

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1268

2001 HOUSE EDUCATION

HB 1268

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1268

House Education Committee

☐ Conference Committee

Hearing Date 01/22/01

Tape Number	Side A	Side B	Meter #
#4	X		1910 to 3119
		X	1 to 2453
Committee Clerk Signature <i>Dina Gilbertson</i>			

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunsakor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will now open the hearing on HB1268.

Rep. DeKrey: The reason I stuck this bill in was, if you look in the century code, there's a listing, when you're talking about special ed kids, of the categories that they can be fitted into so they can get an IEP, so they can qualify for more services from the school, and according to my son, the only category they have for a child that has behavior problems fits into is emotionally disturbed, and he feels that it is unfair for the child to go through the school system tagged as emotionally disturbed when possibly he has a behavior problem. The other problem is, when they notify parents and they start writing an IEP, and you have to sit across the table from the parents and tell them that their child is emotionally disturbed, that's a lot tougher to do, instead

of telling them that they have a behavior problem, which they probably already know. What this bill would do, what I'm hoping this bill doesn't do, is open up a bunch of different categories that would take more funding, I'm just wanting to add another category to that list, so that there's a category that would say that if a child has a behavior problem, that an IEP could be written for that and school services could be rendered to that child. Minnesota already has that, and the purpose of the bill would be to align ND with that.

Bob Rutten: (Director of Special Education for DPI) *Please refer to attached testimony*

Rep. Nottestad: Could an IEP be written on a behaviorally disturbed child based on the 504 law?

Rutten: A child who qualifies for IEP services would automatically qualify for section 504 services. Typically the IDEA is more comprehensive in its array of services.

Rep. Nottestad: They couldn't just qualify as a BD child, under the current law?

Rutten: No.

Chairman Ketsch: I was told that when a child that has been labeled as ED tries to get into armed forces, which it seems that a lot of times children that have some emotional disturbances or behavioral problems, that seems like it would be a career that they would go into, but I have been told that if you are labeled ED, you are not able to enlist in the armed forces. Do you know anything about that? What would happen by a behavioral problem instead of the ED?

Rutten: I made a call to the armed forces recruiting station, and I asked, and the fellow said that any child with a disability is not eligible, and I said, 'well, we're really more interested in the notion of behavioral disorder'. His immediate response was that they would be disqualified. He intended to check with his supervisor and we didn't connect today, and I would be happy to share that with you.

Rep. Mueller: If you would talk to us about the individual who determines the behavioral disturbances? Who makes that determination and maybe what that criteria would be?

Rutten: One of the hallmarks of the special education process is that no one person puts that label on a child with a disability. It must be through a multi-categorical team process, so that the essential people with the appropriate background and training come to a consensus about whether or not the child has a disability. I pulled something out of Guide I, which regards special education services in our state, and I specifically pulled it for students with emotional disturbances. 'Any student enrolled in services for emotionally disturbed students shall have had a psychiatric and psychological evaluation indicating presence of behaviors which are inappropriate and consistent. This is defined as aggressiveness, withdrawal, fear of appropriate emotional and behavior responses to specific situations. When these behaviors and others are persistently inappropriate to the situation and pervasive in many areas of the students life, he may need special help if he is to benefit in the learning environment. Programs services should be established for the severely disturbed student.' The evaluation process involves observation. Parents, by all means, must be a part of that observed behavior of the student.

Rep. Mueller: Are you basically talking about the IEP team?

Rutten: Technically at this point, no. What we're talking about is an evaluation team. We cannot have an IEP team until that multidisciplinary team reaches that common ground of, yes, this is a child with a disability and yes, this child requires special ed services. You can obviously have a disability and not require special ed services, and there are a number of students who do that.

Rep. Haas: How do you eventually decide whether or not the behavior is a manifestation of the emotional or if its simply a maladjusted situation?

Rutten: This is the question, and I think it's the real challenge for the people in the area of mental health across the country and certainly educators across the county. They're trying to make that ascertain based on, is there, in fact, mental health at play, or this just a child who is having behavioral problems for the time being. I think why there's such concern regarding inappropriately putting a disability label on a student are those societal implications like possible exclusion from such things as armed services. When you get that psychologist/psychiatrist input, with that more professional analysis of this is a behavioral issue versus this is, in fact, in the realm of mental illness.

Tracy Klein: (Director of special ed in Mandan) I have one or two concerns, primarily, if you're going to change the definition to include behavioral disorders, then we also need a change in criteria, so that we can identify those students, so purely changing the name does not open up evaluation criteria to look at this new population of students. That would be my second concern, it would be a new population of students that we would be calling disabled for educational purposes, so there is that stigma. When we do identify a BD, then that population also needs some type of service, and is that going to be funded, is that going to be a different professional, or is that going to be an increase in professionals that already serve our emotionally disturbed children? Right now, at the local level, we identify emotional disturbance based on those social, psychiatric, psychological, mental illness types of disorders. The behavioral issues are still part of the general functioning of the school, and how can they serve those students?

Rep. Bellew: What would constitute a behaviorally disturbed child?

Klein: That is my concern. How many kids are we going to look at? Is that every ADD? Every truant child? Child that is belligerent to a teacher? And, if that child has behavior issues, is that a disability of the education system? Purely changing the term to emotionally or behaviorally does not have any impact on the education system, you'd also need to change the criteria so we can know what is it that we're identifying for a behaviorally disabled child, because there are a lot of children that have behavioral issues, but that aren't disabled.

Rep. Thoreson: Would emotionally disturbed child be more of a long term problem and possibly a behaviorally disturbed child might have a real short term problem that could be corrected, yet he would be identified as a special ed student. Are most emotionally disturbed children a long term problem for a school?

Klein: Yes, and as part of the criteria, it has to be a behavior or a personality trait that is persevered over six months or more before you can even be identified in this emotionally disturbed category.

Rep. Mueller: If we don't pass this bill, what's the downside?

Klein: We continue to identify a vast majority of emotionally disorder type of children under the emotional disorder category. The downside is, there are those short-term behavioral issues that do not get identified as disabled, therefore, they do not get an IEP, they would have to be handled through the school system, whether that's a management program or consulting through a school psychologist. Section 504 plan to make some minor accommodations.

Rep. Meier: When a child is diagnosed with this type of disability, when there comes a time when this child is improving, is there constant monitoring for a situation like that? At what point do you determine whether or not the child is emotionally disturbed still?

Klein: We look at the child's education plan annually, and most often it's more frequent than that. It can be, if any team member has a concern or sees a change, or something that would indicate that this child would indicate that this child no longer needs special services for a disabled child and can succeed without those services, then a team would come together and discuss that and look at dismissing that child from special education, then that child would no longer be identified as disabled.

Rep. Hawken: Since that is not part of the definition of the federal law, how would that affect our state? From a funding perspective/

Klein: I don't know if a state changes their terminology and increases the breadth of the students that are identified, if we can count them on our child count, which is what generates the federal funds, I imagine there would be some mechanism that we would still, when we turn in an account to the federal government, turn it in as an ED student.

Rep. Thoreson: Is schizophrenia considered a mental disorder or a behavioral disorder?

Klein: That's a mental disorder, so that would qualify under emotional disorder.

Rep. Hunsakor: With the number of students that you work with that have emotional disorders, what percentage do you serve that would fall under the behavioral?

Klein: I can give you a rough estimate. Because of how we use our criteria, the emotional criteria has to be there for the child to qualify as disabled, so there are no children that are purely behavioral disordered that we are providing special education services for. There are children who have emotional disorders, and because of those disorders have behavioral issues, and we provide programming for them.

Rep. Hunsaker: Do you have students, in the schools that you work with that are not qualifying under emotional disorder, but do have behavioral disorders, but they would be disabled under this new law?

Klein: Not under the current law. There are behavioral disorder students in our schools, but they are not identified as disabled.

Rep. Hunsaker: But there are some there?

Klein: Yes, and those students are served under 504 plans, management plans, through consultation with a special ed teacher.

Rep. Nottestad: For those that aren't involved in education, would you just give a short explanation of what these 504 programs are?

Klein: It's not one of my strong areas, but the 504 is based on American Disabilities Act, which is more of an access law. It's saying that because of a disability, you cannot deny them access to the educational process. That could be a child with asthma, a child with behavioral disorder child, and the catch phrase in there is to qualify for section 504 limits one or major life functions, such as breathing, learning and a couple other items. If they have some type of disability that limits their access to the to the activity of learning.

Chairman Kelsch: You may determine they don't need an IEP any longer, however, they continue to carry that label. That label does not go away?

Klein: For academic purposes, that label is removed, however, if somebody like the armed forces requested their educational records, it would indicate they were in special ed in fourth grade, even though they were no longer in it for the rest of their academic career.

Chairman Kelsch: Would, putting in this new classification, I hate to say, would it make your job easier or harder, because I don't know it would necessarily make your job easier, my guess is it would probably increase the work load, however, would we be able to, possibly, identify that there are behavioral disorders right now that are not falling under this category and are kind of slipping through the cracks. Would, putting this piece of legislation into effect, determine the criteria, would that be easier for you? Not easier for you? Good? Bad? Indifferent? What type of effect would it have on your special ed district?

Klein: Right now the focus is more on having the general ed population support those children with behavioral problems. By adding this, it would change the focus to more of a special education responsibility, and looking at that discipline in the education services to design the program and follow through on the program.

I would see that whenever a student had some behavioral issues, it would increase the amount of referrals to special ed and more testing and potentially more placements and with more placements, we would probably need some increase in program capacity, which would include space as well as staff. A concern would be that a behavioral issue would need very strict defining, so that we are not looking that, every time a child is truant, every time a child comes in with a diagnosis of ADD, or is belligerent to a teacher, because then we would have a scenario when we are labeling those behavioral students as disabled and doing a lot of testing and a lot of paperwork process to develop an individual education plan for students who I do not believe are truly disabled.

Chairman Kelsch: We'll close the hearing on HB1268.

Vote happened on 01/31/01 on tape #1

Page 9

House Education Committee

Bill/Resolution Number HB1268

Hearing Date 01/22/01

Chairman Kelsch: We will take up HB1268. What did the committee find out?

Hawken: The subcommittee recommends a do not pass.

Chairman Kelsch: Committee discussion.

Motion DO NOT PASS passes 15 YES 0 NO 0 ABSENT

Floor Assignment: Rep. Hawken

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1268 A

House Education Committee

☐ Conference Committee

Hearing Date 01/30/01

Type Number	Side A	Side B	Meter #
#1	X		122 to 304
Committee Clerk Signature <i>Juni Albert</i>			

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunsaker, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will now take up HB1268.

Rep. Hawken: I move a do not pass.

Rep. Mueller: Second.

Chairman Kelsch: Committee discussion.

The motion of DO NOT PASS passes 15 Yay 0 Nay 0 Absent.

Floor Assignment: Rep. Hawken.

FISCAL NOTE

Requested by Legislative Council
01/16/2001

Bill/Resolution No.: HB 1268

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The eligibility criteria for the currently used disability category of *emotional disturbance* vary in the special education units across the state. Some special education units have broader eligibility criteria that allow students who have behavioral disorders to be served more readily under the emotional disturbance category. The proposed bill would have little or no fiscal impact on their units. In other special education units there is a narrower set of criteria for emotional disturbance. One special education unit director from a large North Dakota community indicated that the addition of the term *behaviorally disturbed* would "easily double" the number of students that their unit currently serves under the existing category of emotional disturbance. For certain special education units that use the narrower eligibility criteria a doubling of the number of students in this disability category would obviously have a significant fiscal impact. Due to this variance in the special education units it is difficult to determine the total fiscal impact of this proposal without conducting more extensive research.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

None.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

None.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Bob Rullen	Agency:	Public Instruction
Phone Number:	328-2277	Date Prepared:	01/19/2001

Date: 1/30/01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1268

House House Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Hawken Seconded By Mueller

Representatives	Yes	No	Representatives	Yes	No
Chairman-RaeAnn G. Kelsch	✓		Rep. Howard Grumbo	✓	
V. Chairman-Thomas T. Brusegaard	✓		Rep. Lyle Hanson	✓	
Rep. Larry Bellew	✓		Rep. Bob Hunsakor	✓	
Rep. C.B. Haas	✓		Rep. Phillip Mueller	✓	
Rep. Kathy Hawken	✓		Rep. Dorvan Solberg	✓	
Rep. Dennis E. Johnson	✓				
Rep. Lisa Meier	✓				
Rep. Jon O. Nelson	✓				
Rep. Darrell D. Nottestad	✓				
Rep. Laurel Thoreson	✓				

Total (Yes) 15 Click here to type Yes Vote No 0 Click here to type No Vote

Absent 0

Floor Assignment Click here to type Floor Assignment Rep Hawken

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

REPORT OF STANDING COMMITTEE (410)
January 30, 2001 1:08 p.m.

Module No: HR-16-1914
Carrier: Hawken
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1268: Education Committee (Rep. R. Kelsch, Chairman) recommends DO NOT PASS
(15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1268 was placed on the
Eleventh order on the calendar.

2001 TESTIMONY

HB 1268

TESTIMONY ON HB 1268
HOUSE HUMAN SERVICES COMMITTEE
January 22, 2001
Department of Public Instruction

Madam Chairman and members of the committee:

My name is Bob Rutten and I am the Director of Special Education for the Department of Public Instruction. I can be reached at 328-2277. On behalf of the DPI, I am here to provide information regarding House Bill 1268 relating to the definition of a child or students with disabilities.

The office of special education within the Department of Public Instruction is charged with administration of supportive services to students with disabilities ages 3 through 21 in the schools of our state. A major responsibility of our office is to ensure compliance with the Individuals with Disabilities Education Act, better known as IDEA. This is the national legislation for special education first passed by Congress in 1975 and signed into law by President Ford. Under the IDEA the term *child with a disability* is defined as a:

Child evaluated in accordance with §§300.530-300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment, including blindness, emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education services.

For mental health disorders the schools of our state currently use the term *emotional disturbance* that appears in the IDEA and which is defined as follows:

- (i) *The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:*
 - (A) *An inability to learn that cannot be explained by intellectual, sensory, or health factors.*
 - (B) *An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.*
 - (C) *Inappropriate types of behavior or feelings under normal circumstances.*
 - (D) *A general pervasive mood of unhappiness or depression.*
 - (E) *A tendency to develop physical symptoms or fears associated with personal or school problems.*
- (ii) *The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.*

Each year the Department of Public Instruction gathers information about the numbers of students with disabilities who are receiving special education services. As of December 1, 1999, there were 973 students in North Dakota schools whose individualized education programs (IEPs) identified a primary disability of emotional disturbance. This number equals 7.15% of the total number of students who receive special education services.

As a point of reference, our neighboring state of Minnesota has adopted the term *emotional and behavioral disorders*. Initial analysis indicates that Minnesota's criteria is somewhat broader than North Dakota's and as a result a higher percentage of students in Minnesota receive services in this category of special education. As of December 1, 1999, there were 17,792 students in Minnesota schools whose individualized education programs (IEPs) identified a

primary disability of emotional behavioral disorder. This number equals 16.06% of the total number of students who receive special education services.

South Dakota, like North Dakota, uses the term *emotional disturbance*. Their criteria stipulates that "a student may not be identified as having an emotional disturbance if common disciplinary problem behaviors, such as truancy, smoking, or breaking school conduct rules, are the sole criteria for determining the existence of an emotional disturbance."

In preliminary consultation with a professor of special education and several special education administrators in the state the Department asked the question, how would the addition of the phrase "...or *behaviorally disturbed*" affect your evaluation process and services for students?" Responses varied. One director suspected there would be no impact from this wording change. One special education unit director from a large North Dakota community indicated that the addition of the term *behaviorally disturbed* would "easily double" the number of students that their unit currently serves under the existing category of emotional disturbance. These differing responses to this question are thought to result from variances in eligibility criteria from one special education unit to another. Some have narrower eligibility criteria while other units' criteria allow them to identify and serve larger numbers of students.