

June 2013

## **EDUCATION STANDARDS AND PRACTICES BOARD RULEMAKING PURSUANT TO 2011 HOUSE BILL NO. 1270**

This memorandum was requested to provide a timeline and description of rulemaking activity of the Education Standards and Practices Board following enactment of 2011 House Bill No. 1270.

written comments regarding the rules was set for November 21, 2011.

### **2011 HOUSE BILL NO. 1270**

House Bill No. 1270 (2011) became effective August 1, 2011. The bill amended North Dakota Century Code (NDCC) Section 15.1-13-20 to eliminate reference to an interim reciprocal teaching license for individuals who hold a regular teaching license or certificate from another state. The bill reworded the language to provide that the Education Standards and Practices Board "shall grant a teaching license to an applicant who holds a regular teaching license or certificate from another state . . .". The statutory provision requires that the applicant must hold licensure or certification based upon a minimum of a bachelor's degree with a major that meets the issuing state's requirements for early childhood education, elementary education, middle level education, or a content area taught at a public school. The statute requires completion of a state-approved teacher education program, including supervised student teaching, payment of the required fee and submission of a criminal history record check, and that a license granted under the statute is valid for two years if the applicant has not been licensed in the other state for at least 18 months. The statute requires that if the applicant received a teaching license or certificate from another state after 2001 and that state did not require a state test for licensure or certification, the Education Standards and Practices Board shall require the applicant to pass all state licensure tests required of applicants from North Dakota within two years from the date of licensure. In all other cases, the statute requires a license granted to an out-of-state applicant to be valid for five years and renewable in the five-year license renewal cycle.

House Bill No. 1270 also repealed NDCC Section 15.1-13-21 which provided that the Education Standards and Practices Board "shall pursue the reciprocal acceptance of teaching licenses issued by other states."

### **EDUCATION STANDARDS AND PRACTICES BOARD RULEMAKING ACTION**

The Education Standards and Practices Board prepared proposed rules amendments and repeals to existing rules and the board approved the final draft of the rules at its August 11, 2011, meeting. The notice of rulemaking was submitted on September 26, 2011. A public hearing on the rules was held on November 7, 2011, and the deadline for submission of

### **ADMINISTRATIVE RULES COMMITTEE MEETING DECEMBER 15, 2011**

At its meeting December 15, 2011, the Administrative Rules Committee received comments from a West Fargo special education teacher who returned to North Dakota after several years teaching in other states. The committee also requested a representative of the Education Standards and Practices Board to brief the committee on its pending rulemaking activity. The following is the summary of the discussion from the minutes of the December 15, 2011, Administrative Rules Committee meeting:

Chairman Koppelman called on Ms. Amy Martineck, West Fargo, to provide information on her experience with statutory and rules provisions governing out-of-state highly qualified teacher licensing. Ms. Martineck said she is employed as a special education teacher at West Fargo High School. She said this is her 12<sup>th</sup> year as a special education teacher.

Ms. Martineck said she graduated from the University of North Dakota and has been employed as a special education teacher at schools in Arizona and Colorado. She said in every state in which she has been employed as a teacher, she has found it very easy to find and complete teacher licensing requirements. She said that has not been the case in North Dakota.

Ms. Martineck said the Education Standards and Practices Board informed her she had to go back to school to complete additional coursework to receive a highly qualified status in special education. She said she just discovered this requirement in October and was informed that the deadline to complete the coursework is August 1, 2012.

Ms. Martineck said she completed a master's degree in special education this spring. She said the job she is doing at West Fargo High School is exactly the same job she has done for the last 12 years. She said completing a mathematics course for elementary education is a requirement she was told she had to meet. She said she sees nothing that an elementary education mathematics course would add to the skills she needs as a special education teacher. She said she took a reduction in pay of \$14,000 per year in moving from Colorado to North Dakota. She said to now have to pay more for additional education would be very discouraging and does

not fit the family budget. She said she understood North Dakota would welcome returning young people but that has not been her experience.

Ms. Martineck said individual endorsements in separate fields of special education are required in North Dakota. She said she does not know of any other state imposing that requirement. She said educational degrees from colleges and universities are not set up for individual endorsements. She said North Dakota seems to be discouraging qualified teachers from moving to the state.

Senator Heckaman asked whether, for purposes of obtaining a license in North Dakota, it is necessary to seek an endorsement in an individual area within special education. Ms. Martineck said North Dakota requires individual endorsements for intellectual, emotional, and learning disabilities.

Senator Andrist said North Dakota has approximately 50 state licensing agencies for professionals. He said most of these agencies have moved toward easing reciprocity requirements and providing credit for work experience. He asked if Ms. Martineck is allowed any credit for her work experience. Ms. Martineck said she was told her experience in special education teaching does not count for licensing purposes.

Chairman Koppelman called on Dr. Janet Welk, Executive Director, Education Standards and Practices Board, for information on out-of-state highly qualified teacher licensing. Dr. Welk also distributed a copy of a letter from Mr. Ryan Sullivan relating the difficulties he has experienced seeking his teaching license in Minnesota.

Dr. Welk said there is a separate issue regarding special education licensing which is that North Dakota has been a "categorical" state since 1976. She said in special education, categorical means the teacher has been prepared to work with children with disabilities in a specific area, such as intellectual disabilities, emotional disabilities, or learning disabilities. She said in states that are considered noncategorical, teachers are prepared in special education without a specific categorical background and allowed to work with all types of children with disabilities.

Dr. Welk said the issue of categorical requirements is more complex than originally thought. She said reporting requirements of the Department of Public Instruction will need to be changed, institutions of higher education special education programs may be altered, and current teachers with special education degrees will be affected. She said at the December 8, 2011, meeting, the Education Standards and Practices Board discussed the

administrative rules process with the Attorney General's office. She said it was recommended that the board start the administrative rules process over because of changes that must be considered.

Representative Monson asked if Dr. Welk will recommend moving away from categorical licenses for special education in North Dakota. Dr. Welk said she would recommend that change. Representative Monson asked if this would allow an individual holding a bachelor's degree to teach the hearing disabled. Dr. Welk said that is an issue that has been discussed by the Education Standards and Practices Board. Representative Monson asked about the August 1, 2012, education deadline Ms. Martineck was given. Dr. Welk said the federal rules allow three years to obtain additional education but require the state to monitor progress annually. She said the August 1 deadline requires demonstration of progress but is not the deadline completion of the requirements. She said she believes the two course requirements for Ms. Martineck will be waived.

Representative Koppelman said it appears federal requirements are involved in the additional education Ms. Martineck is to pursue. He said it does not appear she had to meet these requirements in other states where she has been employed as a special education teacher. Dr. Welk said the Education Standards and Practices Board is looking at why North Dakota has to meet these requirements. She said it appears these requirements apply in North Dakota because of categorical state status.

Senator Andrist said he is pleased Dr. Welk believes the requirements for Ms. Martineck will be waived. He said he hopes the Education Standards and Practices Board is working on rules that will incorporate more flexibility and provide credit for experience in other teaching settings.

Senator Heckaman asked if a special endorsement is required in North Dakota to teach individuals with autism. Dr. Welk said no special endorsement is required for autism, and under the national standards it is part of the special endorsement for intellectual or emotional disability.

Representative Koppelman said he was under the impression that 2011 House Bill No. 1270 made statutory changes to NDCC Section 15.1-13-20 which would make it easier for applicants licensed in other states to obtain licensing in North Dakota. He said he invited Representative RaeAnn G. Kelsch, Chairman, House Education Committee, to comment on the status of out-of-state teacher licensing after the 2011 legislation.

Representative Kelsch said she was a cosponsor of House Bill No. 1270. She said North Dakota has a need for additional teachers, and the 2011 legislation was intended to make licensing easier if applicants coming from another state are rated as highly qualified in another state. She said the bill was not intended to leave out special education teachers. She said the language of the bill applies to all teachers, including special education teachers. She said the statutory provision requires that the Education Standards and Practices Board shall grant a teaching license to an applicant who holds a regular teaching license or certificate from another state, subject to listed conditions. She said it has been her understanding that a statutory provision should supersede any conflicting rules provisions. She said the intent and statute are very clear, and licensing should proceed regardless of the provisions of the existing rules.

Representative Koppelman said it has been his understanding also that if there is a conflict between a statute and rules provisions, the statutory provision would prevail. He asked committee counsel if that is a correct interpretation. Committee counsel said he cannot give an opinion on whether there is a conflict between the 2011 legislation and the existing administrative rules of the Education Standards and Practices Board. He said if there is a conflict between statutory provisions and administrative rules provisions, the statutory provisions are to be given effect, and the administrative rules are to be disregarded.

Representative Koppelman said if the Education Standards and Practices Board proceeds with a new rulemaking proceeding, it would probably be advisable to consider emergency rulemaking because of time concerns of licensees and applicants.

Chairman Koppelman called on Mr. Mike Bitz, Assistant Superintendent, Mandan Public School District, Mandan, for comments on the committee discussion. Mr. Bitz said he is an Education Standards and Practices Board member. He said the board thought the problem of licensing for out-of-state teachers was to conform the rules to the statutory provision. He said the board now has been advised that the rulemaking proceeding needs to be restarted. He said he is encouraged that perhaps the board can proceed with licensing without awaiting rules changes if the board can act under authority of the statutory provision.

Representative Koppelman asked Dr. Welk if she can revisit the issue on the current status of teacher licensing under the 2011 legislation and the existing and proposed rules with the Attorney General's office. She said she will do

so, and it appears to her that the rule in the area of the two course requirements for Ms. Martineck is clearly in conflict with the statutory provision and could be waived.

### **ADMINISTRATIVE RULES COMMITTEE MEETING MARCH 14, 2012**

At the March 14, 2012, meeting of the Administrative Rules Committee, the Education Standards and Practices Board requested committee approval of elimination of obsolete rules provisions and the request was approved by the committee. Attached is a copy ([Appendix A](#)) of the testimony submitted by the Education Standards and Practices Board at the March 14, 2012, meeting.

### **ADMINISTRATIVE RULES COMMITTEE MEETING JUNE 14, 2012**

At the Administrative Rules Committee meeting June 14, 2012, the Education Standards and Practices Board provided testimony relating to rules adopted and submitted by the board. The summary of the discussion of these rules in the minutes of that meeting provided as follows:

Chairman Koppelman called on Dr. Janet Welk, Executive Director, Education Standards and Practices Board, for testimony relating to rules adopted by the board. Dr. Welk said at the end of June the board will meet to consider what to do regarding licenses for teachers moving to North Dakota from a state where they were teaching under a waiver.

Representative Monson said the Legislative Assembly did not want to discriminate against qualified teachers coming to North Dakota. He said he understands the board has not put up higher standards for out-of-state applicants. Dr. Welk said that is correct and that will be part of the board discussion later this month.

Senator Sitte said the rules adopted by the board establish requirements for teachers of theology. She asked what right the state has to set standards for theology teachers. Dr. Welk said the requirement comes from statute, and the standards are not restrictive. She said the requirement for a theology teacher would be a bachelor's degree of any kind and a letter from the school administrator.

Representative Koppelman asked if North Dakota is making it harder for teachers to come here from other states. Dr. Welk said, to the contrary, she attended a recent conference at which North Dakota was described as the only state that has true reciprocity with other states for teacher licensing.

Attached is a copy ([Appendix B](#)) of the written testimony provided by the Education Standards and Practices Board at the June 14, 2012, meeting of the Administrative Rules Committee. The Education Standards and Practices Board determined that it was

appropriate to recommence the rulemaking proceeding to address additional issues.

### **RECOMMENCED RULEMAKING PROCEEDING**

The Education Standards and Practices Board began a new rulemaking proceeding, which was conducted under the following timeline:

- August 10, 2012, letter from the Education Standards and Practices Board to the Governor asking for emergency status for the proposed rules.
- August 14, 2012, letter from the Governor granting emergency status.
- August 16, 2012, letter and notice of rulemaking filed with the Legislative Council and the North Dakota Newspaper Association.
- October 1, 2012, public hearing on proposed rules attended by one representative of the North Dakota Education Association. No other comments were received.
- November 8, 2012, Education Standards and Practices Board discussed and amended the proposed rule regarding interim substitute teacher licensing.
- January 6, 2013, letter from the Attorney General approving the proposed rules as to legality.
- January 24, 2013, rules adopted by the Education Standards and Practices Board submitted to the Legislative Council.
- March 13, 2013, rules considered by the Administrative Rules Committee. Committee members expressed concern about wording of the proposed rules and consensus could not be reached on clarification. The committee approved a motion to carry over consideration of the rules to the June 6, 2013, committee meeting.

The language in the proposed rules that created confusion at the March meeting of the Administrative Rules Committee appears in two places. For the teaching alternative flexibility endorsement and the alternative access licenses for teacher shortages rules, language is proposed to be added to provide that the applicant have no less than two years of "documented through the other state educator license, teaching" in the course area. It appears that for these provisions, which are apparently intended to allow endorsement or licensing in special circumstances, the intention is to approve candidates who can show two years of teacher licensing from another state. However, a question raised is whether two years licensing that would be required by these changes is compatible with NDCC Section 15.1-13-20, which requires the Education Standards and Practices Board to grant a teaching license to an applicant who holds a teaching license or certificate from another state for any length of time.

### **2013 HOUSE BILL NO. 1296**

On April 12, 2013, House Bill No. 1296 was passed by the Senate, and it was signed by the Governor on April 18, 2013. The bill created a new subsection to NDCC Section 15.1-13-20 providing that for an applicant who holds a regular teaching license or certificate from another state, "[a] license granted under this section must include all of the applicant's endorsements issued or recognized by the applicant's other state of licensure." This bill becomes effective August 1, 2013.

ATTACH:2