

# MICROFILM DIVIDER

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



ROLL NUMBER
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DESCRIPTION

2108

2007 SENATE EDUCATION

SB 2108

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2108

Senate Education Committee

Check here for Conference Committee

Hearing Date: January 8, 2007

Recorder Job Number: 704, 706

Committee Clerk Signature

Minutes:

Chairman Freborg opened the hearing on SB 2108. All members were present.

Robert Rutten, Director of Special Education, Department of Public Instruction, testified in favor of the bill. (Written testimony attached)

Senator Bakke said she was glad to see the addition of deaf and blind students in the proposed amendment. She asked where was the "multiple handicapped" category?

Mr. Rutten said "multiple disability" is a federal option but many years ago, the department decided not to use it as a category in North Dakota. The category is not precise enough and they want the interdisciplinary team to pinpoint a primary disability and then a secondary disability if necessary.

Senator Taylor said that since the NCD applies only until age 9, are the delays categorized or corrected by that age?

Mr. Rutten said this is a tough issue for schools and parents, especially with younger kids. A diagnosis is not always clear and but what is clear is these children need help. The use of the term NCD (Non-Categorical Delay) buys time for school personnel and family to properly diagnose. It is especially difficult when mental retardation is suspected; this is a difficult diagnosis for families. By age nine, it becomes clearer and is usually easier to detect.

Senator Gary Lee asked if a broader number of students would be eligible for services when this category becomes available.

Mr. Rutten said not necessarily. This additional category is based on a pilot study. In the study, they did not see an increase in the number of children being served; they were being served in an inaccurate category. 900 children are now served in this category, half are ages 3 – 5 and half are ages 6 – 9. This is more honest reporting.

Senator Flakoll said in the interest of determining legislative intent, what constitutes educational time as referred to on page 2 line 6? What is education responsible for and what is human services responsible for? What hours are available for related services?

Mr. Rutten said that is a good question and this differentiation is not always understood. It is defined in federal law; related services are speech therapy, physical therapy, occupational therapy and transportation.

(Mr. Rutten provided a list of related services to the committee later in the day and it is attached.)

Doug Johnson, Executive Director of the North Dakota Council of Educational Leaders, testified in favor of the bill.

Chairman Freborg closed the hearing on SB 2127.

Senator Flakoll moved a Do Pass on the amendment proposed by Mr. Rutten. Senator Taylor seconded the motion. The motion passed on a roll call vote 5-0-0.

Senator Taylor moved a Do Pass as Amended on SB 2127. Senator Bakke seconded the motion. The motion passed on a roll call vote 5-0-0. Senator Taylor will carry the bill to the floor.

# FISCAL NOTE

Requested by Legislative Council

12/28/2006

Bill/Resolution No.: SB 2108

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Purpose of this bill is to align the N D's definition of a "Student with a disability" with federal law. This bill incorporates current state provisions for school districts to serve children who require special education. There is no anticipated fiscal impact resulting from this bill.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Bob Rutten	<b>Agency:</b>	DPI
<b>Phone Number:</b>	328-2692	<b>Date Prepared:</b>	01/03/2007

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2108

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number 78133.0101

Action Taken Move the amendment

Motion Made By Senator Flakoll Seconded By Senator Taylor

Senators	Yes	No	Senators	Yes	No
Senator Freborg	X		Senator Taylor	X	
Senator Flakoll	X		Senator Bakke	X	
Senator Gary Lee	X				

Total Yes 5 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:  
Page 1, line 17 after "impairment", remove "or"  
Page 1, line 18, replace "disabilities" with "disability, or deaf-blindness"



**REPORT OF STANDING COMMITTEE**

**SB 2108: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2108 was placed on the Sixth order on the calendar.

Page 1, line 14, after "a" insert "deaf-blindness."

Page 1, line 18, replace "disabilities" with "disability"

Renumber accordingly

2007 HOUSE EDUCATION

SB 2108

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2108**

### House Education Committee

Check here for Conference Committee

Hearing Date: **6 February 2007**

Recorder Job Number: **2920**

Committee Clerk Signature

*Jan Prindle*

Minutes:

**Chairman Kelsch** opened the hearing of SB 2108/

**Bob Retton, director of Special Education, DPI,** introduced the bill. (**Testimony**

**Attached.**) This bill aligns the definitions of categories of disability with definitions under the federal Individuals with Disabilities Education Act (IDEA). There are some minor revisions to the final language that we expect to have completed soon.

**Representative Haas:** In your pilot program, how many children did you identify that fit into this category?

**Retton:** The five special education units in ND that participated in the study were a mix of large urban and rural: Bismarck, Fargo, Grand Forks, Lake Region, and Peace Garden.

What we found out in terms of the numbers was that there was no overall identification rate of these kids. What was happening is that when they were identified as non-categorical delayed we saw commensurate drops in some of the other disability categories where they had been formerly identified. The most common category was speech language impairment. That was a guess by a multi-disciplinary team not knowing for sure what was going on with the child but they knew something was causing a delay but they didn't have a finger for it. In the current school year I believe there are 970 children across the state in this disability category.

**Representative Haas:** Then how do you program for these children differently than you do for the categorical ones?

**Retton:** It's essentially looking by a team of educators, including the family, at what is happening with this young child. There are questions being asked all through that early childhood period and into the elementary school about how is this child responding to speech and language and cognitive processes. It's essentially an on-going analysis by early childhood specialists. Some categories are easier to identify compared to some of the others. For example, vision impairment and deafness are fairly easy to identify. There is a constellation of question marks surrounding the child who doesn't have an obvious physical or sensory disability. It's that time when you can see the delay happening relative to other kids in that age group and then trying to figure out as time goes more precisely what is wrong with this child's function.

**Representative Haas:** Is an IEP developed for this developmentally delayed child.

**Retton:** Yes, these are children who are eligible for special education but instead of saying this is a child with mental retardation or speech and language impairment, if we're not sure, we pick non-categorical delay as most appropriate.

**Chairman Kelsch:** So you will have the amendments for us.

**Retton:** Anita Thomas is working with us to make sure it is in synch with the rest of state law. We'll have something for you.

**There was no opposition to SB 2108.**

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2108**

## House Education Committee

Check here for Conference Committee

Hearing Date: **12 February 2007**

Recorder Job Number: **3383**

Committee Clerk Signature



Minutes:

**Chairman Kelsch opened discussion of SB 2108.** She presented an amendment prepared by Legislative Council (78122.0201). The amendment was suggested by Bob Rutten, director of Special Education for DPI. It clarifies the actual intent of the bill. It is categorized so definitions are easier to find. The intent remains the same, but the format and style are changed from the way the bill was laid out originally.

**Vice Chairman Meier: I move the amendment.**

**Representative Wall: I second.**

**A voice vote was taken. The amendment was accepted.**

**Vice Chairman Meier: I move do pass as amended.**

**Representative Johnson: I second.**

**A roll call vote was taken: Yes: 13, No: 0, Absent 0.**

**Representative Wall will carry the bill.**

Date: 12 Feb 07

Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2108

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number 78133.0201

Action Taken Accept

Motion Made By Meier Seconded By Stall

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

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Date: 12 Feb 07  
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 3108

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number 78133.0201

Action Taken No Pass as Amended

Motion Made By Becker Seconded By Johnson

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

Total Yes 13 No 0

Absent 0

Floor Assignment Hall

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

**REPORT OF STANDING COMMITTEE**

**SB 2108, as engrossed: Education Committee (Rep. R. Kelsch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2108 was placed on the Sixth order on the calendar.**

Page 1, line 1, after "to" insert "create and enact a new section to chapter 15.1-32 of the North Dakota Century Code, relating to students with disabilities resulting from noncategorical delays; and to"

Page 1, replace lines 7 through 24 with:

"4. a. "Student with ~~disabilities~~ a disability" means an individual who is at least three years of age but who has not reached the age of twenty-one before September first of the year in which the individual turns twenty-one and who requires special education and related services because of ~~mental, physical, emotional, or learning characteristics~~ requires regular or special education and related services designed to meet the individual's educational needs. ~~The term includes an individual with mental:~~

- (1) Mental retardation;
- (2) A hearing impairment, including deafness, ~~deafness blindness,~~  
a;
- (3) Deaf-blindness;
- (4) A speech or language impairment, ~~a;~~
- (5) A visual impairment, including blindness;
- (6) An emotional disturbance, ~~an;~~
- (7) An orthopedic impairment, ~~or autism, and an individual who has a;~~
- (8) Autism;
- (9) A traumatic brain injury;
- (10) Other health impairment; or
- (11) A specific learning disability, ~~a traumatic brain injury, or other health impairment. The term.~~

b. "Student with a disability" includes a student ~~aged~~ age eighteen through twenty-one who is incarcerated in an adult correctional facility and who, in the last educational placement prior to incarceration, was identified as being a student with a disability and did not have an individualized education program or was identified as being a student with a disability and had an individualized education program.

**SECTION 2.** A new section to chapter 15.1-32 of the North Dakota Century Code is created and enacted as follows:

Noncategorical delay. If an individual who is at least three years of age but less than ten years of age exhibits a developmental profile in which cognitive, fine motor, vision, hearing, communication, preacademic, socialization, or adaptive skill acquisitions are significantly below that of same-age peers, and if the individual needs special education and related services, the school district may determine that the individual is a student with a disability as a result of a noncategorical delay."

Page 2, remove lines 1 through 6

Renumber accordingly

2007 TESTIMONY

SB 2108

**TESTIMONY ON SB 2108**  
**SENATE EDUCATION COMMITTEE**  
**January 8, 2007**  
**by Robert Rutten, Director of Special Education**  
**328-2277**  
**Department of Public Instruction**

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Mr. Chairman and members of the committee:

My name is Bob Rutten. I serve as the director of special education in the ND Department of Public Instruction. I am here to share information with you about why our office has requested this bill to amend and reenact subsection 4 of section 15.1-32-01 of the North Dakota Century Code relating to the definition of a student with a disability for special education purposes.

Our state has had a definition of "student with a disability" for many years. This definition has been useful for parents, education administrators and state policymakers so that everyone has a clear understanding of which categories of disability are eligible for special education and related services. The Department of Public Instruction is responsible for the general supervision requirements of the federal special education law, the Individuals with Disabilities Education Act (IDEA). The IDEA contains its own definition of a "Child with a Disability." This bill is intended to keep North Dakota's official definition of a student with a disability aligned with the definition in the national law.

IDEA permits states to adopt another category of eligibility for certain young children who do not clearly meet the criteria for one of the listed disabilities. This option has been available in North Dakota as a result of federal law and as a result of a pilot project. This bill would place the option in state law in alignment with the federal law. At the direction of the North Dakota Individuals with Disabilities Education Act (IDEA) Advisory Committee, the North Dakota Department of Public Instruction supported a pilot project to gather data in five local special education units that implemented the option for serving children ages three through nine who were experiencing a developmental delay. The purpose of this study was to define developmental delay to ensure that all eligible preschool-aged children with disabilities were provided a free appropriate public education without being inappropriately labeled under one of the other disability categories used for school-aged children and youth. The term that North Dakota chose to use for this group of children was "Non-Categorical Delay" (NCD).

This bill adds language recognizing Non-Categorical Delay (page No. 2, lines 2-6) to the state definition of Student with a Disability. In line with IDEA, a school district may choose to recognize Non-Categorical Delay. It is not a required disability category. This bill does not create new burdens or additional expenses for school districts. It reinforces flexibility within existing processes for providing special education and related services to young children.

Attached to this testimony is a page with some brief amendments which correct an inadvertent omission when the bill was drafted. The amendments to the bill correct the terminology to track with federal terminology.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2108

Page 1 line 17, after "impairment," remove "or"

Page 1, line 18, replace "disabilities" with "disability, or deaf-blindness"

**Senate Education Committee**

Regarding SB 2108

IDEA definition of related services:

**§ 300.34 Related services.**

(a) *General. Related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes.

**TESTIMONY ON SB 2108**  
**HOUSE EDUCATION COMMITTEE**  
**February 6, 2007**  
**by Robert Rutten, Director of Special Education**  
**328-2277**  
**Department of Public Instruction**

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Madam Chairman and members of the committee:

My name is Bob Rutten. I serve as the director of special education in the ND Department of Public Instruction. I am here to share information with you about why our office has requested this bill to amend and reenact subsection 4 of section 15.1-32-01 of the North Dakota Century Code relating to the definition of a student with a disability for special education purposes.

Our state has had a definition of "student with a disability" for many years. This definition has been useful for parents, education administrators and state policymakers so that everyone has a clear understanding of which categories of disability are eligible for special education and related services. The Department of Public Instruction is responsible for the general supervision requirements of the federal special education law, the Individuals with Disabilities Education Act (IDEA). The IDEA contains its own definition of a "Child with a Disability." This bill is intended to keep North Dakota's official definition of a student with a disability aligned with the definition in the national law.

IDEA permits states to adopt another category of eligibility for certain young children who do not clearly meet the criteria for one of the listed disabilities. This option has been available in North Dakota as a result of federal law and as a result of a pilot project. This bill would place the option in state law in alignment with the federal law. At the direction of the North Dakota Individuals with Disabilities Education Act (IDEA) Advisory Committee, the North Dakota Department of Public Instruction supported a pilot project to gather data in five local special education units that implemented the option for serving children ages three through nine who were experiencing a developmental delay. The purpose of this study was to define developmental delay to ensure that all eligible preschool-aged children with disabilities were provided a free appropriate public education without being inappropriately labeled under one of the other disability categories used for school-aged children and youth. The term that North Dakota chose to use for this eligibility option was "Non-Categorical Delay" (NCD).

As reported in the *Twenty-Fourth Annual Report to Congress on the Implementation of the Individuals with Disabilities Act (2002)*, the option of using Non-Categorical Delay was added to the federal special education law because it "allowed states to look at a young child's physical, cognitive, communication, social/emotional, and adaptive development to determine if the child needed special education and related services. A state could, at its own discretion, define

developmental delay to ensure that all eligible preschool-aged children with disabilities were provided a free appropriate public education (FAPE) without being inappropriately labeled under one of the other disability categories used for school-aged children and youth”.

“The Individuals with Disabilities Education Act (IDEA) Amendments of 1997 added some provisions allowing states to provide identification and early intervention services to young children with disabilities, birth through age 9, under the non-categorical label referred to as developmentally delayed. The definition may be used as an alternative to the specific disability categories with children during a period when it is often difficult to determine the precise nature of the disability.” (The House Committee Report on P. L. 105-17, 1997.)

This bill adds language recognizing Non-Categorical Delay to the state definition of Student with a Disability. In line with IDEA, a school district may choose to recognize Non-Categorical Delay. It is not a required disability category. This bill does not create new burdens or additional expenses for school districts. It reinforces flexibility within existing processes for providing special education and related services to young children.

It has been brought to our attention that there should be some re-drafting of the bill language to better express our intent. We have discussed this with Anita

Thomas, attorney for the Legislative Council. There are some minor revisions to the final language that we expect to have completed shortly.