

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

10388

2005 HOUSE EDUCATION

HB 1038

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1038**

House Education Committee

Conference Committee

Hearing Date **5 Jan 05**

Tape Number	Side A	Side B	Meter #
2	X		4,349 - end
		X	0-end

Committee Clerk Signature



Minutes:

**Chairman Kelsch opened the hearing on HB 1038.**

**Anita Thomas, NDLC, gave a synopsis of the bill.**

**Dr. Douglas Johnson, Asst. Ex. Director, NDCEL testified in support of the bill. (Testimony attached.)**

**Rep. Mueller:** Do we have the where-with-all in the state to implement to do some of the things that are beings suggested?

**Dr. Johnson:** We would like to look at some of the things in other states that could be emulated. There are some things that need to be challenged. We may not be able to change them but we must challenge them.

**Rep. Herbel:** Any opposition to not having non-public schools included?

**Johnson:** The NCLB (No Child Left Behind) is aimed at public schools. It has not been an issue we have discussed as an organization. I do believe some of the non-public schools do support some of the changes we're looking at.

**Rep. Sitte:** I would agree that non-public schools need to be included. I would agree that we are all about holding schools accountable. None of your proposals address holding schools accountable or improving student learning. Can you specify those?

**Johnson:** Measuring cohort growth. The current laws only measure students as they pass through a particular grade level so it does not compare a student's individual growth but with other students. We also look at testing requirements we have in place.

**Jack McDonald, appearing on behalf of the SANS** appeared in support of the HB 1038 but would like to see non-public be included. **(Testimony attached.)**

**Bev Neilson, Schools Board Association,** testified in support of HB 1038.

The perspective of the schools boards association. They (1) desire that the concept survive, and do not want the committee derailed and want the NCLB implemented in ND; (2) have no objection to other groups being represented; (3) desire the commission be able to draft legislation. The only problem is a reporting issue. They wish them to report to the Interim Committee on Education.

**Joe Westby, NDEA,** testified in support of the concept of the bill as it provides for input of the NDEA. NDEA is working with state and national organization to make the NCLB more user friendly. They are working with the congressional delegation to effect changes in the Department of Education's position. They sent to Senators Enzi and Kennedy a letter **(Copy Attached.)** to this effect. It could cost teachers in ND \$1.2 million to prove they are highly qualified and what

do students gain from that? Very little. They support more input into the NCLB and believe this measure does that.

**Carlotta McCleary, Executive Director for the ND Federation of Families for Children's Mental Health**, testified in favor of the bill, but voiced concern that parent's were not included in the advisory commission. **(Testimony attached.)**

**Jim Jacobson, ND Protection and Advocacy Project**, testified in favor of the measure and also requested that parent membership be included and the bill be amended to include three parents on the commission one of those being the parent of a child with disabilities.

**Rep. Herbel:** Is it not satisfactory that most of the people in this group would probably be parents?

**Jacobson:** I am concerned that there will be a conflict in members with alternative responsibilities.

**Dr. Gary Gronberg, DPI**, spoke in opposition to HB 1038. **(Testimony attached.)** The department presents proposed amendments to the bill.

**Rep. Hawken:** One of the major concerns is that the DPI made some rules and went with them. There was no input. I would like DPI to be on the same team as the rest of her constituency.

**Dr. Gronberg:** When you get every one to the commission it's too unwieldy. The responsibility for the implementation of the NCLB act rests with the DPI. They have tested some coalition recommendations, they do not work as they do not meet the letter of the law. DPI has the responsibility to see the NCLB is implemented in the state.

**Rep. Sitte:** I think we have a fundamental conflict of interest here. When you tell us DPI has the responsibility to carry out the federal law. We see your responsibility of carrying out the wishes of the state legislature. The state is responsible to ensure a uniform system of school in this in state and we swear to uphold that state constitution. The US constitution does not speak to education, the state's does. Your department doesn't listen to us.

**Rep Hawken:** We don't want that.

**Dr. Gronberg:** If we take the money it is the responsibility of the DPI to administer in accordance with the law congress passed. We uphold ND law. We have to do both. We cannot ignore one for the other. We are a member of the union--the United States. We also have the responsibility to uphold ND laws and the constitution of the United States.

**Rep. Sitte:** Is the NCLB the option of the governor or the DPI to enroll us in the program.

**Dr. Gronberg:** It is the law of the land. It is not the option of the state to opt in or opt out.

**Rep. Mueller:** Have you found some of the provisions of the NCLB to be difficult to implement through DPI? Has it created issues and problems you would not have had?

**Dr. Gronberg:** I would be remiss if I said it did not create issues.

**Rep. Mueller:** I think that's the point I would make. This bill attempts to make changes to the NCLB and could be construed to be a good friend to DPI. Let's fix it so we can do a better job and make it useable and beneficial to the ND education community. I don't see this as an us against them.

**Dr. Gronberg:** We have submitted seven amendments to the state plan and they have been refused. The NCLB is for disadvantaged students to give them a level playing field and grades

the school on that job. It's not how the child is doing, but how the school is doing against the state plan.

**Rep. Haas:** Tell us about the 25-member advisory committee and it's functions.

**Dr. Gronberg:** I've presented that testimony previously and will be happy to do again.

**Chairman Kelsch:** Would you please provide that to us again.

**Rep. Sitte:** Can you tell us how much standardized test scores have risen since the infusion of federal dollars in the 1960s.

**Dr. Gronberg:** We can report for Tittle 1 schools as we are required to report. Fed funds are approximately 13% of the overall education expenditures in the state.

**Rep. Sitte:** I've read reports that federal money infusion has not raised achievement even one percent in the schools. When you tell us it's the law of the land and we have no choice, we do definitely have a choice. Why do we continue to play this game that has not helped us one iota. When ND had it's own independent standards we had a strong education system. I believe this is making it weaker.

**Dr. Gronberg:** We need to also look at the 87% the state provides. We have not raised our scores on that either. We haven't been doing so good with any source of funds as far as student achievement goes.

**Rep. Sitte:** I remember from Goal 2000. . . What are we really doing? Do parents really know how their students are doing.

**Rep. Hunskor:** The people of ND are represented by school administrators. The people run government and those administrators see major problems. Our job is to work together to

petition to have federal guidelines changed. We are not going to get anyplace if we are not on the same page.

**Dr. Gronberg:** NCLB has made us look under our bed and into our closets to see that we have groups, not just special education students, who are not doing so well in this state. Our averages have always been good. We need to bring all students up to average.

**Janet Welk, Executive Director of the Education Standards and Practices Board,** testified in support of the HB 1038.

**Rep. Solberg:** In light of the testimony of Dr. Gronberg, are you in support of the original HB 1038 or as amended by DPI.

**Ms Welk:** The original

**Sandy Welk, ND Farm Bureau,** testified in opposition to HB1038. **(Testimony attached.)**

The Farm Bureau is concerned that the advisory committee can introduce legislation and asked that the legislation be amended to take out that authority.

Meeting adjourned.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1038**

House Education Committee

Conference Committee

Hearing Date **12 January 05**

Tape Number	Side A	Side B	Meter #
1	X		1530 - end

Committee Clerk Signature



Minutes:

**Chairman Kelsch opened the meeting on HB 1038**, the bill that creates the advisory committee for the NCLB (No Child Left Behind). We have a lot of testimony in support of the bill. The one issue that came up with a couple of people was to add parents and someone specifically representing special ed or a special ed parent. The Interim Legislative Committee felt there are a number of issues that need to be looked at in depth. We are part-time legislators with full-time jobs. It's difficult to study in-depth these issues. The commission is a vehicle of individuals who could really dig in and spend time on the issues and then report to the Legislative Interim Committee.

**Rep. Herbel:** When does this interim committee's responsibility end? How will this committee differ from that committee?

**Chairman Kelsch:** This bill keeps the interim committee alive. If there is a problem with this committee being able to pass leg forward, I don't have a problem taking that away from them.

The biggest reason this is formed is to put the expertise on the commission that could study issues such as cohort testing, changing the binomial remuneration. We do not have the time for an in-depth study. If we want them to refer legislation to the Interim No Child Left Behind Committee, that okay. This is not a duplication of the interim committee, this is a commission of experts.

**Rep. Haas:** Seven citizens, \$62.50 a day. Would the legislators get \$100 a day? Do we have to send this to appropriations.

**Chairman Kelsch:** This is a Legislative Council expense so it would be included in their budget. There is a fiscal note for \$8184.

**Rep. Hunsakor:** Six legislators appointed by legislative council and part or half be designated as urban, half as urban.

**Chairman Kelsch:** We don't typically put that in statute.

**Rep. Norland:** This is a good idea, not in favor of changing it any way. Organizations have ability to put on whoever they want to. There's enough leeway and balance as is.

**Rep. Meier:** How often would they meet?.

**Chairman Kelsch:** At least twice a year.

**Rep. Hawken:** The ability to pass legislation will cause problem. It will be scary for other legislators. We should take that out. Special ed is a huge situation, but we have several subgroups studying that.

**Rep. Mueller:** I agree with Rep. Hawken that we ought to change the ability to pass legislation. Look at Dr. Gronberg's testimony there is a similar group doing the same thing.

**Chairman Kelsch:** We could get that information. That commission was required by DPI to implement as part of their state accountability plan that was put in two years ago and they haven't met yet. Overly loaded with people from DPI rather than people out in the field.

**Rep. Sitte:** I see us handing over the debate to special interest groups. I thought our Interim Committee heard information and honest information. This would filter information. I don't want a consensus group to meet behind closed doors. I strongly oppose and will continue to oppose it.

**Chairman Kelsch:** I assure you that the Interim No Child Left Behind Committee will still exist but we did not have the time and probably will not have the time to dig as deeply into the issues as this committee could. This commission will meet in public. There will be access. This commission will have more input than the interim committee.

**Rep. Mueller:** This commission will bring folks that normally don't come together this encourages this kind of effort.

**Rep. Hawken:** If DPI group has formed as it should have, had it met as it should have, there would not be a need for this group. I think we should take off commission and make it a committee and remove the ability to legislate.

**Rep. Hawken:** NCLB has no effect on private schools? Why put one of them on the commission. There was a promise to include them.

**Chairman Kelsch:** There is a potential impact in qualifying teachers.

**Rep. Hanson:** In that public schools provide Title 1 programs for private schools there would be some relationship there as well as special ed.

**Rep. Sitte:** There are a number of teachers from private schools that are not in the NDEA.

That is a concern is that they are not speaking for all teachers. They all got the same letter that they are not highly qualified. They are less likely to apply for the national board certification as they receive less pay.

**Rep. Norland:** Private vs Public. Private school teachers have a choice. Many want to move to public school for that reason. I don't see the relevance if you are in public or private, a teacher that is on this board, be it special ed teacher, hs or elem, why would you not represent the entire group. The reason that most teachers do not belong to NDEA is not that they don't like what NDEA does for them, it's that they cannot afford the \$500 per year. NDEA will speak for all teachers whether they are private or public, I don't see that as an issue.

**Chairman Kelsch closed the meeting on HB 1038.**

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1038**

House Education Committee

Conference Committee

Hearing Date **17 January 05**

Tape Number	Side A	Side B	Meter #
2	X		700 - 3183

Committee Clerk Signature



Minutes:

**Chairman Kelsch called the hearing on HB 1038 to order.** She opened a discussion on a paper provided by Gary Gronberg, DPI (**Copy attached.**) The paper showed the advisory committee, potential agenda, the ongoing Study and Amendment of the State's Accountability System, and membership, for the NCLB (No Child Left Behind) State Accountability Advisory Committee. Both Gary Gronberg and Greg Gallagher were available to answer questions.

**Rep. Hawken:** The five members from Title 1, IBEA and SALT team, are those parents, teachers or people from the department?

**Greg Gallagher, director of Standards and Achievements, DPI:** The five members within that committee would be teachers, business members, and administrators. Parents are appointed separately by the state superintendent to allow flexibility in the types of people to come in.

**Rep. Hawken:** So this committee has not actually been formed.

**Gallagher:** The names have been selected, but we have intentionally not sent out invitations at time. We are still gathering some important data points that are time sensitive. We are looking at bringing them together sometime in the latter days of winter.

**Rep. Mueller:** It's a statewide accountability committee which will access preparatory work conducted by special and standing advisory committees. Who are those committees?

**Gallagher:** The intention is to build on the knowledge of those people who have studied this over a period of time: the standards assessments learning and teaching team, the Title 1 advisory committee, the individual with disability act advisory committee. So we have standing committees we have used for a number of years and the intention is to bring from the talent pool those people who have been working on these topics and bring them in with a variety of other people in order to have a good balanced representation across the state.

**Rep. Mueller:** Federal guidance is going to say we're not going to go out of these parameters and we're not going to go outside of that. Am I reading that correctly?

**Gallagher:** If we make any changes to the state plan we have to work within the law and federal regulation. Part of study we have put in place look for changes in federal policy. It would be proper for any advisory committee working with DPI to issue requests for reconsideration of standing regulations within the US Department of Education.

**Rep. Hawken:** I move we accept the amendment before us. (Copy attached.) It changes the ability to do legislation and who this committee reports to the NCLB Interim Committee.

**Rep. Johnson.** I second.

**Chairman Kelsch called for voice vote on the amendment.**

**Yes: 13 No: 1 Absent: 1 Amendment passed.**

**Rep. Hawken:** I move for a Do Pass as amended and rerefer to Appropriations.

**Rep. Johnson:** I second.

**Rep. Mueller:** I have a concern that this is a duplication of efforts with DPI.

**Rep. Herbel:** The size of this committee bothers, I'm concerned you'll never get a consensus. I'm not real sure there is a need for this committee.

**Rep. Haas:** I have the same doubts. When you look at the tasks of this committee there is no question that these tasks could not be accomplished in two meetings per year. It looks like a rules committee, we already have that. More logical to have the Interim Committee to continue to exist and do this kind of work through subcommittees, smaller groups as Rep. Herbel is suggesting. Smaller groups of the Interim Committee could be used drawing on the resource people that are identified in this DPI committee such as NDCEL, NDEA, School Board Association, etc. I think this an extra layer of committee structure that we don't need.

**Chairman Kelsch:** Rep. Herbel you indicated you would like further discussion on the need and the size. When originally proposed this committee was larger and more on par with the advisory committee and at that point was a much more unwieldy committee which is how I look at the committee that DPI has. I don't think there will meaningful consensus that comes out of that group either. Here we have a group of 14 and we get some pretty meaningful work done. The reason for this committee during the interim we heard a lot of dismay about the way the state plan for NCLB was put together. There's a lot of people in the state who felt they were left out of the process. If you look at the DPI committee, it's weighed heavily to the department so it would follow that their agenda will be more toward where DPI wants to go. The NCLB Interim Committee felt there was a good cross section of individuals that could come to reasonable

conclusions and have some meaningful input to the legislature. It's still too big. We discussed cutting it down, but wanted to make sure there was a good balance.

**Rep. Herbel:** Within the group that brought this forward was there interest in passing legislation.

**Chairman Kelsch:** No, when drafted it was patterned after the intergovernmental affairs commission. Rather than amend during the interim we felt we could do it during the session. They did not have a request to be able to pass legislation. That is not what their goal was. Their goal was to delve into the subject areas that are greater than any knowledge I will ever have and a lot more time consuming than I will have the time. They have the ability to meet and set up subcommittees that would take each one of these areas and look at them more deeply and bring those proposals before the full committee. I must say there was some frustration because we were told about the DPI committee this summer and that committee has not been finalized or have they met.

**Rep. Herbel:** In your opinion was the Interim NCLB committee beneficial.

**Chairman Kelsch:** I do. I think we were very well informed and in this bill that committee is continue. This committee would bring their input to our Interim Committee.

**Rep. Herbel:** What's the duration of the committee?

**Chairman Kelsch:** There is none.

**Rep. Hawken:** In a perfect world I would have liked to have seen the advisory committee from DPI being put together prior to any plan being sent anywhere. I would have liked to see that plan communicated to the districts so they would have had a chance for input at that time.

Part of the problem and the reason for this legislation is the concern that there was no opportunity for input. Federal regulations are taking a larger role than what the needs of the state are able and we are a rural state and we don't have intercity schools and we do need to look for changes and work for those changes. Perhaps this could be the advisory committee since it has a lot of the same people on it.

**Rep. Hunsakor:** Is there any value in putting a sunset on this down the road.

**Chairman Kelsch:** We can do that or we can come back next session and do away with it.

**Rep. Norland:** I call for the question.

**Chairman Kelsch called for a roll call vote on amended HB 1038.**

**Yes:   9      No:   5      Absent:   0      Passed as amended.**

**Rep. Johnson will carry the bill.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
12/17/2004

Bill/Resolution No.: HB 1038

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>			\$8,184		\$8,184	
<b>Appropriations</b>			\$8,184		\$8,184	

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill creates an advisory commission on the No Child Left Behind Act. The commission consists of 13 members, six of whom are legislators who will be compensated and reimbursed for expenses by the Legislative Council. The commission is to meet at least semiannually.

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.*

Legislative Council expenditures will increase by \$8,184 per biennium to pay per diem and travel expenses of the six legislative members of the commission for four meetings during the 2005-07 biennium.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

An additional \$8,184 from the general fund is needed in the Legislative Council's 2005-07 biennium appropriation to provide for the estimated costs relating to this committee.

**Name:** Jim W. Smith  
**Phone Number:** 328-2916

**Agency:** Legislative Council  
**Date Prepared:** 12/28/2004

VK  
1/17/05

HOUSE AMENDMENTS TO HOUSE BILL NO. 1038 EDU 1-18-05

Page 4, line 12, after "shall" insert "present a written"

Page 4, line 13, after "report" insert "regarding" and replace ". together with any legislation required to implement the" with "to the interim no child left behind committee"

Page 4, remove line 14

Page 4, line 15, remove "of each odd-numbered year"

Renumber accordingly

Date: 17 Jan 05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1038

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Amend*

Motion Made By *Hawken*

Seconded By *Johnson*

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓		Rep. Hanson	✓	
Vice Chairman Johnson	✓		Rep. Hunsakor	✓	
Rep. Haas	✓		Rep. Mueller	✓	
Rep. Hawken	✓		Rep. Solberg	✓	
Rep. Herbel		✓			
Rep. Horter	✓				
Rep. Meier	✓				
Rep. Norland	✓				
Rep. Sitte	✓				
Rep. Wall	✓				

Total (Yes) 13 No 1

Absent 0 1

Floor Assignment

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

Date: 17 Jan 05  
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1038

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *do pass as amended and refer to approp*

Motion Made By *Hawken* Seconded By *Johnson*

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓		Rep. Hanson	✓	
Vice Chairman Johnson	✓		Rep. Hunsakor	✓	
Rep. Haas		✓	Rep. Mueller		✓
Rep. Hawken	✓		Rep. Solberg		✓
Rep. Herbel	✓				
Rep. Horter	✓				
Rep. Meier		✓			
Rep. Norland	✓				
Rep. Sitte		✓			
Rep. Wall	✓				

Total (Yes) 9 No 5

Absent 0

Floor Assignment *Johnson*

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

**REPORT OF STANDING COMMITTEE**

**HB 1038: Education Committee (Rep. R. Kelsch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1038 was rereferred to the Appropriations Committee.**

Page 4, line 12, after "shall" insert "present a written"

Page 4, line 13, after "report" insert "regarding" and replace ". together with any legislation required to implement the" with "to the interim no child left behind committee"

Page 4, remove line 14

Page 4, line 15, remove "of each odd-numbered year"

Renumber accordingly

2005 HOUSE APPROPRIATIONS

HB 1038

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1038

House Appropriations Committee  
Education and Environment Division

Check here for Conference Committee

Hearing Date January 20, 2005

Tape Number	Side A	Side B	Meter #
1	x		

Committee Clerk Signature



**Minutes:** Chairman Martinson opened hearing on HB1038.

**Chairman Martinson** This bill has been re-referred to us. It came from Education Committee. It would cost about \$8,000 for the Legislative Council to put this interim committee together. I called the Council and they said it was in their budget. If the money is there we don't act on the policy, if we agree to recommend a do pass and send it back to the Education Committee. However, I've been asked to put an emergency clause on it. If we all agree can somebody make that motion? The purpose of the emergency clause is so the committee can be established immediately.

**Vice Chairman Brusegaard** I move that we amend HB1038 by adding the emergency clause.

**Rep. Rennerfeldt** Second.

Page 2

Education and Environment Division

Bill/Resolution Number HB1038

Hearing Date January 20, 2005

**Chairman Martinson** It has been moved and seconded to amend HB1038 with an emergency clause. All in favor say aye. (All said aye) All opposed? (None). We have the amended bill before us.

**Vice Chairman Brusegaard** I move a do pass on amended HB1038.

**Rep. Rennerfeldt** Second.

**Chairman Martinson** It has been moved and seconded. Motion carried.

**VOTE: 4 YES and 0 NO with 2 absent. DO PASS. Chairman Martinson will present bill to the full committee.**

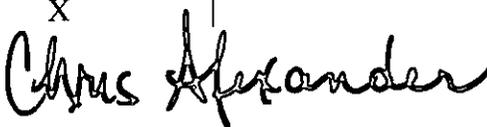
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1038  
Interim No Child Left Behind

House Appropriations Full Committee

Conference Committee

Hearing Date January 25, 2005

Tape Number	Side A	Side B	Meter #
1	X		#14 ending
Committee Clerk Signature			

Minutes:

**Rep. Ken Svedjan, Chairman** opened the hearing, roll call was taken, and the clerk read the bill title.

**Rep. Bob Martinson** explained the bill that came originally from the House Education Committee and that the House Appropriations sub committee on Education and Environment looked solely at the fiscal note of the bill and not the policy end of it. It continues the No Child Left behind Committee and the subcommittee checked with Legislative Council who assured them that the fiscal impact was adequately covered by the agency's budget. The subcommittee added an emergency clause to the bill so that it could be paid out immediately and recommended a do pass as amended.

**Rep. Ken Svedjan, Chairman** called for a voice vote to accept amendment LC#50175.0301 proposed by the Education and Environment subcommittee regarding the emergency clause.

Motion to accept the amendment was made by Rep. Bob Martinson and seconded by Rep. Mike Timm, Vice Chairman. Motion carried.

**Rep. Bob Martinson** moved a Do Pass as Amended vote on HB1038.

**Rep. Francis J. Wald** seconded.

**Rep. Bob Skarphol** noted a grammatical error in the amendment done by the original committee and asked Legislative council to look at that and correct it.

**Rep. Jeff Delzer** began a discussion concerning who carries these re-referred bills to the House Floor and whether the calendar will show the decisions of both committees or whether it will only show the decision by Appropriations. There was concern that Appropriations only deals with the money part and the intent of the bill itself as heard in the original standing committee would not be reflected.

**Rep. Ken Svedjan, Chairman** said that the carriers of these bills would be from the original committee so they would have a chance to discuss the intent of the bill for the floor, but that Rep. Monson should check with Mr. Brad Fay, Chief Clerk of the House, to see if both votes could be reflected on the calendar.

**Rep. Ken Svedjan, Chairman** asked for any further discussion on HB1038. (meter #11.8)

**Rep. Ken Svedjan, Chairman** called for a Roll call vote.

**Rep. Ken Svedjan, Chairman** announced the motion carried with a vote of 20 yeas, 2 neas, and 1 absent, and that Rep Dennis Johnson from the Education Committee will carry the bill to the House Floor.

**Rep. Mike Timm, Vice Chairman** commented that regarding these re-referred bills, he may vote for the appropriations part of these bills here in committee but once he's heard the intent of the bills on the House Floor he may very well vote against them.

**Rep. Ken Svedjan, Chairman** commented that this is the dilemma of the Appropriations Committee, where we have to vote solely concerning the fiscal impact of the bill without knowing much about the full intent of the bill until we reach the House Floor.

**Rep. Ken Svedjan, Chairman** closed the discussion on HB1038.

Date: 1-20-05  
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1038

House Appropriations Education and Environment

Check here for Conference Committee

Legislative Council Amendment Number 50175.0301

Action Taken Do Pass As Amended

Motion Made By VChair Brusegaard Seconded By Rep. Rennerfeldt

Representatives	Yes	No	Representatives	Yes	No
Chairman Martinson	X		Rep. Aarsvold	absent	
Vice Chairman Brusegaard	X		Rep. Gulleon	absent	
Rep. Rennerfeldt	X				
Rep. Wald	X				

Total 6 (Yes) 4 No 0

Absent 2

Floor Assignment Chairman Martinson

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

Date: **January 25, 2005**  
Roll Call Vote #: **1**

**2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB1038**

House Appropriations - Full Committee

Check here for Conference Committee

Legislative Council Amendment Number

**05175.0301**

Action Taken **DO PASS AS AMENDED**

Motion Made By **Rep Martinson**

Seconded By **Rep Wald**

<b>Representatives</b>	<b>Yes</b>	<b>No</b>	<b>Representatives</b>	<b>Yes</b>	<b>No</b>
Rep. Ken Svedjan, Chairman	X		Rep. Bob Skarphol	X	
Rep. Mike Timm, Vice Chairman	X		Rep. David Monson	X	
Rep. Bob Martinson	X		Rep. Eliot Glassheim	X	
Rep. Tom Brusegaard	AB		Rep. Jeff Delzer		X
Rep. Earl Rennerfeldt	X		Rep. Chet Pollert	X	
Rep. Francis J. Wald	X		Rep. Larry Bellew		X
Rep. Ole Aarsvold	X		Rep. Alon C. Wieland	X	
Rep. Pam Gulleason	X		Rep. James Kerzman	X	
Rep. Ron Carlisle	X		Rep. Ralph Metcalf	X	
Rep. Keith Kempenich	X				
Rep. Blair Thoreson	X				
Rep. Joe Kroeber	X				
Rep. Clark Williams	X				
Rep. Al Carlson	X				

Total Yes **20** No **2**

Absent **1**

Floor Assignment **Rep Dennis Johnson (Education)**

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

**REPORT OF STANDING COMMITTEE**

HB 1038, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (20 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1038 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "and"

Page 1, line 3, after "committee" insert "; and to declare an emergency"

Page 5, after line 16, insert:

**"SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

This amendment adds an emergency clause to the bill.

2005 SENATE EDUCATION

HB 1038

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1038**

Senate Education Committee

Conference Committee

Hearing Date 02/15/05

Tape Number	Side A	Side B	Meter #
1	x		2625-end
1		x	0-2480

Committee Clerk Signature



**Minutes: Relating to the interim NCLB committee; and to declare an emergency.**

**Senator Freborg :** Call the meeting to order on **HB 1038**

**Testimony in favor of the bill :**

**Anita Thomas :** Legal Council on the Legislative Council, I served as the attorney for the NCLB committee.

**See attached : written testimony**

**Senator Seymour :** NCLB Act seems to be growing into the high school area as well, with new initiatives with President Bush, would this cover that too, or would this cover what has been, something new? In this arena does this cover that too, or is this something different.

**Anita Thomas :** I have no doubt that the intent of the interim committee was to allow both the commission and the interim committee to look at all aspects of the NCLB Act.

**Senator Flakoll :** One of the measuring tools that could be used in the big picture of NCLB is the % of remedial, student having to take remedial classes once they get to college. With

something like that be germane to the bill in terms of bridging the gap between K-12 and higher education?

**Anita Thomas :** As staff council to that committee I would not preclude the committee you're suggested there would be an inclusion for doing that, I think that the issues are very much related.

**Doug Johnson :** ND Educational Leaders, Would like to change one part of his testimony that to change his position from being Rep. of ND of Ed Leaders to that of Representing the ND Education Coalition which does consist of our Council, SBA, and NDEA this is the voice of our coalition.

**See attached : written testimony**

**Bev Neilson :** ND SBA, just want to add one thing to Doug's testimony, b/c this is such an excellent example of why we believe this commission will be a very positive impact on education in ND in our dealings with NCLB. Over the last couple of years we have been told that things can't be changed, this is the way it is and the Fed's won't allow it and so that we should just buck up and do what we are told. I think the issue of the elementary teachers being highly qualified is really a good example. Where we were told it couldn't possibly be changed and it took a coalition of the education group of the legislators, of ESPB, the Governors office and congressional delegation all standing together to get approval for our elementary teachers. This commission will serve as a way for those groups to be formally to be together and make it a little more organized. We were tired over the past couple of yrs. of being told can't change it, can't change it, can't change it, can't be done, they will never approve it, never approve it, never approve it, and I think there are other things that we can tackle and we put our heads together and we get a coalition like this committee that will be together and have a very positive impact for us.

**Mike Hillman** : Vice Chancellor for Academic and Student Affairs with the ND University

System. Said he is in favor of this bill and here to offer an amendment.

**See attached : written testimony**

**Senator Flakoll** : Was this amendment offered on the House side at all?

**Mike Hillman** : The board had met after the hearing on the House side and that is why we didn't have this prepared for the testimony on the House side.

**Jack McDonald** : On behalf of the state association of nonpublic schools, and as long as you are thinking about amendments, we would like to add and ask that you would consider at least amending to add a representative of a nonpublic school to that. The association of nonpublic schools has approximately 52 schools around the state and about 7500 students, so I think that is a considerable # of students that are affected one way or another by NCLB, it is true that the nonpublic schools are not directly affected by the program, b/c they private schools. Never the less the private schools do need to be accredited by the state and by our own private accreditation association, and to do that we need to have certified teachers. The teacher certification process is very much affected by the NCLB Act. So we are very much directly affected by the NCLB Act, we are just asking that this committee give some consideration. I understand the reasons why there are concerns when a committee getting too big, in this sort of thing you would want to be as inclusive as possible, just give some consideration to adding a representative of the nonpublic schools to the committee as well.

**Carlotta McCleary** : Executive Director for the Federation of Families for Children's Mental Health.

**See attached : written testimony**

**Senator Freborg :** Don't you believe that all of the members on the commission represent the sole interest of the children?

**Carlotta McCleary :** I also believe that they are representing their organization, for example they can represent what's best for the teachers, on education association or whatever. Sometimes it is very difficult to wear two hats when you are on a commission and to look at something that may be in the best interest of the child may not be in the best interest of the teacher, or the School Board.

**Senator Freborg :** We now have three requests for another member of course.

**Carlotta McCleary :** Please consider ours, thank you.

**Roxane Romanick :** Concerned citizen, having a child with Down Syndrome.

**See attached : written testimony**

**Jim Jacobson :** Director of Protective Services for the ND Protection and Advocacy Project.

This sounds like everyone wants to be invited to the ball.

**See attached : written testimony**

**Senator Flakoll :** Pg. 1 line 15 in reference to the Governors appointee, if we were to, realizing that many of these other appointees have to be parents. If we change that wording to one parent of a child enrolled in a some school somewhere, would that kind of address the issue do you think? Also realizing that they would have to have full public hearings and the like.

**Jim Jacobson :** Are you identifying that the Governors appointee would specifically be identified or designated as a parent?

**Senator Flakoll :** Yes,

**Jim Jacobson :** We would then stand behind that 100 %.

**Vivian Schafer** : Children's Caucus, I have followed the interim of the NCLB and at the last meeting there was some talk of putting parents on there. Then it was pushed onto become before the committee in the legislature, I asked at that time that a parent be added, so that is my request so that you will be able to get some input back from children that are in school. I support the last few testifiers, b/c special needs is very important to have, my basic thing is to have a parent on there.

**Elaine Grasl** : From Bismarck district 47 this is a very complicated document, and I know education is meant to serve all children.

**See attached : written testimony**

**Austin Gillette** : Three Affiliated Tribes, We are not asking for an addition to the committee, but we need to clarify a membership similar to the individual to the coalition on #A. Chairman has a request for you to consider on line 13, that one individual appointed by the Indian Affairs commission, that to be stricken and changed to a Tribal Chairman selected by ND Tribes. If you would consider that it would be fine, the concept of the bill itself we recommend a do pass.

**Senator Freborg** : This Tribal Chairman could be appointed by the Indian Affairs Commission.

**Austin Gillette** : Well, it could be, this way we just want to make sure.

**Clare Fox** : Mandan Hidatsa education coordinator, understand the bill completely and we do need that with our schools systems to. I am in favor of the testimony that Mr. Gillette had brought forth to. We need an advocacy for Indian Education too, with the state, it would be strongly recommended to help with the rewording of implementing tribal representative, or tribal chairman or president to be part of this coalition. We need to have stronger people to advocate in the legislature, and for Senators to build a stronger collaboration.

**Senator Taylor :** Are there special challenges to tribal schools with NCLB, ??

**Clare Fox :** Sure there are, for one the bill or NCLB, I like to sit here and speak about rural schools. When you talk about NCLB comes forth with new laws stating that we have to have teachers who are mastering in their subjects. Rural schools if we were to master in our subject areas, it kind of puts the rural schools in a tough situation, b/c we have to spend extra money, they themselves have to spend extra money and what does that do for rural schools? It puts us in a bind, then we start looking at areas of concern, of NCLB, being in school improvement plans, AYP, what will happen? Eventually, I am not in support of NCLB, to me there is an accountability act. If you want to go from good to better, teachers from West to East and North to West, if you want master, we need some type of accountability with funding, professional development.

**Senator Taylor :** A tribal schools face what is very similar to what rural schools are facing.

**Opposition of this bill :**

**Gary Gronberg :** DPI, Assistant Superintendent within the Dept. indicated that his testimony would sound maybe somewhat neutral or not in favor. Related bills of 1488, 1434, with 1038.

**See attached : written testimony**

**Senator Flakoll :** One of the focal points of your testimony was with respect to the relationship and maybe, do we need the advisory group relative to the rest of the committee. Isn't this somewhat of a relationship to what the Round Table of Higher Education and Higher Education Committee, which was deemed successful by many people?

**Gary Gronberg :** The commission that was used as an example though was not the round table for higher education, it was the intergovernmental relations committee commission. The Round

Table has never been termed a commission, never had a legal standing in law or does it? I could be mistaken about that, it was a statewide effort that brought a number of people to the table to discuss Higher Education issues. We are talking here something now that would be put into law and have some legal standing.

**Senator Flakoll :** Process wise this is very similar, what this is being proposed, and with stakeholders and legislators together which was a very, very, very, large group and then it filters down to the Higher Education Committee.

**Gary Gronberg :** Quite possible, what we proposed in terms of our state of accountability advisory committee, does the same thing, membership comprised of various committees that we already have. Standing committees of Title 1 practitioners, IBEA advisory committee, the associations, SBA, Education association, Bureau of Affairs, Bureau of Indian Affairs Schools, Legislative Council, Governors Office, members at large, this is quite extensive technical advisory committee. This is something that is proposed in our accountability plan, already. So all I am saying that if there are numerous, numerous, efforts, how far can we stretch our resources here that are all focused on the same issue. As I mentioned HB 1488 is another study of congress to study elementary and secondary education. Higher Education would like to bring in the issues dealing with remedial courses or whatever, when students transition from one to the other. I think the idea of study, of elementary and secondary education in general, is a very viable kind of purpose or whatever. This would be very welcome at that point and time, but to focus it so narrowly on only the implementation of elementary and secondary education act of the federal level is a mistake. We have to look at accreditation, at all kinds of issues that are much broader aspect than the elementary and secondary education act. I think the study effort is the way to go.

Page 8

Senate Education Committee

Bill/Resolution Number HB 1038

Hearing Date 02/15/05

No other testimony in opposition, Senator Freborg closed the hearing on HB 1038.

**Senator Freborg** indicated that this will generate another work day committee, so if you favor some of the amendments, try to choose which one you will put off of the committee to replace with another amendment.

**Senator Flakoll** : I do have some amendments being drafted.

**Senator Freborg** : Very good.

**Senator Flakoll** : They gave them the international symbol for amendments.

**Senator Freborg** : Do you wish to present those in the next few minutes?

**Senator Flakoll** : No, just so there isn't any shuffling up and having Dirk draft up the same amendments, essentially what I would be looking at is on pg.1 line 15 would be to look at the appointee of the Governor, to be a parent of a child currently enrolled in school. This should be a nice pool to pick from.

**Senator Freborg** : I would like for you to become familiar with the bill, b/c we will spend some time on the bill, if you have amendments, try to have them ready, that will shorten the work load.

**Senator Freborg closed the meeting.**

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1038

Senate Education Committee

Conference Committee

Hearing Date 02/23/05

Tape Number	Side A	Side B	Meter #
1	x		790-1080

Committee Clerk Signature



**Minutes: Relating to the interim NCLB committee; and to declare an emergency.**

**Senator Freborg :** Call the meeting to order on HB1038

**Senator Flakoll :** With respect to some of the testimony we heard there is a long, long, long, list of people we could consider having on there, even though we have thirteen members already on that group, maybe we want to further amend it so that the appointee by the Governor, be a parent of a child with special needs. Between thirteen people we are bound to have someone that's going to whether it is a member of the school board or whatever that has children on there. It seemed after discussion that it might be good thinking to have someone with special needs in there particularly, what the genesis of this is with respect of NCLB committee and those arguably other children who sometimes are the farthest left behind.

**Senator Flakoll,** with that I would move the amendments untitled, to re-engrossed HB 1038 pg. 1 line 15 after the word Governor, insert, who is a parent to a child with special needs and then renumber accordingly.

Page 2

Senate Education Committee

Bill/Resolution Number HB 1038

Hearing Date 02/23/05

**Senator G. Lee** second the motion.

No further discussion .

**Hearing None, Clerk took roll: Vote 6 Yea, 0 Nay, 0 Absent**

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1038

Senate Education Committee

Conference Committee

Hearing Date 03/08/05

Tape Number	Side A	Side B	Meter #
1		x	4350-4560

Committee Clerk Signature

*Patty Wilkens*

**Minutes: Relating to the interim NCLB committee; and to declare an emergency.**

**Senator Freborg :** Call the meeting to order on HB 1038

**Senator Flakoll** moved a **Do Not Pass** reengrossed HB 1038

**Senator Taylor** second the motion.

**Discussion:**

**Senator Flakoll :** With everything we have added to now of 1434 I think we have taken care of a lot of issues from this bill we have before us.

**No further discussion**

**Hearing None, Clerk took roll: Vote 6 Yea      0 Nay 0 Absent**

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1038

Senate Education Committee

Conference Committee

Hearing Date 03/09/05

Tape Number	Side A	Side B	Meter #
1	x		1550-2040

Committee Clerk Signature



**Minutes: Relating to the interim NCLB committee; and to declare an emergency.**

**Senator Freborg :** Call the meeting to order on **HB 1038**

**Senator Flakoll :** indicated that he wanted all to turn to HB 1038 but said we better wait.

**Senator Freborg :** indicated Senator Flakoll intention is that we passed this out with an amendment and we didn't want it to go to sixth order.

**Senator Flakoll :** moved that we reconsider our actions with which we passed out re-engrossed HB 1038 as amended

**Senator Taylor** second this motion.

No further discussion

**Hearing None, Clerk took roll: Vote 6 Yea 0 Nay 0 Absent**

**Senator Flakoll** made a motion to remove the amendments that were adopted on 02/23/05 that would have required that after the word Governor insert who is the parent of a child with special needs.

Page 2  
Senate Education Committee  
Bill/Resolution Number HB 1038  
Hearing Date 03/09/05

**Senator G. Lee** second this motion

**Senator Seymour** : Asked if this could repeat this as he missed exactly what Senator Flakoll said.

**Senator Flakoll** : Essentially what I did, we had some slight amendment that we had applied on there and rather than send the bill that we were looking to kill, we are going to send it up to them clean so we don't have to go to sixth order on one day and then the 14 th order. We would be helping the body as a whole with a clean bill to act on.

No further discussion

**Hearing None, Clerk took roll: Vote 6 Yea 0 Nay 0 Absent**

**Senator Flakoll** moved a Do Not Pass for re-engrossed HB 1038

**Senator Taylor** second this motion.

No further discussion

**Hearing None, Clerk took roll: Vote 6 Yea 0 Nay 0 Absent**

**Senator Flakoll will carry this bill.**

Date: 2/23/05  
Roll Call Vote #: /

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1038

Senate SENATE EDUCATION

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass FL Amendment

Motion Made By Sen Fla Seconded By Sen Lee

Senators  
CH- SENATOR FREBORG  
V-CH- SENATOR G. LEE  
SENATOR ERBELE  
SENATOR FLAKOLL

Yes No  
✓  
✓  
✓  
✓

Senators  
SENATOR SEYMOUR  
SENATOR TAYLOR

Yes No  
✓

Total (Yes) 5 No 0

Absent 1

Floor Assignment

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

Date: 3/2/05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1038

Senate SENATE EDUCATION

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Not Pass*

Motion Made By *Flakoll*      Seconded By *Taylor*

**Senators**  
CH- SENATOR FREBORG  
V-CH- SENATOR G. LEE  
SENATOR ERBELE  
SENATOR FLAKOLL

Yes No  
✓  
✓  
✓  
✓

**Senators**  
SENATOR SEYMOUR  
SENATOR TAYLOR

Yes No  
✓  
✓

Total (Yes) *6*      No *0*

Absent

Floor Assignment *Flakoll*

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

Date: 3/9/05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1038

Senate SENATE EDUCATION

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Brought back re-consider our actions*

Motion Made By *Flakoll*                      Seconded By *Taylor*

Senators	Yes	No	Senators	Yes	No
CH- SENATOR FREBORG	✓		SENATOR SEYMOUR	✓	
V-CH- SENATOR G. LEE	✓		SENATOR TAYLOR	✓	
SENATOR ERBELE	✓				
SENATOR FLAKOLL	✓				

Total (Yes) *6*                      No *0*

Absent

Floor Assignment

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

Date: 3/9/05  
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1038

Senate SENATE EDUCATION

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Remove amendment*

Motion Made By *Flakoll* Seconded By *Lee*

**Senators**  
CH- SENATOR FREBORG  
V-CH- SENATOR G. LEE  
SENATOR ERBELE  
SENATOR FLAKOLL

Yes/ No  
✓  
✓  
✓  
✓

**Senators**  
SENATOR SEYMOUR  
SENATOR TAYLOR

Yes/ No  
✓  
✓

Total (Yes) *6* No *0*

Absent

Floor Assignment

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

Date: 3/9/05  
Roll Call Vote #: 3

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1036

Senate SENATE EDUCATION

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Not Pass reengrossed*

Motion Made By *Flakoll* Seconded By *Taylor*

Senators	Yes/	No	Senators	Yes/	No
CH- SENATOR FREBORG	✓		SENATOR SEYMOUR	✓	
V-CH- SENATOR G. LEE	✓		SENATOR TAYLOR	✓	
SENATOR ERBELE	✓				
SENATOR FLAKOLL	✓				

Total (Yes) *6* No *0*

Absent

Floor Assignment *Flakoll*

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

REPORT OF STANDING COMMITTEE (410)  
March 9, 2005 1:52 p.m.

Module No: SR-43-4533  
Carrier: Flakoll  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

HB 1038, as reengrossed: Education Committee (Sen. Freborg, Chairman) recommends **DO NOT PASS** and **BE REREFERRED** to the Appropriations Committee (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1038 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1038

HB 1038  
5 Jan 05

# Testimony on HB 1038

By

**Dr. M. Douglas Johnson, Assistant Executive Director—NDCEL**

Madam Chairman and members of the Committee, my name is Doug Johnson and I represent the school administrators of North Dakota. I am here to testify in support to HB 1038.

There are several reasons why the Education Coalition supports this bill but first, I believe it important that the committee understands that the Coalition supports holding schools accountable for student achievement. It is our position that NCLB appropriately holds schools responsible for improving student outcomes and that understanding student achievement by applying data drive assessment will improve student learning. Further, members of our organization recognize the importance that no child is left behind in the learning process.

The Coalition believes that it is important to establish an advisory commission on the No Child Left Behind Act (NCLBA) and that the commission includes representation from both the education community, legislature, state governance, and if needed, other groups that may not be listed in the bill. We believe this is a first step in monitoring the development and implementation of the State Accountability Plan for the NCLBA. Further, we believe the adoption of HB 1038 will give our state law makers and education community the needed input to the State Accountability Plan.

The Coalition also believes there are still many issues regarding NCLB that need to be resolved. We encourage continued dialogue at both the state and national level to help develop a state school system that continues to make solid progress in improving student achievement while still comparing favorably to other state accountability plans across the country. HB 1038 provides the needed format to encourage that dialogue. This bill has the

need listing of issues related to the implementation of the NCLBA that the NDCEL and Education Coalition presented to the NCLB interim committee that we believe is in need of examination from a policy perspective.

Finally, the Coalition believes that HB1038 is an important step in making the goal of universal proficiency for every child attainable in our State. The Coalition firmly believes the HB1038 allows the issues listed in the bill to be discussed so that recommendations from that discussion can be made for appropriate modifications to our States' Accountability Plan:

In summary, it is the Coalition's belief that HB1138 calls for open and discussion on how our State in discussing:

1. Modifying how adequately yearly progress [AYP] is determined so that [a]there are multiple measures and [b] AYP measures the continuous progress of the same cohort of students.
2. Modifying the accountability requirements for schools and school districts to reflect realistic requirements.
3. Modifying the requirements for students with disabilities and limited English proficient students to an even greater extent with the modifications already made, and
4. Providing the resources needed to attain the goal of universal proficiency and repeal unfunded mandates.

Thank you for your attention and I encourage you to give HB 1038 a Do Pass recommendation. I will be happy to answer any questions that you might have regarding this testimony.

HB 1038  
5 Jan 05

January 5, 2005

HOUSE EDUCATION COMMITTEE  
HB 1038

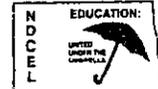
CHAIRMAN KELSCH AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the State Association of Non-Public Schools (SANS). We support HB 1038 but believe the voice of the non-public school community in North Dakota...approximately 7,500 students in over 60 schools in every part of the state....should be heard.

We recognize that the No Child Left Behind Act does not technically cover non-public schools. However, it actually does since it greatly affects teacher qualifications, standards, and licensure. Our schools need to hire these teachers, and to get our teachers qualified, if we hope to compete for students.

Therefore, we respectfully request that you consider an amendment that would allow the Department of Public Instruction to name one person to the proposed Advisory Commission that would represent the non-public school community.

If you have any questions, I will be happy to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.



HB 1038  
5 Jan 05

PO Box 5005, Bismarck, ND 58502-5005

PO Box 2276, Bismarck, ND 58502-2276

121 E. Rosser Ave., Bismarck ND 58501

# The North Dakota Education Coalition

January 4, 2005

Senator Michael Enzi, Chairman  
Health, Education, Labor and Pensions Committee  
379A Russell Senate Office Building  
Washington, DC 20510

Senator Edward Kennedy, Ranking Member  
Health, Education, Labor and Pensions Committee  
317 Russell Senate Office Building  
Washington, DC 20510

Dear Senators:

We, the North Dakota Education Association (NDEA), the North Dakota School Boards Association (NDSBA) and the North Dakota Council of Education Leaders (NDCEL), are appealing to you as you prepare to conduct Confirmation Hearings for Secretary Designate Margaret Spellings. We would like you to inquire into the apparently arbitrary and flawed process by which the U.S. Department of Education has declared nearly 4,000 North Dakota Elementary teachers to be NOT "highly qualified."

Most of these teachers have 10, 20 and even 30 years of successfully teaching elementary students in North Dakota's public schools. North Dakota students have performed at or near the top of rankings of states on standardized tests for decades. It is our belief that our elementary teachers are indeed "highly qualified" for the following reasons: 1) they all have earned bachelor's degrees; 2) they all have majors in the field in which they teach, namely elementary education; 3) by North Dakota standards for continued licensure, they have been required to acquire at least four semester hours of additional credit during each five-year period of time during their teaching careers; and 4) many of them have earned advanced degrees during their long teaching careers.

Paragraph C of Section 9101 of the "No Child Left Behind" Act states, "**when used with respect to an elementary, middle, or secondary school teacher who is not new to the profession, means that the teacher holds at least a bachelor's degree and – (i) has met the applicable standard in clause (i) or (ii) of subparagraph (B), which includes an option for a test; or (ii) demonstrates competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation that...**" – (see language defining the HOUSSSE requirements).

Subparagraph B (ii) (II) states as a method of demonstrating "highly qualified" status: "successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing; and..." (it recycles back to paragraph C where we began).

We contend that North Dakota's elementary teachers are "highly qualified." They possess bachelor's degrees with academic majors in elementary education, and in many cases have advanced degrees, which is clearly the standard specified in subparagraph B (ii) (II). Further, we contend in its visit to North

Dakota in December, the Department of Education clearly erred in determining that North Dakota's nearly 4,000 elementary teachers did not meet the standard as we have shown above.

We further inquire if States can rebut the USDE determination of not meeting "highly qualified?" It appears to us, if the USDE determination in North Dakota regarding our elementary teachers being deemed NOT "highly qualified" stands, there will be many other states in the same predicament. Our research indicates Nevada, New Hampshire, Utah, South Dakota, Montana, Nebraska, Iowa, Minnesota, California, Wyoming and perhaps several others also appear to fall down for the same reasons attributed to North Dakota.

What is to be gained for the children of the United States if potentially hundreds of thousands of teachers with long, successful, dedicated teaching careers are now suddenly found to not meet qualifications necessary for "highly qualified?" Must the teachers endure long, arduous, expensive, paper-intensive, hoop-jumping procedures to seemingly meet some bureaucratic, mindless, and educationally unsound federal mandate? Not much will be gained for the children of the United States, we think.

As you proceed with the hearing process, we implore you to pursue some of these issues with the Secretary Designate and probe USDE for solutions for the teachers of our state.

Thank you very much for your kind attention to this matter. On behalf of North Dakota's nearly 4,000 elementary teachers, we ask for your assistance.

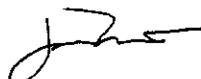
Sincerely,



Gloria Lokken  
NDEA President



Doug Johnson  
NDCEL Assist. Ex. Dir.



Jon Martinson  
NDSBA Ex. Dir.



Joseph A. Westby  
NDEA Ex. Dir.

Cc: Senator Kent Conrad  
Senator Byron Dorgan  
Congressman Earl Pomeroy

HB 1038  
5 Jan 05

TESTIMONY: HOUSE BILL 1038  
HOUSE EDUCATION COMMITTEE  
RAEANN KELSCH, CHAIRMAN  
January 5, 2005

Chairman Kelsch and members of the Committee: my name is Carlotta McCleary. I am the Executive Director for the ND Federation of Families for Children's Mental Health. The Federation of Families is a parent run organization that focuses on the needs of children with emotional, behavioral and mental disorders and their families. On behalf of the Federation, I am here to voice our concern with HB 1038.

The Federation is concerned that parents have not been included in the membership of the advisory commission as outlined in HB 1038. Parents are major stakeholders in No Child Left Behind. The Federation believes that parents must be full and active partners in the education process at every level.

We are requesting that parents be added to the advisory commission on the No Child Left Behind Act. To ensure that parents have a true voice we would recommend that more than one parent be added to the advisory commission. In particular, we request a parent representing the subgroup of special education be added as a member. We also request that parents who are a member of the commission are also reimbursed for their expenses.

By truly partnering with parents we will have a better idea of how we can make sure no child is left behind. Thank you

HB 1038  
NO 1038  
5 Jan 05

**TESTIMONY on HB 1038  
By Dr. Gary Gronberg  
Department of Public Instruction  
January 5, 2005**

Madam Chair and Members of the House Education Committee,

I am Dr. Gary Gronberg, Assistant Superintendent within the Department of Public Instruction. I am here on behalf of the Department to support sections within HB 1038 and to submit amendments that will focus and optimize the intended review process.

HB 1038 establishes an advisory commission on the No Child Left Behind Act consisting of a select collection of interest groups, including the Department of Public Instruction with its administrative responsibilities. The role of the advisory commission is to study and report any findings, recommendations, and legislative proposals resulting from its identified functions and duties to a joint meeting of the senate and house education committees at the beginning of subsequent legislative sessions. HB 1038 also reauthorizes the current No Child Left Behind Committee from a select to an interim committee. The role of the No Child Left Behind Committee is to study and report any findings, recommendations, and legislative proposals resulting from its broad review to the sixtieth legislative assembly.

There exists a clear interest on the part of the State to study the impact of the No Child Left Behind Act and to consider and advance policy initiatives that are appropriate for the proper administration of the Act. The Department of Public Instruction has consistently supported such study efforts. There similarly exists a need on the part of the State to conduct this study in the most effective, efficient, and appropriate manner. The Department believes, therefore, that the State is better served with a review process that unifies effort and optimizes the focused attention of all participants, including the public.

The Department of Public Instruction supports an amended reauthorization of the current study effort, as articulated by the No Child Left Behind Committee, as the most appropriate forum for the current efforts to study the Act. The Department of Public Instruction recommends that all references to an advisory commission be deleted from HB 1038.

### *Reduce Redundant Efforts*

In its current form, HB 1038 establishes two independent bodies, one an interim legislative committee and another an advisory commission, to conduct essentially identical functions and duties. There are no duties identified within the scope of the proposed advisory commission that are not already implied within the broad authority of the interim No Child Left Behind Committee. HB 1038 introduces unnecessary, undesirable, redundant efforts. With the current demands placed on all parties, including the Department of Public Instruction with its already stretched resources and staff, there is little benefit in duplicating effort, multiplying work, and reducing efficiency. This is one of those instances where more government is not better government.

HB 1038 has proposed an advisory commission similar in structure to the standing advisory commission on intergovernmental relations authorized within NDCC 54-35.2. The intergovernmental relations commission, however, has no other comparable standing or interim committee whose functions and duties coincide. In the case of an advisory commission, as proposed within HB 1038, there does exist a specifically authorized standing committee, the interim No Child Left Behind Committee, whose responsibilities already cover the prescribed duties. The interim No Child Left Behind Committee already retains all authority to conduct the expanse of duties prescribed within its auspices. It is more desirable that any such legislative study lie within the purview of an interim legislative committee, whose members are elected by the public. There is nothing to limit the interim No Child Left Behind Committee's ability to seek the advice and counsel of any select stakeholder group in the course of the Committee's work.

The Department of Public Instruction, likewise, holds certain legally defined administrative responsibilities that require the advice and counsel of statewide stakeholders. The Department of Public Instruction has established the structure of a 25 member advisory committee, responsible to the State Superintendent, whose charge is to review and recommend improvements to the State's accountability system. In extensive testimony before the current No Child Left Behind Committee, the Department of Public Instruction has outlined the scope of this committee work.

The current No Child Left Behind Committee holds the appropriate responsibility for the legislative review of the Act. The Department of Public Instruction's accountability advisory committee and other Department advisory committees provide appropriate advice and counsel to the State Superintendent on the administration of the Act. These

independent advisory efforts are distinct in purpose and produce an appropriate balance of constitutional responsibilities. Adding yet another legislative advisory commission will contribute nothing to this effort.

*Establish an Interim Education Accountability and Adequacy Committee*

The Department of Public Instruction has supported and provided extensive testimony to the Legislative Council, through the current No Child Left Behind Committee, regarding the direct and indirect impact of the Act and its regulations on the State. During the course of the past eighteen months, the No Child Left Behind Committee has studied various aspects of the Act and its effects on the State's education system, including the State's academic standards, achievement assessments, accountability rules, service provision, achievement and accountability data, budget impacts, and more. Efforts to study the administration of the Act will clearly continue both within the Legislative Council and the Department of Public Instruction. Given the need to discern the meaning from our collected data and to build a data-driven case for improvements to our accountability system, the Department will conduct an ongoing, exhaustive study of the administration of the Act.

The study of the Act will continue as a critical task, of this we can be certain. Yet our shared efforts to build a meaningful, unified educational system require us to connect all the pieces into an integrated whole, both federal and state. The Department of Public Instruction believes that we must build on our past and current study efforts regarding the Act in order to integrate our federal and state accountability system, including matters like adequate yearly progress, accreditation, and general reporting. Ultimately our State accountability system must serve the needs of our citizens in a manner that demonstrates a unity of effort. To accomplish this aim we propose that the purpose and title of the interim No Child Left Behind Committee be restructured within HB 1038 into an interim Education Accountability and Adequacy Committee. Now is the time to advance a meaningful study of an integrated State education system. The Department of Public Instruction respectfully proposes this initiative.

The Department of Public Instruction proposes amendments that would delete all references to an advisory commission and that would restructure the current No Child Left Behind Committee into an interim Education Accountability and Adequacy Committee. These amendments will provide the appropriate legislative review of both the Act and the integration of all accountability measures, both federal and state. In the

end, the State will proceed with its efforts to establish a unified system in a manner that will be effective, efficient, and meaningful.

Madam Chair, this completes my testimony. I am available to address any questions from Committee members. Thank you.

**Proposed Amendments  
HB 1038**

- Page 1, line 1 delete " to establish an advisory commission on the No Child Left Behind Act; and"
- Page 1, line 3 delete "no child left behind committee"; insert "education accountability and adequacy committee"
- Page 1, line 5 delete text from page 1, line 5 to page 4, line 15 inclusive
- Page 4, line 16 delete "~~Section 6.~~"
- Page 4, line 18 delete "No Child Left Behind Act of 2001"; insert "Education Accountability and Adequacy Committee"
- Page 4, line 26 delete first "and"
- Page 4, line 27 after "taxpayers of this state" insert ", efforts required to establish a unified state accountability system including state accreditation rules and public reporting, the appropriate provision of services to all students including students within subgroups, and the provision of high-quality professional development to school personnel.
- number accordingly

HB 7038  
17 Jan 05

4. the incorporation of recent federal guidance regarding the election of a local school district to determine adequate yearly progress for Title I targeted assistance schools based solely on the achievement of students who are served by Title I or who are eligible to receive Title I services; and
5. the restricted extension of a graduation cohort beyond four years, as defined within an individualized education program, for students served within provisions of the *Individuals with Disabilities Education Act* or as provided within a LEP service program for specified LEP students.

#### *The Improvement Phase*

The Act provides that any Title I school identified for two consecutive years as not meeting adequate yearly progress will be placed on program improvement and will have the provisions for program improvement applied. The Department previously has submitted into testimony the legal foundations and programmatic provisions of the school improvement process.

Based on the identification of schools that *did not* meet adequate yearly progress during 2003-04, no new schools were placed on program improvement within North Dakota. Based on the identification of schools that *did* meet adequate yearly progress during 2003-04, three schools previously identified for program improvement were removed from this list because they successfully met adequate yearly progress for two consecutive years. The result for the State is a net reduction of three schools from the school improvement list. Currently 20 schools are identified as program improvement schools under the provisions of Section 1116 of the Act. Appendix D presents the list of schools within North Dakota identified as program improvement sites.

#### *Study of the North Dakota Accountability Plan*

Within the North Dakota Accountability Plan, the State proposes to conduct an extensive study of the various validity and reliability provisions within the Plan. The U.S. Department of Education, as a condition to its June 2003 approval of the State Accountability Plan, accepted the proposed study and offered broad guidelines regarding the content of the study. The Department of Public Instruction has initiated the compilation of data points that will form the structure of the study. This study will extend throughout the autumn months.

Incorporated within this study, the State will review the effects of the reliability test on composite and disaggregated student achievement rates, participation rates, attendance rates, graduation rates, and its possible adoption for testing Safe Harbor. Additionally, the State will analyze the adoption of Safe Harbor for both secondary indicators (e.g., attendance and graduation), as originally proposed by the State but subsequently rejected by USDE. The State will conduct a quality control analysis of critical data collection and handling points, including the cross-checking and validating of primary data sources. The State will analyze the effects of the emerging State data warehouse as a mechanism to expand the State's assessment system. If the State can produce evidence that other measures are aligned with the State's achievement standards, then the definition of the State's assessment system might be expanded and the State's accountability system might be made more inclusive of other relevant instructional practices.

Before any future improvements can be considered for the State's Accountability Plan, the State must assess its current mechanisms and produce evidence regarding the impact of these mechanisms. The State must present this empirical evidence to the U.S. Department of Education as required through an agreement between the U.S. Department of Education and the ND Department of Public Instruction.

The State's Accountability Plan establishes a statewide Accountability Advisory Committee that will study and recommend improvements to the State's Accountability Plan. The Department presented testimony during the March 22, 2004 Committee meeting regarding the structure and mission of the Accountability Advisory Committee. This committee consists of 25 committee members and a variety of technical specialists. Preparatory work has begun in advance of convening the advisory committee in the near future. Appendix E presents a tentative agenda for the advisory committee when it convenes in the near future.

As preparation for the State Accountability Advisory Committee's discussions, a committee of teachers and administrators was convened in February 2004 to study and issue recommendations regarding State policy on alternate achievement standards. In July 2004 the committee completed its work and a summary draft of the recommendations is being prepared for the State Superintendent. This policy recommendation will be placed before the State Accountability Advisory Committee as an element for policy consideration.

*Summary*

The State has just completed the second iteration of this new accountability system. This second iteration has produced significant findings that must be verified, cross-checked against the original data sources, and applied appropriately within various scenarios to understand the dynamics and impact of the State's accountability system. The Department has assembled a team of nationally recognized technical advisors and begun the process of conducting a comprehensive study of the State accountability system's efficacy. It is the role of the State Accountability Advisory Committee to review all findings, to study the impact of each provision of the State Accountability Plan, and to recommend any changes to the State Superintendent. This process ensures a thorough and considered review of all elements our State's accountability system.

Madam Chairperson and members of the Committee, this completes my testimony. I am available to answer any questions. Thank you.

**APPENDIX A**

**Composite Student Achievement Results,  
North Dakota State Assessment System  
2001-02, 2002-03, and 2003-04 School Years**

**State Accountability Advisory Committee  
on the  
North Dakota Consolidated State Application Accountability Workbook**

**North Dakota Department of Public Instruction**

**[Date to be Determined]**

**Agenda**

*Day 1*

8:30 am

Call to Order  
Welcome, Dr. Wayne G. Sanstead, State Superintendent  
Introduction of Committee Members  
Overview of Agenda

9:00 am

Background on State Accountability Workbook, DPI staff  
Analysis of accountability system among the States, Dr. William Erpenbach, consultant on State accountability systems.

10:00 am

Break

10:15 am

State Accountability System, review of foundational principles.

*Principle 1.0 A single statewide Accountability System applied to all public schools and LEAs.*

- 1.1 How does the State Accountability System include every public school and LEA in the State?
- 1.2 How are public schools and LEAs held to the same criteria when making an AYP determination?
- 1.3 Does the State have, at a minimum, a definition of *basic*, *proficient*, and *advanced* student achievement levels in reading/language arts and mathematics?
- 1.4 How does the State provide accountability and adequate yearly progress decisions and information in a timely manner?
- 1.5 Does the State Accountability system produce an annual State Report Card?
- 1.6 How does the State Accountability System include rewards and sanctions for public schools and LEAs?

Presentation on State academic standards: Dr. Ceri Dean and Monette McIver, Midcontinent Research for Education and Learning.

- a. State standards and assessment protocols;
- b. Standards development activities.

11:30

Principle 2.0 *All students are included in the State Accountability System.*

- 2.1 How does the State Accountability System include all students in the State?
- 2.2 How does the State define "full academic year" for identifying students in AYP decisions?
- 2.3 How does the State Accountability System determine which students have attended the same public school and/or LEA for a full academic year?

Presentation on State data collection process: Steve Hiebert, Department of Public Instruction.

12:15

Lunch

12:45

Principle 3.0 *State definition of AYP is based on expectations for growth in student achievement that is continuous and substantial, such that all students are proficient in reading/language arts and mathematics no later than 2013-14.*

- 3.1 How does the State's definition of adequate yearly progress require all students to be proficient in reading/language arts and mathematics by the 2013-14 academic year?
- 3.2 How does the State Accountability System determine whether each student subgroup, public school and LEA makes AYP?
  - 3.2a What is the State's starting point for calculating Adequate Yearly Progress?
  - 3.2b What are the State's annual measurable objectives for determining adequate yearly progress?
  - 3.2c What are the State's intermediate goals for determining adequate yearly progress?

Presentation on the State's assessment system and the setting of State achievement standards: Dr. Karla Egan, CTB/McGraw-Hill, LLC.  
Presentation on the State's alternate assessment and the setting of the State achievement standards: Dr. Wayne Ball, Mountain Plains Resource Center. Presentation by Dr. Thomas Fisher, State Assessment TAC member, on the State's assessment development protocols including the elements of the States Request for Proposals for the current assessment contract.

2:30 pm

Break

2:45 pm

Principle 4: *State makes annual decisions about the achievement of all public schools and LEAs.*

- 4.1 How does the State Accountability System make an annual determination of whether each public school and LEA in the State made AYP?

Presentation on the State's operational rules for determining adequate yearly progress: Dr. Susan Wagner

Principle 5: All public schools and LEAs are held accountable for the achievement of individual subgroups.

- 5.1 How does the definition of adequate yearly progress include all the required student subgroups?
- 5.2 How are public schools and LEAs held accountable for the progress of student subgroups in the determination of adequate yearly progress?
- 5.3 How are students with disabilities included in the State's definition of adequate yearly progress?
- 5.4 How are students with limited English proficiency included in the State's definition of adequate yearly progress?
- 5.5 What is the State's definition of the minimum number of students in the subgroup required for reporting purposes? For accountability purposes?
- 5.6 How does the State Accountability System protect the privacy of students when reporting results and when determining AYP?

Presentation by Dr. Jane Minnema, National Center for Educational Outcomes on alternative achievement standards for certain special education students. Presentation by Mari Rasmussen on definition of limited English proficient students and certain accountability provisions. Presentation by Steve Hiebert, Department of Public Instruction, on minimum n value for the purposes of public reporting.

4:30 pm

Recess until Day 2, 8:30 am

Day 2

8:30 am

Principle 6: *State definition of AYP is based primarily on the State's academic assessments.*

- 6.1 How is the State's definition of adequate yearly progress based primarily on academic assessments?

Principle 7: *State definition of AYP includes graduation rates for public schools and an additional indicator selected by the State for public Middle and public Elementary schools (such as attendance rates).*

- 7.1 What is the State definition for the public high school graduation rate?
- 7.2 What is the State's additional academic indicator for public elementary schools for the definition of AYP? For public middle schools for the definition of AYP?
- 7.3 Are the State's academic indicators valid and reliable?

Presentation by Steve Hiebert, Department of Public Instruction, on statistics referenced in determining secondary indicators.

Principle 8: *AYP is based on reading/language arts and mathematics achievement objectives.*

8.1 Does the state measure achievement in reading/language arts and mathematics separately for determining AYP?

10:30 am Break

10:45 am Principle 9: *State Accountability System is statistically valid and reliable.*

9.1 How do AYP determinations meet the State's standard for acceptable reliability?

9.2 What is the State's process for making valid AYP determinations?

9.3 How has the State planned for incorporating into its definition of AYP anticipated changes in assessments?

Presentation by Dr. Scott Marion, National Center for the Improvement of Educational Assessments, regarding the State's validity and reliability model in determining adequate yearly progress. Presentation by Dr. William Erpenbach, State Accountability consultant, regarding the State's efforts to establish a valid and reliable accountability system. Presentation by Dr. Thomas Fisher, State Assessment TAC member, on the role of the State's Technical Advisory Committee in advising the State regarding future changes to State assessments, including the setting of State achievement standards.

12:15 pm Principle 10: *In order for a public school or LEA to make AYP, the State ensures that it assessed at least 95% of the students enrolled in each subgroup.*

10.1 What is the State's method for calculating participation rates in the State assessments for use in AYP determinations?

10.2 What is the State's policy for determining when the 95% assessed requirement should be applied?

*Appendix A: Required Data Elements for State Report Card*

2:00 pm Break

2:15 pm State Accountability Advisory Committee discussions.

4:00 pm Next steps

4:30 pm Setting schedule for future meetings of the State Accountability Advisory Committee.

4:45 pm Adjournment

The Department will work closely with the Education Standards and Practices Board to coordinate efforts in order to maximize the effect of the "small, rural schools" provision statewide.

5. *Ongoing Study and Amendment of the State's Accountability System.*

The State Accountability Plan stipulates that the Department will conduct for the benefit of the U.S. Department of Education both time-specific studies and ongoing general evaluations of its many elements regarding the determination of adequate yearly progress (reference <http://www.dpi.state.nd.us/testing/account/AYPbook.pdf>). The Department committed itself to conduct selective studies of specific elements *granted uniquely* to the State (e.g., the application of the confidence interval for participation, attendance, and graduation). These studies were proposed to ensure that the State could demonstrate a legitimate application of the elements and that the State would be entitled to retain these elements indefinitely. The Department also committed itself to conduct selective studies of specifically *proposed* elements that the U.S. Department of Education forestalled pending the completion of data-driven projections (e.g., the application of statistical reliability on safe harbor). These studies will be based on the data collected over three years application of adequate yearly progress for schools, districts, and the State.

The State Accountability Plan additionally committed the Department to establish a statewide accountability committee commissioned to study the Act's accountability provisions, the State's accountability plan, impact data demonstrating the effects of the State's plan, and any proposed amendments to the plan. Since the inception of standards-based accountability established within the 1994 *Improving America's Schools Act* and now in the *No Child Left Behind Act of 2001*, the Department has routinely sought the advice and involvement of educators. The Department has involved literally hundreds of educators in the development of state content and achievement standards, the development of authentic performance assessments, the alignment of State assessments to State standards, the design of State assessment reports, the alignment of State assessment cut-points to State achievement standards (the standards-setting process), advisory committees on standards and assessment protocols and policy, advisory committees on ESEA programming and policy, advisory committees on IDEA programming and policy, advisory committees on accreditation standards, peer review of district discretionary grant awards, statewide technology

initiatives, statewide data collection and analysis projects, consultation with various education stakeholder associations, and a few other items on the side. Consultation with the field is a matter of fact and an integral component of the Department's manner of operation.

For a number of years, the Department has used three key standing advisory committees to advance study in various policy areas. The Title I Practitioners Committee, required by the Act, advises the Department on program and policy matters related to ESEA Title I. The IDEA Advisory Committee, required by the *Individuals with Disabilities Education Act*, advises the Department on special education program and policy matters. The Standards, Assessment, Learning and Teaching (SALT) Team, a Department-sponsored committee, advises the Department on the development and implementation of a standards-based assessment and accountability system. The Title I Practitioners Committee and the SALT Team provided vital assistance to the Department during the highly compressed development cycles allowed for in the development of the State Consolidated Application and the State Accountability Plan.

In order to conduct an integrated analysis of the State Accountability Plan, the Department has elected to form a statewide accountability committee that will combine teachers, administrators, school board members, legislators, the Governor's Office, and parents. The committee will consist of the following membership:

- five members from the Title I Practitioners Committee,
- five members from the IDEA Advisory Committee,
- five members from the SALT Team,
- a representative from the North Dakota Education Association,
- a representative from the North Dakota School Boards Association,
- a representative from the North Dakota Council of Education Leaders,
- a representative from the Indian Affairs Commission,
- a representative from the Legislative Council,
- a representative from the Governor's Office, and
- three members from the Department of Public Instruction.

The statewide accountability committee will access preparatory work conducted by any special or standing advisory committees. Preparatory work has already been conducted within the SALT Team and the short-term Alternate Achievement Standards Committee related to the confidence interval, data collection processes, graduation rate definitions, LEP definitions, and recently released special education assessment

regulations. The Department has contracted with national accountability and assessment consultants to serve as advisors to the statewide accountability committee. The Department has been preparing background information and policy considerations for the committee and anticipates a May date for the first formal meeting of the entire committee. The committee will prepare all proposals in accord with federal guidance and recommend any amendments to the State Superintendent, who gives final approval.

*6. Potential Merger of State and Tribal Accountability Systems.*

In an effort to better align Tribal schools to a standards-based accountability system required within the Act, the Bureau of Indian Affairs has communicated with Tribal schools, the Department, and the North Dakota Indian Affairs Commission regarding its recommendation that all Tribal schools enter into an agreement with the State to merge Tribal schools within the State's accountability system. The Department has met with representatives of the BIA and the Indian Affairs Commission to begin discussion that would lead ultimately to such an arrangement. Future meetings are planned and a working blueprint for this transition is under development. The Department has worked independently with the Circle of Nations School in Wahpeton, a special needs Tribal middle school, to draft a precedent-setting agreement to bring the school within the provisions of the North Dakota State Accountability Plan in 2003-04. It is understood that the State would not alter its accountability system as a result of any merger. The Tribal schools would operate within the State's assessment system and be reviewed for adequate yearly progress under State rules. The rolling up of student and school achievement rates and the administration of any program improvement sanctions or rewards are yet to be determined.

*7. Development of a Statewide Data Analysis System.*

The Act provides funding for the development of data collection and analysis systems designed to aid the advancement of school accountability and improvement. In 2002 the Department issued an RFP and awarded to TetraData Corporation a contract for the development and implementation of a statewide data warehouse. This data warehouse allows for the linking of school databases, without identifying individual students, in order to analyze a variety of school indicators. All warehouses have been constructed and populated with three years of current data. Schools are proceeding with

**State Accountability Advisory Committee  
on the  
North Dakota Consolidated State Application Accountability Workbook**

**North Dakota Department of Public Instruction**

***Purpose***

It is the expressed policy of the State that every public school, school district, and the State be held accountable to the accountability provisions contained within the *North Dakota Consolidated State Application Accountability Workbook, June 2003*. Pursuant to Section 9.3 of the *North Dakota Consolidated State Application Accountability Workbook, June 2003*, the Department of Public Instruction facilitates a state-level advisory committee that advises the State Superintendent on the development and review of all State accountability policies. The advisory committee will draft and submit these recommendations to the State Superintendent for final approval.

***Membership***

The State Accountability Advisory Committee will be comprised of members of representative state-level offices, advisory committees, and associations. The Advisory Committee will consist of the following:

- Title I Practitioners Committee, five members
- IDEA Advisory Committee, five members
- Standards, Assessment, Learning and Teaching Team, five members
- North Dakota Education Association, one representative
- North Dakota School Boards Association, one representative
- North Dakota Council of Education Leaders, one representative
- Indian Affairs Commission, one representative
- Bureau of Indian Affairs Schools, one representative
- Legislative Council, two representatives
- Governor's Office, one representative
- Members-at-Large, three Superintendent-appointed members

Department of Public Instruction facilitation staff:

1. Gary Gronberg, Assistant Superintendent
2. Laurie Matzke, Director, Title I
3. Greg Gallagher, Director, Standards and Achievement
4. Bob Rutten, Director, Special Education

5. Jean Newborg, Assistant Director, Assessment
6. Doreen Strode, Program Administrator, Alternate Assessment
7. Mari Rasmussen, Program Administrator, Limited English Proficient
8. Steve Hiebert, Program Administrator, Management Information Systems

Technical Advisory Committee:

- State Academic Standards: Midcontinent Research for Education and Learning,
  1. Ceri Dean, Colorado, State standards development;
  2. Monette McIver, Colorado, State standards development.
- State Assessment Contractor: CTB/McGraw-Hill, LLC,
  1. Anita Benson, California, State Assessment coordinator;
  2. James Comerford, Indiana, State Assessment consultant;
  3. Karla Egan, Missouri, State Assessment research consultant.
- State Accountability Plan Consultants,
  1. Scott Marion, National Center for the Improvement of Educational Assessments, New Hampshire, reliability analysis;
  2. William Erpenbach, Wisconsin, Independent consultant, nationwide analysis of State accountability systems.
- Special Education Accountability Provisions,
  1. Jane Minnema, National Center for Education Outcomes, Minnesota, alternate achievement standards,
  2. Wayne Ball, Mountain Plains Resource Center, Utah, alternate assessment.
- State Assessment Technical Advisory Committee,
  1. Thomas Fisher, Tennessee, TAC Committee representative;
  2. William Mehrens, Michigan, TAC Committee member;
  3. James Impara, Nebraska, TAC Committee member;
  4. Barbara Plake, Nebraska, TAC Committee member.
- State Accountability System Operations,
  1. Susan Wagner, Colorado, State AYP operational rules.



**Administration:**  
1101 1<sup>st</sup> Ave N  
Fargo, ND 58102  
P.O. Box 2064  
Fargo, ND 58107-2064  
701-298-2200 • 1-800-367-9668  
Fax: 701-298-2210

**State Headquarters:**  
4023 State St  
Bismarck, ND 58503  
P.O. Box 2793  
Bismarck, ND 58502-2793  
701-224-0330 • 1-800-932-8869  
Fax: 701-224-9485

HB 1038  
5 Jan 05

## **North Dakota Farm Bureau**

[www.ndfb.org](http://www.ndfb.org)

### **House Education Committee**

*January 5, 2005*

Testimony presented by North Dakota Farm Bureau  
*Sandy Clark, public policy team*

Good morning, Madam Chair and members of the committee. For the record my name is Sandy Clark and I represent the 27,500 member families of North Dakota Farm Bureau.

Our members have been concerned about the implications of the No Child Left Behind Act. NDFB supports any effort by the education community to form effective coalitions to work with the Department of Public Instruction, the State Legislature and federal officials to invoke realistic changes to the Act. Our members appreciate the efforts of all the education organizations regarding No Child Left Behind.

However we have serious concerns about HB 1038 and the need to establish an Advisory Commission that has the power to introduce legislation. Our system of state government reserves the right to introduce legislation to elected representatives, senators and state agencies.

This commission would be heavily weighted with education representatives. In a taskforce format, that would be desirable. However, in a government commission that has the authority to introduce legislation, special interest groups can control the outcome. Depending upon the representatives named to the commission, many paid lobbyists may be sitting at the table.

Farm Bureau has the same concerns about the Advisory Commission on Intergovernmental Relations, which also functions as a Legislative Council Interim Committee.

If the Legislature establishes this Advisory Commission on No Child Left Behind, a dangerous precedent will be perpetuated. What's to stop the establishment of an Advisory Commission on Human Services, Advisory Commission on Agriculture, Advisory Commission on Transportation – and the list goes on – all with the authority to introduce legislation and all heavily weighted with representatives who are paid lobbyists? We don't think this is realistic.

NDFB aggressively supports coalitions. We simply believe they should exist outside the realm of state commission status with the ability to introduce legislation. *(over)*

*One future. One voice.*

An education alliance can already be a formidable force in effecting change to the NCLB Act. The education community already has the ability to form its own private coalition and testify before the Senate and House Education Committees. They can seek legislators to introduce legislation. They can work with DPI through existing channels.

Again, I want to re-emphasize that NDFB is very supportive of an education coalition relative to NCLB, as well as other education issues. We simply believe establishing an Advisory Commission with the authority to introduce legislation sets an inappropriate precedent.

Thank you for your consideration. I would be happy to entertain any questions.

HB 1038  
5 Jan 05

Testimony on HB 1038  
To  
The House Education Committee

January 5, 2005

Chairperson Kelsch and Committee Members:

My name is Jim Jacobson and I am an employee of the ND Protection and Advocacy Project. Thank you for the opportunity to provide testimony on HB 1038.

First I would like to extend my appreciation to Chairperson Kelsch for her participation in the No Child Left Behind (NCLB) Town Hall Meeting last October. This was a wonderful effort to help inform parents of both specifics of the NCLB Act and of the activities of the NCLB Interim Legislative Committee.

During this meeting Chairperson Kelsch spoke of her interest in increasing the involvement of parents in education. In response to questions regarding the proposed NCLB Advisory Committee, Chairperson Kelsch also welcomed any recommendation to amend the draft legislation to establish parent membership on the Advisory Committee. In response to that invitation I would like to recommend that the House Education Committee amend HB 1038 to include three parents on the Advisory Committee. This would clearly support the increased involvement of parents in education. I would suggest that

three parents be identified to allow for representation from an urban school, a rural school and a parent of a student with disabilities.

As a member of the ND Individuals with Disabilities Education Advisory Committee for several years I have witnessed the invaluable contribution that parents make. Amending HB 1038 to include parents also creates representation from one of the major stakeholder groups regarding North Dakota's elementary and secondary education.

**TESTIMONY: HOUSE BILL 1038  
SENATE EDUCATION COMMITTEE  
SENATOR FREBORG, CHAIRMAN  
February 15, 2005**

Chairman Freborg and members of the Committee: my name is Carlotta McCleary, I am the Executive Director for the Federation of Families for Children's Mental Health. The Federation of Families is a parent run organization that focuses on the needs of children with emotional, behavioral and mental disorders and their families. On behalf of the Federation, I am here to voice our concerns with HB 1038.

The Federation is concerned that parents have not been included in the membership of the advisory commission as outlined in HB 1038. Parents are major stakeholders in No Child Left Behind. No Child Left Behind strengthens the role of parents in their child's education. There is an effort to include parents and to partner with them. The Federation believes that parents must be full and active partners in the education process at every level. Parent involvement is not just showing parents the plan that was developed it is partnering with them to develop the plan. No one on the proposed commission is there to represent the sole interest of the children.

We are requesting that parents be added to the advisory commission on the No Child Left Behind Act. In particular, the Federation is concerned with the representation of the subgroup of special education. We are proposing an amendment that would add a parent of a child who receives special education services. The Department of Public Instruction would appoint this parent. We also request that the parent is reimbursed for their expenses.

I understand that there is concern with adding a parent to the commission due to the size of the commission. If it were not possible to add one more member to the commission then we would request that a parent replace one of the members on the commission.

By truly partnering with parents we will have a better idea of how we can make sure no child is left behind. Thank you.



**MANDAN, HIDATSA & ARIKARA NATION**  
Three Affiliated Tribes • Ft. Berthold Reservation  
404 Frontage Road • New Town, ND 58763-9402

**TEX HALL'S PROPOSED AMENDMENT  
TO  
HOUSE BILL 1038**

Amend Page 1, line thirteen (13) to read as follows:

Strike "One individual appointed by the North Dakota Indian affairs commission"

Add the following: A Tribal Chairman/President selected by North Dakota's Tribes.

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1038

Page 1, line 15, after "governor" insert "who is a parent to a child currently enrolled in school"

Renumber accordingly

## **Testimony on HB 1038**

### **Senate Education Committee February 15, 2005**

Chairman Freborg and members of the Senate Education Committee, thank for the opportunity to testify on HB 1038. For the record my name is Jim Jacobson and I am the Director of Protective Services for the ND Protection and Advocacy Project.

In October of 2004 Representative Kelsch participated in a town hall meeting sponsored by a collaborative group of stakeholders concerned with educational services for children with disabilities. At that time Representative Kelsch invited testimony to request amending the proposed legislation on the No Child Left Behind (NCLB) Advisory commission to include parents as members. It is in response to that invitation that I am testifying today.

Right now the advisory commission includes several of the stakeholders in North Dakota's elementary and secondary educational services. This is clearly an attempt to ensure a comprehensive and thorough examination of the issues related to implementing the NCLB Act. These stakeholders represent important components in North Dakota's effort to provide high quality educational services. What is missing is the voice of the stakeholder group that represents the primary customer in elementary and secondary education. That is the

parents who are the legal decision makers for a significant majority of students. As a member of the ND Individuals with Disabilities Education Act Advisory Committee for several years I have witnessed time and again where the parent voice has kept people focused on the student. It is the parent perspective that helps identify effective methods that schools implement to encourage parent participation in the educational process and also ways that schools create barriers to that participation. This perspective brings a depth and richness to the discussion of issues that cannot be provided by any of us participating as professionals or as representatives of an agency or organization.

Therefore P&A strongly encourages the Senate Education Committee to consider amending HB 1038 to specifically include parental membership on the advisory panel. P&A further suggests that the amendment specifically identify a parent of a child with a disability. This recommendation is made for two reasons. First, children with disabilities are one of the subgroups identified in the NCLB Act and two specific functions of the "commission" will be to "examine the nature and scope of assessments permissible" in determining adequate yearly progress of special education students and to collect and analyze data regarding the percentage of students eligible to be assessed by alternate means. Second, many parents of a student with a disability are also parents of a student or students

who do not have a disability. They can bring both perspectives into the process.

In summary, P&A believes that the efforts of the NCLB Advisory Commission will be enhanced by including parental membership on the Commission. P&A also believes that a failure to include parents will be a failure to ensure that one of the most significant stakeholders in ND elementary and secondary education is a partner in this effort.

Thank you for allowing me to testify and for considering the recommendation for amending HB 1038.

**TESTIMONY**  
**HB 1038 – NO CHILD LEFT BEHIND COMMISSION**  
**SENATE EDUCATION COMMITTEE**  
**SENATOR FREBORG, CHAIRMAN**  
**FEBRUARY 15, 2005**

Senator Freborg and members of the Senate Education committee, my name is Roxane Romanick and I live in Bismarck, ND. I am here this morning as a parent and am requesting that you consider an amendment to HB 1038 to include at least one parent to the No Child Left Behind Commission. I would more specifically request that you consider that this parent be a parent to a child with special needs.

I am a reluctant partner to this world of No Child Left Behind. My daughter, who will turn 6 this April, will only be entering kindergarten in the fall. My heart and head still rest in early intervention and preschool services. I'm not really sure that I'm ready for "real school". My daughter, Elizabeth has Down syndrome. She was diagnosed before birth and we are really only now coming into some realization about what Down syndrome will mean in her life. Interestingly enough, the fears that I had early on (such as "Would she talk? Would she be potty trained? Would her health be OK?") have been quieted, but I'm afraid new fears have taken their place.

Elizabeth has been blessed with strong cognitive skills for a person with Down syndrome. At not quite 6 years of age, she's trying to read, knows most of the sounds of the letters, is counting, and uses words like ambulance and astronaut (in the right context). Truly we are very excited about her future, but we also know that with an IQ range of 75 to 81, she will be too smart for alternate assessments but will be in the subgroup that challenges the achievement testing of her school. When the media reports of a school not making AYP, she will be in the subgroup of special education students who are blamed for pulling down the scores.

And yes, the blame should not be on her. I understand that NCLB is in place to challenge schools to meet the needs of those most vulnerable in their schools, but I fear that in order to meet the federal requirements, children like Elizabeth will again be faced with more segregation, less inclusion, and more stigma. I am requesting that you consider the addition of a parent to the state NCLB commission so that as you proceed with the work that you do, you are always reminded of the families and children that your decisions will affect. We have had to move fast and furious to meet the federal requirements of NCLB and to not lose federal funding. I have been a human services professional for too long to know that when mandates come down and decisions have to be made, sometimes we create programs and policies that work well for our functioning but harm those that are the most in need of our help.

I hope that you will keep in mind that central to the spirit of NCLB is the need for parental involvement. In citing the NCLB Non-regulatory Guidance document on Parent Involvement, issued April 23, 2004: "A SEA must consult with parents, *State Ed Agent* along with others, such as LEAs, in developing its State plan. [Section 1111(a)(1), ESEA.]" I understand that this commission is not the State Education Administration, but in the spirit of the law I encourage you to consider involving someone who's name tag reads "parent" and that is the only role that they serve while advising the committee.

I encourage you to consider the benefits of having parental input: a richer and enhanced understanding of the problem or implementation of a solution, family buy-in, increased understanding of parental and child needs, a built-in safeguard, and improved parent/professional communication. Remember I said I was a reluctant partner and this is mainly because as Elizabeth ages, I have to move with her. For me as a parent, that means moving away from a state system that supports, respects, and encourages parental involvement from state decision-making to parent partnership in creating Elizabeth's educational plans. I am hoping that with your willingness to consider an amendment to add at least one parent to the commission, I will be moving towards a system with the same set of values.

Thank you for your time.

Roxane Romanick  
616 Crescent Ln.  
Bismarck, ND 58501  
701-258-7421  
romanick@bis.midco.net

# **NORTH DAKOTA UNIVERSITY SYSTEM**

## **Testimony to Senate Education Committee**

### **on HB1038**

#### **MIKE HILLMAN, VICE CHANCELLOR FOR ACADEMIC AND STUDENT AFFAIRS**

*February 15, 2005*

Chairman Freborg and members of the Senate Education Committee, I am Mike Hillman, Vice Chancellor for Academic and Student Affairs with the North Dakota University System. At its January meeting, the State Board of Higher Education voted to support an amendment to HB 1038 that would add a higher education representative to the No Child Left Behind Advisory Commission. The specific amendment would be on Page 1, after line 14, insert:

“g. One individual appointed by the state board of higher education;” and to renumber accordingly.

The North Dakota University System and its campuses have worked closely with the Department of Public Instruction, the Education Standards and Practices Board and local schools in North Dakota to implement No Child Left Behind. The system plays a critical role both in teacher retraining and in providing teacher education program graduates who meet the new “highly qualified” requirements. The system and its campuses have been proactive in creating a new interim major equivalency certificate which enables current teachers teaching in a minor area to meet the highly qualified requirements.

The chancellor would likely recommend that a dean of education or a teacher education department chair represent the state board of higher education on the NCLB commission. The higher education representative on the commission would be a link to the system Teacher Education Council to keep system teacher education campuses responsive to state needs. The representative would also serve as a link between K-12 needs and federal funding provided to the university system to support teacher education.

State law requires that the State Board of Higher Education, the State Board for Public School Education/State Board for Career and Technical Education and the Education Standards and Practices Board meet jointly each year to address state education policy issues. The Roundtable on Higher Education has encouraged the North Dakota University System to develop partnerships to address the states’ needs. I encourage you to adopt the proposed amendment to permit a higher education representative to be at the table as the state addresses the challenges of No Child Left Behind.

Mister Chairman and members of the Senate Higher Education Committee I will try to address any questions you may have regarding this request from the State Board of Higher Education.

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1038

Page 1, after line 14, insert:

“g. One individual appointed by the state board of higher education;”

Renumber accordingly

House Bill No. 1038 - Advisory Commission on the NCLB Act  
Testimony by L. Anita Thomas

The interim No Child Left Behind Committee was directed to study the NCLB Act, the direct and indirect impact of the Act on the school districts of this state, and the financial impact of the Act on the budget of this state and on the taxpayers of this state.

Over the course of the interim, the committee heard from many individuals and groups, including a coalition of the education interest groups — i.e. representatives of the North Dakota Council of Education Leaders, the North Dakota Education Association, and the North Dakota School Boards Association. This coalition members joined forces to provide the interim committee with a list of mutual concerns that they believed needed to be addressed. They also indicated that they believed their concerns were not being heard by the Superintendent of Public Instruction and his staff.

Their first recommendation was that a 17 member advisory commission be established to provide input to the Superintendent of Public Instruction and to appropriate legislative committees. This advisory commission, as conceived, would monitor progress and facilitate changes to the state's accountability plan. The proposed membership of this advisory commission included two representatives of the North Dakota Council of Education Leaders, two representatives of the North Dakota Education Association, two representatives of the North Dakota School Boards Association, two staff members from the Department of Public Instruction, one representative of the Governor, one of the Indian Affairs Commission, one of the ESPB, and six legislators.

The recommendation for the creation of an advisory commission was supported by the interim committee, with some changes. The membership was decreased to 13 — i.e.. one individual from each of the three interest groups, one individual appointed by the superintendent of public instruction, one appointed by the Indian affairs commission, one by the ESPB, one by the governor, and six legislators.

Both the interim committee bill and the engrossed bill that you have before you, include a long list of functions and duties. This is the reason for all of the detail.

The interim committee understood that certain concerns about the No Child Left Behind Act were based on the content of the federal legislation and that the role of the North Dakota Legislative Assembly in those instances would be limited to ensuring the greatest degree of flexibility until such time as the issues are reconsidered at the federal level. More importantly, the interim committee also understood that North Dakota can make certain changes to its state plan but that doing so would require more than mere anecdotal evidence or statements of displeasure. There would have to be the demonstration of a sound public policy basis, both from an educational and from a fiscal perspective, and the proposed changes would need to be subjected to a thorough and detailed study so that their implications are fully and completely understood.

That's why you have the detailed list. This commission would have to examine the nature and scope of the assessments, issues of cost, staff training, communication, and data collection and analysis. The interim committee heard a great deal about alternative types of testing and the commission would consequently be charged with determining the feasibility and desirability of using one test over the other. Alternate ways of establishing student proficiency would be considered as would the formulas under which adequate yearly progress is determined.

Student transfers would be examined as would teacher qualifications and availability. Finally, the commission would establish a mechanism whereby school districts can account for all costs incurred as a result of the Act and determine which costs would have been incurred regardless of the Act's passage.

As conceived, the Legislative Council would provide staff services to the commission.

While the commission may receive and expend dollars from any public or private sources, only the legislative members would receive compensation from the state.

As initially conceived, this advisory commission would report to a joint meeting of the Senate and House Education Committees in January of 2007 and each odd numbered year thereafter. As the bill was amended, the commission is to provide a written report regarding its findings and recommendations to the interim no child left behind committee.

In addition to creating this advisory commission, the bill also proposes to extend the life of the interim No Child Left Behind Committee. Its task would be to again study the NCLB Act. Like its predecessor, it would consider the direct and indirect impact of the Act and its regulations on the school districts of this state and the financial impact of the Act on the state budget and on the taxpayers. This committee would report to the Legislative Council in November 2006, just like all of the other interim committees. The interim NCLB committee is statutorily required to consist of 11 legislators – 5 senators and 6 members of the House.

**Proposed Amendment to House Bill 1038. Engrossed.**

**On page 1, line 15, after "g." insert, "One parent of a child who receives special education services appointed by the department of public instruction;"**

**On page 4, line 5, after "member of the legislative assembly", insert or a parent of a child who receives special education services appointed by the department of public instruction.**

**Renumber accordingly.**

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1038

Page 1, line 15, after "governor" insert "who is a parent to a child with special needs"

Renumber accordingly

**TESTIMONY on HB 1038**  
**By Dr. Gary Gronberg**  
**Department of Public Instruction**  
**February 15, 2005**

Mr. Chairman and Members of the Senate Education Committee,

I am Dr. Gary Gronberg, Assistant Superintendent within the Department of Public Instruction. I am here on behalf of the Department to support sections within HB 1038 and to submit amendments that will focus and optimize the intended review process.

HB 1038 reauthorizes, as an interim committee, the current No Child Left Behind Committee and establishes an advisory commission on the No Child Left Behind Act consisting of a select collection of interest groups, including the Department of Public Instruction with its administrative responsibilities. The role of the advisory commission is to study and report any findings and recommendations to the interim No Child Left Behind Committee. The role of the interim No Child Left Behind Committee is to study and report any findings, recommendations, and legislative proposals resulting from its broad review to the sixtieth legislative assembly.

There exists a clear interest on the part of the State to study the impact of the No Child Left Behind Act and to consider and advance policy initiatives that are appropriate for the proper administration of the Act. The Department of Public Instruction has consistently supported and engaged itself fully in all such study efforts. There similarly exists a need on the part of the State to conduct this study in the most effective, efficient, and appropriate manner. The Department believes, therefore, that the State is better served with a review process that unifies effort and optimizes the focused attention of all participants, including the public.

The Department of Public Instruction supports an amended reauthorization of the current study effort, as articulated by the No Child Left Behind Committee, as the most appropriate forum for the current efforts to study the Act. The Department of Public Instruction recommends that all references to an advisory commission be deleted from HB 1038.

### *Reduce Redundant Efforts*

In its current form, HB 1038 establishes two independent bodies, one an interim legislative committee and another, an advisory commission, to conduct essentially identical functions and duties. There are no duties identified within the scope of the proposed advisory commission that are not already implied within the broad authority of the interim No Child Left Behind Committee. HB 1038 introduces unnecessary, undesirable, redundant efforts. With the current demands placed on all parties, including the Department of Public Instruction with its already stretched resources and staff, there is little benefit in duplicating effort, multiplying work, and reducing efficiency. This is one of those instances where more government is not better government.

HB 1038 has proposed an advisory commission similar in structure to the standing advisory commission on intergovernmental relations authorized within NDCC 54-35.2. The intergovernmental relations commission, however, has no other comparable standing or interim committee whose functions and duties coincide. In the case of an advisory commission, as proposed within HB 1038, there does exist a specifically authorized standing committee, the interim No Child Left Behind Committee, whose responsibilities already cover the prescribed duties. The interim No Child Left Behind Committee already retains all authority to conduct the expanse of duties prescribed within its auspices. It is more desirable that any such legislative study lie within the purview of an interim legislative committee, whose members are elected by the public. There is nothing to limit the interim No Child Left Behind Committee's ability to seek the advice and counsel of any select stakeholder group in the course of the Committee's work.

The Department of Public Instruction, likewise, holds certain legally defined administrative responsibilities that require the advice and counsel of statewide stakeholders. The Department of Public Instruction has established the structure of a 25 member advisory committee, responsible to the State Superintendent, whose charge is to review and recommend improvements to the State's accountability system. In extensive testimony before the current No Child Left Behind Committee, the Department of Public Instruction has outlined the scope of this committee work. I have attached at the end of this testimony a tentative outline and membership list for this advisory committee.

The current No Child Left Behind Committee holds the appropriate responsibility for the legislative review of the Act. The Department of Public Instruction's accountability advisory committee and other Department advisory committees provide appropriate advice and counsel to the State Superintendent on the administration of the Act. These independent advisory efforts are distinct in purpose and produce an appropriate balance of constitutional responsibilities. Adding yet another legislative advisory commission will contribute nothing to this effort.

*Establish an Interim Education Accountability and Adequacy Committee*

The Department of Public Instruction has supported and provided extensive testimony to the Legislative Council, through the current No Child Left Behind Committee, regarding the direct and indirect impact of the Act and its regulations on the State. During the course of the past eighteen months, the No Child Left Behind Committee has studied various aspects of the Act and its effects on the State's education system, including the State's academic standards, achievement assessments, accountability rules, service provision, achievement and accountability data, budget impacts, and more. Efforts to study the administration of the Act will clearly continue both within the Legislative Council and the Department of Public Instruction. Given the need to discern the meaning from our collected data and to build a data-driven case for improvements to our accountability system, the Department will conduct an ongoing, exhaustive study of the administration of the Act.

The study of the Act will continue as a critical task, of this we can be certain. Yet our shared efforts to build a meaningful, unified educational system require us to connect all the pieces into an integrated whole, both federal and state. The Department of Public Instruction believes that we must build on our past and current study efforts regarding the Act in order to integrate our federal and state accountability system, including matters like adequate yearly progress, accreditation, and general reporting. Ultimately our State accountability system must serve the needs of our citizens in a manner that demonstrates a unity of effort. To accomplish this aim we propose that the purpose and title of the interim No Child Left Behind Committee be restructured within HB 1038 into an interim Education Accountability and Adequacy Committee. Now is the time to advance a meaningful study of an integrated State education system. The Department of Public Instruction respectfully proposes this initiative.

The Department of Public Instruction proposes amendments that would delete all references to an advisory commission and that would restructure the current No Child Left Behind Committee into an interim Education Accountability and Adequacy Committee. These amendments will provide the appropriate legislative review of both the Act and the integration of all accountability measures, both federal and state. In the end, the State will proceed with its efforts to establish a unified system in a manner that will be effective, efficient, and meaningful.

Mr. Chairman, this completes my testimony. I am available to address any questions from Committee members. Thank you.

### Proposed Amendments HB 1038

- Page 1, line 1 delete "to establish an advisory commission on the No Child Left Behind Act;"
- Page 1, line 3 delete "no child left behind committee"; insert "education accountability and adequacy committee"
- Page 1, line 5 delete text from page 1, line 5 to page 4, line 15 inclusive
- Page 4, line 16 delete "~~Section 6.~~"
- Page 4, line 18 delete "No Child Left Behind Act of 2001"; insert "Education Accountability and Adequacy Committee"
- Page 4, line 26 delete first "and"
- Page 4, line 27 after "taxpayers of this state" insert ", efforts required to establish a unified state accountability system including state accreditation rules and public reporting, the appropriate provision of services to all students including students within subgroups, and the provision of high-quality professional development to school personnel.
- Page 5, line 17 delete line 17, "Section 7. EMERGENCY. This Act is declared to be an emergency measure."  
number accordingly

**State Accountability Advisory Committee  
on the  
North Dakota Consolidated State Application Accountability Workbook**

**North Dakota Department of Public Instruction**

**[Date to be Determined]**

**Agenda**

*Day 1*

8:30 am

Call to Order  
Welcome, Dr. Wayne G. Sanstead, State Superintendent  
Introduction of Committee Members  
Overview of Agenda

9:00 am

Background on State Accountability Workbook, DPI staff  
Analysis of accountability system among the States, Dr. William Erpenbach, consultant on State accountability systems.

10:00 am

Break

10:15 am

State Accountability System, review of foundational principles.

*Principle 1.0 A single statewide Accountability System applied to all public schools and LEAs.*

- 1.1 How does the State Accountability System include every public school and LEA in the State?
- 1.2 How are public schools and LEAs held to the same criteria when making an AYP determination?
- 1.3 Does the State have, at a minimum, a definition of *basic*, *proficient*, and *advanced* student achievement levels in reading/language arts and mathematics?
- 1.4 How does the State provide accountability and adequate yearly progress decisions and information in a timely manner?
- 1.5 Does the State Accountability system produce an annual State Report Card?
- 1.6 How does the State Accountability System include rewards and sanctions for public schools and LEAs?

Presentation on State academic standards: Dr. Ceri Dean and Monette McIver, Midcontinent Research for Education and Learning.

- a. State standards and assessment protocols;
- b. Standards development activities.

- 11:30 Principle 2.0 *All students are included in the State Accountability System.*
- 2.1 How does the State Accountability System include all students in the State?
  - 2.2 How does the State define "full academic year" for identifying students in AYP decisions?
  - 2.3 How does the State Accountability System determine which students have attended the same public school and/or LEA for a full academic year?

Presentation on State data collection process: Steve Hiebert, Department of Public Instruction.

12:15 Lunch

12:45 Principle 3.0 *State definition of AYP is based on expectations for growth in student achievement that is continuous and substantial, such that all students are proficient in reading/language arts and mathematics no later than 2013-14.*

- 3.1 How does the State's definition of adequate yearly progress require all students to be proficient in reading/language arts and mathematics by the 2013-14 academic year?
- 3.2 How does the State Accountability System determine whether each student subgroup, public school and LEA makes AYP?
- 3.2a What is the State's starting point for calculating Adequate Yearly Progress?
- 3.2b What are the State's annual measurable objectives for determining adequate yearly progress?
- 3.2c What are the State's intermediate goals for determining adequate yearly progress?

Presentation on the State's assessment system and the setting of State achievement standards: Dr. Karla Egan, CTB/McGraw-Hill, LLC.  
Presentation on the State's alternate assessment and the setting of the State achievement standards: Dr. Wayne Ball, Mountain Plains Resource Center. Presentation by Dr. Thomas Fisher, State Assessment TAC member, on the State's assessment development protocols including the elements of the States Request for Proposals for the current assessment contract.

2:30 pm Break

2:45 pm Principle 4: *State makes annual decisions about the achievement of all public schools and LEAs.*

- 4.1 How does the State Accountability System make an annual determination of whether each public school and LEA in the State made AYP?

Presentation on the State's operational rules for determining adequate yearly progress: Dr. Susan Wagner

Principle 5: All public schools and LEAs are held accountable for the achievement of individual subgroups.

- 5.1 How does the definition of adequate yearly progress include all the required student subgroups?
- 5.2 How are public schools and LEAs held accountable for the progress of student subgroups in the determination of adequate yearly progress?
- 5.3 How are students with disabilities included in the State's definition of adequate yearly progress?
- 5.4 How are students with limited English proficiency included in the State's definition of adequate yearly progress?
- 5.5 What is the State's definition of the minimum number of students in the subgroup required for reporting purposes? For accountability purposes?
- 5.6 How does the State Accountability System protect the privacy of students when reporting results and when determining AYP?

Presentation by Dr. Jane Minnema, National Center for Educational Outcomes on alternative achievement standards for certain special education students. Presentation by Mari Rasmussen on definition of limited English proficient students and certain accountability provisions. Presentation by Steve Hiebert, Department of Public Instruction, on minimum n value for the purposes of public reporting.

4:30 pm

Recess until Day 2, 8:30 am

Day 2

8:30 am

Principle 6: *State definition of AYP is based primarily on the State's academic assessments.*

- 6.1 How is the State's definition of adequate yearly progress based primarily on academic assessments?

Principle 7: *State definition of AYP includes graduation rates for public schools and an additional indicator selected by the State for public Middle and public Elementary schools (such as attendance rates).*

- 7.1 What is the State definition for the public high school graduation rate?
- 7.2 What is the State's additional academic indicator for public elementary schools for the definition of AYP? For public middle schools for the definition of AYP?
- 7.3 Are the State's academic indicators valid and reliable?

Presentation by Steve Hiebert, Department of Public Instruction, on statistics referenced in determining secondary indicators.

Principle 8: *AYP is based on reading/language arts and mathematics achievement objectives.*

8.1 Does the state measure achievement in reading/language arts and mathematics separately for determining AYP?

10:30 am Break

10:45 am Principle 9: *State Accountability System is statistically valid and reliable.*

9.1 How do AYP determinations meet the State's standard for acceptable reliability?

9.2 What is the State's process for making valid AYP determinations?

9.3 How has the State planned for incorporating into its definition of AYP anticipated changes in assessments?

Presentation by Dr. Scott Marion, National Center for the Improvement of Educational Assessments, regarding the State's validity and reliability model in determining adequate yearly progress. Presentation by Dr. William Erpenbach, State Accountability consultant, regarding the State's efforts to establish a valid and reliable accountability system. Presentation by Dr. Thomas Fisher, State Assessment TAC member, on the role of the State's Technical Advisory Committee in advising the State regarding future changes to State assessments, including the setting of State achievement standards.

12:15 pm Principle 10: *In order for a public school or LEA to make AYP, the State ensures that it assessed at least 95% of the students enrolled in each subgroup.*

10.1 What is the State's method for calculating participation rates in the State assessments for use in AYP determinations?

10.2 What is the State's policy for determining when the 95% assessed requirement should be applied?

Appendix A: *Required Data Elements for State Report Card*

2:00 pm Break

2:15 pm State Accountability Advisory Committee discussions.

4:00 pm Next steps

4:30 pm Setting schedule for future meetings of the State Accountability Advisory Committee.

4:45 pm Adjournment

**State Accountability Advisory Committee  
on the  
North Dakota Consolidated State Application Accountability Workbook  
  
North Dakota Department of Public Instruction**

***Purpose***

It is the expressed policy of the State that every public school, school district, and the State be held accountable to the accountability provisions contained within the *North Dakota Consolidated State Application Accountability Workbook, June 2003*. Pursuant to Section 9.3 of the *North Dakota Consolidated State Application Accountability Workbook, June 2003*, the Department of Public Instruction facilitates a state-level advisory committee that advises the State Superintendent on the development and review of all State accountability policies. The advisory committee will draft and submit these recommendations to the State Superintendent for final approval.

***Membership***

The State Accountability Advisory Committee will be comprised of members of representative state-level offices, advisory committees, and associations. The Advisory Committee will consist of the following:

- Title I Practitioners Committee, five members
- IDEA Advisory Committee, five members
- Standards, Assessment, Learning and Teaching Team, five members
- North Dakota Education Association, one representative
- North Dakota School Boards Association, one representative
- North Dakota Council of Education Leaders, one representative
- Indian Affairs Commission, one representative
- Bureau of Indian Affairs Schools, one representative
- Legislative Council, two representatives
- Governor's Office, one representative
- Members-at-Large, three Superintendent-appointed members

Department of Public Instruction facilitation staff:

1. Gary Gronberg, Assistant Superintendent
2. Laurie Matzke, Director, Title I
3. Greg Gallagher, Director, Standards and Achievement
4. Bob Rutten, Director, Special Education

5. Jean Newborg, Assistant Director, Assessment
6. Doreen Strode, Program Administrator, Alternate Assessment
7. Mari Rasmussen, Program Administrator, Limited English Proficient
8. Steve Hiebert, Program Administrator, Management Information Systems

Technical Advisory Committee:

- State Academic Standards: Midcontinent Research for Education and Learning,
  1. Ceri Dean, Colorado, State standards development;
  2. Monette Mciver, Colorado, State standards development.
- State Assessment Contractor: CTB/McGraw-Hill, LLC,
  1. Anita Benson, California, State Assessment coordinator;
  2. James Comerford, Indiana, State Assessment consultant;
  3. Karla Egan, Missouri, State Assessment research consultant.
- State Accountability Plan Consultants,
  1. Scott Marion, National Center for the Improvement of Educational Assessments, New Hampshire, reliability analysis;
  2. William Erpenbach, Wisconsin, Independent consultant, nationwide analysis of State accountability systems.
- Special Education Accountability Provisions,
  1. Jane Minnema, National Center for Education Outcomes, Minnesota, alternate achievement standards,
  2. Wayne Ball, Mountain Plains Resource Center, Utah, alternate assessment.
- State Assessment Technical Advisory Committee,
  1. Thomas Fisher, Tennessee, TAC Committee representative;
  2. William Mehrens, Michigan, TAC Committee member;
  3. James Impara, Nebraska, TAC Committee member;
  4. Barbara Plake, Nebraska, TAC Committee member.
- State Accountability System Operations,
  1. Susan Wagner, Colorado, State AYP operational rules.

# Testimony on HB 1038

By

**Dr. M. Douglas Johnson, Assistant Executive Director—NDCEL**

Chairman Freborg and members of the Committee, my name is Doug Johnson and I represent the North Dakota Council of Educational Leaders. I am here to testify in support to HB 1038.

There are several reasons why we support this bill, but first, I believe it important your committee understands that the NDCEL supports holding schools accountable for student achievement. It is our position the NCLB Act appropriately holds schools responsible for improving student outcomes and that understanding student achievement by applying data driven assessment will improve student learning. Further, members of our organization recognize that it is import that no child is left behind in the learning process.

The NDCEL believes that it is important to establish an advisory commission on the No Child Left Behind Act (NCLBA) and that the commission include representation from the education community, legislature, state governance, and if needed, other groups that the legislature feels appropriate. We believe this is a first step in monitoring the development and implementation of the State Accountability Plan for the NCLB Act. Further, we believe the adoption of HB 1038 will give our state law makes and education community the needed input to the State Accountability Plan. The NDCEL also believes there are still many issues regarding NCLB that need to be resolved. We encourage continued dialogue at both the state and national level to help develop a school system in North Dakota that continues to make solid progress in improving student achievement while still comparing favorably to other state accountability plans across the country.

What we need now are three, commonsense approaches to make the goals of No Child Left Behind possible. First, we need a commonsense approach to assessing children

with special needs-which we can do by basing assessment on each child's Individual Education Plan (IEP). The IEP should set challenging goals and describe how the child can demonstrate them. As a product of the child's parents and teachers, it is best suited to that individual child's needs. Second, we need a commonsense approach to assessing limited English proficient students in a way that is fair, accurate and appropriate. The current NCLB statute is unclear and the regulations too limiting. We must ensure that schools are not penalized for having populations of non-English speakers, especially older students, who require more time to learn English. Third, it is our belief that both of these goals could be achieved through the most commonsense fix of all: If we want to leave no child behind, we must look at each child's improvement. Our state and school districts must be allowed to develop and use pupil progress models or growth models that assess individual student growth. HB 1038 provides the necessary format that will encourage a commonsense approach to modifying our State Accountability Plan.

Finally, this bill provides a list of relevant issues related to the implementation of the NCLB Act that are needed to examine the NCLB Act from a policy perspective. It is our belief that HB 1038 is an important step in making the goal of universal proficiency for every child attainable in our State. Further, this bill allows the issues listed within the bill to be discussed so that recommendations for commonsense change to the State Accountability Plan can be made

Thank you for your attention and I encourage you to give HB 1038 a Do Pass recommendation. I will be happy to answer any questions that you might have regarding this testimony.

7314 Sunshine Lane  
Bismarck, ND 58503-9134  
February 16, 2005

Education Committee  
The State Senate  
State Capitol  
600 W. Boulevard Avenue  
Bismarck, ND 58505

Attn: The Honorable Layton Freborg, Chair  
and Members of the Education Committee

Dear Honorable Senator:

Re: HB 1038  
No Child Left Behind Commission

(Since I could not seem to get my mouth or nerves to work properly at the hearing, I thought I would forward my original written comments.)

I spoke to an educator, the other day, who happened to comment in the course of conversation, that things have changed a lot since No Child Left Behind. I said that all of several documents regarding NCLB, that I had wanted to download, were well over 100 pages. "Don't bother," said the educator, "it'll change tomorrow." The document is complicated, along with its clarifications and amendments. Education today is complicated--and is meant to serve all children. As a child, I seldom saw even crutches, and that was for a sprain or a break; now, all sorts of kids populate the schools.

I'm asking that any No Child Left Behind Committee includes in its composition, a parent of a child who has a disability. This is why...

A young woman, who at the age of sixteen, had a crisis in her health and was left with brain trauma and physical disabilities. The school system indicated that the family was doing this young woman a great disservice to allow her to go back to school. The courageous and independent young woman walked into school that fall to a life decided by strangers who had sat around a table. She did attend school and really no one quite knew what to do. How does one speak to someone who was fine last year and so physically (and mentally) different this year? It was a problem to provide a safe, accessible area to park (a drop off area). An accessible locker was a problem; she had to carry her books (also a problem). (These two problems were later remedied some time after she graduated.) Teachers varied in their responses--most were helpful. Some were almost too helpful--not knowing where to draw the line between what was helpful and empowering, and what was "doing" (for) and causing frustration. It was a learning process and most everyone tried their best. The young woman felt disenfranchised, separated, and lonely and applied for

and received early graduation and early entrance into college where there was employed a professor, who had years of previous experience with those who had disabilities, <sup>another</sup> she thrived. The story goes on, however...after transferring to college to follow her fiancée, she had absolutely no supports and eventually withdrew after a semester. (I think with supports for her health maintenance, carrying a smaller load--double her classmate's loads--and other supports, she had a very good chance to be successful--even small supports are important.)

A youngster has a chronic life-ending disorder--unless a cure is finally discovered. As he becomes more cognizant of life's plan for him and his physical health worsens, his frustrations and concerns have begun to arise. His parents struggle to deal with how to get the school to understand that this young person is surviving under a life and death condition and he is in a bad spot right now--they ask that the school personell please help him to get through it, as opposed to relying on punishment. (Please note that kids who "act out" or who are difficult in some way, as opposed to being tearful or extremely quiet or withdrawn, are far less likely to be recognized as having depression or similar difficulties.) addition

A young woman had seizures at a young age. One can't tell it to look at her, but there are remaining complications. (addition--when one can't see these "complications;" they and their supports are often forgotten or disregarded as troublesome or other.)

These kids and many others need a variety of things--sometimes very little to be successful. Parents say it is sometimes very difficult to get these services especially as grades/teachers and especially schools change. The so-called "typical-looking" kid is <sup>especially</sup> often forgotten (to have a disability) or thought to be just fine and may suffer for it... The older a child gets, the more that is expected of them. That is a natural progression for everyone. However, because it is forgotten or whatever the cause, that doesn't mean that their recognised (or not) disabilities have disappeared. With a little of the proper kind of education--so little adjustment at times--and which may also prove beneficial to the whole of the classroom--kids ~~can~~ be successful--and thrive.

I feel that a parent who is familiar with these subelties of education for those who are disabled, could make cost saving--child saving--contributions to the committee.

addition--the secret I mention/ Essentially, I said that I had believed that I had I pretty good knowledge of and compassion and empathy for those who have disabilities. Then, I was involved in a car accident a few years ago in which my car was rear-ended. I found I didn't know as much as I thought I knew and even after the difficulties of the last few years, I still feel that I have a lot to learn.

Sincerely,  
*Elaine Grasi*  
Elaine Grasi  
District 47  
223-8149