

MINUTES

Special Education Interim Legislative Committee



Representative Nancy Rasmussen, Chair
Senator Jim Bolin, Vice Chair

**First Meeting, 2019 Interim
Thursday, July 11, 2019**

**Room 253 – University Center
Sioux Falls, South Dakota**

The first meeting of the Special Education Interim Legislative Committee was called to order by Representative Nancy Rasmussen at 9 a.m. in Room 253 of the Administration Building of the University Center in Sioux Falls, South Dakota.

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

Staff members present included: Clare Charlson, Principal Research Analyst; and Sakura Rohleder, Fiscal and Program Analyst.

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

Welcome and Introductions

Representative Nancy Rasmussen welcomed the committee and offered thanks to all those participating in the meeting. She then asked members of the committee and the committee staff to introduce themselves.

Overview of Committee Scope

Senator Jim Bolin, who participated in the Extraordinary Cost Fund for Special Education Study last year and who initially suggested the formation of this committee, provided an overview of the committee scope. He said he felt that a deeper, broader-based examination of the issues at hand was necessary and that the problems that exist will require complex solutions. He noted that the federal government required the provision of special education starting in 1975, which was prior to the creation of the U.S. Department of Education. This shows that special education is a high priority.

Opening Remarks

Dr. Ben Jones, Secretary of the SD Department of Education, provided opening remarks. He said he appreciates the passage of Senate Bill 3, the legislation that established the committee, since few issues are as confounding as special education. He pointed to the rising costs for out-of-district placements as one of the biggest problems that school districts are facing. Dr. Jones stressed that it is often best to keep children in need of special education in their regular classrooms if it is at all possible, and this also keeps costs under control. He told the committee that the financial picture surrounding special education looks a bit brighter this year. Special education fund reserves

within the school districts are up, and the requests for funding from the extraordinary cost fund, for the first time in recent years, did not exceed the amount of funding available. Dr. Jones noted that both he and Special Education Director, Linda Turner, are willing to help the committee in any way that they can.

Overview of Special Education—History, Process, Procedures, and Current Issues

Dr. Michelle Powers, Assistant Professor of Special Education at Augustana University, spoke to the committee on her own behalf ([Document #1](#)). She has served as a special education teacher, special education director, and is the parent of a special needs child.

Dr. Powers pointed to the Education for All Handicapped Children Act that was enacted by Congress in 1975. It required all public schools receiving federal funds to provide equal access to students with mental or physical disabilities. She noted that the law was last reauthorized in 2004, which is a long time ago, but there is currently no effort being made in Congress to reauthorize. When the law was first passed, the federal government promised to pay forty percent of the cost of special education, but this never came to pass. The federal government has been contributing far less. In 2009, the school districts received a big boost in federal funding due to the distribution of American Recovery and Reinvestment Act (ARRA) funds. The federal contribution went from sixteen percent to thirty-three percent, but it was one-time money and it only lasted for one year. Currently, the federal government contribution is sixteen percent. That is higher than it has been, but it still represents less money per child due to the increase in numbers of children requiring special education.

Dr. Powers explained that school districts must determine if a child meets the eligibility requirements for special education. A medical diagnosis does not make a child automatically eligible. Once a child is determined to be eligible, an individualized education program (IEP) is prepared that includes goals for the child for the coming year, and the services the child will need to meet those goals. The child must then be re-evaluated every three years. School districts must not use cost to determine eligibility.

When determining the placement of a child, the least restrictive environment is best. Children learn best in regular classrooms. Currently in South Dakota, only about 300 of the approximately 21,000 children identified as in need of special education are placed outside of their home school districts.

Dr. Powers noted that, both in South Dakota and across the nation, the numbers of children being diagnosed with autism is on the increase. Seven percent of the state's special education students have autism. The increase is likely due to many factors, including genetics, older parents, or low birth weight. The Diagnostic and Statistical Manual of Mental Disorders (DSM-5) combined four separate categories of autism into one umbrella diagnosis of autism spectrum disorder.

According to Dr. Powers, one in five children have a mental illness. Mood disorders are most common in children. Suicide is a leading cause of death in individuals between the ages of ten and twenty-four, and most are attributable to a mental illness. Plus, there is a shortage of school psychologists to address the problem.

In conclusion, Dr. Powers offered some recommendations to the committee that she feels would make a positive difference. They include improving instruction for special education students; expanding knowledge of Applied Behavioral Analysis (ABA); expanding the use of Response to Intervention (RtI), a model for effective service delivery; and required dyslexia screening for children in kindergarten and first grade.

Since school districts are not able to deny services to students based on funding, Representative Peterson asked where a school district gets additional funding that may be needed to provide for a special needs child. Dr. Powers

responded that additional funding that may be needed comes from all sources of funding for schools, including the general fund.

Autism Spectrum Disorder: Understanding Evaluation and Diagnosis

Dr. Eric Kurtz is the Executive Director of the Center for Disabilities and is an Associate Professor in Pediatrics at USD's Sanford School of Medicine. He began his presentation ([Document #2](#)) by noting that one percent of the world's population has an autism spectrum disorder, and prevalence in the United States is estimated at about 1 in 59 births. Autism services cost United States citizens between \$236 and \$262 billion dollars annually. Since most of the cost goes toward adult services, the costs could be greatly reduced with earlier diagnosis and intervention. Autism is much more prevalent in boys than it is in girls. Many theories exist as to why this is true, but none of the theories are conclusive.

Although the numbers of those being diagnosed with autism spectrum disorder are on the rise, Dr. Kurtz noted that it is not an epidemic. There are several reasons for the increase. The definition of autism was broadened, children can now be diagnosed with more than one developmental disability, professionals are getting better at identifying the symptoms, and targeted efforts have been made to screen and evaluate children.

Dr. Kurtz stressed that screening at a young age (18, 24, and 36 months of age) is important because treatment is much less impactful after age three. The only proven treatment is intensive behavioral and early communication intervention. There is no single test to identify autism spectrum disorder. A comprehensive evaluation is required using multiple methods, multiple sources, and multiple settings. All forms of autism can be recognized early and diagnosed by age three. Co-occurring conditions such as feeding issues and sleep disturbances can also be identified and treated.

Representative Rasmussen asked about some of the red flags that may appear in a child by age two, and if there are resources available to help caretakers identify the potential red flags. Dr. Kurtz responded that children who do not respond to their names by the age of twelve months, who avoid eye contact and want to be alone, and who repeat words or phrases over and over are exhibiting some of the warning signs. For any adults, including parents and caretakers, there are checklists of potential red flag behaviors and information on autism spectrum disorders available online.

The need for professionals properly trained in diagnosing autism spectrum disorder is high. Dr. Kurtz told the members about a partnership with the South Dakota Department of Education and Black Hills Special Services with the goal of getting more trained professionals into local schools to conduct comprehensive autism spectrum disorder evaluations. Since 2015, two hundred professionals from over thirty local school districts and educational cooperatives have been trained, and ongoing technical assistance and refresher training is also being provided.

Although autism is a lifelong disorder, the prognosis is much better than in the past. Intervention, especially at a very young age, can dramatically improve outcomes.

Mr. Culver stated that he has seen a marked increase in students with an autism spectrum disorder over the last few years, and he wonders if gluten in the diet is the reason for that based on some media reports he has seen. Dr. Kurtz responded that, through validated and comprehensive evaluations, more children are being diagnosed with an autism spectrum disorder, and that is contributing to the rise in the numbers of children on the spectrum. He also commented that there is no scientific evidence to support that gluten in the diet is causing the disorder. However, children with an autism spectrum disorder can have co-occurring health issues or food allergies.

Dyslexia Bootcamp: What is it and how is it diagnosed?

Ms. Jane Heinemeyer is the **Clinical Director of the USD Scottish Rite Children's Clinic**. The clinic serves children with communication disorders and their families. Ms. Heinemeyer began her presentation ([Document #3](#)) by explaining that dyslexia is a neurobiological disorder that is characterized by difficulties with accurate and fluent word recognition and by poor spelling and decoding abilities. She said that a dyslexic's brain handles information differently. Characteristics of a dyslexic typically include slow, word-for-word reading, poor spelling, and transposing letters when saying words. Family history is a strong indicator of dyslexia.

Ms. Heinemeyer noted that early identification of dyslexia may not be accurate, but the evaluation is worth doing because early intervention is four times more effective than doing nothing. Waiting even one year diminishes the effectiveness by twenty-five to fifty percent.

Universal screening for children at risk of reading disorders in kindergarten through grade two is ideal. The screening needs to include quick and targeted assessments in varying forms that can be administered three to four times a year. Many states mandate dyslexia screening, but South Dakota is not one of them. Ms. Heinemeyer noted that the National Center on Improving Literacy tracks the state by state requirements in this regard. Ms. Heinemeyer distributed an information sheet from the International Dyslexia Association ([Document #4](#)).

Identifying and Supporting Students with Dyslexia

Dr. Shelly Bayer appeared before the committee in place of Marsha Weiland, who heads Decoding Dyslexia South Dakota. Dr. Bayer is the **Assistant Director for the Center for the Enhancement of Teaching and Learning at South Dakota State University**. She is also a parent of a child with dyslexia and an advocate for dyslexic learners. She also distributed two fact sheets on dyslexia ([Document #5](#) and [Document #6](#)).

Dr. Bayer highlighted the importance of providing teachers with the knowledge and training they need to provide reasonable accommodations and create positive learning environments for dyslexic learners. She said teacher education programs currently provide little training in dyslexia, and that pulling students out of their regular classrooms for instruction just does not work. Dyslexic learners experience anxiety, depression, and low self-esteem.

Dr. Bayer noted that reading disorders impact one of every five students. South Dakota is one of only seven states that has no dyslexia laws or guidelines. Minnesota has passed seven statutes addressing the needs of dyslexic learners, and the state employs a dyslexic specialist at the Department of Education. In Iowa, the Department of Education has a reading research center that provides evidence-based professional development for all the school districts.

Ms. Donna Johnson, representing Decoding Dyslexia South Dakota, read the story of McKenzie, who details her long journey with dyslexia on the way to achieving her goal of becoming a veterinarian.

Ms. Kristi Kafka, a school psychologist from Wagner, SD, addressed the committee. She stressed that identifying students with dyslexia begins with general education and outlined a three-step plan. The plan includes using a cohesive kindergarten through third grade curriculum using systematic, multi-sensory, and direct instruction; monitoring progress (teachers need training in this); and using the data to design targeted interventions for students who need them. If the plan is followed, she noted that some students may still qualify for special education, but others will not. That is why general education is so important. Ms. Kafka provided the committee with a summary of her remarks ([Document #7](#)).

Ms. Kafka told of the roadblocks that exist in this regard in rural South Dakota. Often efforts to identify and assist dyslexic learners in a small school district are undertaken by only one or two people. If those people leave, the efforts are in jeopardy. Also, rural teachers often fill multiple roles, and they lack the time and training to adequately screen and intervene. She said that dyslexia not only affects reading, but also writing and speaking. Dyslexic learners often feel sad, hopeless, and fearful, and we need to help them understand and give them the resources they need.

Disability Categories and Eligibility Requirements

Ms. Linda Turner, the Director of Special Education Programs at the SD Department of Education, provided the committee with information on the disability categories in special education and the eligibility requirements ([Document #8](#)). She noted that students are evaluated at no cost to parents, and parents are a part of the evaluation team. The team selects the assessment instruments used. The evaluation types include a psychological evaluation, academic achievement, adaptive behavior, and a skills-based assessment.

A student is determined to be eligible for special education if the student has a disability as defined by federal law which negatively impacts the student's educational performance, and the student needs special education services in order to benefit from education. Since 1996, the state has fourteen disability categories. The categories closely follow those in federal law. Linda commented that states can open the categories, but they cannot make them more restrictive.

The number of students in the "Other Health Impaired" category and the "Emotional Disturbance" category has consistently risen from year to year. The Autism category has increased as well, though not consistently.

Public Testimony

Ms. Patty Kuglitsch, a former teacher at the South Dakota School for the Deaf, addressed the committee. She remarked that fifty percent of deaf children have another disability. Deaf children need a deaf education along with services for any other disabilities they may have. She said that local schools simply are not providing sufficient services. She feels the current system is not good enough; it lacks experts who use sign language. The SD Department of Education and the SD Board of Regents are passing the blame back and forth while nothing is being done to solve the problem.

Linda Turner from the SD Department of Education responded to Ms. Kuglitsch. She said that under legislation enacted in 2018, there is currently a committee working on early literacy improvements for both deaf and hearing children. The committee will soon make recommendations to the Department of Education. She noted that the department is looking at what additional supports it can provide, but it has no authority over the School for the Deaf. That authority lies with the SD Board of Regents.

Committee Discussion and Planning for Future Meetings

Representative Deutsch encouraged the presenters to follow up with any specific suggestions they may have for the committee based on their extensive knowledge and expertise in this area.

The committee reviewed several possible dates for the next meeting and decided on Tuesday, August 27th in Sioux Falls, SD.

Adjourn

A motion was made by Senator Jim Bolin, seconded by Representative Fred Deutsch, that the committee be adjourned. The motion prevailed on a voice vote.

The committee adjourned at 3:15 p.m.