

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### EDUCATION COMMITTEE

Wednesday, September 28, 2005  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Layton W. Freborg, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Layton W. Freborg, Robert S. Erbele, Michael A. Every, Tim Flakoll, Gary A. Lee, Harvey Tallackson; Representatives C. B. Haas, Gil Herbel, Bob Hunskor, Lisa Meier, Phillip Mueller, Mike Norland, John Wall

**Members absent:** Senator Tom Seymour; Representatives Stacey Horter, Dennis Johnson, RaeAnn G. Kelsch, David Monson, Steven L. Zaiser

**Others present:** See Appendix A

Chairman Freborg welcomed the members of the Education Committee and House minority leader Representative Merle Boucher.

At the request of Chairman Freborg, Mr. John D. Olsrud, Director, Legislative Council, reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council](#). He said interim committees are limited to those studies and responsibilities that have been assigned by the Legislative Council. He said the creation of subcommittees is subject to the approval of the chairman of the Legislative Council. Likewise, he said, communications from the committee are subject to the approval of the chairman of the Legislative Council in order to ensure that policy positions are consistently articulated.

At the request of Chairman Freborg, committee counsel presented a memorandum entitled [Educational Equity and Future Educational Delivery - Background Memorandum](#). She said the memorandum contains a history of legislative efforts to fund elementary and secondary education and a description of both education funding lawsuits-- *Bismarck Public School District No. 1 v. State of North Dakota* and *Williston Public School District No. 1 v. State of North Dakota*. She said the memorandum also contains a chart showing the principal education funding components as of the 1995 and 2005 legislative sessions.

#### **WILLISTON PUBLIC SCHOOL DISTRICT NO. 1 V. STATE OF NORTH DAKOTA - UPDATE**

At the request of Chairman Freborg, Mr. Douglas A. Bahr, Director of Civil Litigation, Attorney General's office, presented testimony regarding the education funding lawsuit. In October 2003, he said, nine school districts and

several individuals filed a lawsuit against the state challenging the constitutionality of the state's statutory scheme for funding elementary and secondary education. He said the case is known as *Williston Public School District No. 1 v. State of North Dakota*. He said over a decade ago the case of *Bismarck Public School District No. 1 v. State of North Dakota* had been filed. In the *Bismarck* case, he said, the primary allegation was that the statutory formula for funding education was not equitable. He said the primary focus of the *Williston* case is not equity but adequacy. He said the plaintiffs are asserting that the manner of funding and the amount of funding do not allow school districts to provide an adequate education.

Mr. Bahr said in the *Bismarck* case, three of the five North Dakota Supreme Court justices found the state's funding scheme to be unconstitutional. He said the Constitution of North Dakota requires a super majority of four justices in order for a statute to be declared unconstitutional. He said the three justices who ruled that the funding scheme was unconstitutional are no longer on the Supreme Court.

Mr. Bahr said the discovery phase of the case has been completed. He said the plaintiff school districts have disclosed their experts and the state will disclose its experts within the week. He said the experts will then be deposed so that both sides can fully understand the nature of the experts' reports and their anticipated testimony. He said the state will also be filing a motion for summary judgment within the week. He said the state will ask that the case be dismissed on legal grounds. He said the trial is scheduled for three weeks, commencing February 27, 2006. He said he anticipates that regardless of the trial's outcome, the matter will be appealed to the North Dakota Supreme Court. He said taking into account briefing timelines, it is possible that a final decision by the North Dakota Supreme Court could be issued before the 2007 legislative session.

Mr. Bahr said even if the plaintiffs prevail, he seriously doubts that the North Dakota Supreme Court would direct the Legislative Assembly to do specific things. He said even in the *Bismarck* case, the three justices who found the funding scheme unconstitutional said merely that the Legislative Assembly needed to fix it. He said the justices realized that

matters of what to do and how much funding to appropriate were legislative policy decisions.

In response to a question from Senator Tallackson, Mr. Bahr said courts always consider what other courts have done. He said the ultimate decision will have to be based on North Dakota law and on the requirements of the Constitution of North Dakota. He said what other courts have done will not be determinative in this case. He said it is the Constitution of North Dakota that is being interpreted. He said the constitutions of other states are not the same as North Dakota's constitution.

In response to a question from Representative Haas, Mr. Bahr said the basic legal argument behind the motion for dismissal is that the Constitution of North Dakota does not mandate what the plaintiffs have requested. He said the plaintiffs have actually asked that the court usurp legislative authority, act like a super legislature, and tell the Legislative Assembly how to perform its constitutional duty.

In response to a question from Representative Haas, Mr. Bahr said in the past, the North Dakota Supreme Court has not usurped the authority of the Legislative Assembly. He said the court has concluded that the role of the court is to determine whether or not matters are proper and that it is up to the Legislative Assembly to determine how best to address them. He said while the court may provide guidance, it would not be proper for it to assume legislative power and direct the Legislative Assembly with respect to the performance of its constitutional duty.

In response to a question from Senator Every, Mr. Bahr said he does not believe that another lawsuit by property-rich districts would impact the *Williston* case. He said a second lawsuit would be a separate and distinct case and would not delay this lawsuit.

In response to a question from Representative Mueller, Mr. Bahr said, as with almost all litigation, parties communicate with respect to whether or not there is a solution that meets the needs of both parties. He said the parties in the *Williston* case have met to determine whether there is some common ground that could resolve the lawsuit in the best interests of all parties, particularly the citizens of North Dakota. He said the discussions are ongoing.

Representative Mueller said it would appear that the Legislative Assembly would have to be involved in any additional funding or changes in the funding formula. He said the Legislative Assembly will have to play a fairly major role in any dealmaking that might need to be done.

Mr. Bahr said the Attorney General's office, the Governor's office, and the plaintiffs are fully aware of the constitutional obligations and of the separation of powers. He said they understand that if they entered into a settlement agreement, it would in no way bind or tie the hands of the Legislative Assembly with respect to its constitutional obligation. He said neither

the Attorney General's office nor the Governor's office believe that they have the authority to commit the Legislative Assembly to any action.

In response to a question from Representative Herbel, Mr. Bahr said while the plaintiffs would argue that nothing has changed in the years between the lawsuits, the state is arguing that significant strides have been made during that time. He said whether or not the system is perfect is subject to each person's individual opinion.

## STATUS OF SCHOOL DISTRICTS - ENROLLMENTS

At the request of Chairman Freborg, Mr. Tom Decker, Director of School Finance and Organization, Department of Public Instruction (DPI), presented testimony regarding the status of school districts. He distributed a document entitled *ND School District Enrollment Projections by Foundation Aid Category*. The document is attached as Appendix B. He said reports on fall enrollments, which are due from the school districts on September 15, have not all been submitted. He said the fall enrollments should be available about November 1, 2005.

Mr. Decker said 99,324 students were enrolled in public schools last year. In 1995, he said, 118,600 students were enrolled in public schools. He said some of the larger Class A and Class B schools are having higher enrollments than they expected and higher than were projected, but not by that much. He said an enrollment decline in the neighborhood of 1,400 to 1,500 students was expected but preliminary reports show that the enrollment decline will likely be in the 1,200 to 1,300 range. He said small rural schools are being hit the hardest.

In response to a question from Senator Tallackson, Mr. Decker said open enrollment has grown slowly and steadily. He said about 2,500 to 3,000 students are open-enrolled. He said the trend has been one of movement from smaller schools to larger schools.

Mr. Decker distributed a document entitled *Public K-12 Enrollment Projections*. The document is attached as Appendix C. He said DPI had projected 98,400 students for this school year. He said that is optimistic. He said the downward curve is not as sharp as it used to be and the annual decline is not as great as it was in earlier years but there is still a decline in the student numbers.

Mr. Decker distributed a document entitled *Enrollment Projection Comparison - State-wide Method vs. Rollup of 162 Projections*. The document is attached as Appendix D. He said the document contains a chart showing both public and nonpublic school enrollment. He said there has not been an increase in nonpublic school enrollment at the expense of public schools. He said there has been a small growth in the number of students who receive home

education but that has not been a significant factor in the declining number of public school students.

In response to a question from Representative Herbel, Mr. Decker said it is too early to know the exact number of students who receive home education. He said he understands that the number has remained steady.

Representative Boucher said he is confused by the elementary and secondary enrollment projections. In some cases, he said, the number of students said to be in kindergarten or first grade actually increases in the year those students are expected to graduate from grade 12.

Mr. Decker said there is a significant decline in the number of students coming into the early grades. He said there are some gains in certain classes but what really matters is the overall total projection. He said births in this state have hovered around 7,600. He said it might be appropriate to assume that the decline in students might level out in the future.

In response to a question from Representative Haas, Mr. Decker said the system is based on cohort survival. As an example, he said, the system looks at the number of students enrolled in grades 1 through 3 and then at the number of students in grade 1 who move to grade 2 and the number of students in grade 2 who move to grade 3. He said this information allows for the generation of a trend. He said the system projects trends. He said five years ago the trend projections were conservative. He said enrollment decline was significantly greater than had been projected. If an enrollment decline of 2,000 was projected, he said, the actual decline might have been 2,500. He said more recently the projections have in fact shown larger numbers than what have been actual declines. Overall, he said, the projections have been very close--usually within 100 students.

In response to a question from Representative Haas, Mr. Decker said the cohort survival model is self-correcting and, as trends change, the projection model changes.

In response to a question from Senator Flakoll, Mr. Decker said he is unaware of any impact that students who are held back have on the trend projections.

### **SCHOOL DISTRICT REORGANIZATIONS AND DISSOLUTIONS**

Mr. Decker distributed a document entitled *Reorganizations & Dissolutions Effective 2005*. The document is attached as Appendix E. He said last year there were 210 school districts and this year there are 204. He said there are currently three nonoperating districts and the status of the Earl School District in McKenzie County is uncertain.

### **EFFECT OF FUEL PRICES ON SCHOOL DISTRICTS**

Mr. Decker said he has not received a single call related to the effects of high fuel prices on school districts' transportation and heating budgets.

Chairman Freborg called on Mr. Doug Johnson, Executive Director, North Dakota Council of Educational Leaders, who said most of the information he has gathered is anecdotal. He said all of the districts are experiencing price increases for which they did not plan when constructing their budgets. He said many are looking at ways to cut back on their travel for athletic and extracurricular events. He said most school district superintendents anticipated gas prices in the range of \$2 per gallon this year. Consequently, he said, the districts are dealing with a 25 to 35 percent cost increase.

Representative Boucher said in his area, the five-year average for heating fuel has been around \$1 per gallon. He said the price of heating fuel in his area is now in the \$2.61 to \$2.63 range. He said if a school district uses roughly 15,000 gallons of heating fuel a year, its cost for fuel will be 260 percent of the five-year average. He said a district that averaged \$15,000 in heating fuel costs during the last five years will now be paying \$40,000 per year. He said the Legislative Assembly and school districts will have to pay very close attention to the price of heating fuel. He said he expects to see significant impacts from the cost of heating fuel and transportation during the second year of the biennium. He said he would like to see the interim Education Committee closely monitor the effects of the high fuel prices.

Mr. Johnson distributed a document entitled *NDCEL Survey of Superintendents on Increased Fuel and Heating Costs*. The document is attached as Appendix F. He said his initial inquiry showed that some school districts are seeing price increases in the 100 percent range while others have managed to lock in prices. He said natural gas prices are expected to increase by about 70 percent this year. He said he will get the rest of the survey responses to the Legislative Council staff for distribution.

Senator Flakoll said the 2005 Legislative Assembly allocated more money per mile for smaller buses.

In response to a question from Senator Flakoll, Mr. Johnson said school district superintendents are considering the use of alternative fuels and examining obligations to transport students. He said the recent price increases caught superintendents off guard.

In response to a question from Representative Herbel, Mr. Johnson said some school districts are considering the consolidation of team travel, even though that would mean having students wait all evening for the last team to finish playing.

In response to a question from Representative Mueller, Mr. Johnson said the big question right now is how will the school districts address their heating costs. He said cutting back on school trips and

dipping into school district ending fund balances are two options.

With the permission of Chairman Freborg, Mr. Dean U. Koppelman, Superintendent, Dickinson Public School District, said the Dickinson Public School District does not own a fuel storage facility. He said the district therefore cannot buy its fuel in bulk. He said every time the price goes up at the pump, the district incurs the expense. He said there are not many school districts that have their own storage facilities. He said the Dickinson Public School District does charge a fee for rural students to ride buses. He said unfortunately the district assessed the fee in August before the spike in fuel prices. He said the district has tried to be more efficient. He said some students get on a bus at 6:45 a.m. in order to arrive at school by 8:15 a.m. He said the district has cut one bus route and driver. He said the district has examined its extracurricular activities but it must still transport students to places such as Williston, Bismarck, and Beulah. He said other than trying to combine units there is not much else that the district can do. He said if all the teams were to leave school early so that travel could be consolidated, a lot of class time would be lost. He said the different time zones alone require an additional loss of class time.

Chairman Freborg called on Mr. Dean A. Koppelman, Superintendent, Valley City Public School District, who said his district is also concerned about the increase in heating fuel prices. He said he projected a 20 percent increase in gasoline prices and a 30 percent increase in heating fuel prices. He said he is now hearing about a 70 percent increase in the price of natural gas. He said the Valley City Public School District is using smaller buses for activity transportation and combining teams so that rides can be shared. He said the district is also asking parents to transport students to various activities.

In response to a question from Representative Herbel, Mr. Koppelman said the district does not charge transportation fees but it does charge participation fees in the amount of \$50 per activity for high school athletics and \$35 for junior high school students.

In response to a question from Representative Mueller, Mr. Koppelman said the Valley City Public School District contracts with Dietrich's Bus Service in Valley City. He said the bus company is looking at the way it calculates the cost of transporting students.

In response to a question from Senator Freborg, Mr. Koppelman said issues of liability arise when parents transport students to school-related activities. He said the district asks parents to sign a form indicating that liability goes first to the parent rather than to the district.

Senator Flakoll said he wonders if parents could pay a fee and ride on schoolbuses when attending

games. He said that would reduce the costs of transportation.

Mr. Koppelman said that is already being done when space is available.

### **ADEQUATE YEARLY PROGRESS**

At the request of Chairman Freborg, Mr. Greg Gallagher, Director of Standards and Achievement, Department of Public Instruction, presented testimony regarding adequate yearly progress (AYP). His testimony is attached as Appendix G.

Mr. Gallagher distributed a document entitled *A Guide to the 2004-05 Annual Adequate Yearly Progress Report*. The document is attached as Appendix H. He said the document covers how the AYP review is conducted and how identifications are made.

Mr. Gallagher said AYP is an attempt to offer an objective dispassionate measurement on how well schools are doing against clearly identified standards. He said determining AYP involves content standards--what students should know and be able to do, achievement standards--guidelines designed to identify the level of proficiency that is sought, and assessments--valid and reliable tests that are aligned to both the content and the achievement standards.

Mr. Gallagher said he and other staff members from DPI have presented, to both interim and standing committees, a great deal of information regarding the determination of AYP. He said nothing has changed with respect to the determination of AYP.

During the 2004-05 school year, Mr. Gallagher said, 486 schools underwent review to determine AYP. He said 419 schools were identified as having made AYP, 43 schools did not make AYP, and 24 schools were too small or their data were insufficient for purposes of reporting their findings. He said what is done for schools is also done for school districts. For the 2004-05 school year, he said, 168 school districts met AYP, 21 school districts did not meet AYP, and 13 school districts had insufficient data for purposes of reporting their results.

Mr. Gallagher said all North Dakota standards are generated by North Dakota teachers. He said the alignment of standards is performed by North Dakota teachers. He said the cut scores, i.e., the final determination of the achievement level, are also set by North Dakota teachers. During this past year, he said, 325 North Dakota teachers and community leaders participated in determining the cut scores.

Mr. Gallagher said the 2004-05 school year was the first time in which the state assessed students in grades 3 through 8 and 11. He said approximately 53,000 students were assessed. For purposes of determining AYP, he said, students are divided into subgroups. He said a student might belong to several subgroups. He said a student could be both white and low-income. He said the goal is for all students to reach proficiency. He said proficiency is defined as

the combination of both the proficient and advanced categories. He said in reading, by virtue of the cut scores, there are very consistent grade-to-grade demarcations between the novice, the partially proficient, the proficient, and the advanced categories. In mathematics, he said, the line between proficient and nonproficient is not as consistent as in reading. He said as students progress into higher grade levels, there are greater numbers of nonproficient students in mathematics. He said that is reflective of a national trend. He said as students progress through school, mathematics skill requirements are increased and sometimes they are not met.

Since 2002, Mr. Gallagher said, there has been steady measurable growth in students' reading scores. In mathematics this last year, he said, there was a tremendous increase in proficiency compared to previous years. He said that is the result of lower cut scores. He said by lowering the cut scores, the teachers effectively raised mathematics proficiency by 17 percent.

Mr. Gallagher said we are seeing steady growth in reading among almost all subgroups. He said we have seen a little bit of a pullback among students in the subgroups of limited English proficient, migrant, Asian, and other ethnicity. He said the other groups show a steady improvement in reading scores.

Mr. Gallagher said schools do not tend to radically change their proficiency ratings from year to year. He said the statistics tend to show an institutional capacity or lack of capacity. He said the data must be used to identify the issues and then those issues must be attended to through policies and supplemental programs.

Mr. Gallagher said a school must pass all 41 indicators in order to make AYP. He said there are indicators for proficiency, participation, and in some cases attendance and graduation. He said this year 11 schools did not make AYP in reading, based on the performance of all students. He said 13 schools did not make AYP in reading, based on the performance of their "native population." He said 27 schools did not make AYP in reading, based on the performance of their special education students. He said 17 schools did not make AYP in reading, based on the performance of their low-income students. He said we are seeing similar results in mathematics. He said AYP determinations are complex. However, he said, we are seeing that all the various components of the measurement are working the way they were designed to work. He said when identifications are made, it is because consistent verifiable reductions in performance are noted.

Mr. Gallagher said AYP determinations go through six stages. He said a school's performance is reviewed based on its current year data. He said if a school does not make AYP, DPI then includes two additional years on a rolling average. He said a determination that a school did not make AYP is

never made unless DPI can say with a 99 percent assurance that the school did not make AYP. He said if a school does not make AYP at that level, DPI then rolls up three years of data. He said if a school still does not make AYP, the safe harbor provision is used. He said under this provision, even if a school is well below its expected level, it will be labeled as making AYP, provided it can show a 10 percent improvement over the previous year. He said if a school does not make AYP under the safe harbor provision, DPI applies the Title I privilege. He said this allows DPI to consider the results of only those students in Title I programs. Finally, he said, there is a new provision that allows for the application of a certain percentage that raises the level of performance attributable to special education students.

In the 2004-05 school year, Mr. Gallagher said, 42 schools did not make AYP for a total of 122 reasons. He said we need to be aware of how our schools measure overall against the proficiency that is expected. He said among the 486 schools that were assessed for reading proficiency, 301 made AYP free and clear. He said 98 schools were lower than the achievement objective, but because of our reliability test, DPI could not say with 99 percent assurance that those schools did not make AYP. Therefore, they too are said to have made AYP. He said the rest were protected at various levels and in the end only 11 schools were positively identified as not making AYP in reading.

Mr. Gallagher said among those school districts that did not make AYP, nine school districts did not make AYP for overall reading. He said nine did not make AYP because of their Native American population. He said 10 school districts did not make AYP because of their special education students. He said 7 did not make AYP because of their limited English proficient students and 11 did not make AYP because of their low-income students. He said when we look at the indicators at the district level, we are seeing large numbers of students still not making AYP. He said we have often heard that the special education students are the cause of districts not making AYP. Clearly, he said, they are a factor, but not the only factor. He said we need to be attuned to that.

Mr. Gallagher said the state as a whole did not make AYP in reading because of students in the low-income subgroup, the Native American subgroup, the Hispanic subgroup, the special education subgroup, and the limited English proficient subgroup. In mathematics, he said, the limited English proficient subgroup did not make AYP. He said our biggest challenge has been to ensure that the data are clean, valid, and capable of producing reliable results. He said the schools and school districts have ample opportunity to review their own student identification information to ensure that any data accessed for referencing are in fact valid data.

Mr. Gallagher said we are seeing the emergence of certain patterns. He said cut scores will evolve over time. He said when cut scores were first established in 2002, it was precedent-setting. He said with the changes that have occurred in the mathematics cut scores, we need to likewise attend to how well we are working within our expectations. He said we now need to compare how North Dakota standards vary when compared to the National Assessment of Educational Progress (NAEP) standards. He said the NAEP cut scores are set by a national governing board using national standards. He said the NAEP sets a common reference point by which we can compare how our cut scores relate to those of the NAEP and compare that result to how the cut scores of other states relate to the NAEP. He said some states, like Arizona, have state assessment cut scores that very closely approximate those of the NAEP. He said many states have state performance scores in the 65 percent range whereas the NAEP cut scores might be in the 35 percent range. He said that represents wide variance in terms of overall expectations. He said we need to compare how our overall scores vary from the metric of the NAEP for determining how our variance compares against those of other respective states. He said this is part of the ongoing discussion regarding what constitutes adequate achievement in North Dakota.

In response to a question from Senator Freborg, Mr. Gallagher said when the standards were first established in 2002, the group establishing those standards consisted of more than 150 teachers. He said they set the cut scores over three grades. He said they looked at the data that were available to them and made determinations regarding what they believed to be the proper level of achievement. He said those teachers had very little to use as a basis and their work was consequently precedent-setting. He said they also operated in a vacuum with respect to political sentiments. He said this year another 300 teachers came together and again established the cut scores that they believed were proper for the various grade levels. He said the 2005 group did so with the benefit of the precedent that had been set in 2002. He said the 2005 group used data from NAEP and from a variety of other sources in establishing the cut scores. He said it would be disingenuous to say that the individuals who participated in 2005 were not mindful of the political backdrop. He said it would also be disingenuous to say that all individuals rose above that and were able to make certain determinations. He said, in his opinion, the issues of AYP were clearly present in the discussions. He said everyone present had a vote and the final cut score was the median score. He said the setting of cut scores is part of a dialogue that we have never had before. As a state, he said, we have never discussed what achievement means. He said this is an evolving discussion. He said our cut scores must by rule be

assessed in the future and he expects to see a slight variance again.

In response to a question from Senator Freborg, Mr. Gallagher said 80 percent of our kindergarten through grade 12 students move on to higher education. He said the percentage of students who need remediation at the higher education level is in the low 20 percent range. He said we do not yet have a clean alignment of kindergarten through grade 12 and higher education expectations. He said kindergarten through grade 12 institutions and institutions of higher education are part of different cultures. He said they are not comparable. He said they follow different governance patterns. He said every institution of higher education sets its own standards. He said the data that we have from state assessments, ACTs, SATs, and remediation decisions will bring continued discussion regarding the various expectations of students. He said there is a great deal more conversation about this than there was even a few years ago.

In response to a question from Representative Haas, Mr. Gallagher said he expects discussions about kindergarten through grade 12 and higher education standards to continue into the future. He said the discussions are dependent on the relative priorities and on how much effort is being put into a long-term commitment by all parties. He said as we discuss what a student needs to know and be able to do in the 12th grade, we need to determine whether or not that standard aligns with the implied entry-level standard of higher education. Again, he said, the expectations of higher education vary from institution to institution. He said he does not believe that the content standards will be as much of an issue in the transition from kindergarten through grade 12 to higher education. He said he believes that the achievement standards will be the challenge. He said when the groups of teachers come together to establish cut scores, which define the level of achievement that is expected, there is a great deal of divergence in the expectations.

Representative Haas said he believes that the discussion regarding standards and achievement between kindergarten through grade 12 and higher education should be a pretty high priority on the part of both kindergarten through grade 12 and higher education. He said anything less would be a disservice to our students. He said we simply cannot establish one achievement level for kindergarten through grade 12 and tell our students that if they meet that level they are considered advanced and can leave the 12th grade and then put some of those same advanced students in a remedial mathematics course at the university level.

Mr. Gallagher said the work that has been done to establish cut scores has been sincere. He said given the work that was done in 2002 and 2005, we now have a meaningful metric. He said how one

categorizes achievement and records it on a metric becomes the basis for determining proficiency. He said the next step is to compare that metric to the one used by higher education and ask whether the one used by higher education to establish proficiency is in fact proper. He said what happens now will involve both good will and meaningful metrics.

In response to a question from Senator Flakoll, Mr. Gallagher said a report might show that there are insufficient data for a particular school. He said the data are shared with the school. He said sometimes the data may not be able to be reported at a public board meeting, but the school, for purposes of improvement, is made aware of the data.

Senator Flakoll said he would like to see AYP reports that compare those school districts having full-day kindergarten with those districts that do not.

Chairman Freborg called on Ms. Laurie Matzke, Director of Title I, Department of Public Instruction, who presented testimony regarding the program improvement status of schools and school districts in North Dakota. A copy of her testimony is attached as Appendix I. She said the No Child Left Behind (NCLB) Act requires state departments of education to identify both schools and school districts that do not make AYP for two or more consecutive years. She said program improvement existed prior to the NCLB Act but without any sanctions. She said schools were given additional resources but they did not have to fulfill additional requirements.

Ms. Matzke said it is a misconception that schools or school districts will lose Title I funds if they do not make AYP. She said at no time is a school or a school district in program improvement subject to losing Title I dollars or any other federal dollars. She said in year 7, which is the final sanctioning stage, the NCLB Act calls for the removal of local authority or reconfiguration of the school. However, she said, during the 2003 legislative session, North Dakota implemented an alternative menu of options for year 7. She said none of our menu options include the loss of local control or the reconfiguration of a school. She said North Dakota's alternative options for year 7 were outlined in the state's accountability plan and approved by the United States Department of Education.

In response to a question from Representative Boucher, Ms. Matzke said when recently monitored by the United States Department of Education, the state was told that it needs to improve with respect to the performance of certain subgroups. She said the NCLB Act did not create the list of schools or districts in need of improvement. She said the list existed before the Act. She said we know we can improve the performance of certain subgroups. She said we need to look at the list of those schools that have gotten themselves off program improvement. She said most of the schools on the list of those needing program improvement have large Native American

populations. However, she said, all of the schools that have managed to remove themselves from the list of those needing program improvement also have large Native American populations. She said any school can make improvement. She said any school can make AYP. She said the characteristics of a successful school include having strong leaders, having someone specifically focused on doing the needs assessment and identifying the school's weaknesses, getting the additional funds that are available to schools in program improvement, and implementing those things we know work, such as full-day kindergarten and one-on-one tutoring.

## HIGHLY QUALIFIED TEACHERS

Chairman Freborg called on Ms. Janet Welk, Executive Director, Education Standards and Practices Board (ESPB), who presented testimony regarding highly qualified teachers. Her testimony is attached as Appendix J. She said teachers in North Dakota can become highly qualified through a variety of means, including going back to school and getting a major. She said the University System worked with the ESPB on this option and actually waived some of its rules and regulations for teachers. She said teachers can also take a content test, obtain national board certification, complete a portfolio, or obtain an advanced degree in the content area they intend to teach. She said approximately 1,079 teachers have used one of the named methods to become highly qualified.

Ms. Welk said the Governor's teacher quality grant has been extended through 2006. She said this will give the ESPB the ability to continue the alignment process, the mentoring program, and the portfolio process. She said the ESPB has created a second page to a teaching license and that page shows each course the individual is qualified to teach. She said over 4,000 complimentary licenses have been provided to teachers. She said many school districts are asking their teachers to demonstrate their highly qualified status by March 1 rather than July 1, 2006, so that the information is available prior to the standard nonrenewal date.

At the present time, Ms. Welk said, 14 teachers are going through the process of obtaining national board certification.

In response to a question from Representative Mueller, Ms. Welk said there are still a number of people who for whatever reason have waited to become highly qualified. She said some of the teachers might not have realized, until they received their duplicative licenses, that they are not highly qualified to teach some of the subjects they have been teaching. Initially, she said, a number of teachers said they would retire rather than become highly qualified. She said we have not seen that happen. She said teachers are finally understanding that the portfolio option is not as difficult as they first

thought and a number of them are taking that option for becoming highly qualified. She said to date more than 500 teachers have gone through the portfolio process.

In response to a question from Representative Herbel, Ms. Welk said the portfolio is evaluated by three teachers who are highly qualified in the content area. She said the portfolio is electronic and it is submitted via e-mail to a coordinator housed in Devils Lake. She said the portfolio is then sent to the three evaluators and they must agree unanimously before the highly qualified status is assigned. She said the process is rigorous and applicants are often told that they need additional work or documentation. In some cases, she said, teachers are told that they need to take additional coursework because they do not meet the established criteria.

In response to a question from Representative Hunskor, Ms. Welk said there seems to have been an acceptance of the requirements imposed by the NCLB Act. She said some teachers thought that if President George W. Bush was not reelected, the requirements of the Act would go away. She said the teachers with whom they are working now are those who have put the pursuit of their highly qualified status off as long as possible. She said some of those are probably not going to be able to use the portfolio option. She said they will be faced with taking additional coursework, returning to school, or completing the test. She said they are running out of time.

In response to a question from Representative Hunskor, Ms. Welk said the issue of individuals leaving the state rather than becoming highly qualified is moot. She said the NCLB Act is the law. She said if she would leave North Dakota and seek licensure in another state, she would still have to take at least one test. She said the ESPB is developing rules to provide that if a teacher is documented as being highly qualified in another state, North Dakota will accept that designation and not place additional requirements on the individual.

In response to a question from Representative Meier, Ms. Welk said 14 teachers are going through the national board certification process. She said national board certification is a rigorous process and she does not expect that all 14 individuals will achieve the certification.

In response to a question from Senator Flakoll, Ms. Welk said the teacher who is the cooperating teacher for a student teacher has to be teaching in the field in which the individual is student teaching.

### **EDUCATIONAL ASSOCIATIONS GOVERNED BY JOINT POWERS AGREEMENTS**

Chairman Freborg called on Mr. Decker who presented testimony regarding educational associations governed by joint powers agreements (JPAs).

Mr. Decker distributed a document entitled *ND Joint Powers Agreements (2005-2006)*. The document is attached as Appendix K. He said there are nine educational associations that are governed by joint powers agreements approved by the Superintendent of Public Instruction. He said 28 school districts are currently not members of any such association. He said school districts may determine to which association they wish to belong. He said as far back as the mid-1960s, the Alm Report suggested that there be seven such associations in the state.

Mr. Decker said virtually all of the educational associations governed by JPAs have cooperating partners. He said all have at least one institution of higher education as a cooperating partner. He said the Southeast Educational Cooperative, which includes the Fargo Public School District, has as cooperating partners North Dakota State University, Moorhead State University, and the State College of Science. He said all educational associations governed by JPAs have a lead administrator and DPI is requiring that, as part of the approval process, all educational associations governed by JPAs have at least a half-time coordinator. He said the newest educational association governed by a JPA is the Mid-Dakota Education Council. He said that association began in August and is headquartered in Minot. He said it has not yet hired its coordinator.

Mr. Decker said 93 percent of all students are enrolled in school districts that are in approved educational associations governed by JPAs. He said the educational associations governed by JPAs consist of anywhere from 9 to 31 school districts. He said 28 school districts are not members of educational associations governed by JPAs. He said those 28 districts serve approximately 5,900 students. He said because of the statutory land area requirements, there are no more opportunities for additional approved associations. He said those districts that still remain unattached to an educational association governed by a JPA will, if they wish, have to align themselves with an existing association.

In response to a question from Representative Meier, Mr. Decker said members of educational associations governed by JPAs are contributing significant sums of money from sources other than the reimbursement provided by the 2005 Legislative Assembly.

Mr. Decker said educational associations governed by JPAs include both large and small districts. He said each educational association has a different focus. He said the Northeast Education Services Cooperative (NESC) in Devils Lake is focused on technology. He said the Red River Valley Education Cooperative in Grand Forks is focused on the creation of learning environments for teachers.

In response to a question from Senator Lee, Mr. Decker said early in the process there was a very high level of suspicion about large and small districts



working together. He said smaller districts are beginning to understand that being connected to a larger district through an educational association governed by a JPA makes a lot of resources available. He said most school districts have realized that it hurts more to stay where they are than it does to change. He said the business of running a public school is becoming more complicated and more challenging. He said the educational associations governed by JPAs provide resources and make available colleagues to work through some of the issues.

In response to a question from Senator Flakoll, Mr. Decker said an educational association governed by a JPA is a support organization for its member school districts.

At the request of Chairman Freborg, Mr. Dean U. Koppelman, Lead Administrator, Roughrider Education Services Program (RESP) and Superintendent, Dickinson Public School District, presented testimony regarding RESP. He said RESP has been operational since 2002. He said RESP has both an administrative board and a governing board. He said the administrative board is made up of one representative, usually an administrator, from each member district and the governing board is made up of one board member from each member district. He said the administrative board meets once each month with the exception of July and the governing board meets once every second month. He said RESP has an ad hoc committee governing student and administrative services and a budget and finance committee, which is a standing committee. He said other committees will be formed as additional services are provided. He said RESP has involvement from Dickinson State University. He said Dickinson State University is a cooperating partner. He said, as such, representatives of Dickinson State University attend board meetings of RESP. However, he said, cooperating partners do not have a vote. He said Dickinson has a strong nonpublic school system and although nonpublic schools cannot access state funds, they are allowed to access federal funds. He said the nonpublic high schools are therefore able to participate in some of the programs. He said the nonpublic schools pay dues as well but they do not receive per student payments like the public schools.

Mr. Koppelman distributed a document showing RESP's budget for 2005-06. The document is attached as Appendix L.

In response to a question from Senator Flakoll, Mr. Koppelman said nonpublic schools do not benefit from any of the state tax dollars. However, he said, they do have a right to participate in staff development by virtue of the federal law that allows nonpublic schools access to various title program funds. He said an assessment of \$8.07 per student is asked of participating nonpublic schools as well. He said the nonpublic schools have to come up with that money from their own resources.

Mr. Koppelman distributed a document entitled *Roughrider Education Services Program - RESP Development of Programs 2005-06*. The document is attached as Appendix M. He said the document shows the list of services available through RESP. He said the main focus of RESP has been curriculum mapping and staff development. He said they also have a textbook inventory and they have done grant writing, among other things. He said RESP provides student services that include an alternative high school, a common elementary school curriculum, distance learning, an English language learner program, counseling services, and student wellness. He said some member districts elect to participate in only the minimum statutorily required services. He said others participate in many more services.

In response to a question from Representative Boucher, Mr. Koppelman said the alternative high school program was originally sponsored by the Dickinson Public School District. He said the availability of that program has been broadened. As a result, he said, students from other southwest area high schools who have dropped out can attend the alternative school.

In response to a question from Representative Boucher, Mr. Koppelman said there is a distance limitation. He said if one lives 80 miles away, in Bowman, participation is somewhat limited. He said during the four years that the facility has been in operation as part of RESP, there have been at least a half dozen students from surrounding districts who have attended the alternative high school. He said Dickinson does not charge for the attendance of students at the alternative high school, but it does collect the per student payments. He said those per student payments do not cover the costs of the alternative high school program. He said it is being subsidized by the Dickinson Public School District. He said it is a partnership arrangement. He said by working jointly we can do a better job of providing services to our area than we could individually. He said the alternative high school averages about 20 students per year. He said one or two per year are from the surrounding districts.

In response to a question from Senator Tallackson, Mr. Koppelman said there is quite a bit of group buying that already occurs. He said they are moving into group sharing or buying of textbooks and into group service contracts for maintenance and repairs.

Representative Norland said 60 percent of RESP's budget goes toward administrative costs. He said that seems high given what administrative costs are in the private sector.

In response to a question from Representative Norland, Mr. Koppelman said the coordinator of RESP is also the director of the curriculum and staff development process. He said personnel costs for RESP are in fact lower than those of the average school district. He said 82 percent of the Dickinson

Public School District budget is devoted to people costs. He said the only requirement for the staffing of the coordinator position is that one must have a half-time coordinator position as part of the plan. He said at this point there are no academic or professional credentials tied to the coordinator position.

In response to a question from Senator Freborg, Mr. Koppelman said dual credit is a student service offered by RESP. He said there is an ongoing discussion about how well high school students are doing in college. He said college personnel are participating in RESP's curriculum mapping activities and Dickinson State University has even changed its teacher preparatory curriculum to address curriculum mapping. Overall, he said, the educational associations governed by JPAs have not worked much with the colleges to align what colleges need with what high schools are producing. He said that area needs to be addressed.

In response to a question from Senator Flakoll, Mr. Koppelman said if two school districts are members of an educational association governed by a JPA and if those two school districts reorganize into one district, he believes the newly reorganized district should get one vote. He said most of these associations operate on a consensus model. He said with the opt-in, opt-out provisions, a larger group of districts is not able to force a smaller group to participate in any one thing. He said districts choose the services in which they will participate.

Mr. Koppelman distributed a document entitled *Roughrider Education Services Program (RESP) Professional Development Opportunities 2005-2006*. The document is attached as Appendix N. He said RESP did a needs assessment by the coordinator and gave everyone in the unit a chance to identify their needs and concerns. He said curriculum mapping involves having teachers identify what they are teaching at any particular grade or in any particular area. He said those maps are edited and condensed and then aligned with the state standards. He said they look at areas the state will be assessing and if those areas are not identified as being taught, adjustments are made. He said RESP has gotten away from the one-day, one-shot staff development model. He said grade level and discipline meetings are very much encouraged. He said any member school district can submit an application for a grant to study any particular thing, theory, book, etc. He said that same concept is involved in technology integration. He said RESP has study groups organized around technology. He said these groups are facilitated and a curriculum is required in order to get the grant funds.

Chairman Freborg called on Ms. Denise Wolf, Executive Director, Northeast Education Services Cooperative, who presented testimony regarding the hurdles and opportunities faced by coordinators. She distributed a document entitled *Northeast Education*

*Services Cooperative - Vision and Mission*. The document is on file in the Legislative Council office.

Ms. Wolf said through the use of an educational association governed by a joint powers agreement, the member districts have been able to accomplish things that they would not have been able to accomplish on their own. She said education has changed. She said there is a higher level of accountability, instructional methods are different, transportation costs are higher, enrollments are declining, and the distance between schools has increased. She said we have to provide education today and look at where we are going to be in 2015.

Ms. Wolf said NESC consists of 19 districts which serves a total of 4,835 students and covers 6,634 square miles. She said there is a required membership fee of \$1,000 and there are optional fees for computer technicians, technical support, and scheduling support. She said NESC has a variety of standing committees made up of school principals and staff members who have expertise in particular areas. She said NESC works because there is local ownership. She said the members were able to choose those areas on which they wanted to focus. She said in her geographic area it was technology issues that brought the districts together. She said from that point, it has branched out to include professional development and curriculum issues among other things.

Ms. Wolf said they have found that, as rural districts, they are trying to meet the requirements of AYP. She said one of the problems they have noticed is that some of their students have to take the ACT or the SAT without having access to advanced science courses. She said NESC has applied for a variety of grants that they hope will better prepare their science teachers and ultimately their students.

Ms. Wolf said school districts in the state are required to have a sportsmanship plan, an English language learner plan, and a health and wellness plan, among others. She said instead of each school district creating the wheel anew, NESC has created templates for its members to use and in the process the member districts save both time and money.

Ms. Wolf said NESC has several cooperating partners, including Lake Region State College and Candeska Cikana Community College. She said the teacher center, tech prep center, and the career and technology center are all operated under NESC. She said this has allowed for efficiencies and network support for the schools.

Ms. Wolf said one of the biggest challenges for NESC was the development of a common school calendar and a common class schedule. She said this had a major impact on distance education. She said this will also help when member school districts encounter teacher shortages. She said NESC is also working toward using two full professional development days for graduate credit. Ms. Wolf said at the

last NESC meeting, the administrators were all talking about school improvement. She said seven of their schools were on school improvement and now those seven schools will work together to share resources and hopefully to improve their quality.

Ms. Wolf said NESC is in its fourth year. She said for new educational associations governed by JPAs, the support of school district administrators will be a major factor in their success. She said the trust issue is huge. She said member districts have to decide when it is appropriate to make their buildings available for the good of the whole or when to hold contracts for the good of the whole. She said each new educational association governed by a JPA will experience growing pains. She said in her experience, communication is the key.

In response to a question from Senator Freborg, Ms. Wolf said the special education coordinator from her region provides guidance to NESC and works with NESC on special projects and professional development opportunities.

Ms. Wolf said she found the recommendations in the Alm Report from the mid-1960s to be forward looking in that 40 years later, the recommendations are taking hold within the operational structure of the nine educational associations governed by JPAs.

Chairman Freborg called on Mr. Jon Martinson, Executive Director, North Dakota School Boards Association, who presented testimony regarding educational associations governed by JPAs. Mr. Martinson said he would like to thank the legislators for their support of educational associations governed by JPAs and for laying out a course of action that those associations can follow and re-address during the 2007 legislative session.

Mr. Martinson said there is work to be done in order to continue the efforts of the educational associations governed by JPAs. He said there have been questions about the educational associations becoming too large. He said the land mass of an educational association is an issue at the time a school district contemplates joining the association. However, he said, once a school district begins to work within the structure of the association, the size issue tends to go away.

Mr. Martinson said one of the concerns he hears frequently is how the educational association governed by a JPA will mesh with any existing cooperatives to which school districts still belong. He said that issue becomes magnified because participation in an educational association governed by a JPA results in a district receiving a per student

reimbursement. He said governance and oversight differences between prior cooperatives and current educational associations governed by a JPA will still need to be reconciled. He said some districts would like to get credit for the delivery of services that they have engineered without being part of an educational association governed by a JPA.

In response to a question from Senator Flakoll, Mr. Martinson said there is no opportunity to form another educational association governed by a JPA. He said there is neither sufficient remaining land mass nor students.

In response to a question from Senator Erbele, Mr. Martinson said while it would be nice to think that North Dakota is leading the way with respect to educational associations governed by JPAs, the reality is that there are a number of states that many years ago instituted something like these associations.

In response to a question from Senator Lee, Mr. Martinson said the North Dakota School Boards Association is working to delineate some of the issues governing insurance, hiring, and the purchasing of goods. He said they must all be resolved.

At the request of Chairman Freborg, Mr. Decker distributed a document entitled *North Dakota Resident Births*. The document is attached as Appendix O.

## STAFF DIRECTIVES

Senator Flakoll said, given the increase in fuel prices, he would like to see a document indicating the ending fund balances of school districts as of the conclusion of the 2004-05 school year.

Representative Haas said a special education task force has been created to look at state funding and organization. He said he would like to receive a report regarding the task force's efforts.

Chairman Freborg adjourned the meeting at 3:00 p.m.

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L. Anita Thomas  
Committee Counsel

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John D. Olsrud  
Director

[ATTACH:15](#)