

SENATE COMMITTEE ON EDUCATION

February 28, 1991

Hearing Room 343 3:00 p.m.

Tapes 27 - 28

MEMBERS PRESENT: Sen. Shirley Gold, Chair Sen. Bill McCoy, Vice Chair  
Sen. Joan Dukes Sen. Peter Brockman Sen. Ron Grensky Sen. Paul Phillips  
Sen. Cliff Trow STAFF PRESENT: Jan Barga, Committee Administrator  
Angela Muniz, Committee Assistant MEASURES HEARD: SB 119 - Special  
Education - PH . These minutes contain materials which paraphrase and/or  
summarize statements made during this session. Only text enclosed in  
quotation marks report a speaker's exact words. For complete contents of  
the proceedings, please refer to the tapes.

TAPE 27, SIDE A

005 CHAIR GOLD: Calls the hearing to order at 3:15 p.m.

INTRODUCTION OF MEASURES:

Staff presents LC 3841, LC 3690, LC 3689 and LC 3859 for introduction.  
LC 385 9 is submitted at the request of Oregon Student Lobby and LC 3841  
is submitted at the request of Oregon Independent Colleges Association.

MOTION: Sen. Phillips moves for introduction of LC 3841, LC 3690, LC  
3689 and LC 3859 from the committee.

VOTE: In a voice vote there were no objection.

SB 119 - SPECIAL EDUCATION - PUBLIC HEARING: Witnesses: Karen Brazeau,  
Department of Education Judy Miller, Department of Education Sylvia  
Loftus, Task Force on Adolescent Pregnancy Cheron Mayhall, Parents of  
Kids with Disabilities Wilma Wells, COSA Alan Tresidder, OSB A Leticia  
Maldonado, Portland Public Schools

040 JAN BARGEN, Committee Administrator: Provides background on the  
bill. It is a vehicle bill from the Joint Interim Committee on  
Education. The amendments basically rewrite the bill Senate Committee on  
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(EXHIBIT A). Also presents partially hand-engrossed version of the bill  
(EXHIBIT B).

CHAIR GOLD: The bill has a subsequent referral to Ways and Means.

062 KAREN BRAZEAU, Associate Superintendent for Special Education,  
Department of Education: The amendments are to make the state statutes  
in special education conform with the recent reauthorization of the  
federal special education law. Some are a result of a federal monitoring  
visit. The most controversial modify current statutes to limit school  
districts' liability in special education. Walks through the amendments  
(EXHIBIT A) with the hand-engrossed version (EXHIBIT B). 119 SEN. TROW:  
Can we use the term handicapping condition?

BRAZEAU: The favored phrase now is disability and to mention the child  
first. Continues to explain the amendments. Some of the more  
controversial ones limit the state's liability: -- Recent court  
decisions say that states are not required to maximize children's  
potential.

SEN. TROW: We would probably fail with every child we had if we tried to  
maximize their potential.

BRAZEAU: Yes, people do try to do that but don't want to be held legally accountable for it. Other controversial issues: -- The definition of special education. Children who only need specialized services would not qualify for special education. -- Surrogate parents when parents are unavailable is changed. Cleans up the language to meet common practice. -- Parental consent required only for initial placement and evaluation. Laws have been fuzzy about when parental consent required. Taking the requirements to the bare minimum will increase access for children and help school districts understand what is required.

237 SEN. TROW: You are taking out annual evaluation. Is it no longer required?

BRAZEAU: Parental consent is only required for pre-placement or initial evaluations and for any personality or IQ test. It is not required for other standard tests.

SEN. MCCOY: What is the rationale behind getting a parents permission to give a test? BRAZEAU: It is regulated by federal laws that protect families rights. The history behind that is that those tests were used in ways that were damaging to the children. Continues explaining amendments. Section 11 requires school districts to put together transition materials for special education programs. It is new, but is not bolded.

344 CHAIR GOLD: Section 9 says ORS 339.640 is added. What is that?

BRAZEAU: It has to do with the alternative education program. It puts the pregnancy and the alternative education piece together when they are codified. Continues explaining amendments. Presents second amendments (EXHIBIT C). Senate Committee on Education February 28, 1991 - Page 3

451 SEN. TROW: Not sure what the new amendments do. What children are you dealing with?

BRAZEAU: The children in the old Christie List and DARTS programs. Department of Education will still run the education part of it but the Children's Services Division will run the treatment part of it. It is really a technicality so that transferring the program within the Human Resources Department won't effect the Education Department.

SEN. TROW: The DARTS programs are being cut back with budget cuts. The DARTS programs will see just the Medicaid children covered. That is a mistake and will cause difficulty in many school districts.

BRAZEAU: That will have a tremendously bad impact on school districts. They will have to cut 250 children currently being served out of those programs and try to place Medicaid eligible children in their place. The Medicaid eligible children may not be the children who really need the help.

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027 SEN. TROW: What about the Christie Lists? They are being cut back too. The Department of Education will provide the educational program, but if they are cutting out numbers you won't have as many to serve.

JUDY MILLER, Assistant Superintendent of Student Services, Department of Education: Not sure what will be cut and how many children will be eliminated from the programs. Are a number of residential programs cut

back. Thinks there are 61 children across the agencies. Some of them are on the Christie Lists.

BRAZEAU: The programs will serve 59 fewer children than they serve now, even if the children are Medicaid eligible.

SEN. TROW: Thought it was more children being cut. Thought some programs being hit harder than that.

BRAZEAU: They are being hit hard because of the change in the eligibility criteria. They are shifting to Medicaid-eligible children and will lose a lot of the children they are currently serving. Initially there will be fewer placements. Asks Judy Miller to explain Section 8 of the amendments that removes pregnancy as a handicapping condition. It is not a handicapping condition in federal law.

SEN. TROW: Before the federal and state laws for handicapped children, there was nothing in the schools for pregnant women. This program got them covered. We are doing more now, but is not sure what it means to take the language out.

066 MILLER: Served on a Committee on Teen Pregnancy. Clear to that committee that adequate services were not provided for participation in school programs by pregnant teens. There are areas of the state such as Portland and Eugene that provide comprehensive services for pregnant and parenting teens, but other areas are lacking. Wants clear language in statute about expectations for school districts for providing programs to pregnant and parenting teens. The - Senate Committee on Education February 28, 1991- Page 4

special education statutes may not be appropriate for this population. Do not want to label pregnant teens as handicapped or disabled. Has eliminated the area to identify pregnant teens for special education services, but has included language about the needs for those students. Also has included parenting students. In the past, requirements only levied on pregnant teens and after the woman gave birth, she was not eligible for services.

SEN. MCCOY: There are some districts where that is not true. The parent comes back to school with the child.

113 MILLER: Yes, Portland Public Schools, for example, has been pro-active in its programs for parenting teens. But those districts are in the minority. Most districts do not take an active role in coordinating services because of costs and time. Explains new language in the amendments. Is adding child care, transportation and health and nutrition services to what the school should facilitate to the student. Facilitate means to make access to and provide opportunities for these services to the children. It does not mean the school has to provide those services on site. Issue comes down to costs. It doesn't cost money, but it does take time. Doesn't want to have less services for pregnant teens. Wants to be clearer about expectations for schools. May not think that a school would exclude a child because she is pregnant or parenting, but there are many places in the state that have the attitude 'she chose to get pregnant, it's her problem.'

199 BARGEN: Could you explain Section 9? What is the significance of putting the language you described in a different statute?

MILLER: It has been in the special education statute. If not going to identify them as children with disabilities then it probably belongs in

a different section of the law.

BARGEN: Is there any difference in the mandates of these services?

BRAZEAU: It would just move the piece on pregnancy from the special education section to the alternative education area.

MILLER: There are several House and Senate bills that deal with the issue of pregnancy and parenting from the Task Force on Teen Pregnancy.

BARGEN: What is the significance of changing the wording from individuals who are pregnant to pregnant students?

MILLER: No significance to that. A student is any child residing in the district of school age.

BARGEN: So even if a student dropped out of school the school would have to make the outreach to them?

MILLER: Yes, there was no intent to take that requirement away.

SEN. MCCOY: May want to make sure the legal definition of student matches that intent.

BRAZEAU: Corrects an oversight on the hand-engrossed version of the bill where handicapped child was not changed to child with a disability on line 7 and 8 of Page 2. Senate Commitbe on Education February 28, 1991  
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247 BARGEN: Are teen parents living at home with their parents not eligible for AFS services?

MILLER: Yes that can be correct. If the family is not eligible for services then the teen is not eligible for services.

CHAIR GOLD: Does that have anything to do with age and whether she is considered an adult?

MILLER: No, it does not.

BARGEN: Currently schools have to pay for at-home tutoring, and with the new provision they would not, correct?

MILLER: When students have medical conditions that prevent them from attending school, districts have a responsibility to provide tutoring. Pregnancy could be considered a medical condition. Responds to Sen. Trow's question about cuts in the DARTS program. The DARTS program has been reduced by 59 children, the residential treatment programs are reduced by 21 and the residential youth care centers are reduced by 47.

311 SEN. MCCOY: Why are you making the changes in Section 8? Is it because the federal government decided you shouldn't care for pregnant teens under special education statutes?

MILLER: They were never eligible for reimbursement under the federal mandate. It was a state mandate that required districts to identify pregnant teens.

SYLVIA LOFTUS, Task Force on Teen Pregnancy: Met informally with members of the task force. They support the language that describes the comprehensive services needed by pregnant and parenting teens. SB 119 is

parallel to some of the recommendations in the task force's summary report. The language stating that no student shall be excluded from school on the basis of pregnancy satisfies concerns that removing pregnant students from handicapped status will remove services. Thinks that emotionally and socially pregnant and parenting teens are disabled.

400 BARGEN: What is your concern about being placed in the other ORS?

LOFTUS: Including pregnant teens in the handicapped category allows them to receive benefits such as transportation. Was concerned about removing them from that section of the law at first, but the strength of the language in Section 8 is clear about the districts' obligation to facilitate services for pregnant and parenting teens.

440 CHERON MAYHALL, Advocate for Children with Disabilities: Presents written testimony (EXHIBIT D).

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110 SEN. DUKES: Are you a parent of a special education child? Is interested in the response from the Department of Education. Suspects the department is not doing this intentionally.

MAYHALL: Has three special education children. Suspects there is a lot of pressure from the field that the Department of Education has to juggle with other pressures. Senate Committee on Education February 28, 1991- Page 6

CHAIR GOLD: Will come back with a work session on the bill at a later time. Hopes she will come back then.

132 WILMA WELLS, Confederation of Oregon School Administrators: Recommends approval of bill with amendments even though sympathizes with concerns of the previous witness: -It makes Oregon statute conform with federal statute. - It limits the school districts and looks at the rights of students with disabilities. -- It removes pregnancy as a handicapping condition. -- It encourages interstate agency cooperation. Disagrees that the definition of special education excluding related services will deny services. Will not deprive children of services or take rights away from parents. In regards to parental consent for initial consent only: the parent always has right to appeal any action of the district. The surrogate parent clause has never been used and is not appropriate. Identifying pregnancy as a handicapping condition limits the services the woman can receive.

300 ALAN TRESIDDER, Oregon School Boards Association: Supports SB 119 with the amendments. Has some concerns: - On the hand engrossed bill, the language about the 2% cap on reimbursement of TMR students. Wants that section, lines 3742, deleted from the bill because the statute was enacted while in the process of increasing money for TMR students. In the current economic climate it doesn't make sense to have the 2% cap on reimbursement because will not be able to reimburse at the full 50% level. -- Supports removing pregnancy as a handicapping condition while creating statutes that provide for services for pregnant and parenting teens. Has objected to categorizing pregnant teens as disabled even though understands the political climate at the time it was put in the statute.

400 SEN. TROW: It was the only way to get them covered. Not sure your organization was doing anything about the-problem at the time.

TRESIDDER: Wants to do something about it, and the amendments make sense. Offers one amendment: ' -On line 18, page 7 of the amendments, before 'school district' add 'availability of such services in the community'. Talking about cooperative community efforts and all services need to be available. Wants pregnant and parenting teens to have access to services.

CHAIR GOLD: So you want us to insert the word 'community,'.

TRESIDDER: Yes. In response to Dr. Mayhall's testimony: SB 119 is a good bill that does not detract from the services the state will provide children with disabilities.

475 SEN. TROW: If taking 'related services' out doesn't make any difference what harm is there to leaving it in?

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020 TRESIDDER: Didn't say it doesn't make a difference. All that special education means is what do districts have to do that is special to make sure that child receives an education that a child without a disability would receive. As a part of that, related services become part of a special - Senate Committee on Education February 28, 1991 - Page 7

education. This would have related services standing alone from the definition of special education. They should go hand in hand.

SEN. TROW: It doesn't stand alone now. Has been involved with this legislation for a long time. There was a lot of discussion of what related services meant, and the federal government really wanted it in there. If there is no good reason to take it out, then we need to leave it in. If there is a good reason, needs to know what it is. Doesn't want an answer based on your made up definition of special education.

TRESIDDER: It has never been in federal definition that related services is special education. That is an Oregon definition.

SEN. TROW: But related services are a part of providing special education. TRESIDDER: Yes, and they would continue to be under both Oregon and federal law with this amendment. The next section expands the definition of related services.

061 CHAIR GOLD: Will get an analysis from Legislative Counsel before this bill comes to a work session. SEN. PHILLIPS: Please clarify between special education, special services and special education services.

TRESIDDER: Section 8 talks about removing pregnant and parenting students from that section of the law, so refers to it as special services. If the bill is enacted, services for pregnant and parenting students won't appear in that section of the law, it will move. Will provide services, but won't identify the teens for special education.

SEN. PHILLIPS: Wants Legislative Counsel to look at it. When refer to special education services, it doesn't necessarily refer to any section of law. It is a statement of the purpose of what you want to do. If there is no good reason to take it out other than potential reference to some other point. SEN. DUKES: If delete existing language about relating services, do you see any cost savings the districts? TRESIDDER: Doesn't know, will get an answer. SEN. TROW: The sentence reads to define special education as 'specially designed instruction to meet the unique needs of a child with disabilities.' It then includes some things such as regular classroom instruction so they are not left out. These are things we wanted in the statute because they relate. 105 TRESIDDER:

Those things included in the special education definition are talking about modes of delivering instruction. Want to cover all categories of instruction. SEN. TROW: Thinks the intent was different. Wanted to include all the things that had an effect on special education like relating services did have. It's not just locations; it's effects. TRESIDDER: Is not trying to eliminate the provision of related services to children with disabilities. SEN.TROW: Then why not leave it alone? BRAZEAU: Clarifies the amendments. The children eligible for special education with this amendment would continue to receive the related services they have now and more because of federal law. Oregon law includes children as eligible for special education those who do not need specialized instruction but do need related services. These children don't need special instruction, only services such as transportation. Still the school must evaluate them, conduct an IEP and determine their placement. 148 SEN.TROW: Do such children as those meet the eligibility requirements for Early Intervention services? BRAZEAU: No, Early Intervention is for younger children. The only reason they are included in special education is because they need a service. Under the change, the children would get those services, but the districts would not have to go through the process of classifying the child for special education. SEN.TROW: That's getting closer to a good explanation. BRAZEAU: There would be some potential minimization of the cost to school districts. Children should not have to be special education eligible just to get the district to provide some services for them. Under current law, if the district provides services, they open up the due process protections under special education law. Doesn't believe this amendment would remove services from children. It would remove protections for parents under due process issues within their school system. 195 SEN. DUKES: Reality is the child that needs an additional service may get it. But if it breaks down, it is difficult to replace it. Leaving related services in the definition provides a comfort levels for the parent. Sometimes the only reason a district pays attention to a child's special needs is because the child is special education eligible. BRAZEAU: Agrees. SEN. DUKES: Removing those children from the definition may make sense, but it doesn't always work in reality. There is not always a priority for children who's needs are more expensive. Will fight to keep those children and their needs in the statute. 230 LETICIA MALDONADO, Portland Public Schools: Supports SB 119 and the proposed amendments. Had some questions about Section 8 regarding the words facilitate and individual learning styles, but Judy Miller answered those questions. BARGEN: To Alan Tresidder: Have you done any figuring on what the bill could potentially save school districts? Do you have a list of the differences between what a district does now and what it would do with the bill for the pregnant student?

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TRESIDDER: Will get the information about costs to staff. The bill suggests that a lot will be left to the rule making process. The bill significantly increases services to parenting students because they have not been included in the law before. Can't tell how much it would cost. CHAIR GOLD: Adjourns the hearing at 5:00 p.m.

Submitted by:      Reviewed by: Angela Muniz              Jan Bargaen  
Assistant              Administrator

EXHIBIT LOG: A - Amendments to SB 119 - Staff- 11 pages B - Partially hand-engrossed version of SB 119 - Staff - 6 pages C - Amendments to SB 119 - Karen Brazeau - 2 pages D - Testimony on SB 119 - Cheron Mayhall -

2 pages

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