

FISCAL NOTE
Requested by Legislative Council
12/22/2014

Bill/Resolution No.: SB 2108

- 1 A. **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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

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

No fiscal impact is noted.

- 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.*

No fiscal impact is noted. Section three, lines six through nine of the bill, changes the compulsory attendance age to the date that a child reaches the age of six to "on or before June 30". Though it is difficult to quantify the fiscal impact without actual census data (the birth dates of each student) and since most of the students potentially impacted by this change are already enrolled in school the Department estimates no or only minimal fiscal impact to the state.

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Dr. Sherry Houdek

Agency: Public Instruction

Telephone: 328-2755

Date Prepared: 12/29/2014

2015 SENATE EDUCATION

SB 2108

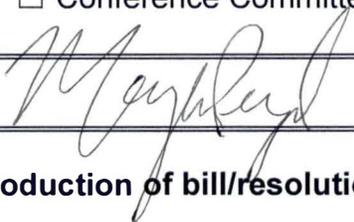
2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

SB 2108
1/13/2015
Job# 21897 (22:23)

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

INITIAL HEARING

Relating to kindergarten admission and the provision of special education services; to amend and reenact subsection of NDCC, relating to the minimum and maximum age of eligibility for school services and compulsory attendance; and to repeal section relating to compulsory attendance.

Minutes:

Attachments #1, #1b, #2

Chairman Flakoll called the committee to order on January 13th at 11:10am with all committee members present.

Dr. Sherry Houdek, Director of Teacher and School Effectiveness with the Department of Public Instruction (*see attachment #1 & #1b*)

(3:36) Vice Chairman Rust: On page 3 section 1, it says "age 6 on or before June 30th child must be enrolled". What is the age under current law?

Houdek: must be enrolled by age 7 August 1st with compulsory attendance.

Vice Chairman Rust: Therefore this bill changes the age of compulsory attendance from age 7 to 6?

Houdek: Correct.

Chairman Flakoll: It also changes the month, why?

Houdek: There have been some inquiries from schools districts for the changing to that month. We've gone from July 1st to August 1st and now we're speaking for June 30th. It's to help them know about the enrollment earlier at the end of the fiscal year and going into the new fiscal year.

Chairman Flakoll: So how would that help if we are just changing the definition of what age they are?

Houdek: One month

Chairman Flakoll: It doesn't say when they have to report. It says the definition of a 6 year old. Are you familiar with the legislation that was passed that actually moved it to later in the year in terms of defining the person of a certain age because they felt they weren't developmentally ready?

Houdek: I am not.

Chairman Flakoll: On page 2, if your child transfers in from another state, basically if they are in a 4th grade setting there, they are in a 4th grade setting in North Dakota? If they are struggling then could they make some adjustments in consort with the parents?

Houdek: That would be the districts, yes.

Chairman Flakoll: Last page section 12, what is the repealer?

Houdek: I don't know.

-Opposition

(8:55) **Mandy Dendy**, parent (see attachment #2)

Chairman Flakoll: It concerns me that if the new language were to be adopted, you could enroll your child in Moorhead as a kindergartner and transfer him or her into North Dakota to beat the system.

Dendy: We thought about it, but we have three other children.

(19:30) **Kathy Harstead**, Director with the Pathfinder Parents' Center

Harstead: My testimony is neutral however I want to bring to attention my concern a section in the bill. On page 3, with attendance at age 6, this does not apply if the child's multidisciplinary team with the child's parent determines that the child's disability renders attendance or participation in a regular or special education program "inexpedient or impractical". Enrolling children to receive special education services is also governed by federal law under the Individuals with Disabilities Education Act. There are very specific guidelines within the law that teams have to follow in making such a determination. The terms "inexpedient or impractical" are widely open to interpretation. A district that doesn't want to include a child who has more significant disabilities might persuade themselves and the parents that it would be impractical for the school to serve and enroll the in special education services. I'm concerned the language in the bill will open conflict with federal law. We regularly council parents around the state about the eligibility requirements and so have to be very knowledgeable. I'm sure it was not the department's intention, but we need clarification of language.

Chairman Flakoll closes the hearing on SB 2018.

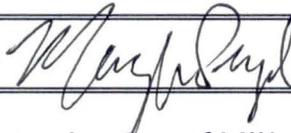
2015 SENATE STANDING COMMITTEE MINUTES

Education Committee
Missouri River Room, State Capitol

SB 2108
1/13/2015
Job # 21911 (19:51)

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

COMMITTEE ACTION

Minutes:

No attachments

Chairman Flakoll called the committee to order at 1:45 with all committee members present.

Senator Schaible: There are so many areas that I disagree with in which areas were changed yet implied as a correction. Changing the compulsory date of how old you have to be is a significant change. I would be in favor of putting a do not pass on this bill.

Senator Oban: Are there any good sections? Can we go through to determine if there is are any sections that we would like to keep?

Chairman Flakoll: yes we can. I do however know if we were to change the compulsory age over to the House, it would be very controversial.

Senator Davison: I was bothered by item number 2 in Dr. Houdek's testimony. Why would randomly move the date back 30 days so schools can have better enrollment numbers for the upcoming fall? The purpose focuses on why we should do it for adult incentive versus benefiting children, and I struggle with that.

Chairman Flakoll: There are between 10,000-12,000 children who eligible at that age and that's about 30 kids a day and if you take that by month it's about 1,000. I'm assuming something that the schools are thinking about is their increased pay since the state would provide a higher share.

Senator Davison: I was impressed with testimony of Mandy Dendy. Is the suggestion that the level of IQ having to be genius in order to get an early enrollment into kindergarten accurate?

Vice Chairman Rust: There are a number of schools with early entrance policies and requirements. The idea of the early entrance policy is for truly exceptional children ready for school. It takes into account a variety of issues. One is a test that is designed for the upper 5% of children at their age level. Others look at verbal or social skills, but most of the time, students do not get beyond that step because of it's testing for the 95th percentile.

Chairman Flakoll: We added the social skills component recently for the reasons that perhaps they did well but are unable to play well with others. There will always be someone on the other side of the line with any decisions we make.

(7:10) **Senator Oban:** I'm not seeing any clear reason from the Department of Public Instruction as to why they want changes other than the first paragraph in Dr. Houdek's testimony. Beyond that there are problems.

Chairman Flakoll: You're referencing that there will be less pushback on the transitioning between states and maintaining the same grade level versus the rest of the bill?

Senator Oban: Correct, and the language about special education. Is that accurate?

Vice Chairman Rust: I'm wondering why that is needed. As I recall, The Special Education law says age 3-21 so it shouldn't be necessary.

Senator Davison: Correct, I believe that is already part of IDEA. There's not a choice with the public schools. Is the second paragraph regarding the transfer of students from out of state, a solution to a problem? Is that an actual problem we are experiencing in this state?

Vice Chairman Rust: It's not a problem. In one case, we had a girl in a family of missionaries from Israel. Her daughter graduated at age 15 because that was her grade over there. We took them where they were. I was looking at page 7 with regard to disability and if that student reaches the age of 21 in a calendar year. As I recall, we had a student with a poor homeschooling situation. He turned 21 in the middle of his senior year and I think after he turned 21, the state didn't give us foundation aid.

Chairman Flakoll: Once they turn 21 they are off government funding.

Vice Chairman Rust: The bill needs a lot of work. I'm with Senator Schaible on this.

(13:25) **Senator Davison** makes a motion on a do not pass for SB 2108.

Senator Schaible seconds the motion.

Senator Davison: I look through it and I don't see anything that is worthy and that is why I made the motion from my perspective on this committee.

Chairman Flakoll: The most logical components would be the transferability and letting students finish out the school year after turning 21.

Senator Schaible: There is opportunity to fix every bill throughout the session. For instance turning 21 and finishing out the year is a priority, but even that would have to be carefully worded and conceptualized. There are 2 items out of the 4 that could be looked at, but while sometimes it is appropriate to amend bills, it's not our job to totally revamp it.

Chairman Flakoll: It sometime seems impossible to convince people that you've fixed a bill because they get it set in their minds that the initial draft was the most appropriate.

The vote was taken for a Do not Pass: Yes-6; No-0; Absent-0.

Senator Schaible will carry the bill.

Chairman Flakoll closed the discussion on SB 2108.

REPORT OF STANDING COMMITTEE

SB 2108: Education Committee (Sen. Flakoll, Chairman) recommends DO NOT PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2108 was placed on the
Eleventh order on the calendar.

2015 TESTIMONY

SB 2108

TESTIMONY on SB # 2108

EDUCATION COMMITTEE

Tuesday, January 13, 2015

By: Dr. Sherry Houdek, Teacher & School Effectiveness Director

701-328-2755

Department of Public Instruction

CHAIRMAN FLAKOLL and Members of the Committee:

My name is Sherry Houdek and I am the new Director of Teacher and School Effectiveness as of September 1 – with the Department of Public Instruction. I am here to provide information regarding SB 2108.

Our intent of Senate Bill 2108 is to clarify and eliminate confusion within the current law. First, with the revisions to the child who relocates to North Dakota, the child will be permitted to transfer into the grade level in which the child has been enrolled, even if the child does not meet enrollment age requirements set forth in this legislation. This bill includes students transferring in, outside of the school calendar. This legislation does not include children of military families and will not conflict with provisions otherwise agreed to, by the state, in the Compact on Educational Opportunity for Military Children.

Second, this legislation will change the compulsory attendance date for students starting school at age 6 - from the current August 1st date to June 30th. This is to support school districts with knowledge earlier about kindergarten enrollment numbers for the upcoming school year.

Third, additional changes are addressed in Section 6, paragraphs 1-5 which outlines readiness testing procedures for public school districts to address students who have not met the age requirements for enrollment in kindergarten. And, Section 7 of this bill extends the approval of a nonpublic kindergarten to meet the requirements in NDCC 15.1-22-02 and to provide the same readiness testing procedures as public schools.

Finally, the last addition to this bill clarifies the special education language to read "Special Education services may be extended to students up to age 21".

Chairman Flakoll, and Members of the Committee that concludes my prepared testimony and I will respond to any questions that you may have.

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1/13

#16

**CHAPTER 15.1-22
KINDERGARTEN**

15.1-22-01. Kindergarten - Establishment by board - Request by parent.

The board of a school district shall either provide at least a half-day kindergarten program for any student enrolled in the district or pay the tuition required for the student to attend a kindergarten program in another school district.

15.1-22-02. Public kindergarten - Requirements.

A school district operating a kindergarten:

1. May not employ an individual as a kindergarten teacher unless the individual is licensed to teach by the education standards and practices board or approved by the education standards and practices board;
2. Shall submit to the superintendent of public instruction and follow a developmentally appropriate curriculum;
3. Shall provide kindergarten instruction, on a half-day or full-day basis, as determined by the school board;
4. Shall provide for a kindergarten instructional calendar equal to at least fifty percent of the full-time instructional days required in accordance with section 15.1-06-04;
5. Shall apply all municipal and state health, fire, and safety requirements to the kindergarten; and
6. May not enroll a child who is not five years old before August first of the year of enrollment, unless the child will be five years old before December first and:
 - a. The child, by means of developmental and readiness screening instruments approved by the superintendent of public instruction and administered by the kindergarten operator, can demonstrate superior academic talents or abilities and social and emotional readiness; or
 - b. The child has been enrolled in another approved kindergarten.

15.1-22-03. Nonpublic kindergarten - Requirements - Approval.

Any person operating a nonpublic kindergarten may request approval of the kindergarten from the superintendent of public instruction. The superintendent shall approve a nonpublic kindergarten if it meets the requirements of section 15.1-22-02.

15.1-22-04. Kindergarten - Discontinuation.

A school board by resolution may cease to provide a kindergarten.

#2

1/13

Opposition to SB 2108

By Mandy Dendy –mandy_dendy@hotmail.com

Mr. Chairman, members of the Education Committee: My name is Mandy Dendy and I oppose SB 2108 for two reasons: 1) Because the kindergarten age of admission date change from August 1 to July 1 prevents smart, eager and able children who will turn 5 between July 1st and the first day of school from entering school along with their peers and 2) Because the requirement that a child must demonstrate “cognitive and developmental readiness” is undefined and the Department of Public Instruction is leaving this definition completely open to interpretation and inconsistency among school districts.

I. The kindergarten age of admission date change from August 1 to July 1 prevents smart, eager and able children who will turn 5 between July 1st and the first day of school from entering school along with their peers

My family has experienced firsthand the detrimental effect of North Dakota’s change of kindergarten eligibility date from September 1 to August 1 which took place in 2009. My daughter Willow’s birthday is August 11, just 11 days past the deadline for eligibility. In spring of 2013 Willow was a bright young girl really excited to start school in the fall as a 5 year old. My husband and I knew she was ready. She was big for her age, mature, expressed herself clearly, she had a very lengthy attention span and a fierce hunger to learn. But there was the problem of those 11 days. We pursued early entrance testing pursuant to the provision in the law stating that if the child could demonstrate superior academic talents or abilities¹, he or she could potentially enter kindergarten early. We quickly found out what superior academic talents or abilities meant to school districts across the state. Children seeking early entrance to kindergarten, four year old children, are required to take an IQ test and score in the genius level before they will be considered at all for early entry. No genius IQ, no discussion of readiness or any of the other wonderful things that made us confident in Willow’s readiness for school. Willow was denied early entry because she is just really smart but not a genius. Even though her IQ of 116 puts her at the 86%+ of the population, it was not enough to get her into kindergarten 11 days after the age cutoff even though she was 5 years old before school actually started. We then had to explain to a girl who wanted nothing more than to go to school that she couldn’t go and try to sidestep that the reason she couldn’t go was because she wasn’t smart enough. Willow was extremely disappointed and lost her excitement for school for a while.

A group of North Dakota children who are 5 years old by the first day of kindergarten are prevented from attending school each year since 2009 when the eligibility date was moved from September 1 to August 1. Many are bright and eager students capable of entering kindergarten but these children are forced to lose an entire year of school because of an arbitrary deadline and genius IQ requirements. Many of those children may not have an adequate preschool or home education. There will be students who, after waiting a year will enter kindergarten and find it is not challenging enough. Moving the date forward another month will leave roughly twice as many of these bright, but not genius, children locked outside of the school doors for a whole year.

A July 1st admission date will make North Dakota the earliest cutoff in the nation. Is telling more five year olds than any other state in the nation that they can't go to school on the first day something that North Dakota really wants to be first at? Moving up the admission cutoff is a misguided attempt to ensure that children are ready for school. The reality is that there is no magic date that ensures school readiness, children are not "ready" or "not ready". Schools need to be ready to teach each child and to be responsive to each child's experiences prior to entering school. The National Education Association states that to give children the best possible chances to benefit from kindergarten, five should be the uniform entrance age for kindergarten.² The National Association for the Education of Young Children's position on School Readiness states in no uncertain terms that raising the kindergarten ages will not ensure more children are ready for kindergarten. The Association believes it "is the responsibility of schools to meet the needs of children as they enter school and to provide whatever services are needed to help each child reach his or her fullest potential".³

The vast majority of states have cutoffs on the last date of August or later. Currently there are 29 states which have eligibility cutoff dates in September, 4 use August 31st and 3 have dates in October. That's 36 states with dates after August 31st. The earliest date at this time is Hawaii at July 31st with 3 other states besides North Dakota using August 1st.⁴ Aligning our cutoff date to other states will make it easier for families moving in and out of our state to ensure that their children are able to attend kindergarten on a timely basis.

II. The requirement that a child must demonstrate "cognitive and developmental readiness" is undefined and the Department of Public Instruction (DPI) is leaving this definition completely open to interpretation and inconsistency among school districts.

This bill states that to enter kindergarten early a child must demonstrate "cognitive and developmental readiness through an assessment and evaluation process approved by the superintendent of public instruction and administered by the school district" but the terms "cognitive and developmental readiness" are undefined. Current statutory requirements of superior academic talents or abilities are being interpreted by North Dakota school districts as requiring a genius level IQ prior to consideration for early entry. Without a definition of cognitive and developmental readiness from the legislature or DPI, it is up to school districts to set their own policies which are subject to DPI approval. I contacted DPI and there is no list of approved testing methods or tests, it is completely up to schools whether to have a policy and then how to structure that policy.

It is crucial that the legislature be clear in what its intentions are behind making any changes to the date on which children become eligible to enter school and the requirements for those who are close to that cutoff to seek early entrance because the child is developmentally appropriate for entering kindergarten. When the superior academic talents or abilities language was reinstated in 2011, testimony from school administrators said that when the language was changed in 2009 to require "academic, social and emotional readiness"⁵, it became too easy for parents to get their children admitted to kindergarten early and that more children were being admitted under that standard than in previous years. What was missing from these educators' testimony was whether or not those students were being wrongly admitted. There was no testimony that children were being admitted early and then failing to meet the kindergarten standards.

Children want to learn. I'm asking that the legislature make sure that each child's opportunity is handled in the fairest way possible and then support schools in their efforts to be ready schools.

DO NOT PASS this bill because moving the cutoff to July 1st closes the doors to kindergarten on an even bigger group of 5 year old children who then must prove they are geniuses to begin their education. When it comes to letting children into kindergarten, I believe and the research I've cited supports the nationwide majority that earlier is not better. However, if the legislature feels that moving the date forward is in the children's best interest, it should also ensure that geniuses are not the only students who get an exception.

In case you're wondering what happened to Willow, she was able to gain early entry to first grade using the exact same IQ score that prevented her from entering kindergarten early. Less than halfway through the school year she was already meeting many first grade end-of-year performance standards. It's unfortunate that by the time kindergarten opened its doors to Willow she was ready for first grade. I am here today because I know she's not alone. Arbitrarily turning away students who want to learn and are able to learn is a terrible waste of a precious resource. I appreciate the opportunity to be here today to share with you the effect of these legislative changes to kindergarten admission. Now you know what the process is and exactly who it affects. For that reason, I ask that you DO NOT PASS this bill.

Education is not the filling of a pail, but the lighting of a fire.

¹ NDCC 15.1-22(6)(a) stating that "The child, by means of developmental and readiness screening instruments approved by the superintendent of public instruction and administered by the kindergarten operator, can demonstrate superior academic talents or abilities and social and emotional readiness".
<http://www.legis.nd.gov/cencode/t15-1c22.pdf?20150112142202>

² The NEA (National Education Association) on Prekindergarten and Kindergarten – June 2004
http://www.nea.org/assets/docs/HE/mf_prekkinder.pdf

³ National Association for the Education of Young Children "Where We Stand on School Readiness" 2009.
<https://www.naeyc.org/files/naeyc/file/positions/Readiness.pdf>

⁴ Education Commission of the States 50-State Analysis – Kindergarten Entrance Age – March 2014
<http://ecs.force.com/mbdata/mbquestRT?rep=Kq1402>

⁵ HB1436 – 2011 <http://www.legis.nd.gov/files/resource/62-2011/library/hb1436.pdf?20150112150816>