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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3871

04/11/2016 Authored by Thissen
The bill was read for the first time and referred to the Committee on Education Innovation Policy

1.1 A bill for an act
1.2 relating to education; pursuing strategies to prevent over-enrolling minority
1.3 students and English learners in special education, dismissing more minority
1.4 students than other students with disabilities, or placing more minority students
1.5 than other students in settings other than general education classrooms;
1.6 emphasizing cultural competency; establishing a working group to examine
1.7 the over-representation of minority students and English learners identified
1.8 as needing special education or subject to dismissal from school; amending
1.9 Minnesota Statutes 2014, sections 120B.12, subdivision 1; 121A.55; 122A.06,
1.10 subdivision 4; 125A.56; Minnesota Statutes 2015 Supplement, section 125A.08.

1.11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.12 Section 1. Minnesota Statutes 2014, section 120B.12, subdivision 1, is amended to read:

1.13 Subdivision 1. **Literacy goal.** The legislature seeks to have every child reading at or
1.14 above grade level no later than the end of grade 3, including English learners, and that
1.15 culturally competent teachers, consistent with section 120B.30, subdivision 1, paragraph
1.16 (q), provide comprehensive, scientifically based reading instruction consistent with
1.17 section 122A.06, subdivision 4.

1.18 **EFFECTIVE DATE.** This section is effective for the 2016-2017 school year and
1.19 later.

1.20 Sec. 2. Minnesota Statutes 2014, section 121A.55, is amended to read:

1.21 **121A.55 POLICIES TO BE ESTABLISHED.**

1.22 (a) The commissioner of education shall promulgate guidelines to assist each school
1.23 board. Each school board shall establish uniform criteria for dismissal and adopt written,
1.24 culturally competent policies and rules, consistent with section 120B.30, subdivision 1,
1.25 paragraph (q), to effectuate the purposes of sections 121A.40 to 121A.56. The policies shall

2.1 emphasize preventing dismissals through early detection of problems and shall be designed
2.2 to address students' inappropriate behavior from recurring. The policies shall recognize the
2.3 continuing responsibility of the school for the education of the pupil during the dismissal
2.4 period. The alternative educational services, if the pupil wishes to take advantage of them,
2.5 must be adequate to allow the pupil to make progress towards meeting the graduation
2.6 standards adopted under section 120B.02 and help prepare the pupil for readmission.

2.7 (b) An area learning center under section 123A.05 may not prohibit an expelled or
2.8 excluded pupil from enrolling solely because a district expelled or excluded the pupil. The
2.9 board of the area learning center may use the provisions of the Pupil Fair Dismissal Act to
2.10 exclude a pupil or to require an admission plan.

2.11 (c) Each school district shall develop a policy and report it to the commissioner on
2.12 the appropriate use of peace officers and crisis teams to remove students who have an
2.13 individualized education program from school grounds.

2.14 **EFFECTIVE DATE.** This section is effective for the 2016-2017 school year and
2.15 later.

2.16 Sec. 3. Minnesota Statutes 2014, section 122A.06, subdivision 4, is amended to read:

2.17 Subd. 4. **Comprehensive, scientifically based reading instruction.** (a)
2.18 "Comprehensive, scientifically based reading instruction" includes a program or collection
2.19 of instructional practices that is based on valid, replicable evidence showing that when
2.20 these programs or practices are used, students can be expected to achieve, at a minimum,
2.21 satisfactory reading progress. The program or collection of practices must include, at
2.22 a minimum, effective, balanced, and culturally competent instruction in all five areas
2.23 of reading, consistent with section 120B.30, subdivision 1, paragraph (q): phonemic
2.24 awareness, phonics, fluency, vocabulary development, and reading comprehension.

2.25 Comprehensive, scientifically based reading instruction also includes and integrates
2.26 instructional strategies for continuously assessing, evaluating, and communicating
2.27 the student's reading progress and needs in order to design and implement ongoing
2.28 interventions so that students of all ages and proficiency levels can read and comprehend
2.29 text, write, and apply higher level thinking skills. For English learners developing literacy
2.30 skills, districts are encouraged to use strategies that teach reading and writing in the
2.31 students' native language and English at the same time.

2.32 (b) "Fluency" is the ability of students to read text with speed, accuracy, and proper
2.33 expression.

2.34 (c) "Phonemic awareness" is the ability of students to notice, think about, and
2.35 manipulate individual sounds in spoken syllables and words.

3.1 (d) "Phonics" is the understanding that there are systematic and predictable
 3.2 relationships between written letters and spoken words. Phonics instruction is a way
 3.3 of teaching reading that stresses learning how letters correspond to sounds and how to
 3.4 apply this knowledge in reading and spelling.

3.5 (e) "Reading comprehension" is an active process that requires intentional thinking
 3.6 during which meaning is constructed through interactions between text and reader.
 3.7 Comprehension skills are taught explicitly by demonstrating, explaining, modeling, and
 3.8 implementing specific cognitive strategies to help beginning readers derive meaning
 3.9 through intentional, problem-solving thinking processes.

3.10 (f) "Vocabulary development" is the process of teaching vocabulary both directly
 3.11 and indirectly, with repetition and multiple exposures to vocabulary items. Learning in
 3.12 rich contexts, incidental learning, and use of computer technology enhance the acquiring
 3.13 of vocabulary.

3.14 (g) Nothing in this subdivision limits the authority of a school district to select a
 3.15 school's reading program or curriculum.

3.16 **EFFECTIVE DATE.** This section is effective for the 2016-2017 school year and
 3.17 later.

3.18 Sec. 4. Minnesota Statutes 2015 Supplement, section 125A.08, is amended to read:

3.19 **125A.08 INDIVIDUALIZED EDUCATION PROGRAMS.**

3.20 (a) At the beginning of each school year, each school district shall have in effect, for
 3.21 each child with a disability, an individualized education program.

3.22 (b) As defined in this section, every district must ensure the following:

3.23 (1) all students with disabilities are provided the special instruction and services
 3.24 which are appropriate to their needs. Where the culturally competent individualized
 3.25 education program team, consistent with section 120B.30, subdivision 1, paragraph (q),
 3.26 has determined appropriate goals and objectives based on the student's needs, including
 3.27 the extent to which the student can be included in the least restrictive environment,
 3.28 and where there are essentially equivalent and effective instruction, related services, or
 3.29 assistive technology devices available to meet the student's needs, cost to the district may
 3.30 be among the factors considered by the team in choosing how to provide the appropriate
 3.31 services, instruction, or devices that are to be made part of the student's individualized
 3.32 education program. The individualized education program team shall consider and
 3.33 may authorize services covered by medical assistance according to section 256B.0625,
 3.34 subdivision 26. The student's needs and the special education instruction and services to

4.1 be provided must be agreed upon through the development of an individualized education
4.2 program. The program must address the student's need to develop skills to live and work
4.3 as independently as possible within the community. The individualized education program
4.4 team must consider positive behavioral interventions, strategies, and supports that address
4.5 behavior needs for children. During grade 9, the program must address the student's
4.6 needs for transition from secondary services to postsecondary education and training,
4.7 employment, community participation, recreation, and leisure and home living. In
4.8 developing the program, districts must inform parents of the full range of transitional goals
4.9 and related services that should be considered. The program must include a statement of
4.10 the needed transition services, including a statement of the interagency responsibilities or
4.11 linkages or both before secondary services are concluded;

4.12 (2) children with a disability under age five and their families are provided special
4.13 instruction and services appropriate to the child's level of functioning and needs;

4.14 (3) children with a disability and their parents or guardians are guaranteed procedural
4.15 safeguards and the right to participate in decisions involving identification, assessment
4.16 including assistive technology assessment, and educational placement of children with a
4.17 disability;

4.18 (4) eligibility and needs of children with a disability are determined by an initial
4.19 evaluation or reevaluation, which may be completed using existing data under United
4.20 States Code, title 20, section 33, et seq.;

4.21 (5) to the maximum extent appropriate, children with a disability, including those
4.22 in public or private institutions or other care facilities, are educated with children who
4.23 are not disabled, and that special classes, separate schooling, or other removal of children
4.24 with a disability from the regular educational environment occurs only when and to the
4.25 extent that the nature or severity of the disability is such that education in regular classes
4.26 with the use of supplementary services cannot be achieved satisfactorily;

4.27 (6) in accordance with recognized professional standards, testing and evaluation
4.28 materials, and procedures used for the purposes of classification and placement of children
4.29 with a disability are selected and administered so as not to be racially or culturally
4.30 discriminatory; and

4.31 (7) the rights of the child are protected when the parents or guardians are not known
4.32 or not available, or the child is a ward of the state.

4.33 (c) For all paraprofessionals employed to work in programs whose role in part is
4.34 to provide direct support to students with disabilities, the school board in each district
4.35 shall ensure that:

5.1 (1) before or beginning at the time of employment, each paraprofessional must
 5.2 develop sufficient knowledge and skills in emergency procedures, building orientation,
 5.3 roles and responsibilities, confidentiality, vulnerability, and reportability, among other
 5.4 things, to begin meeting the needs, especially disability-specific and behavioral needs, of
 5.5 the students with whom the paraprofessional works;

5.6 (2) annual training opportunities are required to enable the paraprofessional to
 5.7 continue to further develop the knowledge ~~and~~ skills, and cultural competency, consistent
 5.8 with section 120B.30, subdivision 1, paragraph (q), that are specific to the students with
 5.9 whom the paraprofessional works, including understanding disabilities, the unique and
 5.10 individual needs of each student according to the student's disability and how the disability
 5.11 affects the student's education and behavior, following lesson plans, and implementing
 5.12 follow-up instructional procedures and activities; and

5.13 (3) a districtwide process obligates each paraprofessional to work under the ongoing
 5.14 direction of a licensed teacher and, where appropriate and possible, the supervision of a
 5.15 school nurse.

5.16 **EFFECTIVE DATE.** This section is effective for the 2016-2017 school year and
 5.17 later.

5.18 Sec. 5. Minnesota Statutes 2014, section 125A.56, is amended to read:

5.19 **125A.56 ALTERNATE INSTRUCTION REQUIRED BEFORE ASSESSMENT**
 5.20 **REFERRAL.**

5.21 Subdivision 1. **Requirement.** (a) Before a pupil is referred for a special education
 5.22 evaluation, ~~the~~ culturally competent district employees, consistent with section 120B.30,
 5.23 subdivision 1, paragraph (q), must conduct and document at least two instructional
 5.24 strategies, alternatives, or interventions using a system of scientific, research-based
 5.25 instruction and intervention in academics or behavior, based on the pupil's needs, while
 5.26 the pupil is in the regular classroom. The pupil's teacher must document the results. A
 5.27 special education evaluation team may waive this requirement when it determines the
 5.28 pupil's need for the evaluation is urgent. This section may not be used to deny a pupil's
 5.29 right to a special education evaluation.

5.30 (b) A school district shall use alternative intervention services, including the
 5.31 assurance of mastery program under section 124D.66, or an early intervening services
 5.32 program under subdivision 2 to serve at-risk pupils who demonstrate a need for alternative
 5.33 instructional strategies or interventions.

6.1 Subd. 2. **Early intervening services program.** (a) A district may meet the
6.2 requirement under subdivision 1 by establishing an early intervening services program
6.3 that includes:

6.4 (1) a system of valid and reliable general outcome measures aligned to state academic
6.5 standards that is administered at least three times per year to pupils in kindergarten
6.6 through grade 8 who need additional academic or behavioral support to succeed in the
6.7 general education environment. The school must provide interim assessments that
6.8 measure pupils' performance three times per year and implement progress monitoring
6.9 appropriate to the pupil. For purposes of this section, "progress monitoring" means the
6.10 frequent and continuous measurement of a pupil's performance that includes these three
6.11 interim assessments and other pupil assessments during the school year. A school, at its
6.12 discretion, may allow pupils in grades 9 through 12 to participate in interim assessments;

6.13 (2) a system of scientific, research-based instruction and intervention; and

6.14 (3) an organizational plan that allows teachers, paraprofessionals, and volunteers
6.15 funded through various sources to work as a grade-level team or use another configuration
6.16 across grades and settings to deliver instruction. The team must be trained in scientific,
6.17 research-based instruction and intervention. Teachers and paraprofessionals at a site
6.18 operating under this paragraph must work collaboratively with those pupils who need
6.19 additional academic or behavioral support to succeed in a general education environment.

6.20 (b) As an intervention under paragraph (a), clause (2), staff generating special
6.21 education aid under section 125A.76 may provide small group instruction to pupils who
6.22 need additional academic or behavioral support to succeed in the general education
6.23 environment. Small group instruction that includes pupils with a disability may be
6.24 provided in the general education environment if the needs of the pupils with a disability
6.25 are met, consistent with their individualized education programs, and all pupils in the
6.26 group receive the same level of instruction and make the same progress in the instruction
6.27 or intervention. Culturally competent teachers and paraprofessionals, consistent with
6.28 section 120B.30, subdivision 1, paragraph (q), must ensure that the needs of pupils with a
6.29 disability participating in small group instruction under this paragraph remain the focus
6.30 of the instruction. Expenditures attributable to the time special education staff spends
6.31 providing instruction to nondisabled pupils in this circumstance is eligible for special
6.32 education aid under section 125A.76 as an incidental benefit if:

6.33 (1) the group consists primarily of disabled pupils;

6.34 (2) no special education staff are added to meet nondisabled pupils' needs; and

6.35 (3) the primary purpose of the instruction is to implement the individualized
6.36 education programs of pupils with a disability in this group.

7.1 Expenditures attributable to the time special education staff spends providing small
 7.2 group instruction to nondisabled pupils that affords more than an incidental benefit to such
 7.3 pupils is not eligible for special education aid under section 125A.76, except that such
 7.4 expenditures may be included in the alternative delivery initial aid adjustment under section
 7.5 125A.78 if the district has an approved program under section 125A.50. During each
 7.6 60-day period that a nondisabled pupil participates in small group instruction under this
 7.7 paragraph, the pupil's progress monitoring data must be examined to determine whether the
 7.8 pupil is making progress and, if the pupil is not making progress, the pupil's intervention
 7.9 strategies must be changed or the pupil must be referred for a special education evaluation.

7.10 **EFFECTIVE DATE.** This section is effective for the 2016-2017 school year and
 7.11 later.

7.12 Sec. 6. **WORKING GROUP ON DISPARITIES IN IDENTIFYING STUDENTS**
 7.13 **FOR SPECIAL EDUCATION AND IN DISCIPLINING AND DISMISSING**
 7.14 **STUDENTS.**

7.15 (a) A working group is established to examine whether school districts are
 7.16 disproportionately and inappropriately identifying minority students or English learners
 7.17 for special education programs and services, dismissing more minority students than
 7.18 other students with disabilities, or placing more minority students than other students
 7.19 in settings other than general education classrooms. The working group must submit
 7.20 a written report to the chairs and ranking minority members of the committees of the
 7.21 legislature with jurisdiction over prekindergarten through grade 12 education by February
 7.22 1, 2017, recommending how to define and measure the over-representation of minority
 7.23 students or English learners in special education or subject to school discipline and, by
 7.24 the 2020-2021 school year, how to eliminate racial, ethnic, and English language-based
 7.25 disparities affecting how districts provide early intervening services, identify students for
 7.26 special education, place students in particular education settings, or dismiss or otherwise
 7.27 discipline students.

7.28 (b) Consistent with paragraph (a), the working group must analyze:

7.29 (1) how districts and educators determine whether a student's struggles in school are
 7.30 attributable to a disability or other factors such as poverty, limited English proficiency,
 7.31 or a school climate without high-quality instruction or culturally competent staff, among
 7.32 other factors;

7.33 (2) how the state and individual districts determine the extent to which minority
 7.34 students and English learners are disproportionately found eligible for special education,

8.1 dismissed from school or otherwise disciplined, or placed in settings other than general
8.2 education classrooms;

8.3 (3) how best to provide coordinated early intervening services for children beginning
8.4 at age three, with and without disabilities, that include additional academic or behavioral
8.5 supports to help the children succeed in school;

8.6 (4) the data collection and reporting needed to provide greater transparency in
8.7 identifying, understanding, and improving the outcomes of affected students; and

8.8 (5) other related matters of concern to the working group.

8.9 (c) By June 1, 2016, each of the following organizations shall appoint one
8.10 representative of that organization to serve as a member of the working group: the
8.11 Center for Early Education and Development; the Minnesota Head Start Association;
8.12 the Minnesota School Boards Association; the Minnesota Association of School
8.13 Administrators; Education Minnesota; the Minnesota Disability Law Center; the National
8.14 Alliance of Mental Illness Minnesota; the Parent Advocacy Coalition for Educational
8.15 Rights (PACER) Center; the Minnesota Association of Secondary School Principals; the
8.16 Minnesota Elementary School Principals' Association; the Association of Metropolitan
8.17 School Districts; the Minnesota Rural Education Association; the Minnesota School
8.18 Counselors Association; the National Association for the Advancement of Colored People;
8.19 Neighborhoods Organizing for Change; the Minneapolis Urban League; the Minnesota
8.20 State Councils representing Minnesota's communities of color; the Minnesota School
8.21 Psychologists Association; the School Nurse Organization of Minnesota; the Solutions
8.22 Not Suspensions Coalition; the Minnesota Education Equity Partnership; MinnCAN;
8.23 Students for Education Reform; the Minnesota Youth Council; Educators 4 Excellence;
8.24 the African American Leadership Forum; American Indian Opportunities Industrialization
8.25 Center; the Minnesota Indian Affairs Council; and the Minnesota School Social Workers
8.26 Association. Working group members must seek advice from experts and stakeholders in
8.27 developing their recommendations.

8.28 (d) The commissioner of education, or the commissioner's designee, must convene
8.29 the first meeting of the working group. The working group must select a chair or cochair
8.30 from among its members at the first meeting. The working group must meet periodically.
8.31 The commissioner must provide technical and administrative assistance to the working
8.32 group upon request. Working group members are not eligible to receive expenses or per
8.33 diem payments for serving on the working group.

8.34 (e) Based upon the recommendations of the working group, the commissioner of
8.35 education must submit to the legislature by February 1, 2017, for review, a set of standards
8.36 that districts and schools must meet to ensure minority students and English learners are

9.1 not disproportionately found eligible for special education services, dismissed from school
9.2 or otherwise disciplined, or placed in settings other than general classrooms.

9.3 (f) The working group expires February 2, 2017.

9.4 **EFFECTIVE DATE.** This section is effective the day following final enactment.