

# Special education committee hears from USD 113, 335

🕒 October 11, 2023 🧑 by Heather Stewart (<https://www.sabethaherald.com/author/heatherstewart/>)

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Prairie Hills USD No. 113 Superintendent Todd Evans and Chad Tenpenny, attorney for Prairie Hills USD No. 113, attended a special legislative education committee hearing at 1 p.m. Tuesday, Oct. 10, at the State Capital in Topeka.

To open the portion of the meeting regarding “Attendance Center Closures and USD Disorganization,” Representative Kristey Williams had Nick Myers — Assistant Revisor of Statutes from the Office of the Revisor of Statutes — discuss the legal process through K.S.A. 72-635 for closing attendance centers, as well as the process for school district disorganization. See link below for K.S.A. 72-635.

After he discussed the process for disorganizing a school district, Representatives and Senator Committee members asked multiple questions.

Then, after the committee heard from Bill Lowery, Superintendent of Great Plains USD No. 112, and private citizens Christina Hayes and Michael Kratky, the committee welcomed Tenpenny to the floor to speak.

See Figure A on Page 10A for Tenpenny’s entire prepared statement.

Following Tenpenny reading his prepared statement, the committee had no questions for him.

Then, Representative Williams welcomed Jim Howard — Superintendent for Jackson Heights USD No. 335 — to the floor to speak to the committee.

See Figure B on Page 10A for Howard’s entire statement.

Following his statement, multiple committee members had questions for Howard.

Senator Chase Blasi questioned if Kansas law “currently forbids transportation dollars being used to pick up out of district students who are attending those schools.”

“It doesn’t forbid using it, you just don’t get any weighting,” Howard said. “So I can go pick up a student out of district, but I just don’t receive weightings [money] for it.”

Representative Williams asked about Jackson Heights’ enrollment numbers for new students.

Howard said, “one hundred ten that were enrolled. Ninety are new this year. But 110 that live out of district.”

“Out of district?” Representative Williams said. “So you do not receive those families’ property tax?”

“Correct,” Howard said.

"That really seems crazy," Representative Williams said. "That you would have to assume the responsibility, do you get the state aid but you don't get the property tax."

"We get the state aid next year," Howard said.

Then, the committee discussed SB113, that was signed into law on May 18, 2023, but had a line-item veto by Governor Laura Kelly. The portion of the bill that was vetoed was for "provisions stripping funding from rural schools."

Representative Adam Thomas asked Howard, "To the best of your knowledge, what is district 113 doing with that money?"

"In some of their reporting to their local paper, it says here the proposal was an additional revenue exclusively for tax relief by transferring state aid to the general fund," Howard said. "In a subsequent letter to the paper, they pridefully said that they were able to decrease their local mill rate by 8 percent. So, they used it as a way to eliminate taxes for the rest of their patrons."

"In the meantime, you have students, it might actually be two years before you get to see some of that funding in certain circumstances not just one," Representative Thomas said.

"It could be two and if we cannot agree to a land transfer, we will never get transportation weighting unless the law changes," Howard said.

Senator Molly Baumgartner then referenced a letter regarding the transfer of territory that USD No. 335 received from USD No. 113 president Leslie Scoby.

"... So you received the initial letter, but nothing has happened since then?" Senator Baumgartner said.

"So, the original letter was after we had our first meeting," Howard said. "The reason we decided to come together with the other two schools is because the other two schools also received letters. One of our concerns is without there being any legislative oversight, or any kind of process, 380 also received a letter saying that if we chose not to take the land they offered, they can have it all. So basically, 'take it or leave it.' So, I immediately got to working with my other two neighbor schools and said 'hey, I want to make sure we are on the same page to make sure we have done land surveys and all sorts of communications with the patrons to see how they feel would be the appropriate place for their tax dollars to go. So, that is why all three schools got involved, because all three schools were sent a letter from 113 and each of the letters had language in there that made us 'take it or leave it' was kind of the option.

"We're not trying to be ungrateful, because we know that legally speaking they did not have to offer any land transfer at this time. But when the language is 'hey this doesn't seem fair. You only took eight kids, well why would you give them every piece of land you offered us if we wouldn't take the land.' We wanted to make sure we represented what our new community wanted. So, that is the reason we banded together. All three schools got a different version of that letter saying 'here is the land you're going to get.' Then, when we banded together, they refused to meet."

Senator Baumgartner asked if anyone assisted or intervened with the issue.

"They didn't assist until we got to mediation," Howard said. "We didn't have very clear guidance from KSDE or KASB. KASB didn't have any guidance at all... there was no guidance. We had to seek legal counsel and lobbyist for guidance."

Senator Baumgartner asked if he would agree that districts closing school buildings and then neighboring school districts would have to absorb those students. Howard said he agreed and elaborated that USD 113 didn't have certain costs anymore such as, "no building costs and the building's staff."

"I'm not saying that is the intent, but for us we honestly just wanted to accept these kids and we wanted to make sure that it is fair and equitable for our kids and our community," Howard said. "I want these new patrons to have a vote and we want their tax dollars to represent the school they chose."

Representative Williams commented again the line-item veto portion of SB113.

"This does perfectly illustrate the portion of the bill that was vetoed by the Governor," she said. "That's two years. That's \$5 million worth of funding for kids that are not there. They are somewhere else and they don't get the funding. So to me that is a broken piece of the formula that we tried to correct, that the Governor vetoed. When I hear this story, it perfectly illustrates why that was important."

Howard said "it was a big gut punch" when that portion of the bill was vetoed.

"We will be able to make it, but it's going to be at the cost of our own reserves, and our own taxpayers," Howard said.

Senator Renee Erickson asked about the numbers he presented versus the numbers presented by Tenpenny.

"I think you said that 24 percent of your enrollment is from USD 113, and I believe Mr. Tenpenny's testimony was that you asked for 40 percent of the land. Can you comment on that?"

"Some of this is just how we are looking at the numbers," Howard said. "They [USD 113] are the 36th largest school district. We are asking for 24 percent, which is 20 percent of the assessed value of the land. So, I don't know where the 40 percent came from and the same when they say 8.9 percent of their total population was Wetmore. Last year, their enrollment was 1,033. This year, it is 92. Just doing the math in my head, that is over 10 percent, so I'm not exactly sure. That is something we would work out with the mediation."

The full day of the committee can be found at <https://www.youtube.com/watch?v=MPDNNkWeUkY>.

The portion of this conversation begins at approximately, 4:31:30 mark.

### **K.S.A. 72-635**

[https://www.ksrevisor.org/statutes/chapters/ch72/072\\_006\\_0035.html#:~:text=If%20a%20majority%20of%20](https://www.ksrevisor.org/statutes/chapters/ch72/072_006_0035.html#:~:text=If%20a%20majority%20of%20)

### **Figure A**

"Madam Chair, Madam Vice-Chair and members of the Committee. It is truly an honor to be with you.

"My name is Chad Tenpenny. For twenty-three years I served on the staff of Senator Pat Roberts, and I also served as General Counsel to our current Senator – Roger Marshall. Through that service I had the opportunity to work with many of you, and travel to all four corners of our state many times specifically learning about the challenges and opportunities in rural America.

"I also had the opportunity to experience the awesome impact of federal, state and local governments on Kansans. And, generally, I learned that difficult decisions are best made at the local level with constituent and community input with local folks working together rather than depending on far away mandates to solve our issues. In addition, I witnessed our federal government's unsustainable approach to fiscal policy coupled with an unwillingness to make difficult decisions.

"And, those really are the three issues I would like to focus on today: fiscal responsibility, local control and working together in our local communities to solve difficult issues.

"I am now a private practice attorney and am here representing the Prairie Hills School District #113 efforts to follow the law and educate, in a fiscally responsible manner, any and all students who want to attend our schools no matter where they may reside. USD 113 is a small rural school district with 926 students. We have many challenges and opportunities.

"In February 2023, the Prairie Hills school board made a difficult, courageous, and fiscally responsible decision to close the K-12 Wetmore Academic Center. The local decision was made after years of study, including a 2015 Legislative Post Audit Report recommending closure when the Wetmore Attendance Center had 170 Students.

"When the emotional decision was finally made eight years later after significant community input (including five public meetings) and a systematic effort to follow the law, the K-12 Wetmore school's attendance had dwindled another 30% to only 120 students. Three classes had enrollments of five (5) or less. Closure did not happen haphazardly or with malice. This situation had become an unsustainable financial burden.

"Some, but certainly not all, of our friends and neighbors were understandably frustrated with the outcome of this local decision causing significant community turmoil. With that in mind, USD 113 made provisions to continue employing all staff from the Wetmore Academic Center. Most importantly, we have the capacity and welcome the opportunity to educate all the students.

"USD 113 also understands that some families and students may choose to attend school in other districts, which is absolutely common throughout Kansas. As many as 7.3% of Kansas students attend school out of district statewide. In fact, one Kansas school district educates 77% of its students from out of district. Prairie Hills happily educates 127 students from outside the district and has the capacity for more. As you are aware, the Kansas Legislature passed into law a provision encouraging "open enrollment," ensuring that out of district attendance will become even more customary in the future.

"Data shows that of the one hundred twenty (120) 2022-23 Wetmore Academic Center students six (6) of those students have transferred to USD 380 Vermillion and two (2) have transferred to USD 115 Nemaha-Central. By any measure, those are not "substantial and weighty" numbers requiring a wholesale reconfiguration of school district lines.

"Meanwhile, seventy-eight (79) 2022-23 Wetmore Academic Center students have transferred to USD 335 Jackson Heights, and there have been limited discussions about adjusting district lines in the southern portion of USD 113 to more accurately align student residence with the school district they attend.

"USD 113 is absolutely open to having reasonable discussions, but there are limits. Attorneys have suggested that USD 113 surrender 40% of district territory after 8.4% of the student body transferred to these three districts. That is not reasonable.

"Three separate petitions have been filed by three neighboring school districts with the Kansas State Board of Education to appoint a mediator to work through ongoing issues. The Prairie Hills school district welcomes the opportunity to visit school district to school district, superintendent to superintendent, attorney to attorney, one on one in an effort to solve these separate claims locally. Superintendent Todd Evans and I invite Superintendent Desormiers and his counsel to visit one on one at any time convenient to him so that we can work toward local solutions.

"While USD 113 is here focused like a laser on sorting through enrollment and territorial issues on a local level, I would like to note for this Committee and especially the Kansas State School Board that our local issue has the potential to initiate a real "cooling effect" on school boards statewide. Frankly, our school board feels punished for making the courageous decision. The late-night meetings, gut-wrenching votes, Facebook commentary and unnecessary legal maneuvers have come with an emotional cost. Future school boards may view our experience and choose to avoid pain. Instead, these difficult decisions might then be deferred to the Legislature or the State School Board where outcomes may be influenced by other forces with agendas much different than Prairie Hills. Our motto is 'Preparing Kids, Shaping the Future.'

"With that in mind, we formally ask that this Committee request a Legislative Post Audit Study of the information required by the Kansas State School Board's Land Transfer Petition Form as it relates to the separate petitions from USD 115, 335 and 380. A neutral source is required in order to provide objective and factual information as it relates to the impact on Supplemental General, Capital Outlay, and Bond and Interest Funds for all districts involved. This information needs to span multiple years in order to reflect the longitudinal impact of land transfer proposals on the area constituents and taxpayers in the state of Kansas. USD 113 desires to know the facts and not dispute varying information regarding valuations, mill rates and other items.

"Finally, we ask that our neighboring school districts work with us at the local level to find reasonable solutions to solvable issues.

"Thank you."

## **Figure B**

Thank you Madam Chair and members of committee. I'm Jim Howard superintendent of Jackson Heights, 20 years in education and been there since 2001. I'm representing USD 380, USD 335, USD 115, kind of the other side of this conversation from schools who have received students from closures, and some of the ways that has impacted us.

Throughout this entire process, our school and historically when it was Bern and when it was Summerfield, our job has been at Jackson Heights to be the good neighbor. We're going to wait and see what these schools need. We're not picking a side we're going but if Wetmore does close we'll be

available if that's what they need as far as a quality education, and that has been our stance the entire time.

Some of these numbers we can go through, this is not really the place to go through an argument on numbers. We have our numbers in mediation, we'll have to find out which the middle ground is. In February, we did have they did have the vote to officially close Wetmore schools. At that time, we began getting information from the Wetmore community that they might be interested in pursuing us as an academic location. So, at that time we knew the right thing to do would be to open our doors and do our best to be good neighbors and try to get these kids a new location.

This was a very contentious closing, historically also contentious when it was Bern, so this is some of the information is historic because this isn't the first time. This is the third school in 11 years that has been closed. This is the first time it has impacted Jackson Heights. With that being said, we had an extraordinary increase in enrollment.

We had 110 students who currently live in 113's district who attend USD 335, which is 24 percent of our total enrollment. We have 103 students who are eligible for transportation. We transport every student who needs a bus ride, that was a very big undertaking for us, knowing that we would not get any state funding until the lines are moved because the weighting, currently the way weighting works, we will never get that \$1,200 per student, but we still know these are some communities who need transportation. We also expanded our fleet. We had to buy. We have four additional bus drivers. We had to buy new buses, all the other equipment that might we needed.

Additionally 90 new students came this year alone. So, we had a huge influx of kids, because we were wanting to make sure we had these parents, We do believe in school choice. We do believe in giving the parents the opportunity to find a better location. They didn't feel like 113 wanted them. To my understanding, not one Wetmore student chose to attend the Sabetha school district. Because of that we have taken a very big, financial undertaking with no financial, there's no money for us this year. That's about \$600,000 that we are going to be using our cash balances to cover, try to live as lean as we can.

So my school, very open, my board, very open, my community, very open. They want to make sure that they'll be having a smooth transition. Just one quick story on that, this has been great. We have opened our arms, they're all Cobras now, we would like to say. We even had two Wetmore students who were homecoming king candidates. So that tells you what kind of community that we're trying to be.

We're not trying to steal anyone's land. We're not trying to come here and get something that we'd think would be inappropriate. We opened our doors, hoping there would be some sort of a reciprocation and this is why we're here today to try and seek some maybe solutions, moving forward for other schools, especially with open enrollment becoming such a big topic moving forward.

We want to make sure that schools don't feel punished for being the school that parents choose to send their kids. With that being said, some of the things we look at that we have challenges moving forward, beside the financial, we have the longterm challenges of representation. So first and foremost, these families now consider themselves part of our district. The discrepancy extends to the lens of taxes, voting rights which will impact the allocation of resources.

Ultimately, local control belongs to the people, and these families are having their rights denied by not having representation in the school they've chosen to attend. Closing three schools in 11 years without impact this creates an educational vacuum, causes rural flight and significantly shifts enrollment trends in the region. Just ask USD 115, um, when Bern closed 11 years, they still have not had that land transferred and many of those students that attend Seneca have never had representation in the school they've chosen, for an entire career, could've been from kindergarten on.

So where are we at now? As of right now we are seeking whatever means we can. We have banded together as a school, with the other two schools, to have some sort of conversation with 113. That has not, that has not gone to a fruitful product, so we are now working with the State Board and we have, um, where we're going to have a mediator. So that is the next step for us now is mediation, and we're hoping that we can present our information so we have some sort of conversation and ultimately come to a decision together.


We've never not wanted to have a conversation board to board, superintendent to superintendent. We did have one joint meeting, that was public, and ever since then there has not been any, we have not met again. So this, just so I can get through probably as I go into this I think that the recommendations are important because I do represent several schools that are impacted by, funding, by school closures on the other end.


The first would be for unseen, extraordinary costs, some sort of funding mechanism that can help make us whole, when we lose \$600,000 in one year of funding. The way the current funding formula is, we just lose that money. So that would be one recommendation, and maybe look at the funding formula again this year.


Another would be contemplate implications of school closing, um, triggering a mechanism by state aid, some sort of transportation funding. Some sort of mechanism that says that if so many kids leave a certain school, that they have to readdress the lines, because right now its always going to be the closing school who gets to make that decision.

Also requiring districts that close buildings used in their current enrollment. We talked about it on the other school, there is \$2.5 million that they're going to be getting the next two years for kids they know they won't educate. So, that is a lot of money that they get to count on a school they've closed, which we feel might be an incentive to close, rather than an incentive to open your arms and try to have an open enrollment.


In closing, I would like to say one of the things we want to do here is honor the tax payers by having not so much, um, uncertainty as far as the process. We've had to seek attorneys, we've had to seek other legal avenues to try to find a solution, and it has not been a good use of taxpayer money. We feel like the funding formula is also that way where there's a lot of money being spent twice because of the way it is formulated. And we feel like parents are not being heard in this process, when they decide, when you close a school, someone decides to go somewhere else, those parents need to have that right as well to have a voice in that new school district.

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Heather Stewart is one of two co-editors for The Sabetha Herald, where she has been on staff since 2015. Heather is a 2011 Kansas State University graduate with a degree in psychology. She lives in Sabetha with her husband.





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