

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1142

2001 HOUSE EDUCATION

HB 1142

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1142

House Education Committee

☐ Conference Committee

Hearing Date 01/16/01

Tape Number	Side A	Side B	Meter #
#1	X		2655 to 4660
Committee Clerk Signature <i>Diana Gilbert</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 of HB1142. All testimony for the bill?

Bob Ruten: (Director of Special Education for DPI) Please refer to attached testimony.

Rep. Nottestad: What method has been used for the testing to determine whether that individual who says that he/she is special ed. truly was?

Ruten: I did have an opportunity to visit the educational services at the state penitentiary, and got my first real glimpse of what services were available and what was current practice. They do employ an educational psychologist, they also employ a teacher for students with specific learning disabilities and in my opinion, very committed educators. They are trying to help students. One of the concerns I asked about was, 'how do you know which students coming into

the prison actually do have disabilities'. They were really trying at that point to really enhance their own procedures for obtaining those from the communities from which the persons were incarcerated, so they do educational screening of sorts through their educational psychologist, and they really try to make an incentive program there for persons who are in prison. You can go and finish your high school degree or obtain the GED; that's to your advantage educationally, but also to in terms of this early release promotion they have also.

Rep. Nottestad: How common is it that people would be there that this law would affect?

Rutten: If I can recall accurately, when we were there at the end of '97, there were 108 prisoners between the ages of 18-21, and this represented 13% of the overall prison population, and at that time, they did not have any students identified as having an IEP, so we were trying to ascertain exactly your question. When we interviewed folks at the prison, they were implying that because they take such an individualized approach to education there anyway, they felt that this was not that great of a concern.

Rep. Nottestad: Is the prison, itself, concerned about this, or is just the DPI concerned about it?

Rutten: It's strictly a question for purposes of our state receiving our special education money from the United States government Dept. Of Education. It was their concern.

Rep. Nottestad: So, your communications with the prison, if this passes what they're going to be doing, us giving them all the help we can, will not change?

Rutten: No, at this point, we really have not further consulted with the prison staff as to how this would really change, but from our own observation, and interviews with them regarding their services, it's our impression that it should not change.

Rep. Haas: What happens to the incarcerated person if they were identified with an IEP?

Rutten: Yes, that is clear, under US Law Individuals with Disabilities Education Act. If that person were incarcerated, and wasn't identified, and did have an individualized educational program. Upon incarceration, through the age of 21, would be require to receive additional special educational services.

Rep. Haas: And who would pay for that?

Rutten: The educators at the prison now are state of ND employees, and they were the ones providing the service, and so there is conceivable some local responsibility, especially in assisting the prison staff to understand, what was the current status of those persons before they were incarcerated.

Chairman Kelsch: Would they have the prison have to pull in some kind of special education teacher in order to fill their IEP? Or would it just be the staff that's currently there?

Rutten: It was our sense, it's such a unique set of circumstances that I think it's in the formative stage as to who would be involved. We're assuming that the makeup of a services bill would be different.

Rep. Thoreson: You could probably change the IEP to allow for these people if they're qualified at that.

Rutten: I would agree.

Chairman Kelsch: We will close the hearing on HB1142. What are the wishes of the committee?

Rep. Nelson: I move a Do Pass

Rep. Mueller: Second.

Chairman Kelsch: Committee discussion?

Page 4

House Education Committee

Bill/Resolution Number HB1142

Hearing Date 01/16/01

Rep. Bellew: Section 2 on the first page defines a child with disabilities, and on the back, it says student with disabilities, is this being a little redundant?

Chairman Kelsch: The reason it's like this, you'll note it says, 'if HB1045 does not become effective'. This is similar to what we're doing with the rewrite with Title 15, so that will be cleaned up in that language.

The motion of DO PASS passes with 15 YES 0 NO 0 ABSENT.

Floor Assignment: Rep. Bellew

Date: 1/16/01  
Roll Call Vote #: }

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1142

House House Education Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep. Nesson Seconded By Rep. Mueller

Representatives	Yes	No	Representatives	Yes	No
Chairman-RaeAnn G. Kelsch	<input checked="" type="checkbox"/>		Rep. Howard Grumbo	<input checked="" type="checkbox"/>	
V. Chairman-Thomas T. Brusegaard	<input checked="" type="checkbox"/>		Rep. Lyle Hanson	<input checked="" type="checkbox"/>	
Rep. Larry Bellew	<input checked="" type="checkbox"/>		Rep. Bob Hunsakor	<input checked="" type="checkbox"/>	
Rep. C.B. Haas	<input checked="" type="checkbox"/>		Rep. Phillip Mueller	<input checked="" type="checkbox"/>	
Rep. Kathy Hawken	<input checked="" type="checkbox"/>		Rep. Dorvan Solberg	<input checked="" type="checkbox"/>	
Rep. Dennis E. Johnson	<input checked="" type="checkbox"/>				
Rep. Lisa Meler	<input checked="" type="checkbox"/>				
Rep. Jon O. Nelson	<input checked="" type="checkbox"/>				
Rep. Darrell D. Nottestad	<input checked="" type="checkbox"/>				
Rep. Laurel Thoreson	<input checked="" type="checkbox"/>				

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. Bellew

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

**REPORT OF STANDING COMMITTEE (410)**  
January 16, 2001 2:37 p.m.

**Module No: HR-06-1070**  
**Carrier: Bellew**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1142: Education Committee (Rep. R. Kelsch, Chairman) recommends DO PASS**  
(15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1142 was placed on the  
Eleventh order on the calendar.



2001 SENATE EDUCATION

HB 1142

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1142

Senate Education Committee

☐ Conference Committee

Hearing Date 02-28-01

Tape Number	Side A	Side B	Meter #
1		x	0 - 36.0
1 (3-5-01)	x		0 - 8.8
Committee Clerk Signature <i>Andrea Johnson</i>			

Minutes: CHAIRMAN FREBORG called the hearing on HB 1142 which relates to the definition of a child or student with disabilities.

**Testimony in support of HB 1142:**

BOB RUTTEN, Director of Special Education for DPI, distributed prepared testimony. (see attached). This is somewhat of a housekeeping bill. It clarifies whether ND State Law does or does not require that special education and related services be provided to incarcerated persons aged 18 through 21 who were not previously identified and given an IEP. This bill clearly states ND would not have to provide an IEP for those persons. However, education is being provided for incarcerated persons now, and the state penitentiary feels very strongly that their inmates need to be educated. Federal law does state that if a child does come into a facility with an existing IEP, it has to be continued. If the law is left as is and if there is a suspected disability, the evaluation process and IEP would have to be started. In answering questions, Mr. Rutten stated that when he visited the penitentiary, there were 830 incarcerated of which 103 inmates

were 18 - 21 years of age. On national average 10 - 12% of the population probably has a disability. Among the prison population, that percentage is much higher.

RAYLYNN LAUDERDALE, People First of ND, which is a self-advocacy program for people with disabilities, asks the committee to amend the bill and use People First language in describing people with disabilities. SENATOR CHRISTENSON said she would get the amendment using the People First language.

There was no opposition to the bill.

**The hearing was closed.**

**3/5/01, Tape 1, Side A, 0 -**

SENATOR CHRISTENSON presented an amendment that uses The People First language on lines 14 and 15. It states ...."an individual with mental retardation, with hearing impairment, deafness, deaf-blindness,"..... This does not change the definition, just the terms used.

**SENATOR CHRISTENSON moved the amendment. SENATOR FLAKOLL seconded.**

SENATOR COOK stated these amendments would also apply to Section II of the bill. Roll Call

**Vote: 7 YES. 0 NO. 0 Absent. Amendment adopted.**

**SENATOR WANZEK moved a DO PASS As Amended. Seconded by SENATOR**

**CHRISTENSON.** SENATOR O'CONNELL has a concern that there may be some students that could fall through the cracks with the age gap. SENATOR CHRISTENSON stated this bill is not dealing with policy change with the rules at the prison.

**Roll Call Vote: 6 YES. 1 NO. 0 Absent. Motion Carried.**

**Carrier: SENATOR CHRISTENSON**

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1142

Page 1, line 14, remove "an individual", overstrike "who", and remove "is"

Page 1, line 15, overstrike "mentally retarded,", overstrike "hearing", remove "impaired", and overstrike ", deaf, deaf-blind, speech or language"

Page 1, line 16, overstrike "impaired, visually impaired," and overstrike "emotionally disturbed,"

Page 1, line 17, overstrike "orthopedically impaired,", remove "or", overstrike "autistic,", and after "or" insert "an individual with mental retardation, hearing impairment, deafness, deafness-blindness, a speech or language impairment, a visual impairment, emotional disturbance, and orthopedic impairment, or autism,"

Page 1, line 19, replace "Child with disabilities" with "The term" and replace "a child aged" with "an individual who is at least eighteen but not yet twenty-one years of age and incarcerated in an adult correction facility unless, in the individual's last educational placement prior to incarceration, the individual was identified as being a child with a disability and had an individualized education program or services plan"

Page 1, remove lines 20 through 22

Page 1, line 23, remove "program"

Page 2, line 9, overstrike "who is mentally retarded, hearing impaired, deaf, deaf-blind,"

Page 2, overstrike line 10

Page 2, line 11, overstrike "orthopedically impaired, or autistic" and insert immediately thereafter "with mental retardation, hearing impairment, deafness, deafness-blindness, a speech or language impairment, a visual impairment, emotional disturbance, an orthopedic impairment, or autism"

Page 2, line 12, replace "Student with" with "The term does not include an individual who is at least eighteen but not yet twenty-one years of age and incarcerated in an adult correction facility unless, in the individual's last educational placement prior to incarceration, the individual was identified as being a student with a disability and had an individualized education program or services plan"

Page 2, remove lines 13 through 15

Page 2, line 16, remove "not have an individualized education program"

Renumber accordingly

Roll Call Vote #: /

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1142**

Senate	Education	Committee
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☐ Subcommittee on \_\_\_\_\_

or

☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Adopt Amend

Motion Made By Sen. Christensen Seconded By Sen. Flakoll

[illegible]

Total (Yes) 7 No 0

Absent

## Floor Assignment

If the vote is on an amendment, briefly indicate intent: *Language in conformance with the People's First Language.*

Roll Call Vote #: 2

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 114/2**

Senate	Education	Committee
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☐ Subcommittee on \_\_\_\_\_

or

☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DPA

Motion Made By Sen. Wanzick Seconded By Sen. Christenson

[illegible]

Total (Yes) 6 No 1

Absent 0

Floor Assignment Ann Christensen

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

**REPORT OF STANDING COMMITTEE**

**HB 1142: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1142 was placed on the Sixth order on the calendar.

Page 1, line 14, remove "an individual", overstrike "who", and remove "is"

Page 1, line 15, overstrike "mentally retarded,", overstrike "hearing", remove "impaired", and overstrike ", deaf, deaf-blind, speech or language"

Page 1, line 16, overstrike "impaired, visually impaired," and overstrike "emotionally disturbed,"

Page 1, line 17, overstrike "orthopedically impaired,", remove "or", overstrike "autistic,", and after "or" insert "an individual with mental retardation, hearing impairment, deafness, deafness-blindness, a speech or language impairment, a visual impairment, emotional disturbance, and orthopedic impairment, or autism,"

Page 1, line 19, replace "Child with disabilities" with "The term" and replace "a child aged" with "an individual who is at least eighteen but not yet twenty-one years of age and incarcerated in an adult correction facility unless, in the individual's last educational placement prior to incarceration, the individual was identified as being a child with a disability and had an individualized education program or services plan"

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Page 2, line 9, overstrike "who is mentally retarded, hearing impaired, deaf, deaf-blind,"

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Page 2, line 12, replace "Student with" with "The term does not include an individual who is at least eighteen but not yet twenty-one years of age and incarcerated in an adult correction facility unless, in the individual's last educational placement prior to incarceration, the individual was identified as being a student with a disability and had an individualized education program or services plan"

Page 2, remove lines 13 through 15

Page 2, line 16, remove "not have an individualized education program"

Renumber accordingly

2001 TESTIMONY

HB 1142



**TESTIMONY ON HB# 1142**  
**HOUSE EDUCATION COMMITTEE**  
**January 16, 2001**  
**by Bob Rutten, Director of Special Education**  
**328-2277**  
**Department of Public Instruction**

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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 speak in support of House Bill 1142 relating to the definition of a child or student with disabilities.

In 1999 the North Dakota Department of Public Instruction prepared a report for the U.S. Department of Education regarding grant funding for the provision of special education and related services. This report was entitled the *Individuals with Disabilities Education Act Part B Eligibility Document*. This document is the basis for our state to receive grant funding for special education from the Department of Education.

In late June last year the North Dakota Department of Public Instruction received notification that our eligibility document was conditionally approved. In its analysis of our state's document the Office of Special Education Program identified several issues that required further clarification or action. The bill before you this morning is one such issue that required further action.

Our original document submitted to the Department of Education began with the sentence "North Dakota assures that all children with disabilities ages 3 through 21 have the right to a free appropriate public education (FAPE)." However, in the Individuals with Disabilities Education Act as reauthorized in

1997 there are exceptions allowed for certain ages in the provision of public education to persons with disabilities. One such exception is for:

"Students aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities, who, in the last educational placement prior to their incarceration in an adult correctional facility---(A) were not actually identified as being a child with a disability under §300.7; and (B) did not have an IEP under Part B of the Act."

*Individual Educational Program*

Since we had earlier noted that all children with disabilities ages 3 through 21 in our state did have the right to a free appropriate public education, the Department of Education asked that we revise our eligibility document to clarify whether North Dakota State Law did or did not require that special education and related services be provided to this group of incarcerated persons aged 18 through 21. The Department of Education wrote "without such a law, ND is required to serve all students with disabilities in adult correctional facilities who are within these ages for which FAPE is made available to all."

It is important to note that the North Dakota State Penitentiary does currently provide extensive individualized educational services to inmates. State penitentiary policy provides that each incarcerated person who doesn't have a high school diploma or graduate equivalency diploma (GED) may attend classes to hasten his/her date of release. Also, the education staff at the state penitentiary currently provides special education services to those persons incarcerated between ages eighteen and twenty-one who, prior to incarceration, were identified as a "child with a disability."

If our North Dakota Legislative Assembly elects to pass this bill subsection 4 of section 15.1-32-01 of the North Dakota Century Code would clarify that the definition "*Student with disabilities*" does not include a student aged eighteen

*through twenty-one who is incarcerated in an adult correctional facility who, in the last educational placement prior to incarceration, was not identified as being a student with a disability and did not have an individualized education program."*

The Department of Public Instruction respectfully requests that this change in North Dakota Century Code occur.

**TESTIMONY ON HB# 1142**  
**SENATE EDUCATION COMMITTEE**  
**February 28, 2001**  
**by Bob Rutten, Director of Special Education**  
**328-2277**  
**Department of Public Instruction**

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Mr. Chairman and members of the committee:

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