Each library catalog or inventory provided on the parent transparency portal shall indicate next to the title of the book, magazine or other material whether a designation of parental review is recommended is due to sexual content, excessive profanity or excessive violence and shall provide a sample of the material that necessitates such designation;</p> <p>(7) information and guidance on how a person may request and be given the opportunity to review and inspect any of the materials, activities and information that is required to be provided on the school district's parent transparency portal. Such information and guidance shall include a point of contact at the school district and at each school for the purpose of making a request to review materials, activities and information pursuant to this section; and</p> <p>(8) the school district's policies adopted pursuant to section 1(d), and amendments thereto, that provide for parental involvement in a child's education.</p>	<p>without written permission of parents. (See K.S.A. 72-6316).</p> <p>Posting the materials on the website would be an additional step that allows others who are not parents to scrutinize the materials, as well as to question educational objectives.</p> <p>Section (5) requires an organized list of all professional development courses and training materials that were provided "or offered" to any licensed teacher or administrator. The statute later exempts posting of materials in order to protect copyright. This likely negates posting of nearly all actual materials, since copyright arises at creation of any original work.</p>
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**Review of materials, including designation that “parent review is recommended”**

The bill requires a process to designate whether “parental review is recommended” for materials, based criteria in section 3. “Any book, magazine or other material that is made available to students in a school library shall be designated by the school district as an item for which parental review is recommended if such item meets the criteria for the designation that parental review is recommended. Designations shall be made in accordance with the requirements of this subsection. If there is doubt regarding whether a book, magazine or other material meets the criteria for a parental review is recommended designation, school districts shall resolve such doubt in favor of designating the item so that parents may make informed decisions regarding the use of such item.

The bills require school districts to conduct a review of each book, magazine or other material offered in each school library that was purchased or obtained by the school district on or after July 1, 2017, to determine whether any such book, magazine or material necessitates a designation that parental review is recommended.

A school district shall not be required to conduct a review of any of the books, magazines or other materials that were purchased or obtained prior to July 1, 2017, but shall designate any such items that are known by the school district as items that meet the criteria for a parental review is recommended designation.

On and after July 1, 2022, a school district that purchases or obtains any new books, magazines or other materials for availability in a school library shall designate any such items that meet the criteria for a parental review is recommended designation prior to making any such books, magazines or other materials available to students in the school library.

Pursuant to a school district's policies adopted under section 1, and amendments thereto, upon a parent's request for a school district to have an item designated as one in which parental review is recommended, a school district shall cause such designation to be made unless the item is unequivocally not deserving of such designation.

The requirement to evaluate all media center materials acquired since 2017 to apply the parental review advisory would create demand on contract time of media specialists that is not currently contracted or budgeted. Since the applicable standard requires an assessment of whether the work “taken as a whole lacks serious literary, scientific, artistic or political value for minor[s],” it is unreasonable to believe that the review could be conducted without a major investment of time and human resources.

Current KASB recommended policy already permits parents to challenge materials that are used in classrooms or kept in libraries and media centers and to seek removal of those items.



<p>The bill specified “this section shall not be construed as requiring a school district to violate the copyright, trademark or other intellectual property right of the creator or owner of any material referred to in this section.”</p>	
<p><b>Posting material on website</b>  The bill requires each school district to post and update the information required pursuant to this section on an ongoing basis during each school year. All such information that is required to be provided on the parent transparency portal in a school year shall be updated, posted and completed by June 30 of such school year. All such information shall be maintained for not less than two school years following the school year in which such information was provided on the parent transparency portal.  The state department of education may provide guidance and assistance to school districts regarding the establishment and maintenance of such transparency portals.</p>	
<p><b>Enforcement</b>  The attorney general, the city, county or district attorney or a resident of the school district in which the school is located may bring an action for injunctive relief or a writ of mandamus to compel the school district to comply with this section. If a resident of the school district prevails in any such action, the court shall award to the resident reasonable attorney fees not to exceed \$15,000.</p>	<p>There are two objectionable components of this portion of the bill:</p> <p>First, a right of action is given not only to students and parents, but to <i>residents</i> of the school district. It is difficult to conceive of any cognizable legal damage to a resident whose child has no access to the offending materials; therefore, a mere resident could not demonstrate a “particularized harm” that would confer standing to bring a cause of action.</p> <p>Moreover, this places a school district in the position of having to respond to concerns of both parents and non-parents, whose concerns may not be the same.</p> <p>Second, we are concerned that attorney fee provisions tend to encourage excessive litigation, discourage resolution of disputes, and create an incentive for lawsuits (in this case, at the expense of public schools). Moreover, the resident in these cases is to be awarded attorney fees if he or she “prevails.”</p>

	<p>Presumably, that means that a plaintiff who can prove even a single misstep or violation of the bill’s requirements would win a fee award. Beyond the fee award, defense costs would be enormous. As an example, consider money that districts spent litigating SB 40 cases. That legislation was in place for about four months. One suburban Kansas City district advised in a presentation to KASB members that though it did not lose a single one of the cases filed against it (no district lost in court, in fact), the district spent around \$200,000 defending SB 40 grievances. It is also troubling that the bill makes no requirement that a resident attempt to resolve disputes or deficiencies through any kind of process at the district level before filing suit.</p>
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Section 3

<p><b>Definition of terms, including “Parental Review Recommended”</b></p> <p>"Parental review is recommended" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture, film, record, video or any other written communication that: (1) (A) The average person applying contemporary community standards would find, taking the material as a whole and with respect to minors, is designed to appeal or pander to the prurient interest; (B) depicts, describes or represents, in a manner patently offensive with respect to what is suitable to minors, an actual or simulated sexual act or sexual contact or a lewd exhibition of the genitals or post-pubescent female breast; and (C) whether the work taken as a whole lacks serious literary, scientific, artistic or political value for minor; (2) contains excessive profanity; or (3) contains excessive violence.</p>	<p>This section attempts to define a community standard for what is and what is not offensive applying “contemporary community standards.” Of course, those standards are anything but fixed or “standard.” Clearly, a line of decency exists even if it cannot be definitely set in all cases, and school officials tend to be cautious not to cross or even approach a line that people broadly find indecent. It is difficult to imagine that public schools are either warehousing or providing to students any materials that contain graphic depictions of sex organs or descriptions of sex acts calculated to titillate. Since parents do review what their students bring home from school, teachers and other education professionals already view the materials they choose as subject to parental evaluation and review.</p> <p>Also, school personnel do not seek to harm students with inappropriate material. Because opinions may differ about the artistic or literary merit of materials, <i>KASB recommends</i> a review process in board policy IF. (LS)</p>
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Section 4

<p><b>Removal of education “affirmative defense” for material harmful to minor for schools</b></p> <p>Section 4 of the bill removes from current law an “affirmative defense” that materials or devices allegedly harmful to minors was purchased, leased or otherwise acquired by a public, private or parochial school, and that such material or device was either sold, leased, distributed or disseminated by a teacher, or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school. This affirmative defense would remain for postsecondary institutions.</p>	
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Section 5

<p><b>Teacher protections for not teaching “critical pedagogy” or violating sincerely held religious beliefs</b></p> <p>The bill amends the current teacher evaluation statute to add the following provision: “A person subject to evaluation who refuses to teach through critical pedagogy philosophies or against such person's sincerely held religious beliefs shall not be negatively evaluated or have such person's contract be nonrenewed on the basis of such refusal.”</p>	<p>At present, boards of education (along with the state board) have authority to set curriculum and require that staff provide instruction in keeping with that curriculum and board-established educational objectives. Boards are free to discipline or non-renew teachers who refuse to instruct students according to that curriculum. This provision in the bill would limit the board’s ability to ensure that its objectives are being met. The exemption is so broadly stated that an individual could claim religious objection to nearly any curricular or pedagogical paradigm and refuse to instruct students on those matters without fear of repercussions. Read broadly, the provision could also immunize a teacher against negative employment consequences for refusing to adhere to Department of Education guidance and court holdings on issues like pronoun usage for transgender students. This could place teachers’ rights on how they interact with children in conflict with parental rights on how they want their children treated.</p>
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