

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

EDUCATION COMMITTEE

Wednesday, January 6, 2010
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative David Monson, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives David Monson, Lyle Hanson, Brenda Heller, Dennis Johnson, Karen Karls, Jerry Kelsh, Lisa Meier, Corey Mock, Phillip Mueller, Lee Myxter, John D. Wall; Senators JoNell A. Bakke, Dave Oehlke

Members absent: Representatives Rod Froelich, Bob Hunsakor, RaeAnn G. Kelsch, David S. Rust; Senators Robert S. Erbele, Layton W. Freborg

Others present: Senator David O'Connell and Representative Bob Skarphol, members of the Legislative Management, were also in attendance.

See [Appendix A](#) for additional persons present.

It was moved by Representative Meier, seconded by Representative Karls, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

Chairman Monson welcomed Senator O'Connell and Representative Skarphol and said they will be participating with the committee in their capacity as members of the Legislative Management.

SCHOOL APPROVAL

At the request of Chairman Monson, Ms. Linda M. Paluck, Director, School Approval and Accreditation, Department of Public Instruction, presented testimony regarding the approval process. Ms. Paluck distributed a document entitled *School Approval - Proposal* ([Appendix B](#)). She said the North Dakota Century Code requires that each public and nonpublic school offering elementary or secondary education to students must be approved by the Superintendent of Public Instruction. She said the Superintendent may not approve a school unless:

1. Each classroom teacher is licensed to teach by the Education Standards and Practices Board or approved to teach by the Education Standards and Practices Board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under Section 15.1-09-57;
3. The students are offered all subjects required by law;
4. The school is in compliance with all local and state health, fire, and safety laws; and

5. The school has conducted all criminal history record checks required by Section 12-60-24.

In response to a question from Representative Monson, Ms. Paluck said the State Fire Marshal is the individual ultimately responsible for ensuring compliance with the fire and safety laws.

Ms. Paluck said the problem with the current approval process is timeliness. She said when data is received by the department via various computerized submissions, the data first must be cleansed to ensure that it is accurate. Only then, she said, is it provided to the approval and accreditation unit for review. She said the approval and accreditation unit examines data for approximately 400 schools. She said this is very time-consuming. She said approval decisions usually are made in late December or early January. She said at this point more than half of the school year is over.

In response to a question from Senator O'Connell, Ms. Paluck said the process is delayed further if clerical errors are found. As an example, she said, a school could intend to reference 120 minutes but inadvertently enter 12 minutes. She said a typographical error of this sort greatly delays the process. She said Department of Public Instruction staff need to be working with schools to ensure that the best possible education is being provided to students rather than spending time looking for clerical or typographical errors.

In response to a question from Representative Monson, Ms. Paluck said even though the information is provided electronically to the Department of Public Instruction, the actual checking of the information is done manually. She said approval letters should be sent to schools before January 1. She said this year the high school approval process is only 25 percent done and the elementary approval process is only 40 percent done.

In response to a question from Representative Monson, Ms. Paluck said when there is a turnover in school administration, often the incoming staff does not know how to fill out the state-required reports. She said other times clerical help is inadequate. She said delays in large schools are often due to the size of the data. She said schools in effect have the entire school year to become approved.

Ms. Paluck said another problem with the current school approval process has to do with the compulsory attendance provisions. She said a student of school age must be in attendance at a

public school. She said presumably, this is intended to mean an approved school. She said if a student attends an unapproved school, that student does not meet the state's compulsory attendance requirements. Historically, she said, enforcement of the state's compulsory attendance law has been lax.

In response to a question from Senator Bakke, Ms. Paluck said many schools use PowerSchool. She said not all of them do. She said tracking students will become easier once the longitudinal data system is in place.

Ms. Paluck said even though the North Dakota Century Code requires that each classroom teacher teach only in those areas or fields for which the individual is licensed or for which the individual has received an exception under Section 15.1-09-57, the department sees individuals teaching outside of the appropriate course areas or fields in small and large schools. She said the question for legislators is what should be done if a school does not meet the approval criteria.

Ms. Paluck said one potential solution is to involve school principals. She said a principal is the individual who should be in charge of ensuring that each teacher in the school is licensed appropriately and is teaching in the appropriate field or course area. She said the principal also should be held accountable for ensuring that all required subjects are being taught and for complying with local and state health, fire, and safety laws. She said a simple compliance report could be used and could be filled out by the principal before the start of a school year. She said if the school does not meet one of the required approval criteria, the school principal could ask for a waiver. She said this waiver would not be permanent. She said the waiver only would be for the period of time within which the school could work with an advisory board to address its issues and become approved.

Ms. Paluck said the compliance report would be a government document and if a principal intentionally lies on this document, the principal would be subject to a criminal penalty.

In response to a question from Representative Mueller, Ms. Paluck said the laws do not allow a pilot to extract a tooth. She said likewise, the laws should not allow an individual who is not appropriately licensed to teach children.

SCHOOL ACCREDITATION

At the request of Chairman Monson, Ms. Paluck presented testimony regarding the accreditation process. She distributed a document entitled *Calculation Tables for High Schools and Middle Schools* ([Appendix C](#)). She said this document sets forth the various education components that are required by the accreditation rules or for which points are awarded or deducted under the accreditation rules. She said the document also sets forth the regulatory description of the various components.

In response to a question from Representative Monson, Ms. Paluck said the total number of points

required for a school to become accredited is dependent on the size of the school.

Representative Monson said in reviewing the regulatory requirement for accreditation, it is clear that the Legislative Assembly needs to determine whether the Department of Public Instruction should direct its focus toward policing regulatory compliance or whether the department should direct its focus toward providing technical assistance to schools and school districts for the betterment of education in this state.

Ms. Paluck said given the time and personnel available at the Department of Public Instruction, she believes the main focus of the agency should be on helping schools educate their students. She said she believes the current approval and accreditation process could be melded into a single system that is much more efficient and much more focused on educational pursuits.

In response to a question from Representative Monson, Ms. Paluck said the Education Standards and Practices Board is responsible for the licensing of teachers. She said the Department of Public Instruction is responsible for the credentialing of teachers. She said when an individual graduates from college with a degree in elementary or secondary education, that person can obtain a teaching license. She said depending on the coursework that individual has done, the license will govern what areas the individual may teach. She said a credential is like a certificate of specialization given to a licensed teacher. She said for example, administrators must demonstrate additional coursework in order to obtain their specific credentials.

Ms. Paluck said the current rules are confusing from many different perspectives. She said one of the standards for school accreditation is that a superintendent be employed. However, she said, the superintendent is employed by a school district, not by a school. She said the same applies to other administrative positions like those of principals. She said two points are awarded, but only if an assistant superintendent is employed and qualified. However, she said, according to the rules an assistant superintendent must have a superintendent's credential. Therefore, she said, a person who is employed as an assistant superintendent must be qualified. She said a person who is not qualified may not be employed as an assistant superintendent.

Ms. Paluck said another area of confusion pertains to teacher preparation. She said the accreditation rules require teacher preparation. She said the field understands this to mean that a teacher must be appropriately licensed. However, she said, the administrative rules do not reference teacher licensure. She said the rules reference a requirement for teacher preparation time during the workday. Furthermore, she said, because teacher licensure is an approval issue and the school that is not approved cannot seek accreditation, she has no explanation for why teacher preparation, if in fact it means licensure, is included in the accreditation requirements. She

said that appears to be duplicative. Similarly, she said, the regulatory requirements for the professional development plan are found in the North Dakota Century Code.

Senator Oehlke said perhaps the department should consider accreditation for a multiyear period of time, much as is done for institutions of higher education. He said the requirements for the assignments of various points should not be maintained in an accreditation period. He said a school either should be accredited or not accredited and that the accreditation should not be based on percentages.

Ms. Paluck distributed a document entitled *Calculation Tables for Elementary Schools* ([Appendix D](#)). She said in many ways this is very similar to the calculation tables for high schools and middle schools. She said on pages 4 and 5 of the document, there are charts showing the minimum instructional time per week for all subject areas required in the various elementary grades. She said it takes a great deal of time for teachers to complete forms showing that they have in fact taught a particular subject for a requisite number of minutes each week. She said she knows of no teacher who follows these minute requirements exactly. However, she said, the Department of Public Instruction staff spends an inordinate amount of time ensuring that the forms submitted by schools in fact contain the required number of minutes.

Representative Mueller said it is difficult to make a connection between many of the accreditation requirements and how those requirements translate into actually helping students learn.

Chairman Monson said it is the wishes of this committee that Department of Public Instruction staff work with the Legislative Council and develop a bill draft for committee consideration that would streamline the approval and accreditation processes.

At the request of Chairman Monson, Mr. Jerry Coleman, Director, School Finance, Department of Public Instruction, presented testimony ([Appendix E](#)) regarding the provisions of state aid to accredited and unaccredited schools. Mr. Coleman said if a school fails to obtain accreditation during one school year, the second school year the school is placed on accredited warned status, and only in the third year would there be any reduction in state aid. However, he said, if a school is unaccredited and a reduction in state aid is required, the school is made whole if at any time during the year the school achieves accreditation. He said at best, money could be withheld for only a short period of time.

Mr. Coleman said the North Dakota Century Code used to contain language saying that a school that was not approved would receive state aid only in the amount of \$200.

Committee counsel said that provision was removed. She said if an entity does not meet the approval requirements, it is not a school in North Dakota. She said if an entity is not a school, the entity

should not be receiving state aid or claiming to be a school.

Mr. Coleman said state aid is not withheld from a school that is not approved.

Senator Bakke said it sounds as if there is no penalty applied to an entity that is not approved and therefore is not a school, but there is a financial penalty for a school that is not accredited.

In response to a question from Senator O'Connell, Mr. Coleman said approximately 10 school districts do not receive any state aid.

Ms. Paluck said there are two unapproved schools.

Chairman Monson said it is becoming very clear that the North Dakota Century Code must be changed to clarify what should be done about entities that do not receive approval from the Superintendent of Public Instruction.

NORTH DAKOTA COMMISSION ON EDUCATION IMPROVEMENT - UPDATE

With the permission of Chairman Monson, Lt. Governor Jack Dalrymple presented an update regarding the activities of the North Dakota Commission on Education Improvement. Lt. Governor Dalrymple said the work of the North Dakota Commission on Education Improvement resulted in the passage of two monumental bills. He said the first bill--2007 Senate Bill No. 2200--focused on equity, and the second bill--2009 House Bill No. 1400--focused on adequacy. He said the two bills were deemed to have satisfied the plaintiffs who had brought suit against the state, and their lawsuit has been dismissed. He said North Dakota is now receiving national recognition for the reforms it enacted.

Lt. Governor Dalrymple said the North Dakota Commission on Education Improvement was created to assist the Legislative Assembly, the Governor, and the interim education committees in addressing education reform. He said the makeup of the commission allowed it to delve into more detail with greater expertise than was available through the interim process. He said the commission is involved in a number of education issues. He said it is examining the weighting factors to ensure they adequately reflect the cost of education. He said the commission is analyzing the minimum and maximum threshold payments and the equity payments to ensure that they are functioning as envisioned. He said the commission is exploring issues with early childhood education and monitoring the role and function of regional education associations. He said the discussion with respect to regional education associations is focusing on whether there ought to be a full-time coordinator for each regional education association and whether each regional education association should be required to provide a minimum set of core services.

Lt. Governor Dalrymple said the commission is examining the special education multiplier to ensure

that it is appropriately set, looking at the nature and scope of the professional development plans and the appropriateness of using early dismissal days for professional development activities, monitoring the expanded teacher mentoring program and national board certification program participation, and monitoring the new tutoring and counseling requirements to determine their effectiveness.

Lt. Governor Dalrymple said another one of the things the commission is looking at is the 22-unit high school graduation requirement. He said in the past the language provided that a student must take "at least" a specified number of units. He said this was not a problem in the past. However, he said, scholarships are now tied to the successful completion of required units and setting grade point average requirements. He said the Legislative Assembly should take a look at this issue. He said the Legislative Assembly also should look at the optional curriculum that requires only 21 units and examine whether the criteria for the scholarships are fair, reasonable, and producing the expected results.

In response to a question from Representative Monson, Lt. Governor Dalrymple said the equity payment system is working as it was intended. He said unless distortions are noted, the equity payment system should not have to be revised.

In response to a question from Representative Monson, Lt. Governor Dalrymple said the current school year is not affected by the 22-unit requirement. He said in the past it was fine to use the phrase "at least" with respect to the number of units required for high school graduation. However, he said, now the North Dakota Century Code includes specific requirements for high school graduation which are more rigorous.

Lt. Governor Dalrymple said with respect to new policy discussions, the North Dakota Commission on Education Improvement is looking at isolated school formulas. He said the commission also is looking at quality instruction and whether there is a need to recruit college students to the teaching profession. He said the commission is looking at why the grade point average of individuals going into teaching is so low and whether there is an image problem with respect to the teaching profession in North Dakota. He said the commission is looking at the potential for expanding the mentoring program and perhaps restoring the role of the school principal as an instructional coach for the teaching staff.

Lt. Governor Dalrymple said the commission is looking at alternative forms of teacher compensation, the length of the school year as it relates to quality instruction, the nonrenewal of very low-performing teachers, and a Teach for America program. He said with respect to school transportation, the commission has decided not to pursue work in this area. However, he said, the commission will analyze any proposals brought forth by others.

Lt. Governor Dalrymple said the state is in the process of reviewing opportunities for Phase II of the

federal stimulus funds. He said much of the information being sought by the federal government has to do with reform initiatives, such as those that were put into place by House Bill No. 1400. He said the questionnaires that the state has received demonstrate the federal agenda for North Dakota. He said he believes the requirements set forth by the federal government will become more stringent rather than less stringent as time goes by.

In response to a question from Representative Monson, Lt. Governor Dalrymple said the Department of Public Instruction has the responsibility to complete forms for Race to the Top grants.

TEACHER COMPENSATION

At the request of Chairman Monson, Mr. Dakota Draper, President, North Dakota Education Association, presented testimony regarding teacher salaries. Mr. Draper said in 2001 legislation was enacted to reimburse school districts \$3,000 for a full-time teacher to help pay for teacher compensation increases. He said the legislation also provided a definition of compensation and provided a minimum salary in the state. He said in 2003 the Legislative Assembly passed the first version of the 70 percent language. He said this required that 70 percent of all new money given to a district be used to increase teacher compensation. He said in 2007 the Legislative Assembly passed a bill that dramatically changed how education is funded in this state. He said Senate Bill No. 2200 ensured that all districts could make significant strides in attracting and retaining teachers. He said this bill also required that 70 percent of all new money go to teacher compensation. He said House Bill No. 1400 (2009) achieved the long sought after goal of providing 70 percent funding to education. He said when this is combined with the American Recovery and Reinvestment Act of 2009 funding, North Dakota schools are in great financial shape. He said from the North Dakota Education Association's perspective, the Legislative Assembly should keep the requirement that 70 percent of all new funding go to increasing teacher compensation.

Mr. Draper said despite the efforts of the Legislative Assembly, North Dakota's standing nationally has not improved.

At the request of Chairman Monson, Mr. Josh Askvig, North Dakota Education Association, presented testimony regarding teacher compensation. Mr. Askvig distributed a document entitled *North Dakota Teacher Salary Data History* ([Appendix F](#)). He said the document, which uses North Dakota Education Association figures, shows that the North Dakota average base salary for a first-year teacher in 2008-09 was \$26,838. He said the document also shows the North Dakota average salary. He said that is not an association figure but is a Department of Public Instruction figure.

In response to a question from Representative Monson, Mr. Askvig said this figure is strictly money in

the pocket. He said the figure does not include any extracurricular compensation or compensatory amounts, such as the employee's share of the Teachers' Fund for Retirement paid for by the school district.

Mr. Askvig said North Dakota still ranks 50 out of 51 states with the District of Columbia being included in the 51.

Mr. Askvig said while benefit packages are an attractant, the bottom line for most teachers is still the amount of actual pay they will receive.

In response to a question from Representative Karls, Mr. Askvig said benefit packages are not included in the compensation because benefit packages vary due to the fact that contracts are bargained locally.

Representative Karls said a teacher in a large district might be responsible for 20 or more students in a class whereas a teacher in a small district might be responsible for only 8 or 10. She said she would expect that the base pay would not be the same.

Mr. Askvig said he would expect that teachers bargain locally for what they believe is adequate pay. He said it has been the position of the North Dakota Education Association that a beginning teacher should make \$40,000. He said some states have beginning salaries well above that. He said for a student who is expected to have four years of college and perhaps additional coursework for extra credentials, a starting salary of \$26,000 does not allow that individual to keep up with student loans. He said that is part of the reason young teachers go elsewhere.

Representative Karls said teachers in Bismarck and Fargo are very well compensated compared to teachers from other school districts in the state.

Mr. Askvig said if you are going to separate teachers in North Dakota's large school districts and compare those salaries to other states, it would be appropriate to compare teachers in North Dakota's larger school districts against teachers in larger school districts from other states and not just the averages in other states.

Representative Monson said teachers in North Dakota probably have greater opportunities to make additional dollars through extracurricular efforts than those in other states.

Senator Bakke said extracurricular assignments take time away from other things, such as preparing for the next day's classwork.

Mr. Askvig said he is seeing the trend of having school districts put more money into beginning teachers and leaving behind the experienced teachers.

Representative Monson said if a number of experienced teachers leave and if they are replaced by new teachers, the lower salaries paid to the newer teachers will affect the average salaries in that district.

Mr. Askvig said the North Dakota Education Association is not opposed to the pursuit of alternative compensation methods but believes that

compensation must not be based solely on student test scores.

At the request of Chairman Monson, Ms. Bev Nielson, North Dakota School Boards Association, presented testimony regarding teacher compensation. Ms. Nielson said the North Dakota School Boards Association stopped collecting salary information a number of years ago because the information was not verifiable or comparable. She said some salaries might be lower compared to other districts but could be part of a schedule that is very aggressive. She said the salary surveys did not indicate whether the health insurance offered by the district was a bare minimum plan or a very lucrative plan. She said the salary information did not indicate whether the district paid both the employer and the employee shares of the Teachers' Fund for Retirement.

Ms. Nielson said a focus only on salaries is virtually meaningless. She said average salaries are equally misleading because they do not indicate whether the teachers are predominately new or predominately experienced. She said prior to the bargaining process, teachers prioritize their benefit package preferences. She said often there are not that many dollars left over for increases to base salary lines.

Ms. Nielson said the state has put a lot of money into education. She said it would be better to have the state continue to fund education at an adequate level and not become involved in dictating how much money must be spent on teacher compensation.

WEATHER-RELATED SCHOOL CLOSURES

At the request of Chairman Monson, Ms. Paluck presented testimony regarding waivers of schooldays in years preceding the 2008-09 school year. She distributed a copy of Section 15.1-27-23 ([Appendix G](#)), which pertains to the closure of schools for weather or other emergency conditions. She said during the 2008-09 school year, approximately 115 school districts applied for waivers. She said in a normal year, approximately 40 districts apply for waivers.

Ms. Paluck distributed a document entitled *Weather Related School Closing Guidance* ([Appendix H](#)). She said the Department of Public Instruction often receives questions from the field regarding weather-related school closings. She said this document was prepared to provide consistent guidance to schools' commonly asked questions. She said during the 2008-09 school year, Valley City had 17 schooldays forgiven. She said most other districts were in the three-day to four-day range.

Ms. Paluck distributed a document ([Appendix I](#)) written by Mr. Ryan Bernstein, Counsel, Governor's office. She said the document clarifies the Governor's interpretation of North Dakota Century Code sections pertaining to weather-related or emergency-related school closures.

Ms. Paluck distributed a document entitled *Record of School "Storm Day" Forgiveness - 2005-2006* ([Appendix J](#)).

INDIAN EDUCATION

At the request of Chairman Monson, Mr. Robert J. Parisien, Indian Education Program Administrator, Indian Affairs Commission, presented testimony regarding challenges faced by schools in Indian country. Mr. Parisien distributed a document entitled *Education Committee Report: Challenges Facing Schools in Indian Country* ([Appendix K](#)). He said on December 10, 2009, the Department of Public Instruction and the Indian Affairs Commission hosted the first-ever Indian Education Advisory Committee meeting. He said the role of the committee is to advise the Department of Public Instruction on educational matters affecting the education of Indian students and to promote equal educational opportunity and improve the quality of education provided to Indian students throughout the state. He said the Indian Education Advisory Committee consists of members who represent both kindergarten through grade 12 and higher education in capacities that serve Indian students.

Mr. Parisien said at the meeting a number of issues were identified as problem areas. He said one among these is the recruitment and retention of teachers. He said many American Indians are having difficulty passing the Praxis tests. He said another issue has to do with reporting requirements. He said even though PowerSchool is widely used, many Indian schools are mandated by the Bureau of Indian Affairs to use the Native American Student Information System. He said there is a desire not to engage in duplication. He said poverty is an ongoing issue in the education of Indian students. He said in the future the Department of Public Instruction will help the committee understand the requirements of the No Child Left Behind Act and, particularly, the requirements associated with making adequate yearly progress.

Mr. Parisien said another issue that needs to be explored is that of jurisdictional conflicts. He said as an example, North Dakota law requires attendance of students until 16 years of age. He said most tribal laws require the attendance of students until 18 years of age. He said enforcement of laws can vary at the same school depending on whether the student's family lives on or off the reservation.

Mr. Parisien said this is the first time that Indian educators are actually sitting across the table from members of the Department of Public Instruction. He said earlier in the year he had attended a dropout prevention summit and was dismayed to see very low

attendance on the part of Indian educators. As a consequence, he said, a dropout prevention summit has been scheduled on February 25-26, 2010. He said the summit will include representatives of the United States Department of Education, McREL, the Department of Public Instruction, the North Dakota Bureau of Indian Education, and the North Dakota Education Association.

At the request of Chairman Monson, Mr. Greg Gallagher, Director, Standards and Achievements, Department of Public Instruction, presented testimony ([Appendix L](#)) regarding student achievement statistics for the Native American student subgroups.

Mr. Gallagher said his testimony includes data regarding districts and schools that did not make the adequate yearly progress by subgroup; achievement and participation rates by subgroup in mathematics, reading, and science; achievement rates by subgroup in the national assessment of educational progress for mathematics, reading, and science in grades 4 and 8; comparative reading rates by district for all students and Native American student subgroups; comparative mathematics rates by district for all students and Native American student subgroups; comparative graduation rates by district for all students; comparative attendance rates by district for all students; and composite achievement rates by subgroup. He said additional information regarding truancy, suspension, expulsion, and student health and safety will be forthcoming. He said in examining the data one must recognize it is not homogeneous. He said there is great variance in performance, and as a result it is imperative to look at the data on a district-by-district basis.

OTHER MATTERS

With the permission of Chairman Monson, Representative Skarphol presented a video entitled *Did You Know 3.0*. Representative Skarphol said the video is available on YouTube. He said the video is a precursor to the upcoming joint meeting of the interim Education, Higher Education, and Workforce Committees. He said it is clear that education needs to change to accommodate the demands of the 21st century. He said it also is becoming evident that education may not know how to fix itself.

No further business appearing, Chairman Monson adjourned the meeting at 3:30 p.m.

L. Anita Thomas
Committee Counsel

ATTACH:12