

**N.D.A.G. Letter to Wald (April 28, 1989)**

April 28, 1989

Honorable Francis Wald  
State Representative  
District 37  
P.O. Box 330  
Dickinson, ND 58601

Dear Representative Wald:

Thank you for your April 18, 1989, letter concerning sections 3 and 6 of House Bill No. 1604. You inquire whether a conflict exists between these two sections.

Section 3 of House Bill No. 1604 requires every local school district to formulate and implement a comprehensive health education program. Each district must develop this program pursuant to guidelines adopted by the Superintendent of Public Instruction.

Section 6 of House Bill No. 1604 states that each local school district "shall submit" to the Superintendent of Public Instruction a proposed comprehensive health education program for review. This section requires the Superintendent to review each proposed program. (The bill originally required approval of the program by the Superintendent. However, the approval requirement was amended and replaced with a "review and recommend" provision.) The Superintendent may then make specific recommendations to the school district to improve that program. Following the Superintendent's review and consideration by the school board of any recommendations made by the Superintendent, section 6 states that the Superintendent "shall authorize distribution of funds to the local school district."

My reading of sections 3 and 6 of House Bill No. 1604 concludes that every school district must formulate and implement a comprehensive health education program and that such a program must be reviewed by the Superintendent of Public Instruction. Presumably, the Superintendent's review of the plan would occur prior to the final implementation of the program so that the school board could consider any of the Superintendent's recommendations which would improve the program.

A potential conflict, or at least some amount of redundancy, may exist between a review of the proposed comprehensive health education program by the Superintendent (as provided in section 6) and the availability of the Superintendent's technical assistance to local school districts in formulating and implementing the program (as provided in subdivision 2 of section 3). Arguably, there is little need for the Superintendent's review of a program for which he has provided technical assistance in its formulation and implementation. However, the technical assistance sought by a school district may be

restricted to a particular issue whereas the Superintendent's review concerns the entire program.

More importantly, a review of the legislative history surrounding the enactment of House Bill No. 1604 clearly indicates the intent of the primary sponsor of this bill was to provide for the Superintendent's review of the program while, in addition, providing for the availability of the Superintendent's technical assistance to school districts in the formulation and implementation of the program. Hearings on H. 1604 before the Senate Committee on Education, 51st Leg. (March 20, 1989) (statement of Representative T. Kelly).

In summary, I find no conflict between sections 3 and 6 of House Bill No. 1604, including those instances where the Superintendent, at the request of the local school district, provides technical assistance in the formulation and implementation of a comprehensive health education program.

I hope this information is helpful.

Sincerely,

Nicholas J. Spaeth

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