

2011 HOUSE EDUCATION

HB 1073

2011 HOUSE STANDING COMMITTEE MINUTES

House Education Committee
Pioneer Room, State Capitol

HB 1073

01/10/11

12692

☐ Conference Committee

Committee Clerk Signature



MINUTES:

Chairman RaeAnn Kelsch: We will open the hearing on HB 1073.

Rep. Phillip Mueller – sponsor: You have before you a bill that has been requested by a number of special education district directors in southeast North Dakota. The basics of the bill clarify a few provisions and terms in the Century Code 15.1-32-01. On page 1 line 22 it removes “mental retardation” and replaces the term with “intellectual disability.” It is a more accurate term and keeps with what the IDEA (Individuals with Disabilities Education Act). Page 2 line 20 has medical professionals and it is proposed that the term be taken out of the code. Most individual education plans don’t involve medical professionals but the current law requires their presence in the drawing up of an individual education plan. They are also not required by the Federal Government, they can be difficult to get at times and rather expensive. Page 2 lines 28-31 are also being changed in the bill. Current law requires that all parental insurance options be exhausted in the process of setting together and IEP. Federal law says that all services for IDEA students be free to the parents. Requiring the use of insurance could be a financial burden to parents. Replacement language says parents need to agree to the use of their insurance to help pay for the cost.

Chairman RaeAnn Kelsch: Questions?

Vice Chair Lisa Meier: Do you know the difference between a mental disability and an intellectual disability?

Rep. Phillip Mueller: No. I think intellectual disability covers a broad range while mental disability is more narrow.

Chairman RaeAnn Kelsch: I’m guessing one of the special education directors can better answer that.

Rep. Karen Rohr: Regarding line 20 on page 2, the medical professionals you are asking to have deleted. Could you just elaborate on what their role was in the past?

Rep. Phillip Mueller: I think there are people here that are better able to talk about that. If I understand it, there are circumstances where these folks have more than just an

intellectual disability, such as a physical disability, and that is where I think the medical professional comes in.

Chairman RaeAnn Kelsch: Any further questions? Any other bill sponsors wishing to testify?

Sen. Heckaman – sponsor: Testimony. Attachment 1.

Chairman RaeAnn Kelsch: Questions? Any other bill sponsors?

Rep. John Wall: I think the changes are justified and lend support which reflects what is being done today.

Chairman RaeAnn Kelsch: Question? Any other sponsors what to testify? Support?

Carol Jabs: It was at the request of people in our area that these sponsors drafted the bill. The bill came about as we were looking through the Century Code and discovered there was language in the code that no longer met the standards under the federal law IDEA. There were some requirements in the Century Code we could not meet and meet the requirements under the IDEA at the same time. Let us take a look at the changes we recommended. On page 1 we have all been in support of this change in law; a change from "mental retardation" to something else. On October 5, 2010, President Obama signed a law or a rule obligating all federal agencies to start using "intellectual disability" which made this an opportune time to introduce this to ND legislation. On page 2 when we look at the members that make up the multidisciplinary team, medical professionals are not required under federal IDEA. In my experience it is only under request that medical professionals come to a IEP meeting. As far as the insurance option it has been confusing for a long time. We have a law that says we need to exhaust parental insurance options before the special education units or school districts pay for any medical evaluation. Federal law does not allow that. Under federal IDEA we cannot access parental insurance without parental permission. Although we do sometimes ask permission to access the insurance, some parents refuse. When it is possible we do access that insurance because we cannot require those folks to give us access. This is a piece of law that needs to be cleaned out. Finally on page 3 where it talks about all the disabilities, any disability is covered under the thirteen categories recognized by IDEA and we don't need to break them down. Questions?

Vice Chair Lisa Meier: Are you aware how much a district actually picks up for the cost for the individuals that need services? Does the district automatically pick up the cost or does that it automatically go to the parents?

Carol Jabs: If a parent is expected to pick up a cost for any service they have to sign a release for us to do that. So I would say 90 percent of any evaluations requested by a school team are paid for by the special education unit/school district.

Chairman RaeAnn Kelsch: Questions? Support?

Roxane Romanick: Testimony. Attachment 2.

Chairman RaeAnn Kelsch: Questions? Support?

Veronica Zietz – Executive Director, The Arc of Bismarck: Testimony. Attachment 3.

Chairman RaeAnn Kelsch: Questions?

Rep. Phillip Mueller: You referenced “medical professional” be omitted from the language. Are you aware of any circumstances where the IEP was done and should have had a medical professional involved and did not?

Veronica Zietz – Executive Director, The Arc of Bismarck: I don’t know any specific instance of that. I wonder if removing this could be detriment to having them involved in the process. I think it’s great that the opportunity is still there and remains there in some way.

Rep. John Wall: I have a question on section 2. Do you know when medical professionals are invited to IEP? Do they normally show up or not?

Veronica Zietz – Executive Director, The Arc of Bismarck: I cannot speak specifically to that but from what I do know it sounds like they show up on invite only.

Chairman RaeAnn Kelsch: Further questions? Support?

Jim Jacobson – Director, ND P&A: Testimony. Attachment 4.

Chairman RaeAnn Kelsch: Committee members just so you know he did provide the section of IDEA on second page of testimony.

Rep. Brenda Heller: I noticed you didn’t comment on removing “medical professionals” out of that one section and I was wondering what you thought about that?

Jim Jacobson – Director, ND P&A: There is a federal law that mandates that. I would like to add a comment to what Rep. Mueller said. Right now federal law allows for any team member to invite anybody with knowledge of the child. My experience is when medical professionals do have something to contribute; it’s more often contributed through the process as a report.

Rep. Karen Rohr: Who determines the member of the multidisciplinary team?

Jim Jacobson – Director, ND P&A: I’m not a special education expert but if you look at the law the determination is really based on the child. Every team has the potential to be different in composition.

Rep. Karen Rohr: Is the statement fluid enough so that if a medical professional or a healthcare professional wants to be invited that the option would be there for parents or the school district?

Chairman RaeAnn Kelsch: Tracy why don’t you come and respond to the question? Thank you Jim for your testimony.

Tracy Klein – MSSEU: The team is prescribed in the federal regulations and its made up of a parent, staff, and the child. The remainder of the team is determined by those core team members. The change is to avoid having someone there that is required to be there that doesn't really need to be.

Chairman RaeAnn Kelsch: What it should be is if a parent feels it is important for a medical professional to be there then they should be there. In the majority of the cases it is just not necessary to have someone there and I have been told that it is somewhat difficult to get a medical professional to attend as well. If they aren't needed it probably becomes more of a burden to schedule the IEP meeting and to get them there.

Rep. Karen Rohr: I guess the two points that have me concerned is medical professionals also includes physical therapists, occupational therapists?

Tracy Klein – MSSEU: Medical professionals refers more to your PH. D. The therapists aren't required to be there, but if they are involved in that child's assessment then they are a member of the team.

Rep. Karen Rohr: My second concern would be that the student's parents be away that they have that option to invite that individual.

Tracy Klein – MSSEU: That's prescribed in federal regulations. Parents have that option.

Rep. Bob Hunsakor: There isn't any question that the IEP team would want proper medical advice for students. With that in mind, I find it hard to believe that they wouldn't find someone that has medical capacity and then move ahead without that proper advice.

Rep. Joe Heilman: The concern about medical professionals was that they are not left out if the need is there, so maybe in the bill we could put in language that would mention them but wouldn't require them to be there.

Tracy Klein – MSSEU: What you are going to encounter will be a plethora of people you don't need there. I don't know you if you want to do an exhaustive list but I'd advise against it.

Rep. Joe Heilman: To my second point on legal guardian. Should that be placed in there or is the term parent sufficient?

Tracy Klein – MSSEU: Generally parent refers to and/or legal guardian but I don't see any harm in including it.

Vice Chair Lisa Meier: What percent of your students' special needs are actually picked up by your district?

Tracy Klein – MSSEU: About 90 – 95 percent.

Chairman RaeAnn Kelsch: Further questions? Support?

Gerry Teevens – DPI: Testimony. Attachment 5.

Chairman RaeAnn Kelsch: Questions? Support of 1073? Opposition? We will close the hearing on HB 1073.

2011 HOUSE STANDING COMMITTEE MINUTES

House Education Committee
Pioneer Room, State Capitol

HB 1073
01/12/11
12805

☐ Conference Committee

Committee Clerk Signature



MINUTES:

Chairman RaeAnn Kelsch: We will open on HB 1073. Rep. Joe Heilman had an idea on an amendment on the bill and the people I heard from thought it was a valid item for amendment. Rep. Joe Heilman would you explain?

Rep. Joe Heilman: This is relating to section 2 line 20 on page 2. When we talked about medical professionals there was concern that if we take the wording out, parents may not understand that it might be to their benefit to have a medical professional present. We didn't want to require it so we used some new language that would suggest the possibility or in their best interest to have a medical professional there but it is not a requirement.

Chairman RaeAnn Kelsch: If you would please read the amendment.

Rep. Joe Heilman: If a school district has evidence of a student's disability the school district shall put in a multidisciplinary team. The team must include educational professionals and the student's parent. It may include medical professionals. The team shall share assessment information etc. So that would be my offered amendment to that section of the bill.

Chairman RaeAnn Kelsch: So we have a motion on the amendment. Is there a second?

Rep. Karen Rohr: Second.

Chairman RaeAnn Kelsch: Committee discussion. I think everyone understands what this does. It doesn't completely eliminate medical professionals but would state that parents have that option. Are there any further questions on the amendment? We will take a voice vote on the amendment. All those in favor? Opposed? Motion Carried.

Voice Vote: 15 yeas, 0 nays, 0 absent.

Chairman RaeAnn Kelsch: Rep. Karen Karls do you have an amendment as well?

Rep. Karen Karls: Roxanne Demonic from Designer Genes asked that we consider modifying section 3. Section 3: Each school district shall obtain parental consent before accessing any family insurance options whether public or private to pay for the costs of

determining a student's medically related disability and to pay for the provision of related services for the student.

Chairman RaeAnn Kelsch: Is that a motion?

Rep. Karen Karls: Motion.

Chairman RaeAnn Kelsch: Is there a second?

Rep. Mike Schatz: Second.

Chairman RaeAnn Kelsch: Committee discussion.

Rep. Phillip Mueller: What is the between public and private?

Rep. Karen Karls: I assume having medical insurance vs. Medicaid.

Chairman RaeAnn Kelsch: That is correct. Any further discussion on the purposed amendment? All in favor? All opposed? Motion carried.

Voice Vote: 15 yeas, 0 nays, 0 absent.

Chairman RaeAnn Kelsch: We have now amended HB 1073. What are the wished of the committee?

Rep. Karen Karls: Motion Do Pass as amended.

Chairman RaeAnn Kelsch: We have a motion do pass as amended. Is there a second?

Rep. Mark Sanford: Second.

Chairman RaeAnn Kelsch: Committee discussion. Hearing none we will take roll on a DO PASS as Amended on HB 1073. The Do Pass motion as amended passed by a vote of 15-0. We will close on HB 1073.

15 YEAS 0 NAYS 0 ABSENT DO PASS as Amended
CARRIER: Rep. Mark Sanford

Date: 1-12-11
Roll Call Vote #: Voice Vote #1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1073

House EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By REP. HEILMAN Seconded By REP. ROHR

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	X		Rep. Hanson	X	
Vice Chairman Meier	X		Rep. Hunskor	X	
Rep. Heilman	X		Rep. Mock	X	
Rep. Heller	X		Rep. Mueller	X	
Rep. Johnson	X				
Rep. Karls	X				
Rep. Rohr	X				
Rep. Rust	X				
Rep. Sanford	X				
Rep. Schatz	X				
Rep. Wall	X				

Total (Yes) 15 No 0

Absent 0

Floor Assignment _____

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

VOICE VOTE

Date: 1-12-11
Roll Call Vote #: Voice Vote #2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1073

House EDUCATION

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By REP. KARLS Seconded By REP. SCHATZ

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	X		Rep. Hanson	X	
Vice Chairman Meier	X		Rep. Hunsakor	X	
Rep. Heilman	X		Rep. Mock	X	
Rep. Heller	X		Rep. Mueller	X	
Rep. Johnson	X				
Rep. Karls	X				
Rep. Rohr	X				
Rep. Rust	X				
Rep. Sanford	X				
Rep. Schatz	X				
Rep. Wall	X				

Total (Yes) 15 No 0

Absent 0

Floor Assignment _____

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

VOICE VOTE

January 12, 2011

VK
1/13/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1073

Page 2, line 20, overstrike "consisting of" and insert immediately thereafter ". The team must include"

Page 2, line 21, overstrike the first "to" and insert immediately thereafter "and may include medical professionals. The team shall"

Page 2, line 30, replace "public benefits or insurance" with "any family insurance options, whether public or private."

Page 2, line 31, overstrike "in paying" and insert immediately thereafter "to pay"

Renumber accordingly

Date: 1-12-11
Roll Call Vote #: 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1073

House EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By VICE CHAIRMAN MEIER Seconded By REP. SANFORD

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	X		Rep. Hanson	X	
Vice Chairman Meier	X		Rep. Hunsakor	X	
Rep. Heilman	X		Rep. Mock	X	
Rep. Heller	X		Rep. Mueller	X	
Rep. Johnson	X				
Rep. Karls	X				
Rep. Rohr	X				
Rep. Rust	X				
Rep. Sanford	X				
Rep. Schatz	X				
Rep. Wall	X				

Total (Yes) 15 No 0

Absent 0

Floor Assignment REP. SANFORD

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

REPORT OF STANDING COMMITTEE

HB 1073: Education Committee (Rep. R. Kelsch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1073 was placed on the Sixth order on the calendar.

Page 2, line 20, overstrike "consisting of" and insert immediately thereafter "The team must include"

Page 2, line 21, overstrike the first "to" and insert immediately thereafter "and may include medical professionals. The team shall"

Page 2, line 30, replace "public benefits or insurance" with "any family insurance options, whether public or private,"

Page 2, line 31, overstrike "in paying" and insert immediately thereafter "to pay"

Renumber accordingly

2011 SENATE EDUCATION

HB 1073

2011 SENATE STANDING COMMITTEE MINUTES

Senate Education Committee
Missouri River Room, State Capitol

HB 1073
March 9, 2011
15146

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to special education.

Minutes:

See "attached testimony."

Vice Chair Schaible called the meeting to order on HB 1073; no fiscal note attached.

Senator Heckaman, District 23 introduced the bill as a co-sponsor. Earlier worked on a bill that had similar language changes; this would change the term "mental retardation" to the same as earlier to "intellectual disability" and is a softer and more comfortable word to use in the public. Kinder and gentler word for those with that type of disability. On the first page, line 22 that terminology is changed there. In earlier discussion on this bill, she understood that's changed in a section of law there, and same as the bill and would change it through the code. Council works and changes the terminology in other areas of the code. On the second page in Section 2 this is a change that came from a special education unit and would agree with the change. Line 19 it talks about a student coming in with a disability that you will convene a multidisciplinary team to review the student's needs. If they come with a disability they probably will have an IEP (individual education plan) and the school needs to review that to see what services are appropriate for the student, if any. Types of accommodations or modifications the student may need. As listed the team must have educational professionals; medical professionals was crossed out here and the reason is that sometimes it is very difficult to get a medical professional that knows the student and is available to come to an IEP meeting. There are occasions where it is important to have them there. The terminology was changed from "must include" to "may include" medical professionals. There may be times when the expertise is needed or a report from that individual. If no one in the school is equipped to handle a medical issue, may need some consultation services from a medical professional. Then it said they shall share assessment information related to the student's disability—that would be on a confidential basis. You will share some that information with some of the other staff in the school that may not have attended the meeting and would be interacting with that student.

On the insurance option; each school shall obtain parents consent before accessing any family insurance options—whether public or private, to pay for the cost. Right now every school district across the state access parents' insurance first. Not as strong about getting parents' permission on this, but don't think there would be too many instances where

parents would deny permission to use their medical provider. A lot of these services if a student is assessed out of your own district, and send them to some other place for assessment their insurance will pay most of cost. What insurance doesn't pay then the school will pay for. If a parent requests an outside evaluation, it is different.

Senator Freborg: on line 22, page 1 is the language change universal? **Senator Heckaman:** Think that relates to the federal law right now and how that will be changing. That is why we want that changed in code.

Veronica Zeitz, Executive Director, The Arc of Bismarck testified in favor of HB 1073. (#1 Testimony)

Gerry Teevens, Assistant Director of Special Education, DPI testified in favor of the bill (#2 Testimony)

Vice Chair Schaible: This multi-disciplinary team it says that the school or the parent can agree on additional people. That just means if a school would like to add a different type of professional people then that person would be on the team. Just like if a parent wanted additional people to be on the team? **Gerry Teevens:** That would be a decision made at the IEP team meeting; this individual is invited and the team felt they should be a regular member of the team. Sometimes someone is invited to provide information but the team may not feel they need to be a regular member of the team.

Cathy Haarstad, Executive Director, Pathfinder Parent Center and parent of a child with an intellectual disability testified in favor of HB 1073 (#3 Testimony)

Senator Heckaman: The change in wording would not change the criteria schools use to place the student, correct? **Cathy Haarstad:** Believes it would not; as a parent the term mental retardation has been around a long time. Have a master's degree in education and viewed that as a scientific name for this. Provided a reason why she realized the term was disturbing to her.

No further testimony in favor; no opposition. Hearing closed.

Senator Luick moved a Do Pass to HB 1073; second by **Senator Heckaman** (noted that this bill parallels the one passed out earlier by the Senate) Motion carried 5-0-2. Senator Heckaman will carry the bill.

Date: 3/9/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1073

Senate Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Sen Luick Seconded By Sen Heckaman

Senators	Yes	No	Senators	Yes	No
Chairman Layton Freborg	X		Senator Joan Heckaman	X	
Vice Chair Donald Schaible	X		Senator Richard Marcellais	X	
Senator Tim Flakoll		ab			
Senator Gary A. Lee		ab			
Senator Larry Luick	X				

Total (Yes) 5 No 0

Absent 2

Floor Assignment Sen. Heckaman

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

REPORT OF STANDING COMMITTEE

HB 1073, as engrossed: Education Committee (Sen. Freborg, Chairman) recommends
DO PASS (5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed HB 1073
was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1073

HB 1073-Relating to special education

House Education Committee-

January 10, 2011

Good Morning Madam Chairman and members of the House Education Committee. I am Senator Joan Heckaman from New Rockford and I represent District 23.

I am here this morning to support HB 1073. I have just a few words concerning the sections addressed in this bill.

Page 1 line 22. I support the change of the term "Mental Retardation", replacing it with intellectual disability. I have 3 different special education credentials-one being in Mental Retardation. It has always seemed like such a harsh term. So I support the change of this wording. I would hope this change is wording also moves to Education Standards and Practices and other areas of the Department of Public Instruction that may currently use the term "Mental retardation"

Page 2 line 20: I support the removal of medical professionals from the IEP team. There certainly are times when the IEP team would invite medical professionals or others with information pertinent to the case to sit in on the team meeting. So removing this wording would not necessarily remove a medical professional from serving on the team if asked. What this does is remove the requirement that a medical professional attend ALL IEP team meetings.

Section 3- lines 28-31 are more of a gray area. Currently the law states that first line of payment is addressed from Parents' insurance. I don't know how much difficulty it will be to get "consent" to access public benefits or insurance, but I do think it needs to be done and will generate some discussion in this committee

Page 3 line 9 I am in total agreement that this is a positive change and does not affect any substantive changes in law.

That concludes my comments and I would stand for any questions.

Public Testimony on HB 1073
House Education Committee
1-10-11

Chairperson Kelsch and Members of the House Education Committee:

My name is Roxane Romanick and I live in Bismarck, ND. Today, I am providing testimony as a representative of Designer Genes of North Dakota. Designer Genes is a Down syndrome support organization consisting of 250 members across the state of North Dakota, some of them who are adults with Down syndrome.

We are strongly in favor of the language change from "mental retardation" to "intellectual disability" as stated in the proposed legislation. We further ask this committee to be diligent in the use of "people first" language in all of the legislation that comes before you.

Today as we speak my daughter, who has Down syndrome, sits in a public school classroom in ND. She is not "pegged" into a specific type of classroom because she was determined to have a certain level of mental retardation, but instead her teachers have carefully looked at the specific learning challenges that she has and work to find modifications and accommodations so that she can learn along side her peers. This is a very different philosophy than just labeling someone with an all-inclusive diagnosis. We need to congratulate those schools in our ND community that are working to make sure everyone has access to our state's standards and benchmarks.

It is our hope that changing language will also help promote an attitude change towards people with intellectual disabilities and that our communities as a whole will see the incredible potential that persons with Down syndrome and other disabilities bring to our world.

Thank you for your time.

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Testimony HB 1073 House Education Committee January 10, 2011

Good morning Chairperson Kelsch and members of the Education Committee. My name is Veronica Zietz (#99); I am the Executive Director at The Arc of Bismarck and am here today representing both The Arc of Bismarck and The Arc of Cass County. The Arc is an organization that provides education and advocacy to people with disabilities to foster empowerment and full inclusion in the community.

House Bill 1073, Section 1 changes the term "mental retardation" to "intellectual disability" and The Arc is strong supporter of this modification. It is necessary to strike this archaic language from state law and provide individuals with intellectual disabilities with the dignity they deserve. As you may be aware there is a bill in the Senate (2142) that is also promoting this terminology change. People First Language and the elimination of words that have become derogatory are both widely supported by people with disabilities, families and organizations. This is shown through the passage of more comprehensive federal legislation (Rosa's Law) and comparable legislation in other states all of which change outdated terminology.

House Bill 1073, Section 2 omits medical professionals from a student's IEP team. I am concerned that this change could do a disservice to a student with a disability. Medical professionals can often provide expertise into an individual's health, allowing them the opportunity to provide input and suggestions which could enhance an individual's learning. This can hugely affect the behavior of a student with a disability and ultimately the success of their education.

House Bill 1073, Sections 3 and 4 hold positive changes for students with a disability and their families. If enacted, Section 3 will allow more options for families to allocate for health services that a student with a disability may need. Allowing access to public benefits in addition to private insurance will likely be less of a hardship for families. Finally, Section 4 has minor changes which update language to make the statement more inclusive.

Thank you for your time and attention.

House Bill 1073

House Education Committee

January 10, 2011

Testimony of Jim Jacobson
ND Protection and Advocacy Project

Chair Kelsch and members of the House Education Committee, I am Jim Jacobson, Director of Program Services for the ND Protection and Advocacy Project (P&A). P&A is Federal and State funded disability rights protection agency.

I am here today to testify in support of House Bill 1073. One of P&A's goals is to promote community education and awareness of disability related issues. For many years P&A has joined other groups in promoting the "People First" philosophy in language and legislation. The term "mental retardation" has evolved to be used as a derogatory slang, not a diagnostic determination. This carries a negative stigma and its use has been eliminated in federal law and in laws in numerous other states. P&A supports the change proposed in HB 1073 that brings ND State Law in line with the use of non-stigmatizing language.

P&A also supports the amendment proposed in Section 3 of HB 1073. This amendment will help ensure that ND State Law is consistent with Federal Law in providing children with disabilities a truly Free Appropriate Public Education (FAPE). I have attached a P&A memorandum citing relevant federal regulations for your information.

Chair Kelsch and members of the House Education Committee, thank you for the opportunity to testify in support of HB 1073. I would be happy to answer any questions.

Public Law 108-446

The Individuals with Disabilities Education Improvement Act of 2004

Applicable Regulations for IDEA 2004

34 C.F.R. § 300.154

....

- (d) Children with disabilities who are covered by public benefits or insurance
- (1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, **except** as provided in paragraph (d)(2) of this section.
 - (2) With regard to services required to provide FAPE to an eligible child under this part, the public agency—
 - (i) **May not require** parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;
 - (ii) **May not require** parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;
 - (iii) **May not** use a child's benefits under a public benefits or insurance program if that use would—
 - (A) Decrease available lifetime coverage or any other insured benefit;
 - (B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
 - (C) Increase premiums or lead to the discontinuation of benefits or insurance; or
 - (D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and
 - (iv)
 - (A) **Must obtain parental consent**, consistent with §300.9, each time that **access to public benefits or insurance** is sought; and
 - (B) Notify parents that **the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.**

**TESTIMONY ON HB 1073
HOUSE EDUCATION COMMITTEE
January 10, 2011
Department of Public Instruction**

Madam Chairman and members of the committee:

My name is Gerry Teevens and I am the Assistant Director of Special Education for the Department of Public Instruction. I am here to speak in support of HB 1073.

Amending the terminology of the disability category of 'mental retardation' to 'intellectual disability' is consistent with federal legislation commonly known as Rosa's law, signed into law on October 5, 2010 by President Obama. This bill changes references in many Federal statutes that currently refer to "mental retardation" to refer, instead, to "intellectual disability". This bill will substitute outdated, stigmatized terms in federal health, education, and labor laws.

The Department has had concerns for several years with the terminology of mental retardation. There have been inconsistent practices in the field. The Department has been consulting with the Department of Human Services about another bill, SB 2142 that proposes to amend and reenact sections of the Century Code related to changing "mental retardation" to "intellectual disability" and "mentally retarded" to "intellectually disabled".

This terminology change would not impact service, eligibility, or quality of special education services, but would promote more respectful terminology in referring to individuals with cognitive delays.

As we are all aware, people with intellectual disabilities and their families have expressed concerns about the use of the term “mental retardation” in legislation, policy and practices used throughout the United States.

During the 2009-10 school year, the ND *I.D.E.A. State Advisory Committee* in its advisory capacity to the ND Department of Public Instruction, recommended that the Department of Public Instruction encourage the U.S. Department of Education to replace the term “mental retardation” with “intellectual disability,” and to work with Congress to modify Federal education statutes, policies, regulations and guidelines regarding this language. Discussion among parents and professionals on the committee focused on these key challenges associated with the use of this term.

- Testimony from families about the negative and hurtful nature of the term “mental retardation”, which is strongly associated with the slur “retard,” that is now commonly used in many U.S. communities, especially among young people in school settings.
- The inaccuracy of the term “mental retardation,” as a scientific descriptor; which may imply that if mental abilities are “retarded,” people are somehow unable to learn.
- The reluctance of many educators to identify a student’s primary disability as “mental retardation;” knowing that it will be rejected by their parents and thus making it difficult to secure needed special education services for the student.
- An awareness of the need to listen to the disability community; as recipients of special education services and graduates who have received a free and appropriate public education, they have expressed their preference to be considered as people first; and to be treated with dignity and respect.

- A sense of humility in understanding how words both shape perception and influence thoughts and behaviors that limit individual growth and place in society.

A year ago, a letter from the North Dakota Department of Public Instruction with those recommendations to replace the term “mental retardation” with “intellectual disability,” was sent to the Assistant Secretary for Special Education and Rehabilitative Services. The letter was an expression of support for the federal legislation later signed into law by President Obama as Senate Bill 2781.

The North Dakota Department of Public Instruction also supports the amendment of the section 15.1-32-13 of the North Dakota Century Code which modifies the language regarding Related Services and insurance options. This amendment aligns the North Dakota Century Code with the 2006 IDEA regulations at 34.CFR 300.154(e)(1). The federal regulations state that a school district “may access a parent’s private insurance proceeds only if the parent provides informed consent. According to 34 CFR 300.9 “consent” means:

- That the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication.
- That the parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes the activity and lists the records (if any) that will be released and to whom.
- The parent understands that the granting of consent is voluntary and may be revoked at any time.

Madam Chairman that concludes my testimony. I would be happy to answer any questions the committee may have.



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Testimony of Support House Bill 1073
Senate Education Committee
March 9, 2011

Good morning Chairman Freborg and members of the Senate Education Committee. My name is Veronica Zietz (#99); I am the Executive Director at The Arc of Bismarck. I am here today representing both The Arc of Bismarck and The Arc of Cass County. The Arc is an organization that provides education and advocacy to people with disabilities to foster empowerment and full inclusion in the community.

House Bill 1073 makes several positive changes to current century code relating to special education. First, Section 1 changes the term "mental retardation" to "intellectual disability" and The Arc is strong supporter of this modification. It is necessary to strike this archaic language from state law and provide individuals with intellectual disabilities with the dignity they deserve. As you may be aware Senate Bill 2142 also promotes this terminology change. People First Language and the elimination of language that perpetuates stereotypes are widely supported by people with disabilities, families and organizations. This is shown through the passage of more comprehensive federal legislation (Rosa's Law) and comparable legislation in other states all of which alter outdated terminology.

A second positive change presents itself in Section 2, which creates flexibility in the composition of an IEP team. Initially, this bill removed medical professionals from a student's IEP team and fortunately this was remedied in the House Committee. There are consequences of completely removing medical professionals from this section of code and it is believed that it could cause a great disservice to a student with a disability. For instance, medical professionals often provide expertise into an individual's health, allowing them the opportunity to provide input and suggestions which could enhance an individual's learning. This can hugely affect the behavior of a student with a disability and ultimately the success of their education.

Finally, Sections 3 and 4 hold appropriate changes for students with a disability and their families. If enacted, Section 3 will allow more options for families to allocate for health services that a student may need due to a medically related disability. Allowing access to public benefits in addition to private insurance will likely be less of a hardship for families. Finally, Section 4 has minor changes which update language to make the statement more inclusive.

I would like to urge the committee to support House Bill 1073. Thank you for your time and attention.

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TESTIMONY ON HB 1073
SENATE EDUCATION COMMITTEE
March 9, 2011
Department of Public Instruction

Mr. Chairman and members of the committee:

My name is Gerry Teevens and I am the Assistant Director of Special Education for the Department of Public Instruction. I am here to speak in support of HB 1073.

Amending the terminology of the disability category of 'mental retardation' to 'intellectual disability' is consistent with federal legislation commonly known as Rosa's law, signed into law on October 5, 2010 by President Obama. This bill changes references in many Federal statutes that currently refer to "mental retardation" to refer, instead, to "intellectual disability". This bill will substitute outdated, stigmatized terms in federal health, education, and labor laws.

The Department has had concerns for several years with the terminology of mental retardation. There have been inconsistent practices in the field. The Department has been consulting with the Department of Human Services about another bill, SB 2142 that proposes to amend and reenact sections of the Century Code related to changing "mental retardation" to "intellectual disability" and "mentally retarded" to "intellectually disabled".

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- Testimony from families about the negative and hurtful nature of the term "mental retardation", which is strongly associated with the slur "retard," that is now commonly used in many U.S. communities, especially among young people in school settings.
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The North Dakota Department of Public Instruction also supports the amendments of section 15.1-32-12 of the North Dakota Century Code (section 2 of this bill) which modifies the language related to the makeup of the multidisciplinary team. The Individuals with Disabilities Improvement Act (IDEA) regulations at 34 CFR 300.322 requires that the multidisciplinary team for each child with a disability include the parents of the child, at least one regular education teacher of the child, at least one special education teacher of the child, a Local Education Agency administrator, an individual who can interpret the instructional implications of evaluation results for the child, and at the discretion of the parent or the school, other individuals who have knowledge or expertise regarding the child. Changing the terminology in this section to read “may include medical professionals” is consistent with the requirements of the IDEA Law and does not require beyond the IDEA.

The North Dakota Department of Public Instruction also supports the amendment of section 15.1-32-13 of the North Dakota Century Code (section 3 of this bill), which modifies the language regarding Related Services and insurance options. This amendment aligns the North Dakota Century Code with the 2006 IDEA regulations at 34.CFR 300.154(e)(1). The federal regulations state that a school district “may access a parent’s private insurance proceeds only if the parent

provides informed consent. According to 34 CFR 300.9 "consent" means:

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- The parent understands that the granting of consent is voluntary and may be revoked at any time.

Mr. Chairman that concludes my testimony. I would be happy to answer any questions the committee may have.

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Testimony on HB 1073

March 9, 2011

Lee Senators
Chairmen Kersch and Representatives

My name is Cathy Haarstad. I am the Executive Director of the Pathfinder Parent Center. We are the Parent Training and Information Center for ND, representing over 4200 parents and teachers.

We are testifying in favor of HB 1073.

We approve the replacement of the term "Mental Retardation" with terms intellectual disabilities or persons with an intellectual disability.

This language change is respectful and in keeping of the wishes of people with disabilities and their families. While this may be viewed as a housekeeping bill for families it is a historic occasion.

Thank you for considering this bill.

We also believe that the requirement to include a medical professional when appropriate should remain in the bill in keeping with Federal law. The changes currently in the bill are acceptable.

Thank you!

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