

# Comment Report

HF 604

A bill for an act relating to education, including authorizing the ombudsman to investigate complaints received by individuals who hold a license, certificate, authorization, or statement of recognition issued by the board of educational examiners, and modifying the responsibilities of the department of education, school districts, and charter schools. (Formerly HSB 206.) Effective date: 07/01/2023.

Subcommittee Members: Evans-CH, Donahue, Sinclair

Date: 03/28/2023

Time: 02:00 PM

Location: Room 315

**Name:** anon anon

**Comment:** Requiring schools to suspend students rather than allowing for local decision making based on the situation is overreach.

**Name:** Catherine Johnson

**Comment:** HF 604 violates students with disabilities rights under the IDEA, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. DRI opposes HF 604 and the amendment to HF 604. Thank you in advance for your thoughtful deliberation of our written testimony in opposition of HF 604. DRI submitted written testimony in opposition of HF 604 prior to the amendment. I submit the following amended written testimony to share DRI's concerns regarding both impact of HF 604 and the amendment to HF 604 on the Disability Community.



# Disability Rights Iowa

LEGAL PROTECTION AND ADVOCACY

## **Disability Rights Iowa HS 604 – Amended Written Testimony in Opposition March 27, 2023**

Chairpersons and honorable members of the Committee.

My name is Catherine E. Johnson. I am the Executive Director of Disability Rights Iowa (DRI). DRI is an independent, non-profit agency, which serves as the designated protection and advocacy system for people with disabilities in the state of Iowa, pursuant to federal mandates. The mission of the agency is to protect and advocate for the human and legal rights of Iowans with disabilities. DRI submitted written testimony in opposition of HS 604 prior to the amendment. I submit the following amended written testimony to share DRI's concerns regarding both impact of HS 604 and the amendment to HS 604 on the Disability Community.

### **Overview of Federal Requirements in School Discipline Matters:**

The "three strikes" system created by HF 604 has the potential to violate the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act relating to when and how a child with a disability may be disciplined. The U.S. Department of Education has repeatedly opined that the IDEA's discipline provisions are applicable to students covered by Section 504. Students with Individualized Education Program (IEP) have protections pursuant to the IDEA in disciplinary matters. Students that have Section 504 Plans have similar protections under 504 in disciplinary matters. The IDEA requires that schools hold a Manifestation Determination Review (MDR) when the school decides to change a student's educational placement for more than 10 days because of behavior that violates the District's Policies. The 10 days may happen consecutively, or they may be cumulative if the behavior in question is related.

Our Mission: To defend and promote the human and legal rights of Iowans with disabilities

### **Disciplinary Procedural Requirement:**

If a school seeks to change a student's educational placement for more than 10 school days through a disciplinary proceeding, the IDEA and 504 of the Rehabilitation Act requires that an MDR occur within 10 school days of the decision to discipline the student. A change in placement for disciplinary matters includes in-school, out-of-school suspensions, and expulsions.

The purpose of the MDR is to discuss and decide two questions: 1) whether the student's behavior was a manifestation of their disability; and 2) whether the student's behavior was a result of failure to follow their IEP. In the event the answer to either of these questions is "yes" the School must return the student to their current placement, the School may not proceed with suspending or expelling the student, and the School must conduct or review the student's Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP) to determine what services and supports the student needs to be successful in school. Only if after review and discussion, it is determined that the answer to both of the above questions is "no" is the School allowed to proceed with their proposed discipline. The student has due process rights during all disciplinary matters. If the student receives a long-term suspension and/or expulsion, the IDEA requires that the school continue to provide all the educational supports and services needed to advance in the general education curriculum and to make progress in their stated IEP goals. The educational supports and services may be provided in a different location.

### **HF 604 & Federal Requirements:**

HF 604 does not recognize any of these legal requirements in the procedure it lays out. HF 604 implements a one-size-fits-all approach to dealing with complex situations. HF 604 provides no discretion on the part of teachers and school staff to determine whether a student is simply having a difficult day, whether they need additional supports and services, or whether their behavior is a manifestation of their disability.

HF 604 does not define what it means to "disrupt" the classroom. A student's conduct could range from benign behaviors such as tearing up papers or verbal ticks to prolonged episodes of escalated behaviors, all of which could be a manifestation of the student's disability. When left to the teacher's discretion of what constitutes a disruption, removals can result in discriminatory practices against students with disabilities.

### **Disproportionate Discipline of Students with disabilities:**

Students with disabilities are disproportionately disciplined compared to their non-disabled peers. According to the U.S. Department of Education, in the 2017-2018 school year students with disabilities made up 16% of the overall student population, but they made up 25% of students who face in-school suspensions, 28% of out-of-school suspensions, and 25% of expulsions. These disparities were even larger for boys with disabilities and Black students with disabilities. This law risks codifying and normalizing these discrepancies.

Students with disabilities are also disproportionately exposed to the criminal justice system. Studies estimate that between 65-70% of youth in the juvenile justice system have a disability. Thus, HF 604's requirement that a student be removed from the classroom "under the supervision of a school resource officer or lead administrator" risks increasing the likelihood that a student with a disability will be subjected to the criminal justice system and perpetuates this disparity.

HF 604 would require schools to provide staff with a copy of Iowa Code 281.21 to notify staff of instances during which physical contact with a student may be considered reasonable. Just as students with disabilities are far more likely to experience discipline, they are also far more likely than non-disabled students to be physically restrained in school. The use of restraints can be highly traumatic for students, cause even more behaviors that result in more restraints, and result in serious injuries and even death. The U.S. Department of Justice has stated that the repeated use of restraints may constitute the denial of a free and appropriate public education (FAPE) which violates the IDEA. By specifically highlighting a teacher's right to use physical

contact with a student, without also educating them about the limits and effects of such physical contact, risks further subjecting students with disabilities to potentially traumatic and unlawful experiences in school.

Many students with disabilities receive services through outside therapists and other mental health providers to help them manage their disability. These relationships are carefully built over extended periods of time to build up trust and understanding of a student's complex needs. Requiring a student to participate in a counseling session with the school's counselor may lead to contradictions and confusion between the school counselor's recommendations and the outside therapist's treatment plans.

**Amendment to HS 604:**

**Child Find and Least Restrictive Environment Requirements of IDEA:**

The regulations for IDEA require that, to the maximum extent possible, students with disabilities are educated with their same-age, nondisabled peers in the least restrictive environment (LRE). The IDEA creates a "strong presumption" that children with disabilities can, and should, be educated in the general education classroom with appropriate supports and services. Removing a student with disabilities from a general education classroom should only occur if the nature and severity of the disability is such that appropriate education of the student in the general education setting cannot be satisfactorily achieved. The standard here does not center around whether the student is being "disruptive"; rather the question is what is necessary to ensure the student receives a meaningful educational benefit in the general education classroom.

### **Amendment to HS 604: Requirements of 504 of the Rehabilitation Act & the Americans with Disabilities Act:**

Removing a student from a general education classroom solely based on their disability is a violation of Section 504 of the Rehabilitation Act. Policies and practices that explicitly segregate or have the effect of segregating children with disabilities from same-age nondisabled peers violate the Americans with Disabilities Act (ADA). The U.S. Department of Justice has found that a state's policy or practice of unnecessarily segregating students with disabilities into specific behavior-related classrooms violates the ADA.<sup>1</sup> Schools are instead required to *first* determine what supports and services a student needs to be successful, *and then* determine in what setting these supports and services should be delivered. The placement determination of a student with disabilities must be on a case-by-case basis and include reviewing a multitude of factors and information. Whether a student is "disruptive" in the general education environment may be relevant, but it cannot be the determinative factor.

### **Amendment to HS 604: Iowa's state regulations: Department of Education Requirements:**

Iowa's state regulations include similar language and requirements. The Iowa Department of Education states that removal of a student with disabilities from the general education classroom should only occur when the education of that student cannot be satisfactorily achieved *with the use of supplementary aids and services*.<sup>2</sup> The DOE goes on to encourage schools to first try to overcome hinderances to a student's learning through the provision of special aids and services.

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<sup>1</sup> U.S. Department of Justice Civil Rights Division, *Letter to Deal and Olens* (July 15, 2015). Retrieved from [https://archive.ada.gov/olmstead/documents/gnets\\_lof.pdf](https://archive.ada.gov/olmstead/documents/gnets_lof.pdf).

<sup>2</sup> Iowa Department of Education, *Administrative Rules of Special Education: Part B Policies, 05. Least Restrictive Environment* (September 2010). Retrieved from <https://educateiowa.gov/sites/default/files/documents/V.%20LEAST%20RESTRICTIVE%20ENVIRONMENT%202010%20public%20comment%29.pdf>.

When a school seeks to remove a student from the general education classroom, they must first consider several questions provided in Iowa Administrative Rule 281–41.116. These include whether the alternative placement would be potentially harmful to the student, what supports and services the student needs to be successful, why those supports or services cannot be provided in the general education environment, and how a more restrictive environment may impact the student and the services they receive.

HF 604 does not include such careful consideration and instead puts the placement determination before the services determination. HF 604 encourages schools to ignore the first step in this process – determining what supports and services are needed for the student to be successful in the general education classroom – and instead skips to the second step of determining placement with no mention of supports and services. This process risks unnecessarily segregating students with disabilities from their same-age nondisabled peers. Countless studies have shown that when students with disabilities and those without are educated side-by-side, all students benefit both academically and socially.<sup>3</sup>

### **HS 604 & Child Find Obligations:**

When a school removes a student *without* a disability from the general education classroom and considers placing them into an alternative school setting or therapeutic classroom, the school may now have a "child find" obligation. Under the IDEA, schools are required to have policies and procedures in place that ensure that students with disabilities are identified, located, and evaluated as to whether they may need special education and related services. Several things can and should give a school reason to suspect a disability, such as repeated behavioral problems. If a school determines that a student, who does not already have an IEP, needs to be placed in an alternative class setting or therapeutic classroom, the school likely has enough notice to trigger their child find obligations. Failure to

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<sup>3</sup> Anne M. Hayes & Jennae Bulat, *Disabilities Inclusive Education Systems and Policies Guide for Low- and Middle-Income Countries*, Research Triangle Park (NC): RTI Press (July 2017). Retrieved from <https://www.ncbi.nlm.nih.gov/books/NBK554622/>.

identify and evaluate a student under these circumstances can result in a violation of IDEA's requirement that the school provide FAPE.

HF 604 does not contemplate such nuanced requirements and skips over several important steps that are required by federal and state laws to ensure that students with disabilities are not segregated and overlooked by their schools. The law encourages schools to place students in more restrictive settings before they consider whether the student may have a disability and what supports or services the student may need to be successful in the general education classroom. This reversing of the process mandated by the IDEA and Iowa's state regulations risks segregating students with disabilities and subjecting them to more restrictive environments that are unnecessary, inappropriate, and unlawful.

HS 604 violates students with disabilities rights under the IDEA, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. DRI opposes HS 604 and the amendment to HS 604. Thank you in advance for your thoughtful deliberation of our written testimony in opposition of HS 604.