

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

2364

2005 SENATE EDUCATION

SB 2364

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2364

Senate Education Committee

Conference Committee

Hearing Date 02/01/05

Tape Number	Side A	Side B	Meter #
1		x	2100-end of tape
2	x		0-1740
Committee Clerk Signature <i>Patsy Wilkens</i>			

Minutes: Relating to special education payments.

Senator Layton Freborg, Chairman called the meeting to order on SB 2364

Testimony in support of the Bill:

Senator Flakoll : introduced the bill, the genesis of this bill currently after we had the hearing on SB 2033 when we started drilling down and getting in some of the information behind that, so that is why this reciprocated might be on the last day of being able to introduce bills. There is no new \$'s in this bill, so that you know that. If I could have people reference the work to do is to put the amendments on this bill otherwise we would need to slide it down the hall, to our friends in appropriations. Currently with the current bill, we have a double appropriation and that is not the intent of what we wish to do. We wish to do is look at to see how the money should be metered out and what would be most appropriate for that amt. of money, again referencing HB 1013. Currently were we are @ what we kind of want to do is, after testimony you will certainly be wise about special edu. funding but also more confused.

Senator Freborg : Are you going to testify on the proposed amendment which will likely be adopted and become the bill?

Senator Flakoll : Yes, I have asked people to reference that.

Senator Freborg : Have you handed it out to the people that are interested in this bill.

Senator Flakoll : Yes maybe 8 or 10 of them. What our intent is to work out the bill, the exact same # of \$'s that were in the original bill, it just translated the #'s into %'s so we don't have to deal with it that way. In terms of a policy issue VS a \$ issue, currently about 36 million \$'s plus change is not a guaranteed portion that's paid out historically on what's called a per pupil amt. If you divide that amt. out per student it is about 17 dollars plus change per student across the state regardless if they have special ed students or the severity of what they have, there lies the rub.

They may use this for football jerseys, band instruments, it seems inappropriate that these \$'s are being used for something other than special education. Ranging from 9 % to 25 % with some outliers, \$'s also available for gifted students program ½ million \$'s we haven't touched that money. What we are hoping to do in this process, we won't complete in all in one swoop, because we will need a lot of rigorous discussion, I believe if we don't spend special ed \$'s on special ed, we can go back to the infamous lawsuit that is pending. We will open up ourselves to a disadvantage position if we don't make some changes. We are sweeping the guaranteed \$'s per student side to the special education and their contracts. These contracts are broken up into three areas in districts students, those placed out of their district, and the third one is those placed by agencies. With the bill we have also added another category, with very very expensive students that are deemed as medically fragile. How do we define medically fragile, some of them costing

more than ¼ of a million dollars a year. These do take a lot more effort to educate and maintain, so going back to the general crux those that need most should maybe get a little more money.

Section 1/ As far as walking through the bill, with the amendments the 96.1 % translates to the 50 million dollars that was in the original bill. Section 2/ .76 % translates to the money that was in the original bill for the 400 thousand \$'s for gifted children's program. Section 3/ 3.05 % was set aside for the medically fragile, there is really no changes, just a better way to approach this.

One of the things that has happened for example with a school placed contract there is a 1 million 76 thousand dollars plus change shortfall for the most recent biennium because the money wasn't there to provide them. So the request for 7.1 million dollars of which only 6.0 million was paid out so going back to the philosophy I think we should be spending special education money on special education. There may need to be some things that we will need to tweak in this, I am sure we will have some discussion throughout testimony.

Dan Hoffman : Assistant Superintendent for the Fargo Public School District. I do have some ?'s and concerns with this bill the way it is drafted. The concept of eliminating the ADM payment is a concept that the Fargo School District has suggested since it was adopted in 1995. Each session since the ADM method was put in place. We have opposed that method in distributing foundation, or special education \$'s to school districts because we do not believe that it recognizes the local commitments and the cost that it incurred. So from that perspective that this is an attempt to address a distribution of special education \$'s through other than the ADM formula, we are in support of the concept. I believe however for us to collectively weather it's that of those that are speaking in favor of this bill or opposed, to accomplish what we want to accomplish. There needs to be additional discussion how the money is going to be distributed. At

the present time and the current definition of excess cost and how it is defined in the state of ND and 2 and a half times the cost of education and agency placements the money would not be distributed because there are not enough kids that meet the 2 and half times definition of cut. So in order for this system to work, the formula needs some work to identify what kids will be included in the distribution, definition of excess cost needs to be reworked, and we need to talk about a different kind of formula that might recognize program costs or staffing costs at the local level. As a district we are in support of the concept of finding a different distribution system for special education \$'s than a ADM unit.

Senator Taylor : The shortfall last biennium on special education fund did Fargo get caught in that and to what extent.

Dan Hoffman : Yes, the Fargo school district was an unfortunate participant in the shortfall. I believe in the Fargo school district it was around 300 thousand, we were distributed only a portion of what we submitted for contracts. That has happened before in the 2nd yr of the biennium but this is the first time it has happened in the first yr. of the biennium.

Senator G. Lee : Is it easy to find out what category that your student might fall into? Is it the 96 % of your formula here or the 3.5 that are medical fragile? Is it easy to determine who those kids are? What criteria do they need to meet for the medical fragile?

Dan Hoffman : The Fargo district has two children that are presently at the Anne Carlson Center. There are other medical fragile kids that the Fargo school district has placed other than those. I am assuming that these are the kids defined here. At the present time only a fraction of the kids in Fargo School District actually get a contract. In order to be eligible of the excess cost reimbursement the total cost has to exceed 2 and ½ times plus 20 % of the state average cost of

education. That is a small fraction of our special education kids. One of the possibilities would be to write a contract for every kid in the district and I am not suggesting that because that would be a huge task or undertaking. We have 1,318 special education kids in the school district and to go through the process for everyone of them to get the special ed reimbursement for a student who gets three hours of speech therapy a week would be a phenomenal undertaking. As a school district we have never supported the ADM reimbursement for special education dollars. We support the concept of getting the distribution from the change and changed away from the ADM reimbursement.

Senator Seymour : Could you give us a couple examples of agency placed other than the Anne Carlson.

Dan Hoffman : Social Services places kids and division of juvenile services places kids, DD places kids (development disabilities) these need adult supervision of 24 hrs, other than education.

Senator Flakoll : Might one consideration, be to change 2 ½ time factor to 2.

Dan Hoffman : I don't know how far down you have to get to distribute the 2 ½ million. Maybe someone else could answer that ?.

Senator Freborg : More in favor?

Bob Rutten : Director of Special Education

See attached : written testimony

Senator Taylor : You saw a pretty significant increase in the last biennium in agency placement, I guess in looking at the list for the reason might be, we would expect that to continue in the next biennium and on.?

Bob Rutten : Regrettably that seems to be true, there is an upward trend in our state and nation wide, having these kinds of difficulties in the families and certainly the school personnel who end up serving them. We have been trying to emphasize an ironic set of circumstances in ND where we have been having a decrease in general enrollment of approximately 2000 students per yr. we are continuing to see an increase in a # of students who requested prior special education services. We are just completing today our child count for the current year and we are up several hundred even over last yr. even though we have lost approximately 1700 students state wide. Yes, some of those students are definitely coming out of very troubled situations and big challenges for the families and the schools.

Senator Taylor : We also have SB 2033 sitting here with district of residency and that is supposedly going to increase the amt. of state support required for some of these same students. Are there any corollaries here between these two pieces of legislation that we should be aware of.

Bob Rutten : I think you are right, we need to be mindful, they do overlap. We have really been trying to work with the Dept. of Human Services, yes they do overlap.

Senator Flakoll : With respect to subsection 3 the medically fragile, one thing on the request, Anita Thomas had drafted or believed that is a definable category and if I could maybe ask Dan Howel to be here today and he has some knowledge and experience with that, so if we could get him to come up and explain what that category entails.

Dan Howle : Chief Executive Director of the Anne Carlson Center, this is a 52 bed intermediate care facility for the mentally retarded. We are also an accredited and licensed school. We educate 56 children on any given day. Fifty of them are residence of the Anne Carlson Center, six children are from the surrounding area and come in as day students. We have used and I have a

copy and we can make more, we used a pediatric skilled nursing facility definition for medical fragility. This goes specifically toward the residential side of children, listening to the criteria as well as the diagnosis. Today we have 17 children from around the state of ND that fall into that definition of mental fragility, I believe two are from Fargo and we have others around from the state of ND. If I could answer any ? about medically fragile children about education, I certainly can do that.

Senator Flakoll : Could you just tell us a couple things that some of the admission criteria.

Dan Howle : The admission criteria is medical necessity and substantiates a severe medical necessity of being included diagnosis complete medical history, progress with the use of ventilators, frequent use of oxygen, by-pap or c-pap machines, skilled nursing observation assessment monitoring, seizures, basically children who are mentally fragile come out of kind of a step down intensive care unit from the hospital, so there is provided intensive care unit hospital ization services while attending school.

Senator G. Lee : In terms of the district of residency, how do the \$'s flow. What this all means in terms of where that student should be placed?

Dan Howle : I am sorry, but I would need to defer that ? .

Senator Taylor : Educating 56 students, and maybe we got this from someone else but that's what the average cost on those 50 kids. As I was unprepared today I do not have those #'s. I could certainly get those #'s and get them back to the committee.

Testimony in opposition of the Bill:

Barry Chatums : Special Education Director and I am here to testify against and recommend a Do Not Pass on this bill. Mike Ahman from the Bismarck School system, submitted testimony on a do not pass and also checked with West Fargo, Mark LaMer, also recommends a do not pass. See written testimony from Mike Ahman, BPS, if you repeal SB 2364 the only message that you have of distributing special education funds is through the contract system. If you put it all in the contracts, how is the money going to be distributed. Are we going to do contracts for every student? Right now contracts in those districts, the contract money that had been there ended up being about 20 % of the cost of reimbursement from the state to special education units. So 75 to 80 % comes through ADM. If you push this all over the contract then you got another 80 % or 75 % I don't care what it is, somehow you gotta distribute to school districts, and if it is in a contract system, now you have to come up with some formula of some way to distribute this. A better fix to this problem would be to increase the student contract monies for the state. I guess I believe that too, I am not sure if the system is flawed, I still believe that the ADM still needs to come to school districts. In my opinion, that is an equitable issue. If Fargo has 40,000 kids they get an ADM based on 40,000. If Hazen has 5 they get it based on five, so that 75% is some equity that school districts are going to get money for special education children. If you take that down even further to a smaller school district. They for one yr don't have a contract student, they may not get any special edu. money, so now it will come out of the general fund. Maybe the next yr they have two and if we are to think that all these student contract kids are from large districts we better start thinking differently. I can tell you that from the school district which we have 3 and in communities with high needs. So, again if you do it in a contract system for one yr. someone may have nothing and next year maybe they will get some. I think the issue is trying to keep up with

it. Certainly you have a tough task legislatively but I think there needs to be each session more money to put into this, how much? I could tell you 5 or 6 million, whatever, I still think the system is not flawed. We need to keep the system but need to know how to keep up with inflation on the costs. Medical technology is advancing so rapidly and saving more kids, I look at the preschool handicap program I have, and the kids we had 20 years ago compared to today is totally different, they are needy. Mark Lemers testimony is saying the same thing. Seems as though we are rearranging the \$'s around from here to here. This is all we are doing, kids are becoming more medically fragile and we are getting more of them year to year to year. We need to find a way of funding it, I am not sure that taking all the money out of ADM so those kids get nothing and putting it over here. We don't need another definition for medical fragile, it is already there for kids. If those kids cost more than 2 ½ times and 20 % they are covered. Why would we take 1.6 million in just another add on at the bottom in this bill? Didn't matter what handicap there were way back when, doesn't matter what handicap they are, you can have an emotionally disturbed kid, autistic kid, why are we singling out and putting in another definition and name of something and allocating a certain amt. of money to it. Because your definition and my definition is different, it comes back to what it is costing the district. I don't think we should get away from the definition in the federal government that gives us some parameter to stick to what we are trying to do.

Senator Flakoll : I guess I don't want to point out all the things that were wrong or inaccurate, how can we straight face justify a line item, when people may not have any students.

Barry Chatums : Maybe I need to clarify myself, they have handicap kids but they may not meet the 2 ½ times. Some don't have high cost kids but they may have 4 or 5 kids in speech. Seven or

eight kids that are LD they may have a program for mentally handicap kids. They may not reach 2 ½ times so you have to understand that we don't have any kids it is just that we don't have any high cost ones. If we dump all the money into high cost then they are picking up whatever is needed for those kids. It is not meeting 2 ½ times plus 20 %.

Senator Flakoll : Then why aren't we looking at another provision instead of putting a bond in the bill that we define these other ones needs because they may have 10 students instead of five students. There are restriction on the per student amt. again it can go back to buying football jerseys with them, when people say they are not. Then with consortiums it begs a bit of a problem. To some in the consortiums they may get the entire amt. of money but one school may have the bulk of them. If you look at Madina they have medical fragile students.

Barry Chatums : I take offense to that we say that people are buying uniforms and football jersey. This is not something we would be doing, this is my 29th yr. as the special ed, and you certainly can and are welcome to look at our books and whatever, I do not believe that the money is being shifted to these types of things. When I look at the cost, our unit is almost at 1.8 million dollars. We try to provide a very good education for handicap kids, I can assure you that nothing is being averted in any other way. I guess that is misinformation, this has got to be wrong information. More kids less kids and 2 ½ times. There is an issue of trying to come up with the funds, to reach that. I do not believe dumping everything into a student contract system is the answer. I do agree with you that you need a shift in balance or some more money put into it, but I don't believe we should through away the ADM system.

Senator Flakoll : Where does the money go if they have zero kids, that are special education of any type. Do you turn back the money?

Barry Chatums : No, in 20 some yrs I cannot think of a school district that does not have a handicap child. When you are talking about 185.00 per kid, that's not a whole lot of money. I really question if there is even a district out there without a handicap child. In 29 yrs. I am not sure that I could come up with a district that doesn't have a handicapped kid. In Springbrook south of Hazen now closed, 4 or 5 handicapped kids. Weather speech or hearing or any other handicap, I don't think that the legislature needs to worry where the money may be going because there is always a handicapped kid.

Terri Tucker : Special Education Director in Southwestern ND serving 17 school districts. The ADM system allowed a block grant, brings in 185 dollars per student for every district. School districts all have expenditures, for special education my Sp Edu unit expenditures are a little bit under 2 million dollars a year, with the number of students that we serve in excess cost we are spending above the state average, about 6300 dollars per (923 meter) district? not sure. That will tie into about 24 or 25 % of revenues received on the block grant, those cover those expenditures. We have no children right now that are on the contract system for in district those costs have gotten proportionately higher. You have to have a very expensive child to be able to participate in that contract system. I think Barry has made it very clear that when we have a contract system that doesn't have enough revenue in it, but to take away from the support of the system so that those special education kids that are served in our school districts. To respond to the fact that if you had a district, I have no districts that don't have kids without disabilities. If I had a district that did not have any children, they would be typically small. There is a minimum proportion that's required by any special education unit, they have a formula that drives the costs for belonging to the unit. My unit has a minimum base of a 1000.00 dollars. Amidon this yr has 4

kids, three of them are receiving services. That is a disproportion % of kids. There are expenses, so regardless of the unit you need to check and go back home and talk to your administrator in regards to the systems. The ADM system is supportive of all kids in special education, the way they derived the block grant was to do it in ADM. I was actually supportive of that particular element, this brings in some level of support for all schools.

Senator Flakoll : How do you think the perception would be in terms of state wide equity in fairness if we stuck with the, ahh everybody has a few of them? On an ADM basis.

Terri Tucker : You are supporting the excess 6300.00 dollars on every excess kid on every kid I have weather they are LD or speech, that is my average, you are supporting in those costs. The contract system, how would you ever even manage that contract system, kids of supports and services can change weekly if not daily. Where are you going to measure the time, I have kids who fluctuate between services and kids that are emotionally disturbed go from minimal support to one on one. How often am I going to write contracts on kids in order to support their school districts they are serving, this is a micro-managed issue that in essence had the intent is wonderful and most of you in room recognize that the Federal Government recognizes the need for recognition of risk pool. These are the high cost kids, you are stuck with the hard thing of how to come out and support those costs. The contract system is a system that you learn to walk, it is a system that can be so significantly abused that it is a poor system to consider. To give you a direct response, the contract system is a management issue, I don't know who at the dept. would like to take that task on. I would have additional staff in the field trying to write these contracts based on something we don't even know yet, what they are going to look like. My

recommendation would be to continue looking at the ADM and address the risk pool for the high cost kids by additional \$ support.

Bev Neilson : SBA, briefly I was one of those here back when we went to the block grant system. I was on the Fargo board at the time and we did oppose it. The rational for going to the block system in the first place was that we paying those monies out on a % of your program cost for special ed. Accusations were made that it was system right there for abuse. We were putting too much cost into the services and that they had no way the DPI and state had no way of getting a handle of those expenses. This is how much money we are currently paying for that stuff, we want to get it out to the schools, but we don't want another system that can be abuse or a complicated formula, so we will just block grant that money out.. There are state and national averages of a % of kids in your school dist. that will require special ed services. Weather that decision was right or wrong, it is now providing school districts with up to 30 million dollars and those monies are used to support the expenses of all their special ed kids. If the only thing that gets any money out of this bill, after you reach the 2 ½ times plus 20 % kids where are districts suppose to get the money to pay for the 2 ½ times plus the 20 % which is at minimum 13000.00 dollars per student and can go much higher than that. The state wouldn't be providing any fund for those kids. The way the bill is written the way I read it now, it would be a lot of 10's of millions of \$'s to districts for cost for special ed. The definition of contracts would have to be defined and excess cost would have to be defined or we would have to divide an entirely new distribution system for the fault of the special ed money. District needs financial help to get 2 to 2 ½ times plus 20. Perhaps it is weighted units like the report suggested, perhaps it is a block grant based on ADM of special ed population without a bunch of categories. Somehow we need

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to get the 30 million out to school districts, not just say, you are on your own. It is debated often how we are funding special ed. I know you hate studies, but there are 60 days left, it could quickly devised a new distribution system for special ed money might be difficult.

Senator Freborg : Are you doing that to allow Senator Flakoll to save face in the end.

Bev Neilson : If I could do anything that Senator Flakoll would be pleased with it would make me very happy.

Senator Flakoll : I was just looking at the sponsor list.

Doug Johnson : Council of Educational Leaders, putting all the money into the contracts system is going to be dangerous and puts a lot of school districts at risk.

Senator Freborg : closed the hearing on SB 2364

The meeting was adjourned.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2364

Senate Education Committee

Conference Committee

Hearing Date 02/01/05

Tape Number	Side A	Side B	Meter #
2	x		2586-2800
Committee Clerk Signature <i>Patty Wilkens</i>			

Minutes: Relating to special education payments.

Senator Layton Freborg, Chairman called the meeting to order on SB 2364

Senator Flakoll moved the amendments : titled 50824.0101 to SB 2364

Second by Senator G. Lee

Senator Freborg : This is Senator Flakolls hog house amendment.

Senator Flakoll : This essentially takes off the appropriations, so we don't have to have it out tomorrow, and if these are adopted then I would pose that we not take action on it immediately, adopt the amendments and then allow us time to work on it.

Senator Seymour : I was thinking if we would act on this bill right now then we might not have to worry about that other activity.

Senator Freborg : The motion is on the amendment.

Clerk took the roll with a motion to adopt the amendment titled .0101

vote was 6-0-0

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2364

Senate Education Committee

Conference Committee

Hearing Date 02/08/05

Tape Number	Side A	Side B	Meter #
1	x		0-1000
Committee Clerk Signature <i>Patty Wilkens</i>			

Minutes: Relating to special education payments.

Senator Freborg : Call the meeting to order on **SB 2364.**

Senator Freborg : Senator Flakoll are you ready for SB 2364?

Senator Flakoll : Well, I could hand out some stuff but I am not sure we're ready to take up this stuff. This bill looks questionable as soon as you read the sponsors.

Senator Flakoll : We can amend this, essentially what we have before us is a highbred of both the original bill and the first amendments that we put on there to take the so called money out of there. It deals with no new money per-say cause the money found in HB 1013. The first portion of it is about 32 million dollars of money that would be designated for per pupil that type of payments that would be sent out. Currently I think we are at \$182.50 give or take, depending on the enrollment etc. this backs it down by about \$19.00 projected of the first year of the biennium and then it would increase slightly there after b/c of the understandable of declining enrollment.

That is in subsection one.

Senator Freborg : 61.4 % that amounts to what?

Senator Flakoll : Well, there are 52 million dollars in there and if you take 61.54, thirty two million eight hundred dollars, that is kind of in keeping with the of what was in place before but we slid a little away for declining enrollment that was placed towards contracted special ed pymts, b/c those are the ones in need the most. As in all cases any money not used on the per pupil allocation estimate or under section 2 subsection 1 with the contracts, any money left over after those obligations have been made slides down and is paid out on per pupil basis. So what we want to do is for example this past yr. we had a million dollar shortfall, that would shore that up we feel. If there is any money left over that can be sent out on a per pupil basis. Section 2 subsection 2 is for the gifted program, that got capped a little bit, 10 % cap, so that one comes to 442,000.00 dollars. On the back page subsection 3, that was rounded down to 3 % for the medically fragile students, so about 1.56th million. As with subsection 4 on that pg. all moneys remaining distributed on a per student special ed paymts.

Senator Freborg : Senator Flakoll please give me that # again, did you just say 10.4 million?

Senator Flakoll : Subsection 3 is 1.56 million. These are somewhat rough #'s

Senator Freborg : Subsection 2 was?

Senator Flakoll : 442,000.00, subsection one is 1 million and 60 thousand or 1.56 million, remember these are rough #'s. Essentially they are at 52 million dollars which is an increase over the past biennium.

Senator Erbele : I just have a question on subsection 1 what the #'s are or section 2 subsection 1.

Senator Flakoll : Approximately 18 million. I think

Senator Flakoll : I think an exacting # is using 52 million for the reference, 17,997,20. That would be for Section 2 subsection 1 for contracted students.

Senator Freborg : Senator Flakoll could you tell us how that compare to what we do now?

Senator Flakoll : I believe that there is 2 million dollars of new money that is needed.

Senator Freborg : How does the 18 million dollars for contracts compare?

Senator Flakoll : Compared to what is in HB 1013?

Senator Freborg : Compared to what we do today?

Senator Flakoll : That I will have to find out.

Senator Freborg : How would the 32 million dollars compare?

Senator Flakoll : I don't know any of them to be exacting currently, I just know what is in the current budget. I don't have the numbers.

Senator Freborg : You don't know the total dollars that are in the distribution formula now, I mean in each category.

Senator Flakoll : Not with certainty, no.

Senator Freborg : Do we distribute 185.00 per student.

Senator Flakoll : That is what the intent is HB 1013, now do we do that in the current second yr of this biennium,? that is what you are asking right? I will have to find that out.

Senator Taylor : I am trying to read between all the lines here. Do we still have the concern about this being a whole contract system for every student in special education under this plan.

Senator Flakoll : No, b/c we slide back the great portion of 32 million dollars for non contracted first student payments. What I tried to do in terms of the money, if we can hold steady on the amt. we pay out per pupil, say at 160 some dollars that we would hold that constant with the

declining enrollment and then we can slide some of that money towards the contracted students. I would prefer not to move these amendments at this time b/c I think this will give everyone a chance to look this over and digest a little bit and I can get you that information also.

Senator Freborg : Could you do that if we are on break for an hour this morning?

Senator Flakoll : If the right people were around.

Senator Freborg : I do think that we have that information if we just look at what's been presented to us. Perhaps that is the best way to do it, I prefer not to have a motion now until we can make a comparison at exactly what we are doing today and what we will do under your amendment. In each area of distribution.

Senator Flakoll : I think the gifted ones are relatively steady and that is just a small # anyway.

Senator Freborg : Any more ?'s.

Senator Taylor : We are referencing HB 1013 and aren't we tying an amendment in one bill to another bill that is likely or could change or maybe with the %'s that doesn't matter, is there any concern with that Senator Flakoll ?

Senator Flakoll : That is exactly why we tie the %'s cause they can flow up or down, that way without having to rectify both bills. If we would have put actual dollars in here we would have had to take them out of the other bill and this would have went down and it would be a double appropriation possibly.

Senator Freborg : Did you take out the dollars you wanted and backed out the %'s.?

Senator Flakoll : That is why the #'s are a little odd.

Senator Freborg : All of us slower thinkers would have said 62 % and then figured out how many dollars.

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Senator Freborg : We will not have a motion on Senator Flakoll proposed amendments.

Senator Flakoll : If there is anything else you want me to check on to give you a little more information so you can either decide thumbs up or thumbs down, I would be happy to do that too.

Senator Freborg : We want the whole load Senator Flakoll, in plain English and no double talk.

Senator Freborg : Perhaps you can get that as soon as possible Senator Flakoll and come back after the break.

Discussion ended for a break

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2364

Senate Education Committee

Conference Committee

Hearing Date 02/09/05

Tape Number	Side A	Side B	Meter #
1	x		160-2105
Committee Clerk Signature <i>Patty Wilkins</i>			

Minutes: Relating to special education payments.

Senator Freborg : Call the meeting to order on **SB 2364**

Senator Flakoll : I have some new amendments, I think this would be preferred out of all the bill and or amendments. That at least you may want to adopt these and then kill the bill, this may be in order. Originally looking into the bill, to shore up the contract side to make sure we try to have as much money as possible for the contract. Again going with the thinking that those that need it most should get adequate money for that. Going back to when I first started the legislature I became aware of special situation for special students where there are English language learners or coming to find out that there are students in various school districts that cost more than 100 thousand dollars plus, and coming to the realization through my association with the Anne Carlson Center and finding out some of the things they are doing and that there are students that cost an excess of a quarter of a million dollars or 200 thousand dollars and over. The amendment we have before us, is designed to maintain the ADM or per student payment at 185.00 per

student. Contracts in the current biennium as the sheet shows that 13,292,181.00. We have increased that for the contracts and those are the ones that are considered more in need by approximately 1.6 million dollars at the present biennium. The gifted category currently there is 400 thousand dollars and 42000.00 is a 10% increase. The medically fragile we pulled that back down to 800,800.00 1/3 rd of that cost per student spread out amongst the students. With all of these with contracts or any other things, if \$ isn't used up through contracts the \$'s is swept down and paid out on per pupil basis, so that every penny of the 52 million is paid out with the thinking of it going to special education.

Senator Freborg : What is ADM ?

Senator Flakoll : Average daily membership.

Senator Taylor : ADM starting roughly the same pmt. putting some increase in a contract that all the bill is going to pull some off for the medically fragile?

Senator Flakoll : What we have here, we have increased contract by 1.6 million dollars, gifted children, 42,000.00 and put in an increase for the medically fragile. We have created a category for the most needy.

Senator G. Lee : So do we have a definition of the medically fragile in statute, or are we defining that some other way??

Senator Flakoll : I asked Anita Thomas if we needed to define this as it was being drafted and she said no.

Senator G. Lee : How do we know who they are, how are they separated out?

Senator Flakoll : Human Services would know there is generally a list of criteria, weather on a vent or oxygen, a number of things. There are maybe 25 across the state of ND.

Senator Taylor : I would assume they are now being educated under the current contract of the last biennium.

Senator Flakoll : I don't know for certain b/c we don't have access to all of that information.

Senator Freborg : We don't know the #?

Senator Flakoll : There are 17 at the Anne Carlson Center and about 8 others. The life expectancy of the medically fragile is very limited.

Senator Taylor : The amendments might be fine b/c the bill as it stands with the appropriations probably needs to be changed. I think I am concerned and we could be just as well off and taking 800 thousand and putting it into contract and focus in on education and letting medical needs met by other departments other than DPI that focus on medical needs rather than education. It might be simple to leave it how it is.

Senator Seymour : One person I have Senator Flakoll is the process, you say you have some 50 million in here is it going to be guaranteed, this thing falls apart if it is 48 million.

Senator Flakoll : The money for the bill is in 1013, until that passes, it is a live bill, and this could move up or down, until we go sine die every thing is up for grabs. Mr. Chairman could we have Tom Decker up for a few questions? I did say when I testified that we would know more by the time we get done with this but we may be more confused.

Senator Flakoll : With respect to the medically fragile or any other classifications is it assumed that those are already on contracts.

Tom Decker : This is a Bob Rutten or Jerry Coleman question.. My assumption is that they are on contract because they are high cost, this would be the typical process. You would need to talk to them about the details.

Senator Flakoll : But would they be capped out, by a certain threshold similar to someone who has a much less of a need relative to accomplish their education.

Tom Decker : If they are not state responsible if in fact they are residence of some district being served of a district the district would pay 2 ½ times the average cost and the state would pick up the rest of the educational cost.

Senator Flakoll : Is there a 20 % that comes in there too.

Tom Decker : I can't tell you how that works, It is a high cost feature,, you will need to ask Jerry Coleman.

Senator Freborg : I do believe it is 2 ½ times the cost plus 20 %.

Tom Decker : I think it is the 80/20 feature.

Senator Flakoll : I would be interested, Senator Taylor expressed an interest in maybe sliding some of that medical fragile money up contracts.

Senator Freborg : For the sake of discussion do you wish to try these amendments?

Senator Flakoll : My output goal would be to have a bill that would be good enough for passage, I know that they were certain to adopt the amendments as these are less objectionable than the bill. I would like to get to a point where we could have at least at the end of this some consensus of support if there are things that we can move forward. I think otherwise Mr. Chairman I don't think I paused long enough to have to ask for permission again. Otherwise we may shorting the contracts, and have the same million dollar plus shortfall that we have in the current biennium.

Senator Freborg : Do we need to stand at ease for discussion?

Senator Freborg called meeting back to order.

Senator Flakoll : I would like to take pg. 2 subsection 3 the 1.54 % and move it up to section 2 subsection 1 and add to the contracts so we would add the 1.54 to the 28.66. I believe that would come to 30.2 for contracts. Which would roughly be an increase of 2.4 million over the current biennium, but I may be wrong. If everyone is comfortable with this and has an understanding I will make a motion.

Senator Flakoll made a motion to adopt the amendments.

Senator G. Lee second the motion

Senator Freborg said the print amendment is a hog house and before anything happens we will need to look at it.

Hearing no other discussion roll call was taken: vote 6-0-0

Senator Freborg : I am a little confused and am not sure what we are working with.

Senator Freborg : We have now adopted 0103 Senator Flakoll

Senator Flakoll : The motion was to amended engrossed, 2364

Senator Freborg : With this revised sheet.

Senator Flakoll : Correct

Senator Freborg : We were not voting on your revisions b/c we haven't adopted this. We have adopted 0101.

Senator Flakoll : Earlier we did. My motion was to take the changes as stated and amend that onto the engrossed bill.

Senator Freborg : Well the engrossed bill would have to be 0101

Senator Flakoll : Yes

Senator Freborg : All right, and now Senator Flakoll?

Senator Flakoll : I will let someone else do that, I will concede to the committees wishes.

Senator Taylor moved a Do Not Pass as amended on SB 2364

Senator Erbele second the motion.

Senator Flakoll : Our intent originally when we first had our good friend 2033 we had some shared concern that a lot of money, that we are spending some of this money without any accountability in terms of the ADM or per pupil payments were used for and we want to kind of try to make sure that those that cost the most and are the worst off had some kind of set aside for them in place, not to guarantee that it will all be covered but to kind of shore up the disparity of the 1.6 million that we had. If we kill the bill if we have any assurance that we will have all those problems resolved.

Senator Taylor : I think the amended bill could be workable too for a couple of yrs. but if we, for the records we are getting the 52 million into 1013 were there is some additional money from the previous biennium. Having the stability of the 185.00 per students that our districts can count on which is part of their budget. I think the policy is as good as is. This will be even better if we can put more money into it.

Senator Freborg : Motion is for a Do Not Pass SB 2364.

Hearing no other discussion roll call was taken: **vote: 4-2-0**

Senator Taylor will carry the bill.

No further discussion

Vote 4 Yea 2 Nay 0 Absent

PROPOSED AMENDMENTS TO SENATE BILL NO. 2364

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 15.1-27-10 of the North Dakota Century Code, relating to per student special education payments; and to provide a method for distributing special education payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-27-10 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-10. Per student payments - Special education.

1. Except as provided in subsection 2, each biennium the superintendent of public instruction shall distribute ~~61.54 percent of any~~ moneys appropriated by the legislative assembly for ~~per student~~ special education payments ~~to each among school district districts~~ in the state on the basis of students in average daily membership. The superintendent of public instruction shall forward the payments, as calculated under section 15.1-27-05, to eligible school districts in the same manner and at the same time that the superintendent distributes state aid payments. For purposes of this section, "special education" means the provision of special services to students who have special needs, including students who are gifted and talented. Expenditures under this section may not conflict with nonsupplanting and maintenance of effort provisions under the Individuals With Disabilities Education Act, 20 United States Code 1400 et seq.
2. Upon the written request of a school district, the superintendent of public instruction may forward all or a portion of the moneys to which the school district is entitled under this section directly to the special education unit of which the school district is a member.
3. The superintendent of public instruction may withhold state special education funds due a school district if, in response to a complaint, the superintendent finds that the district is not providing a free appropriate public education to a student as required by law. Any withholding under this subsection may not exceed an amount equal to the cost of meeting the affected student's needs.

SECTION 2. SPECIAL EDUCATION PAYMENTS - DISTRIBUTION DURING 2005-07 BIENNIUM.

1. The superintendent of public instruction shall distribute 34.61 percent of any moneys appropriated in the grants - special education line item in House Bill No. 1013 to school districts or special education units as reimbursement for excess costs incurred in contracts for students with disabilities during the biennium beginning July 1, 2005, and ending June 30, 2007.
2. The superintendent of public instruction shall distribute 0.85 percent of any moneys appropriated in the grants - special education line item in House Bill No. 1013 to school districts or special education units as reimbursement for costs incurred in providing programs to gifted and

talented students during the biennium beginning July 1, 2005, and ending June 30, 2007, upon the submission of an application that is approved by the superintendent. The superintendent of public instruction shall encourage the provision of gifted and talented programs through cooperative efforts by school districts and special education units.

3. The superintendent of public instruction shall distribute 3.00 percent of any moneys appropriated in the grants - special education line item in House Bill No. 1013 to school districts or special education units as reimbursement for costs incurred in providing services to medically fragile students during the biennium beginning July 1, 2005, and ending June 30, 2007.
4. If any moneys remain after the superintendent of public instruction completes the requirements of section 15.1-27-10 and subsections 1 through 3 of this section, the superintendent shall distribute the remaining moneys as additional per student special education payments in the same manner as provided in section 15.1-27-10."

Renumber accordingly

Date: 2/1/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2344

Senate SENATE EDUCATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken on amendment

Motion Made By Sen. Flakoll Seconded By Sen. Lee

Senators	Yes	No	Senators	Yes	No
CH- SENATOR FREBORG	✓		SENATOR SEYMOUR	✓	
V-CH- SENATOR G. LEE	✓		SENATOR TAYLOR	✓	
SENATOR ERBELE	✓				
SENATOR FLAKOLL	✓				

Total (Yes) 4 No 0

Absent 0

Floor Assignment _____

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

PROPOSED AMENDMENTS TO SENATE BILL NO. 2364

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 15.1-27-10 of the North Dakota Century Code, relating to per student special education payments; and to provide a method for distributing special education payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-27-10 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-10. Per student payments - Special education.

1. Except as provided in subsection 2, each biennium the superintendent of public instruction shall distribute 68.95 percent of any moneys appropriated by the legislative assembly for ~~per student~~ special education payments ~~to each~~ among school district districts in the state on the basis of students in average daily membership. The superintendent of public instruction shall forward the payments, as calculated under section 15.1-27-05, to eligible school districts in the same manner and at the same time that the superintendent distributes state aid payments. For purposes of this section, "special education" means the provision of special services to students who have special needs, including students who are gifted and talented. Expenditures under this section may not conflict with non-supplanting and maintenance of effort provisions under the Individuals With Disabilities Education Act, 20 United States Code 1400 et seq.
2. Upon the written request of a school district, the superintendent of public instruction may forward all or a portion of the moneys to which the school district is entitled under this section directly to the special education unit of which the school district is a member.
3. The superintendent of public instruction may withhold state special education funds due a school district if, in response to a complaint, the superintendent finds that the district is not providing a free appropriate public education to a student as required by law. Any withholding under this subsection may not exceed an amount equal to the cost of meeting the affected student's needs.

SECTION 2. SPECIAL EDUCATION PAYMENTS - DISTRIBUTION DURING 2005-07 BIENNIUM.

1. The superintendent of public instruction shall distribute 28.66 percent of any moneys appropriated in the grants - special education line item in House Bill No. 1013 to school districts or special education units as reimbursement for excess costs incurred in contracts for students with disabilities during the biennium beginning July 1, 2005, and ending June 30, 2007.
2. The superintendent of public instruction shall distribute 0.85 percent of any moneys appropriated in the grants - special education line item in House Bill No. 1013 to school districts or special education units as reimbursement for costs incurred in providing programs to gifted and

talented students during the biennium beginning July 1, 2005, and ending June 30, 2007, upon the submission of an application that is approved by the superintendent. The superintendent of public instruction shall encourage the provision of gifted and talented programs through cooperative efforts by school districts and special education units.

3. The superintendent of public instruction shall distribute 1.54 percent of any moneys appropriated in the grants - special education line item in House Bill No. 1013 to school districts or special education units as reimbursement for costs incurred in providing services to medically fragile students during the biennium beginning July 1, 2005, and ending June 30, 2007.
4. If any moneys remain after the superintendent of public instruction completes the requirements of section 15.1-27-10 and subsections 1 through 3 of this section, the superintendent shall distribute the remaining moneys as additional per student special education payments in the same manner as provided in section 15.1-27-10.*

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2364: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2364 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 15.1-27-10 of the North Dakota Century Code, relating to per student special education payments; and to provide a method for distributing special education payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-27-10 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-10. Per student payments - Special education.

1. Except as provided in subsection 2, each biennium the superintendent of public instruction shall distribute 68.95 percent of any moneys appropriated by the legislative assembly for ~~per student~~ special education payments ~~to each~~ among school ~~district~~ districts in the state on the basis of students in average daily membership. The superintendent of public instruction shall forward the payments, as calculated under section 15.1-27-05, to eligible school districts in the same manner and at the same time that the superintendent distributes state aid payments. For purposes of this section, "special education" means the provision of special services to students who have special needs, including students who are gifted and talented. Expenditures under this section may not conflict with nonsupplanting and maintenance of effort provisions under the Individuals With Disabilities Education Act, 20 United States Code 1400 et seq.
2. Upon the written request of a school district, the superintendent of public instruction may forward all or a portion of the moneys to which the school district is entitled under this section directly to the special education unit of which the school district is a member.
3. The superintendent of public instruction may withhold state special education funds due a school district if, in response to a complaint, the superintendent finds that the district is not providing a free appropriate public education to a student as required by law. Any withholding under this subsection may not exceed an amount equal to the cost of meeting the affected student's needs.

SECTION 2. SPECIAL EDUCATION PAYMENTS - DISTRIBUTION DURING 2005-07 BIENNIUM.

1. The superintendent of public instruction shall distribute 30.2 percent of any moneys appropriated in the grants - special education line item in House Bill No. 1013 to school districts or special education units as reimbursement for excess costs incurred in contracts for students with disabilities during the biennium beginning July 1, 2005, and ending June 30, 2007.
2. The superintendent of public instruction shall distribute 0.85 percent of any moneys appropriated in the grants - special education line item in House Bill No. 1013 to school districts or special education units as

reimbursement for costs incurred in providing programs to gifted and talented students during the biennium beginning July 1, 2005, and ending June 30, 2007, upon the submission of an application that is approved by the superintendent. The superintendent of public instruction shall encourage the provision of gifted and talented programs through cooperative efforts by school districts and special education units.

3. If any moneys remain after the superintendent of public instruction completes the requirements of section 15.1-27-10 and subsections 1 through 3 of this section, the superintendent shall distribute the remaining moneys as additional per student special education payments in the same manner as provided in section 15.1-27-10."

Renumber accordingly

2005 TESTIMONY

SB 2364



**Anne Carlsen
Center for Children**
Changing Lives Forever

**STUDENT/DIAGNOSIS
2005**

	Gender	Diagnosis	Treatments/Medications
1	M	Congenital Myelomalacla of the Spinal Cord (C5-T3); Hypoplastic Lungs and Thorax; Seizure Disorder; Brain Atrophy; Tracheostomy (8-29-95); Gastrostomy (8-4-95); Failure to Thrive; Ventilator Dependant, Latex allergy, Obsessive compulsive behavior	G-tube, trach, Epi-Pen Jr. IM for anaphylaxis, Ventilator when ill, cool aerosol to trach for moisture, Singulair daily, Flintstones complete vitamin daily, Glycolax daily, Zoloff daily, Zyrtec daily, Feosol TID, Oxybutynin TID, Baclofen TID, cleanse g-stoma BID, cleanse trach stoma site every shift, Soy milk per g-tube at 12am if not taken orally, water flushes 5 times per day, trach change two times per week and PRN, Albuterol nebs PRN, CPT per Vest BID and PRN, Nasonex spray daily, Flovent inhaler BID, Atrovent neb PRN, Patanol eye drops TID for allergies, suction trach PRN, O2 to keep O2 sats above 92%, Benadryl for severe allergy reaction every 4 hours PRN, O2 sat monitor. Significant milk allergy
2	M	Seizure Disorder, Trisomy 21(Down's Syndrome), Anoxic Encephalopathy with profound MR, seizure disorder, Tracheostomy, gastrostomy tube, Cerebral palsy with spastic quadriplegia, Gastroesophageal reflux, Bronchopulmonary dysplasia, Chronic reactive airway, Hypothyroidism, Endocardial cushion defect	G-tube, trach, cool mist to trach, Baclofen pump, trach change twice weekly and prn, multivitamin daily, mom daily, prune juice daily, Calcium Carbonate daily, Levothyroxine daily, Dulcolax supp PRN, Probalance feeding three times per day and at night time per pump, water flushes 7 times per day, CPT per Vest TID and PRN, Flovent inhaler BID, Atrovent nebs TID and PRN, Duoneb PRN, Albuterol neb PRN, Adult fleets enema PRN, Lorazepam Intensof 0.5ml sublingual every 4 hours PRN for seizure activity over 5 minutes and may repeat after 10 minutes times 1 if necessary, cool mist per trach to keep trach secretions thin, trach suction prn, O2 monitor to keep O2 sats above 88%, Mickey button
3	M	Severe dystrophy with resultant respiratory failure; status post grade III bilateral intraventricular hemorrhage; Gastroesophageal reflux; bilateral cryptorchidism, history of aspiration	G-Tube, Trach, ventilator at night time and during nap times for two hours at a time, change tracheostomy two times daily and PRN, oxygen PRN to keep sats above 93%, trach suction PRN, Calcium

	Gender	Diagnosis	Treatments/Medications
		pneumonia, Gastrostomy with Nissen fundoplication, ventilator, tracheostomy	carbonate, Milk of Magnesia daily, Colace BID, Carnitine TID, Nutren Jr BID and at HS per pump. Water flush 4 times per day, Prune juice 2 times per day, Passey Muir valve, Cool or warm mist per trach PRN, Albuterol Nebs PRN, Colace daily, CPT Vest BID and PRN, Flovent inhaler 2 puffs BID, 02 sat monitor.
4	M	Perinatal Asphyxia with anoxic Encephalopathy, Seizure disorder, Gastrostomy and Nissen Fundoplication, Methicillin Resistant Staphylococcus aureus	G-tube , Head circumference every 3 months, clean gastrostomy site bid, suction almost continuously orally and nasally, Multivitamin with mineral BID, vitamin D, Phenobarbital BID, Calcium Carbonate BID, Kepra BID, Zantac BID, CPT with Vest TID, Atrovent neb BID and PRN, Xopenex neb TID and PRN, Racemic epi neb PRN, Pulmicort neb BID, Artificial tears to both eyes while awake, Elecare 4 ounces every 4 hours per g-tube, Topamax BID, O2 to keep O2 sats above 90%, O2 sat monitor. Modified to full isolation for MRSA
5	M	Cerebral Palsy with spastic quadriplegia secondary to severe neonatal hypoxic ischemic encephalopathy, Seizure disorder, global developmental delays, Tracheostomy, Gastrostomy, visual and hearing impairments	G-tube, trach , Prune juice or apple juice once daily, Cerovite daily, Sodium Fluoride drops daily, Mineral Oil daily, Prilosec daily, Lamictal BID, Chlorhexidine rinse to mouth bid, Clonazepam BID, O2 sat monitor when unattended , cool mist prn to thin trach secretions, trach, mic-key button, Maalox TID, Robinul 5 times a day, Water flush 4 times daily, clean trach stoma BID, clean g-stoma BID, change trach weekly and PRN, Promote per pump QID and night time, Albuterol Nebs PRN, Saline neb PRN, CPT per Vest TID and PRN, Atrovent Neb daily, Pulmicort Neb daily, Lubifresh P.M. ointment to eyes every 2 hours and PRN, trach suctioning prn, oral suction prn, O2 to keep sats above 92%, K-pad PRN for low temp 96.0 or lower, Diazepam for seizure activity over 10 minutes.
6	F	Myelomeningocele at L-4 sacral area, status post repair, Chiari type II malformation, status post decompression, VP shunt and revision, Bilateral vocal cord paralysis, Laryngomalacia secondary to vocal cord paralysis, obstructive sleep apnea	G-tube, trach, ventilator at night time and during the day as needed , cool mist to thin secretions, Passey Muir valve, continuous oxygen, O2 sat monitor and apnea monitor , trach change weekly and prn, Atrovent nebs prn, prune juice daily, Zantac twice daily, massage tear ducts three times daily, Good Start Supreme formula 5 times per day per g-tube, vent g-tube every hours and PRN, Saline neb PRN, CPT PRN, Xopenex neb PRN, Flovent inhaler BID, Colace BID, 1/2 Glycerin supp every 3 rd day if no stool, Mickey button, head circumference monthly, weight weekly. Latex precautions
7	F	Cerebral Palsy, Profound mental retardation, Seizure disorder, GERD, G-tube, spinal fusion, Gastrostomy	G-tube , Calciferol daily, prune juice BID, Lamictal BID, Clonazepam Bid, Trileptal BID, Isosource TID per g-tube, Critic-Aid to g-stoma BID and PRN, Diastat per rectum for seizure activity over 3 minutes, Water flush QID and after feedings, isosource per pump at night, clean g-stoma BID, CPT PRN,

	Gender	Diagnosis	Treatments/Medications
			Albuterol Nebs PRN. Log roll only 2-3 person lift, vent g-tube PRN, Carafate paste to g-stoma PRN, O2 to keeps sats above 90%, Milk of Magnesia every other day PRN, vent g-tube as needed.
8	F	Post herpes encephalopathy, right hemiparesis, seizure disorder, oral motor difficulties, visual impairments, expressive aphasia, Vagus Nerve Stimulator, Gastrostomy	G-tube, VNS (Vagal Nerve Stimulator) Docusate daily, Miralax daily and PRN, Keppra BID, Felbatol TID, Depakene syrup TID, Multivitamin chewable daily, Carnitine liquid TID, Promote per g-tube TID, Nasonex nasal spray daily, Lorazepam for hard seizure activity over 10 minutes. VNS magnet PRN for seizure activity.
9	F	Cerebral palsy with spastic quadriplegia, Seizure disorder, Cortical blindness, static encephalopathy, scoliosis, chronic right hip dislocation, spinal fusion, Gastrostomy, Urinary Stents	G-tube, O2 PRN, Ferrous sulfate, Cerovite liquid daily, Phenobarbital, Levothyroxine, Oxybutynin, Clonazepam, Calciferol daily, Glycolax powder daily, Clonazepam daily, Levothyroxine daily, Calcium Carbonate BID, Naprosyn BID, Zantac BID, Chlorhexidine rinse to mouth BID, Ferrous Sulfate BID, Carnitor TID, Neurontin ZTID, Neutra-phos TID, Valproic Acid TID, Oxybutynin TID, Baclofen QID, Dulcolax supp every second day if no stool, Diazepam rectally PRN for seizures over 5 minutes for cluster seizures over 15 minutes may repeat if not effective, Peptinex TID and at night per pump, water flushes six times per day. ProMod BID, CPT per Vest BID and PRN, suction orally as needed PRN, Cough machine as needed, Albuterol nebs PRN, may straight cath PRN if no urinary output in 12 hours, O2 to keep sats above 90%, 2-3 person lift or Hoyer lift, O2 sat monitor PRN
10	F	Aicardi Syndrome, Agenesis of the Corpus Callosum, Seizure disorder, Scoliosis, retinal Coloboma	Urine dipsticks for ketones with every void related to ketogenic diet, Multivitamin sugar-free daily, Vitamin D daily, Milk of Magnesia daily, Neutra-phos daily, Phenobarbital BID, Calmag Zinc plus D BID, Glycolax powder BID, Carnitor TID, Trileptal TID, Valium rectally PRN for seizures over 15 minutes or prolonged clusters, Peds Fleets enema every third day with out BM, Diastat per rectum for seizure over 1 minute on outings, Chromium daily, Zonegram BID
11	M	Cerebral palsy-severe spastic quadriparesis, Seizure disorder, visual impairments, chronic respiratory problems, profound mental retardation, Gastrostomy, Baclofen pump	G-tube, Baclofen pump, Neurontin TID, prune juice, Neurontin, Lamictal BID, Robinul TID, Glycolax daily, Calciferol daily, Heartburn Relief BID, Neurontin TID, Clonazepam TID, Clonazepam TID, O2 sat monitor at night to monitor O2 saturations, Probalance one can BID and at HS per pump, water flush 5 times per day per g-tube, prune juice BID, skim milk once daily per g-tube, CPT per Vest tid and PRN, cough machine bid and PRN, 2 person lift, log roll, Albuterol Neb PRN, Valium rectally for seizure activity if over 5 minutes, suction orally PRN, O2 PRN
12	F	Hydranencephaly, VP shunt due to hydrocephalus, profound mental	G-tube, Multivitamin daily, Baclofen QID, water flushes 6 times per day, Promote with fiber offered

	Gender	Diagnosis	Treatments/Medications
		retardation, Gastrostomy, spinal fusion, Nissen fundoplication	orally if not taken orally then given per g-tube, EES gel to acne at HS, Echanachea root, Milk of Molasses enema every other day, Vent g-tube frequently, 2 - 3 person lift, log roll, Glycolax daily, Ibuprofen TID, Dicto TID, Mylanta extra strength TID, Artificial tears PRN, Guaiac stool monthly due to Ibuprofen use, weigh monthly
13	F	Immunodeficiency with Ataxia-telangiectasia syndrome, history of aseptic meningitis due to influenza A, viral meningeal encephalitis, history of seizures with meningitis, right hemiparesis, dandy walker abnormalities, bifrontal and right parietal infarction, spastic quadriparesis, Gastrostomy, Nissen fundoplication, right sided visual field defect, astigmatism, porta cath	G-tube, Porta cath central line, Multivitamin with iron daily, Calciferol daily, Docusate BID, Iron sulfate BID, Lamictal BID, Diazepam BID, Baclofen TID, Camitor TID, Lactulose TID, Robinul TID, Naprosyn TID, Valproic acid TID, Misoprostol QID, K-Poly Bac-eye ointment to eyelids and eyelashes at bedtime daily, Promote with fiber TID and at HS per pump, Water flushes per g-tube 5 times a day, cleanse g-tube BID, Albuterol nebs BID and PRN, Ayr line nasal gel BID and PRN, IV Gammagard once monthly per RN, Bisacodyl supp every second if no BM, 2 person lift, O2 to keep sats above 90%, suction PRN, Diazepam PRN for hard seizure over 5 minutes (may give dose every 4 hours, call physician if given)
14	F	Seizure disorder, global psychomotor retardation secondary to group B sepsis as a neonate, static encephalopathy, global developmental delays, generalized hypotonia, hypermobility of joints, left hemiparesis, oral motor dysfunction with feeding difficulties, pervasive developmental disorder, spinal fusion, Vagus Nerve Stimulator	G-tube, Colace daily, Calciferol daily, Ferrous sulfate TID, prune juice BID, Keppra BID, skim milk, Valproic acid TID, Camitor QID, MOM daily, skim milk daily per g-tube Promote per g-tube 4 times per day, water flushes per g-tube 4 times per day, Diazepam per g-tube for seizure activity over 5 minutes or 10 minutes partial seizure activity may give 2.5mg if not effective, log roll only, VNS (vagal nerve stimulator) - may use one of the magnets at the beginning of seizure activity. Hold magnet on device for 3 seconds then remove. If seizure continues the magnet can be used for 3 seconds every 60 seconds PRN. If prolonged stridor with seizure, tape horseshoe magnet flat over stimulator, leave it in position and call physician).
15	F	Chromosome abnormality, Seizure disorder, heart defect, psychomotor retardation, glaucoma, left cataract	Childlife multivitamin and minerals daily, Levothyroxine daily, Unifiber BID, Camitor TID, Topamax TID, Valproic acid TID, Oxygen PRN, CPT PRN, Valium rectally PRN for seizure activity.
16	M	Waardenburg Syndrome, possible Hirschsprung's disease, ileostomy with revision, congenital deafness, opsoclonus (dancing eyes), possible Seizure disorder, Gastroesophageal reflux, failure to thrive, sphincter dysergia with significant postoperative Hirschsprung type enterocolitis	Broviac central line with sterile dressing changes every 7 days and PRN, Flintstone vitamins daily, table salt on food ½ tsp BID, Heartburn Relief BID, FeSO4 TOD, Artificial tears to each eye TID, Vitamin C TID, Simethicone QID, Heparin flush to Broviac central line one daily by RN, Enterostomal cares with every stool, weight every 4 weeks. Significant egg and whey allergy
17	M	Cerebral palsy with spastic quadriplegia, Seizure disorder, Cortical blindness, mental retardation, history of respiratory	G-tube, Calciferol daily, Camitor TID, Valproic acid QID, Xalatan eye drops daily, water flush per g-tube TID, Promote per g-tube five times a day, prune juice

	Gender	Diagnosis	Treatments/Medications
		and ear infection, chronically dislocation of left hip, Scoliosis, probable fetal alcohol syndrome, Gastrostomy with Nissen fundoplication	daily and PRN, milk per g-tube once daily, Albertol Nebbs PRN, CPT per Vest BID and PRN, Racemic epi Neb PRN, Atrovent neb PRN, Lacri-lube at HS and PRN, O2 PRN to keep O2 sats above 90%, suction orally PRN.
18	M	Cerebral palsy, Seizure disorder, Porencephalic cyst, visual impairment	G-tube , Prune juice, Centrum daily, Ca-fortified orange juice daily, Vitamin D daily, Glycolax powder daily, 2% milk BID, Mebaral BID, Valproic acid TID, Water flush 5 times a day, Floets enema every 2 nd day if no large stool, Glycerin supp every evening if no large stool, vent g-tube every 2 hours and PRN, CPT Vest PRN, TAO to granulation tissue BID.
19	M	Cerebral palsy, spastic quadriplegia, panglobal developmental retardation, Seizure disorder, probable Cortical blindness, Gastrostomy	G-tube , Miralax powder, Baclofen, Calciferol, Ferrous sulfate elixir, Miralax powder, Topamax, Diocto, Trileptal, Zantac, Motrin tid, Metoclopramide tid, Carnitor tid, Potassium qid, Diazepam, Promote per g-tube 3 times per day and night time drip per pump, water flushes per g-tube, vent g-tube PRN, Sodium chloride 20cc qid, MOM PRN, Fleets enemas PRN, Clemastine PRN, Diazepam per g-tube for seizure activity over 5 minutes
20	M	Cerebral Palsy, VP shunt, Seizure disorder, Latex allergy, abnormal breathing pattern, behavior, gastrostomy, spinal fusion	G-tube , MOM daily and PRN, Mag-Ox daily, Topamax BID, Keppra BID, Carnitor BID, Neurontin TID, Patanol PRN eyes, Elecare to g-tube 5 times a day, water flush to g-tube five times a day, Apricot or pear juice to g-tube daily, Triamcinolone BID PRN, Fluocinolone to bilateral ears daily PRN, Lacri-lube ointment to bilateral eyes daily PRN, Nasacort nasal spray BID, Benadryl at HS PRN for agitation, Patanol eye drops PRN, Clemastine PRN for nasal congestion, Diazepam rectally for seizure activity over 5 minutes, log roll, 2-3 person lift. Latex allergy

Admission Requirements

- **Admission requirements:**

1. **Medical Necessity:** Medical documentation substantiates that the service is medically necessary. Medical documentation may include a diagnosis, complete medical history, copies of progress notes from the physician, or other professionals providing care or service, laboratory tests, X rays, physicians orders, and treatment plan outlining the needed medical care, and any other documentation that may be necessary to determine medical necessity for the child's admission;

2. **24-Hour Nursing Care:** Professional nursing services are necessary on a 24-hour basis and the child requires one the following services:

- a. Use of ventilator,
- b. Continuous or frequent use of oxygen,
- c. Tracheostomy care or other airway care requiring wall suction,
- d. Frequent skilled nursing observation and assessment,
- e. Use of BiPAP or CPAP.

Additive Criteria

Additional Admission Criteria:

The child requires at least 2 of the following services (most require multiples of services):

- a. Tracheostomy care,
- b. Apnea monitoring,
- c. Continuous pulse oximeter,
- d. Frequent skilled nursing observation and assessment due to risk for crash
- e. Intravenous Therapy,
- f. Uncontrollable seizures,
- g. Frequent respiratory treatments/ assessments,
- h. Specialty bed,
- i. Vagal Nerve Stimulator,
- j. Baclofen pump,
- k. Skilled nursing observation and assessment following surgery casting, surgeries,
- l. Birth to 3 years of age,
- m. Chest Physiotherapy,
- n. Hoyer lift,
- o. Skilled skin care and monitoring for the treatment of decubitus ulcer,
- p. Drug therapy stabilization that requires skilled monitoring on a 24 hour basis,
- q. Nutritional therapy,
- r. Alternative nutritional feeding, such as nasogastric or gastrostomy feeding,
- s. Colostomy or ileostomy care,
- t. Prolonged isolation,
- u. Infectious disease care,
- v. Direct paraprofessional care such as rehabilitation therapy that is supervised by a medical professional,
- w. Professional monitoring to manage end stage disease.

Current 2003-2005 spending on Special Ed

Total of all Special Education money \$49,898,695

↳ ADM (per pupil payments)

2003-2004 ADM - \$18,103,257

2004-2005 AMD - \$18,103,257 - same is projected by Jerry at DPI

Grand total (estimate) for ADM for biennium is \$36,206,514

2004-2005 \$ 185 per student

↳ Contracts

\$ 13,292,181 for biennium

↳ Gifted programs

Plus \$400,000 for gifted programs

Proposed for 2005-2007 in SB 2364 with amendments 50824.0103

Total of all Special Education money is \$52,000,000 an increase of about \$2.5 million over current biennium.

↳ ADM (Per pupil payments)

Grand total of \$35,854,000

Estimated number of students in 2005-2006 - 97,386

Estimated number of students in 2006-2007 - 96,412

Estimated average payout of \$185/pupil (same as current year)

↳ Contracts

\$14,903,200 for biennium

An increase of \$1,611,019 from present biennium

↳ Gifted

\$ 442,000 for biennium – an increase of \$42,000 from current biennium

↳ Medically fragile

\$800,800 for biennium

Source of data – Jerry Coleman at DPI

All information depends on amount placed in HB 1013

TESTIMONY ON SB 2364
SENATE EDUCATION COMMITTEE
February 1, 2005
by Robert Rutten, Director of Special Education
328-2277
Department of Public Instruction

Chairman Freborg and members of the committee:

My name is Robert Rutten and I am the Director of Special Education for the Department of Public Instruction.

I would like to express my appreciation to the sponsors of this bill for the concerns they have demonstrated through this proposal in an attempt to address the issues surrounding state support for special education. However, the current language in SB 2364 creates some questions that will need to be addressed if this proposal becomes law.

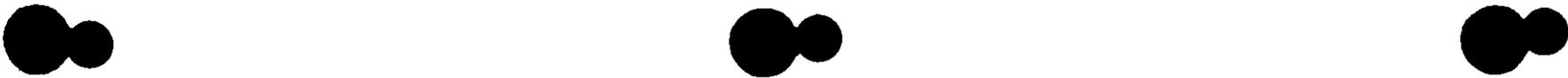
Just to make sure we're all clear about current state funding for special education I thought it might be helpful to briefly review how schools currently receive state dollars for special education programs.

State funding for special education is a two-part system:

1. Average Daily Membership (ADM) block grant; and
2. Funding for Extraordinary Costs.

The purpose of the ADM block grant is to provide supplemental support to school districts for the excess costs of educating students with disabilities. The ADM block grant is approximately 75% of the total state dollars set aside for special education.

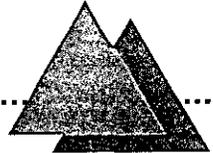
The Extraordinary Cost funding is intended to provide supplemental support to school districts for very high cost cases---individual students requiring many intensive services. This is also called the student contract system. It is currently described in NDCC 15.1-32-14.Special education per student payments.



Example of a child who has moderate to severe disabilities:

Cerebral Palsy (Orthopedic Impairment)



- ← Physical Therapy
 - ← Speech/Language Therapy
 - ← Assistive Technology
 - ← Occupational Therapy
 - ← Individual Paraeducator
- 

The funds provided by the state for student contracts provide an insurance-like system for schools. School districts apply for reimbursement when the cost of educating students with moderate to severe disabilities goes beyond a specific amount. This is comparable to a deductible with an insurance policy. The threshold amount is 2.5 times the average cost of educating a student. School districts are responsible for an additional 20% of remaining costs over the 2.5 times.

An example of reimbursement for a student contract is provided below:

State allowable cost	\$20,803
Less 2-1/2 times State Average cost	<u>-14,580</u>
Remaining amount	\$ 6,223
School District Co-pay (20%)	\$ 1,244
State Reimbursement ((80%))	\$ 4,978

The student contract system represents about 25% of the total state special education appropriation.

As you can see the *"state is liable for eighty percent of the remaining cost of education and related services for each such student with disabilities within the limits of legislative appropriation."*(NDCC 15.1-32-18. Cost Liability of school district for special education).

Last year the schools of our state experienced significant increases in the numbers of student contracts and approved costs. School personnel are typically not involved in the placement of youth considered by the student contract process as "agency placed." Typically these placements are made by the courts or persons in the Human Services system. Often the Department of Human Services assists parents and families who voluntarily place their children out of their homes when

necessary. Factors that are contributing to this increase in the number of agency placed student contracts include:

- Youth placed in the Foster Care Program as a result of abuse and neglect;
- Youth who have been adjudicated for drug usage;
- Increase in the number of families that are unable to care for their children because of severe emotional disturbances.

This increase in the number of student contracts and the associated costs was the basis of DPI's request for an increase in state appropriations for the student contract system.

The proposal being considered today in SB 2364 would repeal 15.1-27-10, the provision in state law that authorizes the distribution of state moneys "*appropriated by the legislative assembly for per student special education payments to each school district in the state on the basis of students in average daily membership.*" In addition, this proposal would require the distribution of state funds to reimburse school districts or special education units for excess costs incurred *relating to contracts* for students with disabilities. The number of students involved in the student contract system for last school year was 763. However, our overall student special education enrollment was 14,044. Because SB 2364 would repeal the section of NDCC that requires payments determined on the basis of average daily membership, it appears that this bill would require schools to seek reimbursement for *all* students with disabilities through the student contract system.

Part 3 of Section 1 of SB 2364 would require the distribution of \$1,600,000 to reimburse school districts or special education units for costs incurred in providing services to *medically fragile* students. The term, *medically fragile*, however, is not one of the current designated disability categories in the federal Individuals with Disabilities Education Act (IDEA). It is not clear to the

Department of Public Instruction how “medically fragile” is defined in order to determine which students would be eligible for this funding. It is also unclear how school districts would access these funds.

Senate Education Committee

SB 2364

February 1, 2005

Presented by Mike Ahmann, Special Education Director, Bismarck Public Schools

Chairman Freborg and members of the committee, I would like to present testimony in opposition to SB 2364. By repealing sections 15.1-27-32 of the North Dakota Century code, and passage of this bill, the only means by which school districts would receive state funding for special education costs would be through the student contract system. The student contract system has been a means of paying the state share of special education costs when students are placed by agencies as specified in section 15.1-29-14 of the Century Code. The other part of the student contact system protects school districts in cases of extraordinary costs associated with some multiply disabled students. The largest share of state funding for special education services has come to school districts through state funds based on average daily membership (or ADM). This system of funding is consistent with the traditional funding source of state funding of education cost through the foundation aid program.

While state funds for the student contract system have consistently fallen short in recent years, (for 2003-04 – 11 students from Bismarck had excess cost contracts for which state funding reimbursement was cut \$43,018) a better fix for this problem would be to increase the student contract line item in state funding.

The current Special Education funding system has it's flaws mostly in a lack of funds from the Federal Government for mandated services, (approximately 18% of the cost) and state funding falls short (20% of special education costs per year for Bismarck district). The combination of the ADM funding and the student contracts system are desirable to the proposed changes, in SB 2364. I urge you to give this bill a Do Not Pass recommendation. I apologize for not appearing before you in person, however, you may contact me via e-mail at mike_ahmann@educ8.org.

Testimony on Senate Bill 2364
Presented by Mark Lemer, Business Manager, West Fargo Schools
February 1, 2005

Senate Freborg and members of the Senate Education Committee, I would like to express my opposition to the provisions of Senate Bill 2364.

This bill undermines the current funding mechanisms that are in place to support school district's efforts to provide special education services to students with disabilities.

The language eliminates ADM payments, but does not provide a different reimbursement method. Before the adoption of ADM payments as a funding mechanism, school districts were reimbursed based on staff that were hired to provide direct student support. These reimbursements were based on the cost of the salary and benefits of those staff.

Reimbursements for student contracts have always only been a portion of the funding mechanisms in special education, and were designed to be a "safety net" to reimburse schools for very high cost students. Changing the reimbursement system to be entirely based on student contracts will change the entire focus of special education funding.

There are other problems with the proposed language, as well. For example, during past bienniums, the appropriations for student contracts have not increased as rapidly as the costs that school districts are incurring. As a result, the legislature required that all reimbursements on student contracts be reduced by twenty percent. This reduced the amount that school districts could request and allowed the appropriation to be artificially lowered. There is no provision in SB 2364 to eliminate the twenty percent cost share. Based on the current bill, there will be a significant balance remaining in the student contracts line item at the end of the biennium.

The bill also creates a new reimbursement for medically fragile students. As of yet, no one has a definition of what constitutes a medically fragile student. However, I believe that we have at least one student who would meet this definition. He receives full-time nursing services

during the school day in addition to all of the other educational and related services that he receives. Because of his significant medical needs, we are able to claim reimbursements on a student contract and can access Medicaid funds for his nursing services. He is a very high-cost student, but we also receive significant reimbursements for these costs. As such, the net cost to the school district is not different than other students who have fewer medical needs.

While it is true that there needs to be an increase in the appropriation for student contracts, that increase should not come from shuffling dollars from one line item in the DPI budget to another. The appropriation for student contracts should be increased to cover the actual costs incurred by school districts, but the appropriation for ADM payments should not be used to fund it.

Every school district in the State has special education costs to pay. If they are a very small district, they may have no students with special needs in a given year. However, they are still a member of a special education unit and are responsible for their share of the costs of that special education unit. The suggestion has been made that school districts can "use the ADM money to buy basketball uniforms." This is simply not the case. The costs of special education continue to rise each year. Special Education units must fund these increases by assessing their member schools. While a portion of those costs may be tied to individual students, many are not. As a result, school districts pay assessments whether they have special needs children in a particular year or not.

This whole-house change in funding as proposed in Senate Bill 2364 will have negative repercussions for all school districts. I urge you to give this bill a "Do Not Pass" recommendation. I apologize for not appearing before you in person. However, you may direct inquires to me via e-mail at lemer@west-fargo.k12.nd.us.

Thank you for you attention.

Residents
per medically
fragile

Not identified (est.) 8 From unidentified locations in state.

Those currently at ACCC

Medina	2	168
Hope	1	303
New Town	1	1,367
Belcourt	1	2,440
Devil's Lake	1	7,222
Dickinson	2	7,840
Wahpeton	1	8,586
Jamestown	1	15,527
Grand Forks	3	16,440
Fargo	3	30,200
Minot	1	36,567

Using 2000 census data by city.

Statewide average (@25 kids) 25,688

JB2364