

MINUTES

Special Education Interim Legislative Committee



Representative Nancy Rasmussen, Chair
Senator Jim Bolin, Vice Chair

**Third Meeting, 2019 Interim
Wednesday, November 13, 2019**

**Room 413 – State Capitol
Pierre, South Dakota**

The third interim meeting of the 2019 Special Education Interim Legislative Committee was called to order by Representative Nancy Rasmussen, Chair, at 9:58 a.m. (CST) on Wednesday, November 13, 2019, in Room 413 of the State Capitol, Pierre, South Dakota.

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

Staff members present included Clare Charlson, Principal Research Analyst; and Rachael Person, Senior Legislative Secretary.

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. This meeting was web cast live. The archived web cast is available on the LRC website at sdlegislature.gov.

Approval of Minutes

A motion was made by Dr. Kari Oyen, seconded by Representative Deutsch, to approve the minutes of the August 27, 2019, meeting. The motion prevailed unanimously on a voice vote.

Out of District Placements

Mr. Tim Neyhart, Executive Director, Disability Rights South Dakota, provided the committee with an overview of the Disability Rights South Dakota agency ([Document 1](#)).

The agency is a legal-based agency that provides advice and information, individual case work, and representation for individuals with disabilities. It is made up of nine federal funding sources, including one related to people with developmental disabilities from which most of the special education work is accomplished. Mr. Neyhart said the majority of the work they do is in formal advocacy and teaching people how to represent themselves. He discussed the different areas of the agency's specialization and his work in the field. He commented that the agency has changed its focus over the years, and while they still focus on special education, they are selective about what they do. The majority of their work in special education is focused on inappropriate suspension and expulsion from school.

Mr. Neyhart said the agency works hard to support the notion that cost should not be a factor in the process of providing services to children. He noted that funding is a focus of the committee, and he offered some suggestions. In regard to the discussion about district placement, his suggestion is that trust be continuously placed with the Individualized Educational Plan (IEP) teams and the local processes involved.

Representative Peterson asked what percentage of the agency's advocacy work is in the IEP meetings. Mr. Neyhart responded the agency represented about 85 cases in the last fiscal year. Representative Peterson mentioned that some parents go into the IEP process not having the information they need and having an expert to advocate for them would be helpful. Mr. Neyhart said the agency sets priorities every year based on the information they receive from the community, and over time the requests for advocacy in IEP meetings have declined. However, if the demand increases, the agency would consider increasing the amount of work they do in that area.

Senator Bolin asked for Mr. Neyhart's opinion on the potential for using general education dollars to fund special education. Mr. Neyhart discussed some options he thought could create opportunities for using general education dollars.

Representative Peterson highlighted Mr. Neyhart's advocacy for less out-of-district placements and asked what he would recommend as an alternative. Mr. Neyhart remarked having well-trained staff is at the top of the list because staff can help more than one student.

Ms. Linda Turner, Director of Special Education, Department of Education (DOE), presented data requested by the committee in previous meetings on out-of-district placements and fiscal issues.

Ms. Turner said out-of-district placements stem from parents, or the district, recommending or requesting consideration for an out-of-district placement. In order for the district to pay for a placement, the IEP team must determine that the program is the most appropriate option due to the district not having a program to meet the student's specialized education needs, the student is not making adequate progress in the in-district program, or the student having medical or behavioral needs that can only be met in a specialized program. Ms. Turner then discussed the considerations for out-of-district placements and statistics across the state ([Document 2](#)).

Representative Deutsch drew attention to the 90 districts with out-of-district placements and asked about the remainder of the districts. Ms. Turner responded the remaining 60 districts did not currently have out-of-district placements but that can fluctuate frequently. The reasons for the fluctuation can depend on factors such as the ruralness of the area and if the district has the resources available for the placement or not, and where families live. Ms. Turner pointed out that it is the district's responsibility to meet the needs of the student and if needs of the student are significant and cannot be met in the community, they would have to look for an out-of-district placement.

Ms. Turner and the committee then discussed the fiscal data and statistics provided ([Documents 3 – 8](#)).

Representative Rasmussen asked about the IEP meetings and if there is a spokesperson for the group or if it is simply a group effort to come to a consensus. Ms. Turner responded there are required members of the team including an administrator and the parents of the child. The committee comes to a decision and develops a plan for implementation but there is no single spokesperson.

Mr. Hamilton asked if any attorney fees the school district may have incurred due to disputes in the process could be taken out of the special education fund or if they had to come from the general fund. Ms. Turner said under the federal Individuals with Disabilities Education Act (IDEA), legal fees cannot be paid from the special education fund. Under the state rule, there is a list of activities that aren't allowed, and legal fees is not included in that list so it is assumed that they would be appropriate, but it would be up to the district to determine from what fund those fees would come.

Representative Peterson asked what Ms. Turner recommends for parents who feel the out-of-district placement is a predetermined conclusion before the meeting, and they do not have a say. Ms. Turner commented that if they are feeling as if they do not have input prior to the meeting, the DOE has a navigator program that helps bridge

families and districts and helps parents understand the process of special education and their rights. If, after they leave the meeting, they feel their input was not heard, they have dispute resolution options they can pursue.

Mr. Culver added that telling the parents they have to place the child somewhere else because the district cannot serve them locally is not a conversation districts want to have with parents, and the decisions are not taken lightly. The special education teachers play a large role in the meetings, and the teams go through an in-depth process.

Dyslexia Workshops

Dr. Kari Oyen, Assistant Professor of School Psychology, University of South Dakota (USD), opened her discussion by acknowledging the significant work school psychologists do in the school districts. She then provided the committee with an explanation of the dyslexia workshops created by USD's School of Education and the DOE, that took place across the state.

Dr. Oyen said the initial part of the training is understanding typical reading development because in order to effectively understand a child who has the profile of dyslexia, it is first important to understand how typical reading develops. Other portions of the training cover what happens with dyslexia, some common profiles, what goes wrong with dyslexia assessment, and interventions and ineffective interventions.

Dr. Oyen commented on how honored USD was to partner with the DOE, and they hope the workshops can continue in the future.

Representative Deutsch expressed his gratitude for the involvement in the process and echoed Dr. Oyen's hopes for the continuation of the trainings.

Dr. Oyen added that the popularity of the trainings is powerful, and that people want to understand dyslexia. She highlighted that the focus has to remain on the kids, and when the educators surrounding kids are empowered, it can help a significant amount kids for years to come.

Ms. Carda mentioned that one of the things learned about dyslexia is that people want to understand it but are not sure how, or what method to use. She asked Dr. Oyen how the state went about getting recommendations from groups or trainings like Dr. Oyen's to make changes at the state level. Dr. Oyen touched on the partnership with DOE and what can stem from partnerships like that, and then explained the multi-tiered systems of support and how the program is funneled through the General Education Initiative. Dr. Oyen said some conversations are happening, but people in the field need to think about how to be as systematic as possible.

Mr. Putnam asked if there was a program or a model where a senior student could help mentor an elementary or middle school student. Dr. Oyen expressed her support for mentoring systems but said it takes a special kind of student to be an effective mentor. What can be problematic about the mentoring process is that the depth of understanding may not be there, and for kids who need high quality intervention, it should be done by a highly qualified educator.

Representative Rasmussen asked Ms. Turner if there is a plan to move the program and trainings forward. Ms. Turner said the department is reviewing the participation data, and there has been a request for continued offerings of the trainings for the next school year. So far, the feedback has been positive, and the department intends to continue this work.

Committee Discussion

Dr. Oyen said she was struck by the information Dr. Powers shared with the committee at a previous meeting about the rates of kids with disabilities. She said the committee has to be bold in their recommendations. She then presented some of her own recommendations.

Ms. Esmay shared intervention practices done at her school and emphasized that they truly exhaust all of their avenues to make sure the children stay in the least restrictive environments and stays with their families. Then, when all of those avenues are exhausted, they look at out of district placements. She suggested that a key step is trying to prevent the overidentification of special education children by providing intervention in early childhood.

Mr. Martin echoed Ms. Esmay's statements and agreed with the recommendations made by Dr. Oyen. He added that early childhood programs are essential. He also touched briefly on the recruitment and retention of teachers, especially in rural South Dakota.

Mr. Culver said one of the charges of the committee is the funding side of the equation, but the problem is that the funding issues are not going away. He pointed out that superintendents and schools experience a dilemma when it comes to staff because they are being pulled in two directions. Schools are told by the legislature, the DOE, and other agencies that they have too much staff. Audits are constantly taking place to make sure the money in the Extraordinary Cost Fund is being spent appropriately. They are being told they need to do more for the kids, but are also told they need to cut staff. Mr. Culver said this is a frustration many of the school districts have because they want to do what is best for the kids, and they want them to be successful. He added that the districts have no say in the cost for an out-of-district placement, and every year the price goes up. He recommended that there needs to be an oversight on that process.

Representative Peterson inquired to what extent the educational cooperatives are utilized or encouraged. The committee discussed the different ways the cooperatives are utilized and some of the challenges they face.

Senator Bolin commented that the committee identified some of the issues that are very important to special education right now. He noted that everyone wants to meet the needs of these students and help them to be successful in school and life. He emphasized that the problems aren't unique to South Dakota but are being experienced nationwide. He agreed that the funding side is an important part of the situation.

Mr. Hamilton emphasized doing things on the front end and trying to make the best use of the current funding available. He also emphasized sufficient training for staff members, commenting that one of the biggest problems in the process is staff turnover due to frustration and burnout.

Public Testimony

Ms. Valerie Johnson, Special Education Director, Gregory, SD, thanked the committee for all of their work and input on the committee, and being a part of the process. She told the committee that one of the things to remember when talking about funding is that South Dakota funds special education based on category. Ms. Johnson said funding based on service would make more sense than funding based on category. She agreed with Mr. Hamilton's remarks about moving on the front end. She reminded the committee that not all districts have cooperatives, and while they are an excellent way to cut costs and provide service to some of the smaller areas, not every district has that option. Ms. Johnson also pointed out that, while she is thankful for the input from the members of the committee, she wished there was more representation within the committee for people with special education experience. She said she hopes the committee members are talking to the special educators out in the field.

Mr. Wade Pogany, Executive Director, Associated School Boards of South Dakota, inquired as to the process of establishing the recommendations that will come from the committee. He voiced concern over the amount of discussion on funding without an amount that may be requested accompanying the discussion.

Representative Rasmussen said she would be in contact with Dr. Oyen, Representative Peterson, and the superintendents to further discuss what final recommendations would come out of the committee and be presented to the Executive Board.

Adjournment

A motion to adjourn was made by Mr. Martin, seconded by Mr. Culver. The motion passed unanimously on a voice vote.

The committee adjourned at 3:10 p.m.