

MINUTES

Special Education Interim Legislative Committee



Representative Nancy Rasmussen, Chair
Senator Jim Bolin, Vice Chair

Second Meeting, 2019 Interim
Tuesday, August 27, 2019

Avera Hall – USD Community College
Sioux Falls, South Dakota

The second meeting of the Special Education Interim Legislative Committee was called to order by Representative Nancy Rasmussen at 10:00 a.m. in Avera Hall of the Administration Building of the USD Community College for Sioux Falls, South Dakota.

A quorum was determined with the following members answering the roll call: Representatives Fred Deutsch, Sue Peterson, Nancy Rasmussen (Chair), and Ray Ring; and Senator Jim Bolin (Vice Chair); and Public Members Ms. Sara Carda, Ms. Jennifer Conway, Mr. Tom Culver, Ms. Lorrie Esmay, Dr. Michelle Greseth, Mr. John Hamilton, Mr. Dan Martin, Dr. Kari Oyen, and Mr. Neil Putnam.

Staff members present included Tami Darnall, Chief Fiscal and Program Analyst; and Sakura Rohleder, Fiscal and Program Analyst.

NOTE: For the purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. The archived webcast is available at the LRC website at <https://sdlegislature.gov/>.

Welcome and Introductions

Representative Nancy Rasmussen welcomed the committee and offered thanks to all those participating in the meeting.

Approval of the Minutes

A MOTION WAS MADE BY REPRESENTATIVE SUE PETERSON AND SECONDED BY REPRESENTATIVE FRED DEUTSCH TO AMEND AND APPROVE THE MINUTES OF THE JULY 11, 2019 SPECIAL EDUCATION INTERIM LEGISLATIVE COMMITTEE AS FOLLOWS:

On page 5, delete the last paragraph and insert:

"Dr. Power's recommendations were: promote the use of high leverage, research-based practices for students with disabilities; increase number of ABA trained specialists; increase understanding and access to school-based ABA for early intervention and school-age children, especially those on the autism spectrum; reframe current efforts in Response to Intervention (RtI), to emphasize general education as being capable of meeting many student needs; promote structured literacy approaches to meet the needs of all students learning to read, including students with dyslexia; and to partner with the task forces meeting on mental health to address mental health needs in a comprehensive approach for children – home, school, community."

The motion prevailed on a voice vote.

Committee Perspective and Discussion

Representative Rasmussen asked the committee members to share their expertise and thoughts on the issue of special education.

Dr. Kari Oyen expressed her appreciation for the time and effort of the presenters at the first meeting to reflect on what is happening in South Dakota, and stated her opinion is her own based on ten years of experience in the field as a licensed psychologist. She noted the shortage of personnel determining eligibility, including special education teachers and school psychologists, is the key to address not only the mental illness issues, but also the teenage suicides that are caused by preventable or diagnosable mental illness. She suggested incentives for these professionals, such as loan forgiveness programs. Dr. Oyen also noted the importance of home-grown professionals, and appropriate professional developments to recruit and retain special education professionals in rural areas. Lastly, Dr. Oyen advocated for several changes in current special education methodologies and systems including the remodeling of category levels to include severity to improve the allocation of funding, systematic screening for early childhood mental health problems, the development of better mechanisms for intervention, a review of out of district placement mechanisms, and better equip people in the schools with necessary skills and knowledge in order to keep children in the school setting.

Mr. John Hamilton mentioned illegal exclusion from school is also an issue for students with disabilities. Some students are told by schools not to come back until the students' risk assessments for their behaviors are completed, or students are not allowed to return to the school without receiving formal suspensions. He also told the committee that there is a law that makes students with an individualized education program (IEP) ineligible to utilize Psychiatric Residential Treatment Facilities (PRTF) without the IEP team's approval. However, children with an IEP may need, or could greatly benefit from, the intensive services provided by PRTF.

Representative Sue Peterson said as a member of the Joint Committee on Appropriations, she looks forward to learning and hearing about the issues so she is aware of the potential budgetary impact.

Representative Fred Deutsch told the committee that, as part of South Dakota Legislature, he appreciates all the expertise provided on this committee, and he is prepared to learn about the issues so he can bring ideas to the legislature.

Mr. Dan Martin commented the challenge of small rural districts is that some students may require one-on-one teaching, which is costly, and other necessary services including psychiatric assessments and other evaluations necessary for students are not available in the area. Many of these services require a full day of travel from his district. He also agrees with Dr. Oyen that the best way to recruit professionals in special education is to develop and promote locally.

Mr. Neil Putnam told the committee he represents school board members of South Dakota, and school boards must look at the workforce development issues not only from the student's perspective but also from an economic standpoint. The boards have a responsibility to engage in conversations with Congress, administration, and other key advocacy groups to build partnerships for special education. He also encouraged the committee to reach out to other school board members to create direct community links and learn about some of their personal stories.

Representative Ray Ring stated his wife was a special education teacher in a middle school, and the issue is a matter of financial resources. The rebase of the special education formula and the formula change in 2016 addressed some of the issues. However, schools still have financial issues, and they are already efficient with their operation. He emphasized the need to look at the funding issue and ways to increase homegrown teachers.

Ms. Jennifer Conway provided her perspective as a school business manager. She stated issues with special education surround the funding levels and the timing of funding. The funding formula lacks the element of severity which greatly varies by student. She also told the committee that, depending on location, special education funding can be used for transportation or travel used for the student to receive proper assessment or education, and there are gaps between the funding levels and the actual cost that school districts must pay for out of district placements. For the timing issue, she noted while enrollment of students happens through the year, there is only one day for the enrollment count, and there is time lag as long as a year and a half until the school receives funding for a student with disabilities, which can be a significant financial burden on school districts.

Mr. Tom Culver provided a handout entitled, Avon School District Special Education Fund cost analysis ([Document 1](#)) and explained that, while the total funding for special education is \$421,350, there is one student who costs \$120,000. He also noted there is no cap on the rates community support providers can charge the schools for out of district placements. His district currently hires three special education specialists and four paraprofessionals, and although some may see that as more than an adequate number of professionals, his district also has two students who require full time support.

Ms. Sara Carda told the committee that, as a parent of a child with a disability, she is happy that South Dakota is leading the way to help parents of children with disabilities. She stated special education has changed dramatically in the last twenty years. While some of her experience was traumatic, she understands that 99% of people in the field have the right intention and try to do the right thing. She also mentioned the amount of paperwork required for parents of children with disabilities is an issue. As a parent, she has spent many hours making sure all the requirements for the IEP are being met, and appropriate documentations are completed. Lastly, she encouraged early diagnosis and education which will lead to a bigger impact in the future.

Ms. Lorrie Esmay provided her perspective from a small school district that does not have adequate resources for special education. She agrees with other committee member recommendations for evidence-based intervention services, baby check and prenatal care, and better reading instructions are cost effective ways to improve the education experience overall. She also mentioned her school district shares the same issues that other small districts face including the need for homegrown teachers, and the need for a customized program based on disabilities and severity levels.

Dr. Michelle Greseth provided her perspective as a special education director. She agrees with other committee members regarding the high cost of out of district placements especially for children with high needs, and the need to review eligibility categories for the special education funding formula. She also mentioned that, due to lack of workforce, she hired two teachers from the Philippines.

Senator Jim Bolin told the committee that, as a member of the legislature who served on last year's interim study of the extraordinary cost fund, he saw the need for a fundamental dive into special education. He mentioned the amount of paperwork required for the special education teachers, and retention issues among the professionals in special education. He suggested the idea of taking special education teachers out of the teacher pay scale as a solution to the workforce issue, and also to avoid spending general education funding for special education.

Dr. Oyen mentioned the students with the most need is given to people with the least amount of training. Thus, for funding and cost analysis, the committee must make sure that qualified people are assigned to the children with the most needs and look at the necessary cost associated with that. Representative Deutsch stated small school districts may benefit from a disassociated fee schedule for special education teachers.

Representative Rasmussen thanked everyone for sharing their expertise and thoughts on this topic and told the members she will be working with Clare Charlson, Principal Research Analyst, LRC, to create a list of all the concerns and suggestions.

Update on Federal Legislation Seeking Full Funding of the IDEA

Dr. Wade Pogany, Executive Director of Associated School Boards of South Dakota, spoke to the committee about the Individuals with Disabilities Education Act (IDEA). He provided updates ([Document 2](#)) and explained that it is currently not a priority at the federal level to achieve the promise to cover forty percent of the cost of educating students with disabilities. However, there is a desire to move H.R.1878 to the full House this fall to see if more members of Congress will sign on and begin the process to move the bill forward. Dr. Pogany encouraged the committee to show support for this bill. Senator Bolin inquired if Dr. Pogany is aware of a resolution in South Dakota from the previous year requesting forty percent funding at the federal level. Dr. Pogany responded he is aware of the resolution, and his recommendation is for the committee to support H.R.1878.

Special Education Funding Formula and Extraordinary Cost Fund

Matt Flett, Finance Director for SD Department of Education, expressed his appreciation for all the discussion and ideas provided by the committee members. He addressed the committee regarding the special education funding formula, the extraordinary cost fund, and out of district placements ([Document 3](#)). He told the committee that the Department of Education (DOE) will provide information regarding special education funding but will not take positions on any of the recommendations.

He explained the special education state aid formula is based on four elements: child count, disability level, local effort, and effort factor. The child count is done every December and becomes the base for the following fiscal year funding.

There are six disability levels which are rebased every two years, and each level allocation is increased by the index factor in each non-rebase years. Representative Ring asked if there is a possibility that special education teachers and school districts are not utilizing the best method, like the Applied Behavior Analysis (ABA), due to budget constraints. Mr. Flett responded that, because the allocations for all categories except level one are based on actual expenditures, the special education state aid formula depicts actual costs better than the general education funding formula. He also noted that rebasing every two years instead of three years going forward will allow more accurate representation of the actual costs associated with each level. Representative Deutsch asked why level one is calculated as ten percent of admission of the entire district while all the other levels are based on the actual child count at each disability level. Tami Darnall, Chief Fiscal and Program Analyst, responded that children with level one disability are in and out of services through the year. Thus, it is more accurate and fair to look at the average of admission and not at an actual count at a specific point in time.

Mr. Flett said that local effort is the property tax collected at the local level. He also noted that, although state and schools' budgets are based on fiscal year, property tax collections are based on the calendar year, so two years of property tax collections need to be looked at for one school fiscal year. He explained that 41 districts are levying at below the state minimum because a lot of school districts can generate more than they need just using local effort.

On the contrary, he also mentioned that five school districts in FY2018 transferred general funds to the special education fund. Senator Bolin asked if the DOE receives any justifications for these transfers. Mr. Flett responded DOE does not receive any justifications for the transfers, but he hopes school board members are asking for the justification before approving the resolution to complete the transfer. Representative Peterson asked if DOE tracks the number of children on the autism spectrum with ABA therapy vs. children that are not receiving ABA therapy, and the costs associated with them. Mr. Flett responded that DOE does not track the data. Representative Peterson followed up with questions of actual cost average by level, and by severity of the disability since the data would be helpful to identify the deficiencies for appropriation purposes. Mr. Flett said

DOE does not gather the data at that level of detail. Ms. Conway also responded that the tracking the information with the level of detail requested would be challenging with the current tracking and accounting systems. However, she can provide some basic illustration of the actual cost average by taking samples of different levels of autism spectrum and severity.

Mr. Flett then explained the extraordinary cost fund (ECF), which is the statutory appropriation of \$4 million and any unused appropriation for a maximum balance of \$5.5 million. For FY2019, the ECF had a balance of over \$1 million. However, he emphasized the volatility of the fund. Dr. Ben Jones, Secretary for Department of Education told the committee that he would provide historical data of ECF payments.

Lastly, Mr. Flett explained the out of district placements. He stated that 376 of 21,625 students are served outside of districts. Of those, 112 of them were ages 19-21. He added that 46.8% of all students placed outside of districts are in one of the following facilities: Lifescape, Children's Home Society, or Behavioral Care Specialist.

Public Testimony

Ann Land, a parent of a child with a disability, commented that her school district spent \$50,000 on legal services fees to pay a private attorney and recommended further research on how much school districts are spending on legal fees across South Dakota.

Beverly Johnson, a parent of a child with multiple disabilities, shared her difficult experience placing her son in appropriate institutions to get education and treatments. She has filled out multiple applications to various places and exhausted the options available in the state, while her son's mental state is declining due to the trauma from this experience. She has involved many organizations including the American Civil Liberties Union. Her son was admitted to Copper Hills Youth Center in West Jordan, Utah. Senator Bolin inquired the length of the stay at Utah, and Ms. Johnson told the committee that the Department of Human Services will assist with the cost for six months, hence he will stay there for six months and any extended period based on assessments. Dr. Oyen asked where her son was during the process of filling out applications for various facilities. Ms. Johnson responded that her son was at home.

Dr. Wade Pogany, Executive Director of Associated School Boards of South Dakota, encouraged the committee to prioritize the major issues brought to them in the order of the following: teacher shortage, out of district placements, best practices, and a granular look at the data for children with disabilities. Representative Rasmussen reminded the committee the focus of this committee needs to be on children. Representative Deutsch asked what the number of special education teachers employed across South Dakota was, and Dr. Ben Jones, Secretary, SD Department of Education, responded that he would follow up and provide the data to the committee. Representative Peterson suggested the idea of improving general education by incorporating structured reading and other tools which may lead to less need for special education funding.

Wendy Otheim, Director of Special Education Services at Brookings Public School District, asked the committee to look at not only the children on the autism spectrum, but also children with other needs including emotional disturbances. She also mentioned that her division currently has nine special education professional openings, but no applications submitted for those positions.

Committee Discussion and Planning for Future Meetings

Representative Rasmussen told the committee that the next meeting will be held in Pierre and she will be working with Clare Charlson to create a list of potential dates.

Adjourn

A motion was made by Representative Ring, seconded by Representative Peterson, that the committee be adjourned. The motion prevailed on a voice vote.

The committee adjourned at 3:05 p.m.