

1999 SENATE EDUCATION

SB 2154

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2154

Senate Education Committee

Conference Committee

Hearing Date 1/19/99

Tape Number	Side A	Side B	Meter #
1		X	5510-END
2	X		0-3819
Committee Clerk Signature <i>Junda Christman</i>			

Minutes:

Senator Freborg called the meeting to order, roll call was taken, all were present.

Senator Freborg opened the hearing on SB 2154.

Brenda Oas, from the Division of Special Education for DPI, spoke in favor of the bill.

Testimony enclosed.

Senator Freborg: Any questions for Brenda?

Senator Redlin: Present formula has to do with average daily membership of all students?

Brenda: Correct.

Senator Redlin: What does that have to do with special ed. when it varies so much?

Brenda: Provides a base payment. Addresses some variability.

Senator O'Connell: This is a federal law, a certain percentage will go to special needs.

Senator Redlin: Isn't true that some families that have moved away from one district and moved into a larger district that has a better program for that kind of child, but still the other district is getting the money?

Brenda: Hard to confirm. Has a different effect.

Senator Freborg: Thank you Brenda. Any one else to testify in favor, in opposition.

Christie Zent: Not sure I'm for or against. Divide it in the most equitable way. No Written Testimony.

Trisha McCarthy, Special Education Director for Kidder, Logan, and McIntosh County. Line 13 (match -does it mean 50-50) 8-9 and 10 language deleted. Page 3 line 18-19. No Written Testimony.

Testimony In Opposition:

Jim Transk- Director of Special Education Service for the Fargo Public Schools and Rural Cass County. Recommend bill receive clarification. No Written Testimony.

Senator Freborg: Anyone else testifying. Brenda would you return to the podium.

Brenda: Line 22-24, 8-9-10 those sections are addressed in other places.

Senator Freborg: Are you saying this is a house keeping bill because you are retaining the language somewhere else to do exactly the same thing.

Brenda: In regard to information on line 3 that would force this into a due process hearing.

Attorney Generals opinion clarifies that his runs on parallel tracks. Consider complaints, etc.

Withholding would only occur if the district refuses to carry out the corrective action.

Senator Freborg: Brenda who normally initiates due process?

Brenda: Typically the family. Another mechanism to appeal the process.

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Senate Education Committee

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Hearing Date 1/19/99

Senator Freborg: There is a procedure you can go through following the meeting.

Brenda: Clarify. If a district was refusing to carry out the correction actions that is when this would kick in, the withholding of funds. Provide notification.

Senator Freborg closed the hearing on SB 2154. Discussion was held.

Senator Freborg: What are your feelings on SB 2154? Not sure a problem after Brenda explained.

Senator Cook: I'm not comfortable yet.

Senator O'Connell: Section 2 on page 3. New language aid, anyone address that?

Senator Kelsh: Supt. of PI can withhold funds determination if they're living by the dermination they can withhold funds. They can appeal.

Senator Freborg: Either pay or go through due process or they'll withhold the funds. They are probably federal guidelines with 70% federal funds. Required to force into compliance.

Senator Flakoll: Page 1 line 13, matching funds, we don't know what that will be.

Senator Redlin: Intent to give more authority to DPI.

Senator Freborg: Way I understand it, the entire thrust of the bill is line 18 and 19 on page 3.

Giving them authority to enforce the determination by withholding state funds.

Senator Redlin: The cost of special ed. will never be taken care of by any single unit.

Senator Kelsh: The funds specific to the program.

Senator Wanzek: Could we accomplish that by adding words specific to the determination.

Senator Flakoll: My concern is that it is not really explained in the document. Is it specified elsewhere.

Senator O'Connell: Basically the case of IBT right?

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Senator O'Connell moved for a Do Pass.

Senator Redlin seconded.

Discussion for motion of Do Pass on SB 2154.

Motion carried.

ROLL CALL: 7 yes, 0 NO

CARRIER: Senator O'Connell.

REPORT OF STANDING COMMITTEE (410)
January 19, 1999 1:08 p.m.

Module No: SR-11-0827
Carrier: O'Connell
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2154: Education Committee (Sen. Freborg, Chairman) recommends DO PASS
(7 YEAS, 0 NAYS, ABSENT AND NOT VOTING). SB 2154 was placed on the
Eleventh order on the calendar.

1999 HOUSE EDUCATION

SB 2154

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2154

House Education Committee

Conference Committee

Hearing Date 3-2-99

Tape Number	Side A	Side B	Meter #
Tape # 2	x		6.6 to 43.4
Committee Clerk Signature <i>Joan Miller</i>			

Minutes:

Chairman R Kelsch , Vice Chair Drovdal , Rep Brandenburg , Rep Brusegaard , Rep Haas , Rep Johnson , Rep Nelson , Rep Nottestad , Rep L Thoreson , Rep Grumbo , Rep. Hanson , Rep. Lundgren , Rep. Mueller , Rep. Nowatzki , Rep. Solberg .

Chairman R Kelsch : Open the hearing on SB 2154 and ask the clerk to read the title.

Brenda Oas: Director of Special Education DPI (See attached testimony) . The committee spent some time with Director Oas getting information as to specific information how the bill would work.

Ron Torgeson: North Dakota Education Leaders spoke in opposition to SB 2154.

Joan Miller: Director of East Central Education Unit spoke neither in support or against the bill, but just brought her questions to the committee about the bill.

Berry Chattams: Special Education Director for Oliver/Mercer spoke in opposition of SB 2154.

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House Education Committee
Bill/Resolution Number Sb 2154
Hearing Date 3-2-99

Trisha McCarthy: Director of Special Education of the South Central Special Education Unit, spoke in opposition of SB 2154.

Julian Bjornson: Superintendent of school at Grafton , member of the Upper Valley Special Education Board, spoke in opposition of SB 2154.

Brenda Oas: Director Oas was asked to come back before the committee to answer some questions. According to an opinion of the Attorney General even if the school has a policy the Board would still have to withhold federal dollars at the special education unit level.

More discussion was held on that issue.

Chairman R Kelsch : Any further questions, seeing none we will close the hearing on SB 2154.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2154-3-16-99

House Education Committee

Conference Committee

Hearing Date 3-16-99

Tape Number	Side A	Side B	Meter #
Tape # 1	x		4.0 to 9.5
Committee Clerk Signature <i>Joan Diers</i>			

Minutes:

Chairman R Kelsch , Vice Chair Drovdal , Rep Brandenburg , Rep Brusegaard , Rep Haas , Rep Johnson , Rep Nelson , Rep Nottestad , Rep L Thoreson , Rep Grumbo , Rep. Hanson , Rep. Lundgren , Rep. Mueller , Rep. Nowatzki , Rep. Solberg .

Chairman R Kelsch : We will take up SB 2154, what are the wishes of the committee? We have amendments for SB 2154. This bill deals with the special education policies and there was quite a bit of testimony in opposition to this bill. Mr Torgeson was one of those in opposition to the bill, he has given us an amendment that would make the bill palatable to their organization. Mr Torgeson would you explain your amendment.

Ron Torgeson: North Dakota Council of Education Leaders. We have some additional information that has just come in from the US Department of Education and the amendments that

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House Education Committee

Bill/Resolution Number SB 2154-3-16-99

Hearing Date 3-16-99

you have before you would satisfy that requirement. The Department is going to do a seminar for Special Ed Directors on complaints and due process so they don't get the two mixed up.

Chairman R Kelsch : Are there any other questions?

Rep L Thoreson : I would move a Do Pass on the amendments.

Rep. Mueller : seconded the motion. .

Chairman R Kelsch : Any discussion on the amendments to SB 2154? Seeing none, voice vote on amendments. Motion carries. What are the wishes of the committee?

Rep L Thoreson : Move a DO PASS as amended.

Rep Haas : seconded the motion. .

Chairman R Kelsch : Discussion was held. The clerk will call the roll on a DO PASS as amended motion. Motion passes 13 YES 2 NO 0Absent Floor assignment Rep L Thoreson .

VR
3/16/99

HOUSE AMENDMENTS TO SENATE BILL NO. 2154 **EDU 3-17-99**

Page 1, line 3, after "state" insert "special education"

HOUSE AMENDMENTS TO SENATE BILL NO. 2154 EDU 3-17-99

Page 3, line 19, after "state" insert "special education" and after "funds" insert "due a school district that is found to be in violation of providing a free appropriate public education in an amount equal to the cost of meeting the affected individual students' needs"

Renumber accordingly

Date: 3-16-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2154

House Education Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number 98151.0101

Action Taken Do Pass as amend

Motion Made By Thoreson Seconded By Haas

Representatives	Yes	No	Representatives	Yes	No
Rep. ReaAnn Kelsch-Chairperson	✓		Rep. Dorvan Solberg	✓	
Rep. David Drovdal-Vice Chair	✓				
Rep. Michael D. Brandenburg	✓				
Rep. Thomas T. Brusegaard	✓				
Rep. C. B. Haas	✓				
Rep. Dennis E. Johnson	✓				
Rep. Jon O. Nelson	✓				
Rep. Darrell D. Nottestad		✓			
Rep. Laurel Thoreson	✓				
Rep. Howard Grumbo	✓				
Rep. Lyle Hanson	✓				
Rep. Deb Lundgren		✓			
Rep. Phillip Mueller	✓				
Rep. Robert E. Nowatzki	✓				

Total (Yes) 13 No 2

Absent 0

Floor Assignment Thoreson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2154: Education Committee (Rep. R. Kelsch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2154 was placed on the Sixth order on the calendar.

Page 1, line 3, after "state" insert "special education"

Page 3, line 19, after "state" insert "special education" and after "funds" insert "due a school district that is found to be in violation of providing a free appropriate public education in an amount equal to the cost of meeting the affected individual students' needs"

Renumber accordingly

1999 SENATE EDUCATION

SB 2154

CONFERENCE COMMITTEE

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2154CC

Senate Education Committee

Conference Committee

Hearing Date March 31, 1999

Tape Number	Side A	Side B	Meter #
1	x		3065-5199
Committee Clerk Signature <i>Jenda Christman</i>			

Minutes:

CONFERENCE COMMITTEE

SENATOR WANZEK

REP. H. L. THORESON

SENATOR COOK

REP. HAAS

SENATOR O'CONNELL

REP. MUELLER

SENATOR WANZEK opened the Conference Committee on SB2154. All members present.

REP. THORESON: The House looked at part of Section 2 which had to do with the enforcement if there were a complaint and the statement that came over that they would withhold state funds. We felt that was rather wide open and not definitive enough to give direction to the DPI because we did not know for sure what that really meant as far as state funds for the school, the district, individual or what and we were talking about special ed and we thought, it should be

focused in on special ed funding if there is a complaint. We amended it to just apply to a violation in a specific case with specific special ed funding.

REP. HAAS: I'd like to give an example of what could happen in a school district. Let's say that there is a special ed student that the district has decided that the individual education plan that they are going to put in affect for the student and the parents for some reason disagree with that and then buy services someplace else. Then what usually happens in a case like that it will go to litigation or they will have some kind of hearing. Then if in the hearing process, it is ruled in favor of the parents then it becomes the school district's responsibility to pay for that service. If the school district still refuses to pay, what DPI is saying here is then we are going to withhold enough of their special ed funds the way we amended it in order to pay the parents for that child because it was ruled on in that hearing. Our fear was by leaving it wide open and simply saying withholding state funds it could apply to foundation aid, tuition apportionment, transportation repayment, etc. The committee simply wanted to limit it to paying only the amount that was due the parents and only coming from their reimbursement for special education.

REP. THORESON: The amendment was basically drawn up and looked over by the special ed people, the Attorney General's office, the School Board Association and all the people that have a vested interest in it. They all agreed that this would better fit the needs. We did hear in testimony that the Attorney General's office did feel that there should be something to give some guidelines.

SENATOR WANZEK : Without the amendments, the way they read in the original bill essentially the superintendent of public instruction could withhold almost any state funds.

SENATOR O'CONNELL : What is the difference.

REP. HAAS: If you leave it wide open and say withholding state funds, it doesn't say anything about the amount of funds so that it could almost be a punitive type of withholding rather than just withholding the necessary amount to pay for services. The amendment restricts this very specifically to the amount needed to reimburse the parents for the services that would determine what they should have gotten. Our committee did not feel that it was appropriate because every school district in the state gets special ed funds. We did not think it was appropriate to withhold transportation money or tuition apportionment money or foundation aid money in this case because it dealt with a very specific case of, a very specific instance of special education and services for that purpose.

SENATOR COOK : I noticed in your minutes that you had a lot of people testifying against it. Do the amendments apply to their concerns.

REP. HAAS: Yes they do.

SENATOR COOK : Are there times when a school has no special education funds coming to them.

REP. HAAS: Special ed funds usually come back the end of the school year and sometimes into July and August. The DPI could withhold funds for the following year.

SENATOR WANZEK : As long as the school is an ongoing entity they will eventually, if they don't have the means to withhold funds in this current year they could go into the next year.

REP. HAAS: Yes, absolutely.

REP. MUELLER: How often do the special funds come in.

REP. HAAS: It comes in kind of like foundation aid. You don't get your last payment on special ed, \$235 per student and it comes a certain amount of that with each payment to the

school. You don't get your last payment until sometime later. We get the last payment of foundation aid in May but the last payment on special programs usually comes later on.

SENATOR WANZEK : This bill is dealing specifically with special ed situations and you are talking about an example of a student where the school would write out an IEP plan and if the parent does not agree with or decides to go seek some private services somewhere else. Then what is the process, where does the parent go to appeal.

REP. THORESON: There are 3 procedures. There is a due process hearing, a complaint investigations and mediation. There is three different ways. Generally they would start with a due process hearing. They would go to the director of the special ed unit or the director of the school if they have their own special ed. The director then would set up a hearing. Then it would be either denied or granted. They could go one step farther, into the complaint investigation. They would probably call DPI. DPI would do an investigation and they would try to mediate. If DPI rules in favor of the parents, attorneys may be involved, then the DPI would withhold funds to pay for those services.

SENATOR COOK : What happens if DPI says the school is right and the parents still resist.

REP. HAAS: If the court would find the school in violation then DPI could still withhold funds. This does not happen frequently.

SENATOR COOK : What happens if this bill doesn't pass.

REP. HAAS: It is very important that this bill passes and getting us in compliance with federal regulations. It is important for the continuation of the flow of money from the federal government special ed money to the state to have this type of procedure in place. When we had

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Senate Education Committee

Bill/Resolution Number SB2154

Hearing Date March 31, 1999

special ed directors testify in opposition to the bill, and their opposition was based on the language in Section 2 because they thought it was too broad.

SENATOR COOK : I move the Senate accede to the House amendments.

REP. THORESON: 2nd

VOTE: 6 Yes 0 No

CARRIER: SENATOR O'CONNELL

=====
REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420
=====

07398

(Bill Number) SB 2154 (, as (re)engrossed):

Your Conference Committee

For the Senate:

For the House:

Sen. Wanzel ✓
Sen. Cook ✓
Sen. O'Connell ✓

Rep. H.L. Thoreson ✓
Rep. Haas ✓
Rep. ~~Stenberg~~ Mueller ✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
723/724 725/726 5724/H726 5723/H725
the (Senate/House) amendments on (SJ/HJ) page(s) 770 - _____

and place SB 2154 on the Seventh order.
727

, adopt (further) amendments as follows, and place
_____ on the Seventh order:

having been unable to agree, recommends that the committee be discharged
and a new committee be appointed. 690/515

((Re)Engrossed) _____ was placed on the Seventh order of business on the
calendar.

=====
DATE: 3/31/99

CARRIER: O'Connell

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____
=====

(1) LC (2) LC (3) DESK (4) COMM.

Insert LC: .

REPORT OF CONFERENCE COMMITTEE

SB 2154: Your conference committee (Sens. Wanzek, Cook, O'Connell and Reps. L. Thoreson, Haas, Mueller) recommends that the **SENATE ACCEDE** to the House amendments on SJ page 770 and place SB 2154 on the Seventh order.

SB 2154 was placed on the Seventh order of business on the calendar.

1999 TESTIMONY

SB 2154

TESTIMONY ON SB 2154
SENATE EDUCATION COMMITTEE
January 19, 1999
by Brenda K. Oas, Director of Special Education
328-2277
Department of Public Instruction

Mr. Chairperson and members of the Senate Education Committee

My name is Brenda Oas. I am the Director of Special Education for the Department of Public Instruction. I will be speaking in support of Senate Bill 2154.

This bill was developed to address concerns that have arisen from local complaint investigations conducted by our office. The two complaints in question have been brought under the Individuals with Disabilities Education Act (IDEA). Since it was passed in 1975, IDEA has been used to address concerns regarding appropriate education for children and youth with disabilities. Over time, the provisions in IDEA have been tested legally. Legal precedent has established a series of remedies for the denial of a free appropriate public education (FAPE). You would likely be familiar with the availability of attorneys' fees as a remedy. However, this remedy is only available in due process hearings. The remedies available in complaint investigations include revision of local policies and procedures, reconvening planning teams and re-doing procedures, providing compensatory education, tuition reimbursement, or extended school year services.

Until recently, the remedies requested in all complaint investigations conducted by the Department have been to revise policies and procedures or repeat procedures that had been previously conducted. For example, the school might be asked to do another assessment or to do another individualized educational plan. This has frequently involved re-training personnel to carry out the procedures in ways that are consistent with the federal law.

Unlike previous complaints, the two complaints received in the spring of 1998 requested other remedies. In one case, the family requested compensatory education from the school district; in the other, the family requested tuition reimbursement for services that the family had purchased on their own. While complaints of this nature are not uncommon in other parts of the country, until last spring we had not received complaints requesting these remedies.

A problem arises in settling these complaint investigations in which compensatory education or tuition reimbursement are requested. The problem stems from the state distribution of funds to the local level. If a district is found to have denied a free appropriate education to a child with a disability and the remedy requires tuition reimbursement, for example, current authority only allows the state to withhold federal special education funding. These funds are typically distributed to the special education unit, rather than the district, meaning that the special education unit and other districts in multi-district special education units will be held accountable for problems that occurred in a single district.

Because of concerns regarding fairness in such situations, the Department requested an opinion from the Attorney General regarding our ability to enforce a decision using other than federal funds. An opinion was received on October 14, 1998. The Attorney General states that "the Department's ability to enforce an order of corrective action is limited under current state law" and recommends that "the Department consider proposing legislation addressing its powers as the SEA [state education agency]" and suggests that administrative rules also be developed to detail procedures for implementing the provisions (p. 7).

Additionally, the U.S. Department of Education was in the state to monitor the Department of Public Instruction's implementation of the Individuals with Disabilities Education Act (IDEA) in August and September 1998. The parties in the two complaints had sent a request to the Secretary of Education requesting a review of the North Dakota Department of Public Instruction's complaint investigation process in regard to remedies in cases alleging denial of a free appropriate public education and requesting compensatory education or tuition reimbursement. Although we have not received a report detailing the U.S. Department of Education's findings from the monitoring visit, we anticipate a compliance finding regarding our ability to offer the remedies of compensatory education and tuition reimbursement. We expect to receive the U.S. Department of Education's report within the next month.

The requested changes in SB 2154 would provide intent language in 15-59-02.1 regarding the relationship between the Individuals with Disabilities Education Act and the provision of state funds to achieve the purposes of the Act. We took the opportunity to also remove some outdated language from the intent section, as well. The language in SB 2154 would also add a new section that allows withholding of state funds to enforce the decision in a complaint investigation.

ATTACHMENT: Current distribution of state and federal special education funds

Current Distribution of State and Federal Special Education Funds

January 1999

Distribution of Federal Funds

Federal funds are distributed to 31 local special education units based on Child Count information collected in December of each year.

Distribution of State Funds

State special education funds are distributed based on average daily membership for each district. Under 15-40.1-07.6 Per Pupil Payments--Special Education, subsection 2,

"the superintendent of public instruction may, upon the written request of a school district, forward all or a portion of the moneys for which a school district is eligible under this section directly to the special education unit of which the school district is a member."

Consistent with the language in 15-40.1-07.6, the choices made by local school districts are depicted in the following table:

Districts Receive Payments	Payments Are Split Between Districts and Special Education Units	Single District Special Education Units	Special Education Units Receive Payments
Sheyenne Valley (6 districts) Peace Garden (12 districts) East Central (5 districts) Emmons County (5 districts) Grand Forks (2 districts) Northern Plains (4 districts) West River (20 districts) Buffalo Valley (6 districts) Souris Valley (27 districts)	Morton-Sioux Special Education Unit receives 4% of the ADM payment, remainder to local districts (10 school districts) Lonetree Special Education Unit receives 24% of the ADM payment, remainder to local districts (12 school districts)	Fort Totten Bismarck Fargo West Fargo Divide County Wahpeton Turtle Mountain Dickinson	Rural Cass (4 districts) Burleigh County (10 districts) Southwest (4 districts) Dickey/LaMoure (7 districts) S Central Prairie (10 districts) Oliver/Mercer (6 districts) Pembina (7 districts) Lake Region (16 districts) South Valley (14 districts) G/S/T (9 districts) Upper Valley (12 districts) Wilmac (14 districts)
Total = 9 special education units, 87 school districts	Total = 2 special education units, 22 school districts	Total = 8 school districts	Total = 12 special education units, 113 school districts

TESTIMONY ON SB 2154
HOUSE EDUCATION COMMITTEE
March 2, 1999
by Brenda K. Oas, Director of Special Education
328-2277
Department of Public Instruction

Chairperson Kelsch and members of the House Education Committee

My name is Brenda Oas. I am the Director of Special Education for the Department of Public Instruction. I will be speaking in support of Senate Bill 2154.

What this bill does is provide some general intent language in Section 1 of 15-29-02.1 to clarify the relationship between the Individuals with Disabilities Education Act (IDEA) and state funding resources and then adds Section 2 that clarifies potential liability in a situation in which a complaint has been filed against a school district under IDEA. There are some other instances in which wording in Century Code has been crossed out. Department staff have been in a clean up mode regarding extraneous language in all the Sections of Title 15 and took this opportunity to remove some wording that is repeated in other sections of North Dakota law.

Under the Individuals with Disabilities Education Act, families of children with disabilities and school districts have access to three different dispute resolution procedures: due process hearings, complaint investigations, and mediation. The Department is required to have state procedures for each of these forms of dispute resolution.

From the Introduction to the Draft Regulations for the Individuals with Disabilities Education Act, PL 105-17 as amended on June 4, 1997.

"The current Part 300 regulations establish a State complaint mechanism that individuals, organizations, and other interested parties can use to bring to the SEA's attention, for resolution, allegations that a public agency is violating a requirement of Part B or its implementing regulations. The Secretary views these State complaint procedures as an important, less costly, less time consuming, and less formal alternative to due process hearings and other dispute resolution mechanisms through which disagreements under Part B and its regulations may be resolved."

SB 2154 was developed to address concerns that have arisen from local complaint investigations conducted by our office. The two complaints in question have been brought under the Individuals with Disabilities Education Act (IDEA). Since it was passed in 1975, IDEA has been used to address concerns regarding appropriate education for children and youth with disabilities. Over time, the provisions in IDEA have been tested legally. Legal precedent has established a series of remedies for the denial of a free appropriate public education (FAPE). You would likely be familiar with the availability of attorneys' fees as a remedy. However, this remedy is only available in due process hearings and not in complaint

investigations. The remedies available in complaint investigations include revision of local policies and procedures, reconvening planning teams and re-doing procedures, providing compensatory education, tuition reimbursement, or extended school year services.

Until recently, the remedies requested in all complaint investigations conducted by the Department have been to revise policies and procedures or repeat procedures that had been previously conducted. For example, the school might be asked to do another assessment or to do another individualized educational plan for a child. This has frequently involved re-training personnel to carry out the procedures in ways that are consistent with the federal law.

Unlike previous complaints, the two complaints received in the spring of 1998 requested other remedies. In one case, the family requested compensatory education from the school district; in the other, the family requested tuition reimbursement for services that the family had purchased on their own because the school had failed to provide appropriate services. While complaints of this nature are not uncommon in other parts of the country, until last spring the Department had not received complaints requesting these remedies. Compensatory education and tuition reimbursement have a potentially more significant fiscal impact on school districts than do the other remedies.

A problem arises in settling these complaint investigations in which compensatory education or tuition reimbursement is requested. I would suggest it is not a problem of accountability because accountability is clear in the federal law. Accountability rests with the district that failed to provide a free appropriate public education. The problem is one of liability. I would like to explain what I mean by liability.

The problem stems from the state distribution of funds to the local level. If a district is found to have denied a free appropriate public education to a child with a disability and the remedy from the complaint investigation requires tuition reimbursement, for example, current authority only allows the state to withhold federal special education funding. These funds are typically distributed to the special education unit, rather than the district, meaning that the special education unit and other districts in multi-district special education units will be held accountable for problems that occurred in a single district. There would be little implication for single districts that operate as special education units, but the impact on multi-district special education units may be significant.

Because of our concerns regarding fairness in such situations, the Department requested an opinion from the Attorney General regarding our ability to enforce a decision using other than federal funds. An opinion was received on October 14, 1998. The Attorney General states that "the Department's ability to enforce an order of corrective action is limited under current state law" and recommends that "the Department consider proposing legislation addressing its powers as the SEA [state education agency]" and suggests that administrative rules also be developed to detail procedures for implementing the provisions (p. 7).

Additionally, the U.S. Department of Education was in the state to monitor the Department of Public Instruction's implementation of the Individuals with Disabilities Education Act (IDEA) in August and September 1998. The parties in the two complaints had sent a request to the Secretary of Education requesting a review of the North Dakota Department of Public Instruction's complaint investigation process in regard to remedies in cases alleging denial of

a free appropriate public education and requesting compensatory education or tuition reimbursement. Although we have not received a report detailing the U.S. Department of Education's findings from the monitoring visit, we have been told there will be a finding regarding our ability to enforce compliance with IDEA, and specifically to offer the remedies of compensatory education and tuition reimbursement. We expect to receive the U.S. Department of Education's report within the next month.

In closing, I would state again that the Department prepared this bill because we were concerned about fairness. I remind you that this bill is not about accountability. That is already established in federal law. Instead it is about who is liable when a district is found accountable in a complaint investigation. Will the district itself be liable, or will the special education unit and the other member districts in a multi-district unit share in the assumption of that liability?

North Dakota Council of Education Leaders
1720 Burnt boat Drive
Bismarck, ND 58501

**Amendment to Senate Bill No. 2154
March 9, 1999**

Chairman Kelsch, members of the House Education Committee, my name is Ron Torgeson. I represent the North Dakota Council of Education Leaders. I would like to present the following amendment to Senate Bill No. 2154 on behalf of the following persons and the NDCEL. I have worked on the following amendment with Representative Laurel Thoreson, Ms. Bev Nielson of the School Boards Association, and Dr. Brenda Oas from the Department of Public Instruction who has communicated with several Special Education Directors and a representative from the Attorney General's Office and we are in agreement that the following amendment will meet applicable guidelines without being overly intrusive on school districts.

The Superintendent of Public Instruction may enforce the department's determination of a complaint by withholding state special education funds due a school district which is found to be in violation of providing a free appropriate public education an amount equal to the cost of meeting the affected individual students' needs.

Chairperson Kelsch and members of the House Education Committee we appreciate your patience and urge that you adopt the above amendment and that you give S.B. 2154 a Do Pass as Amended. Thank you from all of us.