

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1230

2007 HOUSE EDUCATION

HB 1230

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1230**

House Education Committee

Check here for Conference Committee

Hearing Date: **16 January 2007**

Recorder Job Number: **1171 and 1173**

Committee Clerk Signature



Minutes:

Representative Lois Delmore, District 43, introduced HB 1230. This bill levels the playing field and requires SESP (supplemental educational services providers) to be highly qualified in order to meet the requirements of the NCLB (No Child Left Behind) act. It does not prevent parents from hiring other tutors for their children. If SESP are paid with state or federal monies, they should be highly qualified.

Representative Haas: How many SESP are in the state right now.

Representative Delmore: I do not. I do know that in Grand Forks there are 4 or 5. I have heard from colleagues across the river that there are many non qualified people.

Representative Mueller: What are the SESP that you are referencing?

Representative Delmore: Those are the services provided to children who are not meeting the standards of NCLB. We have SESP that are private and parents are hiring them. These would be people to get those children up to snuff.

Representative Herbel: Are most of those providers highly qualified.

Representative Delmore: I am working with Laurie at DPI to get this determined. I would like everybody that is involved to be highly qualified. Some of them are, some of them aren't.

Representative Karls: Can you give us an example of what a SESP would do in a school?

Would that be special needs students or just students that are not meeting the standards?

What would be the ramifications in our rural areas where such things are not available?

Representative Delmore: It could be special needs. Basically, they would do tutoring services for children that are not meeting standards. We have many of those things that we run into in rural states like ND. One of the problems is who will provide the services. We have to find an alternative to do that. In 2010 they are looking at rewriting the NCLB act and there will be some changes. As a rural state we have pointed out some changes. It has not been easy, but we are making process.

Representative Haas: In an isolated area a SESP could be a single retired teacher who sets up a business.

Chairman Kelsch: If I as a parent hired a tutor, they would not have to be highly qualified.

Representative Delmore: That is correct.

Nancy Sand, NDEA, spoke in favor of the bill. Anyone who receives federal funding would be required to be highly qualified. I believe that is the difference. A parent can certainly invite anyone they so chose to tutor their children. This has to do with funding. This state requires a teaching license for anyone to teach children and it we think it is just as important to for the SESP's who also teach to have the same requirements.

Representative Johnson: Would that requirement be placed on teacher aides?

Sand: No. If we look at the language this refers to those who are teaching.

Chairman Kelsch: It does not include teacher aides. They would not be required to be highly qualified. This is aimed more at tutoring students. The intent is to identify those service providers that receive federal funds under NCLB.

Representative Haas: It might be helpful to recall our discussions on NCLB and that is if schools were not meeting AYP, there were two options. They could transfer to another school or they could receive supplemental services. In the rural areas in many cases there is no chance to transfer to another school.

Representative Herbel: When these service providers have highly qualified people in a specific area, does that mean students can go to that person for another subject. Does it specify the subject area?

Sand: I do not know the answer to that.

Representative Mueller: I heard earlier that this applies only to federal funds or is it saying any school funds?

Chairman Kelsch: It would be federal funds. All schools receive federal Title I funds.

Laurie Matzke, director of Title I, DPI, spoke in Opposition to HB 1230. **(Testimony Attached.)** I agree with the concept but believe it would be problematic to proceed when looking at the legal aspects. She provided copies of the federal law pertaining to Supplemental Educational Services Providers. It provides application criteria and does not require a license.

Vice Chairman Meier closed the hearing on HB 1230.

At a later time on the same day, **Chairman Kelsch** opened discussion on HB 1230 and asked the Committee's wishes.

Representative Hanson: If we pass this bill are we in violation of federal law?

Chairman Kelsch: The federal aid would be in jeopardy. We may be able to appeal to the US Dept of Ed for a waiver. The way you look at the NCLB act itself, we would be in conflict. In my conversation with Laurie as to why we would not want highly qualified teachers, she brings up the point that one person would have to be highly qualified in all the areas they tutor

and in some of the rural areas that would be virtually impossible. In theory this sounds like a good idea. In practice, it probably is not possible.

Representative Hanson: Do substitutes have to be highly qualified?

Matzke: No they do not have to be. Long term substitutes is a very grey area and DPI is putting together some information for the schools. There is no such thing as a long term substitute.

Representative Haas: I like the process DPI has. It seems like a fairly rigorous process. I
move Do Not Pass.

Representative Meier: I Second.

A roll call vote was taken. Yea: 12, Nay: 0, Absent: 1 (Herbel)

Date: 16 Jan 06
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1230

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Haas Seconded By Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓		Rep Hanson	✓	
V Chairman Meier	✓		Rep Hunskor	✓	
Rep Haas	✓		Rep Mueller	✓	
Rep Herbel	0		Rep Myxter	✓	
Rep Johnson	✓		Rep Solberg	✓	
Rep Karls	✓				
Rep Sukat	✓				
Rep Wall	✓				

Total Yes 12 No 0

Absent 1 Absent Herbel

Floor Assignment Haas

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

REPORT OF STANDING COMMITTEE

HB 1230: Education Committee (Rep. R. Kelsch, Chairman) recommends DO NOT PASS
(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1230 was placed on the
Eleventh order on the calendar.

2007 TESTIMONY

HB 1230

**TESTIMONY ON HB 1230
HOUSE EDUCATION COMMITTEE
January 16, 2007
By Laurie Matzke, Director of Title I
(701) 328-2284
Department of Public Instruction**

Madam Chairperson and Members of the Education Committee:

My name is Laurie Matzke and I am the Director of Title I for the Department of Public Instruction. I am here to provide information regarding the supplemental services provision that is pertinent to House Bill 1230.

When the No Child Left Behind Act was signed into law on January 8, 2002, it established a new provision in the Title I law called "Supplemental Educational Services".

"Supplemental Educational Services" are additional academic instruction designed to increase the academic achievement of students who are attending Title I schools that have not made Adequate Yearly Progress for three or more consecutive years. These services must be provided outside the regular school day and must be specifically focused on increasing the academic achievement of students.

State Education Agencies are required to have an application and scoring process established for all entities seeking to be a supplemental services provider. North Dakota has an established process, which can be accessed at <http://www.dpi.state.nd.us/title1/targeted/general/supsvcs.shtm> on our Title I website. In an attempt to attract more applicants to become a supplemental services provider, North Dakota has an open application process. Any interested applicant may apply at any time. New applications are reviewed immediately and scored by three outside reviewers. Applicants that meet the established criteria are

then immediately added to the State approved list of eligible supplemental services providers.

The federal guidance, law, and regulations specifically outline requirements for applicants interested in becoming an approved supplemental services provider. The "highly qualified teacher" requirements of Sections 1119 and 9101(23) of the ESEA do not apply to supplemental educational service providers. In addition, Section 200.47(b)(3) of the Title I regulations (34 C.F.R. 200.47(b)(3)) specifically prohibits an SEA from requiring a provider to hire only staff who meet these requirements. Please reference Attachment A for a copy of these Sections of the Title I guidance, law, and regulations.

The qualifications of instructional staff for a potential supplemental services provider are considered in the application and scoring process. Please reference Attachment B, which is an excerpt from the North Dakota application for supplemental services providers pertaining to the qualifications of staff.

The vast majority of North Dakota approved supplemental services providers use licensed staff; however, there are some on the list who may also use non-licensed staff. Please reference Attachment C for a summary of the staff qualifications for North Dakota approved supplemental services providers.

In conclusion, it is the position of the Department of Public Instruction that it would violate federal law and would put our federal funding in jeopardy if the State would require supplemental services providers to hire only licensed staff.

Madam Chairperson, this concludes my testimony. I would be happy to answer any questions the committee may have.

North Dakota Department of Public Instruction
 Dr. Wayne G. Sanstead, State Superintendent
 600 E. Boulevard Avenue, Dept. 201
 Bismarck, ND 58505-0440

*An Excerpt from the
 Supplemental Educational Services
 Non-Regulatory Guidance
 Department of Education
 United States of America
 June 13, 2005*

C-20. Are supplemental educational service providers governed by the teacher quality requirements of Sections 1119 and 9101(23)?

No. The “highly qualified teacher” requirements of Sections 1119 and 9101(23) of the ESEA do not apply to supplemental educational service providers.

C-21. May an SEA require that supplemental educational service providers meet the teacher quality provisions of Section 1119?

No. Section 200.47(b)(3) of the Title I regulations (34 C.F.R. 200.47(b)(3)) specifically prohibits an SEA from requiring a provider to hire only staff who meet these requirements.

C-22. May there be only one approved supplemental educational service provider in an LEA?

An SEA should strive to identify more than one supplemental educational service provider for each LEA. The inclusion of distance-learning providers is one way to expand the pool of providers. However, in a limited number of cases only a single provider might be available.

C-23. Often, large providers have multiple franchise operations that provide services. May an SEA require separate applications from franchises?

An SEA has discretion in determining how it will consider and approve providers with multiple operations. Although the same curriculum and instructional methods may be used by all franchises of a particular provider, an SEA may decide to require each franchise to apply separately. Alternatively, an SEA could choose to accept one application that would cover all the franchises.

C-24. Some after-school programs are housed in public school buildings. May such programs be supplemental educational service providers if the school in which they are housed has been identified as needing improvement, or is in corrective action or restructuring?

Programs that operate *independently* from the school and are not a part of the school’s regular program may become supplemental educational service providers if they meet the SEA’s criteria. The status of the school does not affect the eligibility of an independent entity housed in the school.

PUBLIC LAW 107-110—Jan. 8, 2002
107th Congress

“SEC. 1119. QUALIFICATIONS FOR TEACHERS AND PARAPROFESSIONALS.

20 USC 6319.

“(a) TEACHER QUALIFICATIONS AND MEASURABLE OBJECTIVES.—

“(1) IN GENERAL.—Beginning with the first day of the first school year after the date of enactment of the No Child Left Behind Act of 2001, each local educational agency receiving assistance under this part shall ensure that all teachers hired after such day and teaching in a program supported with funds under this part are highly qualified.

“(2) STATE PLAN.—As part of the plan described in section 1111, each State educational agency receiving assistance under this part shall develop a plan to ensure that all teachers teaching in core academic subjects within the State are highly qualified not later than the end of the 2005–2006 school year. Such plan shall establish annual measurable objectives for each local educational agency and school that, at a minimum—

“(A) shall include an annual increase in the percentage of highly qualified teachers at each local educational agency and school, to ensure that all teachers teaching in core academic subjects in each public elementary school and secondary school are highly qualified not later than the end of the 2005–2006 school year;

“(B) shall include an annual increase in the percentage of teachers who are receiving high-quality professional development to enable such teachers to become highly qualified and successful classroom teachers; and

“(C) may include such other measures as the State educational agency determines to be appropriate to increase teacher qualifications.

“(3) LOCAL PLAN.—As part of the plan described in section 1112, each local educational agency receiving assistance under this part shall develop a plan to ensure that all teachers teaching within the school district served by the local educational agency are highly qualified not later than the end of the 2005–2006 school year.

“(b) REPORTS.—

“(1) ANNUAL STATE AND LOCAL REPORTS.—

“(A) LOCAL REPORTS.—Each State educational agency described in subsection (a)(2) shall require each local educational agency receiving funds under this part to publicly report, each year, beginning with the 2002–2003 school year, the annual progress of the local educational agency as a whole and of each of the schools served by the agency, in meeting the measurable objectives described in subsection (a)(2).

“(B) STATE REPORTS.—Each State educational agency receiving assistance under this part shall prepare and submit each year, beginning with the 2002–2003 school year, a report to the Secretary, describing the State educational agency’s progress in meeting the measurable objectives described in subsection (a)(2).

“(C) INFORMATION FROM OTHER REPORTS.—A State educational agency or local educational agency may submit information from the reports described in section 1111(h) for the purposes of this subsection, if such report is modified, as may be necessary, to contain the information required by this subsection, and may submit such information as a part of the reports required under section 1111(h).

“(2) ANNUAL REPORTS BY THE SECRETARY.—Each year, beginning with the 2002–2003 school year, the Secretary shall publicly report the annual progress of State educational agencies, local educational agencies, and schools, in meeting the measurable objectives described in subsection (a)(2).

“(c) NEW PARAPROFESSIONALS.—

“(1) IN GENERAL.—Each local educational agency receiving assistance under this part shall ensure that all paraprofessionals hired after the date of enactment of the No Child Left Behind Act of 2001 and working in a program supported with funds under this part shall have—

“(A) completed at least 2 years of study at an institution of higher education;

“(B) obtained an associate’s (or higher) degree; or

“(C) met a rigorous standard of quality and can demonstrate, through a formal State or local academic assessment—

“(i) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

“(ii) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

“(2) CLARIFICATION.—The receipt of a secondary school diploma (or its recognized equivalent) shall be necessary but not sufficient to satisfy the requirements of paragraph (1)(C).

“(d) EXISTING PARAPROFESSIONALS.—Each local educational agency receiving assistance under this part shall ensure that all paraprofessionals hired before the date of enactment of the No Child Left Behind Act of 2001, and working in a program supported with funds under this part shall, not later than 4 years after the date of enactment satisfy the requirements of subsection (c).

“(e) EXCEPTIONS FOR TRANSLATION AND PARENTAL INVOLVEMENT ACTIVITIES.—Subsections (c) and (d) shall not apply to a paraprofessional—

“(1) who is proficient in English and a language other than English and who provides services primarily to enhance the participation of children in programs under this part by acting as a translator; or

“(2) whose duties consist solely of conducting parental involvement activities consistent with section 1118.

“(f) GENERAL REQUIREMENT FOR ALL PARAPROFESSIONALS.—Each local educational agency receiving assistance under this part shall ensure that all paraprofessionals working in a program supported with funds under this part, regardless of the paraprofessionals’ hiring date, have earned a secondary school diploma or its recognized equivalent.

“(g) DUTIES OF PARAPROFESSIONALS.—

“(1) IN GENERAL.—Each local educational agency receiving assistance under this part shall ensure that a paraprofessional working in a program supported with funds under this part is not assigned a duty inconsistent with this subsection.

“(2) RESPONSIBILITIES PARAPROFESSIONALS MAY BE ASSIGNED.—A paraprofessional described in paragraph (1) may be assigned—

“(A) to provide one-on-one tutoring for eligible students, if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher;

“(B) to assist with classroom management, such as organizing instructional and other materials;

“(C) to provide assistance in a computer laboratory;

“(D) to conduct parental involvement activities;

“(E) to provide support in a library or media center;

“(F) to act as a translator; or

“(G) to provide instructional services to students in accordance with paragraph (3).

“(3) ADDITIONAL LIMITATIONS.—A paraprofessional described in paragraph (1)—

“(A) may not provide any instructional service to a student unless the paraprofessional is working under the direct supervision of a teacher consistent with section 1119; and

“(B) may assume limited duties that are assigned to similar personnel who are not working in a program supported with funds under this part, including duties beyond classroom instruction or that do not benefit participating children, so long as the amount of time spent on such duties is the same proportion of total work time as prevails with respect to similar personnel at the same school.

“(h) USE OF FUNDS.—A local educational agency receiving funds under this part may use such funds to support ongoing training and professional development to assist teachers and paraprofessionals in satisfying the requirements of this section.

“(i) VERIFICATION OF COMPLIANCE.—

“(1) IN GENERAL.—In verifying compliance with this section, each local educational agency, at a minimum, shall require that the principal of each school operating a program under section 1114 or 1115 attest annually in writing as to whether such school is in compliance with the requirements of this section.

“(2) AVAILABILITY OF INFORMATION.—Copies of attestations under paragraph (1)—

“(A) shall be maintained at each school operating a program under section 1114 or 1115 and at the main office of the local educational agency; and

“(B) shall be available to any member of the general public on request.

“(j) COMBINATIONS OF FUNDS.—Funds provided under this part that are used for professional development purposes may be combined with funds provided under title II of this Act, other Acts,

and other sources.

“(k) SPECIAL RULE.—Except as provided in subsection (l), no State educational agency shall require a school or a local educational agency to expend a specific amount of funds for professional development activities under this part, except that this paragraph shall not apply with respect to requirements under section 1116(c)(3).

“(l) MINIMUM EXPENDITURES.—Each local educational agency that receives funds under this part shall use not less than 5 percent, or more than 10 percent, of such funds for each of fiscal years 2002 and 2003, and not less than 5 percent of the funds for each subsequent fiscal year, for professional development activities to ensure that teachers who are not highly qualified become highly qualified not later than the end of the 2005–2006 school year.

“PART A—DEFINITIONS

“SEC. 9101. DEFINITIONS.

“(23) HIGHLY QUALIFIED.—The term ‘highly qualified’—

“(A) when used with respect to any public elementary school or secondary school teacher teaching in a State, means that—

“(i) the teacher has obtained full State certification as a teacher (including certification obtained through alternative routes to certification) or passed the State teacher licensing examination, and holds a license to teach in such State, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State’s public charter school law; and

“(ii) the teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis;

“(B) when used with respect to—

“(i) an elementary school teacher who is new to the profession, means that the teacher—

“(I) holds at least a bachelor’s degree; and

“(II) has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum (which may consist of passing a State-required certification or licensing test or tests in reading, writing, mathematics, and other areas of the basic elementary school curriculum); or

“(ii) a middle or secondary school teacher who is new to the profession, means that the teacher holds at least a bachelor’s degree and has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by—

“(I) passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches (which may consist of a passing