

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

EDUCATION COMMITTEE

Tuesday, March 30, 2010
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative David Monson, Chairman, called the meeting to order at 1:00 p.m.

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

Members absent: Representative Rod Froelich; Senator Layton W. Freborg

Others present: Representative Merle Boucher, member of the Legislative Management, was also in attendance.

See attached [appendix](#) for additional persons present.

Chairman Monson said Representative Boucher would be joining the committee in his capacity as a member of the Legislative Management.

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

SCHOOL APPROVAL - TEACHER LICENSURE AND QUALIFICATIONS

At the request of Chairman Monson, committee counsel presented a memorandum entitled [Elements of Approval](#).

Committee counsel said the law states that each public and nonpublic school offering elementary and secondary education to students must be approved by the Superintendent of Public Instruction. She said in order to be approved, a school is required to have licensed or approved teachers; the teachers may teach only in the course areas or fields for which they are licensed; the school must offer all subjects required by law; the school must be in compliance with all local and state health, fire, and safety laws; and the school must have conducted all criminal history record checks. She said under the current system, more than half the school year is over before Department of Public Instruction personnel are able to confirm that a school meets or does not meet the approval criteria. In addition, she said, the law is not clear with respect to what the Department of Public Instruction should do if it determines that a school is not in compliance with approval requirements.

Committee counsel said the first requirement for approval is that every teacher must be licensed to

teach by the Education Standards and Practices Board or approved to teach by the Education Standards and Practices Board. She said the North Dakota Century Code provides that one may not engage in the profession of teaching unless one is licensed to teach or approved to teach by the Education Standards and Practices Board. She said the Century Code requires that when a person is hired by a public school district, that person must present evidence of being licensed or approved to the school district business manager. She said the law is silent with respect to that which must be done when an individual is hired to teach at a nonpublic school.

Committee counsel said there does not appear to be a proliferation of unlicensed teachers being hired to teach in public schools. However, she said, if a teacher fails to renew the teacher's license, that teacher is "not" licensed. She said according to the Century Code, if there is an unlicensed teacher in a school, that school does not meet the approval requirements. She said it is not clear whether the unlicensed teacher should be removed from the classroom immediately. She said it is not clear whether the unlicensed teacher is eligible to receive a salary while the license renewal process is underway. She asked whether there should be a different approach to an individual who has earned all the required continuing education credits and is merely in need of administrative paperwork to renew the individual's license versus an individual who does not have sufficient continuing education credits and no opportunity to acquire such before the end of the school year.

Committee counsel said another scenario could involve a nonpublic school hiring a recently retired college professor with a Ph.D. in engineering to teach high school physics. She said the individual might have taught freshman physics for 30 years. She said the individual is a wonderful teacher, the students like the individual, and their test scores are skyrocketing. She said the individual is not a licensed teacher, and the law is not clear with respect to what should be done. She said the Education Standards and Practices Board probably could craft some form of temporary approval. She said if approval is not sought or granted and the individual remains not licensed, the law does not indicate whether the school should lose its approval status immediately and with that its ability to operate in this state. She said the law

is not clear with respect to what the Department of Public Instruction should do in this case.

Committee counsel said there is an administrative rule that authorizes the Education Standards and Practices Board to impose a fine against any individual "who is under contract" and who does not possess a teaching license. She said the fine is \$50 per day with a cap of \$250. She said the fictional physics teacher might not be under contract. She said the teacher might just be helping out without pay because the teacher likes physics, classrooms, and students and views this as a retirement project. She said in this case, the administrative fine would not be applicable to this individual.

Committee counsel said another dimension that needs to be considered is the size of the school, e.g., is the response to be different if in a school of 40 or 50 teachers only 1 is unlicensed versus a situation in which there are only 2 teachers in the school and 1 is unlicensed.

Committee counsel said the second element of approval requires each classroom teacher to teach 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. She said the Century Code goes into great detail with respect to the different options that individuals have in order to be deemed qualified by the Education Standards and Practices Board. She said at an earlier meeting the committee was told that everything an individual is authorized to teach is printed on the back of that individual's teaching license. She said if an individual's teaching license indicates that the individual can teach English and that individual is teaching English, then all is well. However, she said, if that same individual is teaching physics and is not authorized to do so, then it is said the individual is teaching out of field.

Committee counsel said the most likely scenario for a violation of this requirement occurs if a school district or a nonpublic school finds itself unable to fill a particular position. She said if a school simply cannot find a teacher who meets the statutory requirements for teaching a particular course, such as physics, other staff members may be moved around to accommodate the need.

Committee counsel said in 2005 the Legislative Assembly created an exception in which schools could meet such needs and not be found in violation of the law. She said the board of a school district is authorized to fill a position with an individual who is not licensed to teach in the particular course area or field, provided the individual is licensed to teach by the Education Standards and Practices Board or approved to teach by the Education Standards and Practices Board, holds at least a minor or a minor equivalency in the course area or field that needs to be filled, and has received a temporary exception under the respective statutory section.

Committee counsel said an exception granted in accordance with Section 15.1-09-57 is valid for one

school year. However, she said, the exception may be extended by the Education Standards and Practices Board using one-year increments, provided the individual completes certain course requirements each year. She said the rules require the employing school district to request the exception and to document that a diligent effort to employ a regularly licensed individual has been made. She said presumably, the same option applies to nonpublic schools, even though the rules do not specifically mention them.

Committee counsel said as an additional safeguard the Century Code authorizes the Education Standards and Practices Board to hold a hearing and issue a warning or reprimand, suspend an individual teaching license, or even revoke an individual teaching license if, among other things, an individual knowingly taught in violation of Chapter 15.1-18, i.e., if an individual knowingly taught in a course area or field for which the individual was not licensed. She said the Century Code extends that to a school district administrator who knowingly permitted an individual to teach in violation of Chapter 15.1-18. She said a teacher in a public or nonpublic school can be held to account by the Education Standards and Practices Board for this violation. However, she said, only a school district administrator may be held to account. She said the law does not address actions by an administrator of a nonpublic school.

Committee counsel said the question to be asked is if it is important that a teacher be deemed qualified to teach a particular course area or field before taking a position at the front of the classroom, and if the better part of the school year is completed before the Department of Public Instruction can confirm whether this is in fact happening, has the requirement been watered down to the point of being merely suggestive. She said if in January of a school year the Department of Public Instruction determines that a school district has a teacher who is teaching out of field, what should happen. She said it is not clear whether the teacher is to be immediately removed from the classroom. She said the removal of a teacher from the classroom is not without other consequences for the school or school district.

Committee counsel said it is not clear in the Century Code whether money should be withheld from a school district upon discovering something such as having a teacher teaching out of field. She said it is not clear whether money should be withheld permanently or returned to a district upon achieving compliance with the law. She said it is not clear whether the Department of Public Instruction can provide state aid to a district that has an unapproved school. She said an additional dimension exists if districts do not receive any state aid. Likewise, she said, the law does not indicate whether in the case of a nonpublic school, the Department of Public Instruction is limited to notifying the parents.

Committee counsel said just as with teacher licensure, the committee might want to address

whether being qualified to teach in a course area or field is important. She said the committee might want to clarify whether this is a requirement that should be enforced, encouraged, or merely recommended.

Committee counsel said as the interim committee is pursuing issues of school approval, it becomes important to determine at what point a school is approved and at what point a school is not approved. She said the issue is more than one of policy. She said it is also an issue of payment. She said in accordance with the Century Code, if a school is not accredited the amount of state aid that it is eligible to receive must be reduced. She said a school may not be accredited unless it is first approved. She said in the past, the Century Code provided that payment for an unapproved school was to be \$200 per student. She said that was changed in 2007 Senate Bill No. 2200 under the theory that an entity which was unapproved was not a "school" and therefore should not be supported in any amount.

Representative J. Kelsh said there is a significant issue regarding substitute teachers and their qualifications.

Representative Monson said it is his belief that a substitute teacher from any field can be asked to come into a classroom for an indefinite period of time.

Ms. Linda M. Paluck, Director, School Approval and Accreditation, Department of Public Instruction, said a substitute teacher should not be used for the entire school year. She said after a certain amount of time, a substitute teacher should be put on the district's salary schedule. She said what constitutes the requisite amount of time generally is determined by the district through negotiations with its teachers.

Representative Monson said it appears that one could get around the qualification requirements by employing a substitute teacher almost indefinitely.

Ms. Paluck said schools that are unable to hire a qualified teacher can comply with the letter and spirit of the law by using distance-learning options, including electronic course delivery from other states.

Representative Monson said while distance-learning options can fill a variety of needs, there are certain courses, like music, which are difficult to deliver electronically.

In response to a question from Representative Hanson, Ms. Paluck said teachers at alternative schools face the same requirements, unless the Education Standards and Practices Board determines a particular area to be one in which shortages exist. She said in alternative school settings, however, the students tend to rely heavily on electronic course delivery. She said in these cases there is a licensed and qualified teacher of record.

In response to a question from Senator Bakke, Ms. Paluck said the Education Standards and Practices Board is responsible for issuing teacher licenses. She said the board lists on the back of each teacher's license exactly what that individual is qualified to teach. She said the Department of Public Instruction is responsible for providing credentials.

She said these apply to school administrators, special education teachers, and library media specialists.

In response to a question from Representative Mueller, Ms. Paluck said the majority of public school districts meet the approval requirements. She said those that tend to be considered out of compliance generally reach that status because of coding errors.

In response to a question from Representative Mueller, Ms. Paluck said often schools are flagged as not approved because they have a teacher whose teaching license will expire before the end of the school year.

Representative Monson said it would make a lot of sense for the Education Standards and Practices Board to align the expiration dates of all teacher licenses so that they take effect on July 1 and expire on June 30. He said this would prevent teachers' licenses from expiring during the middle of a school year.

Ms. Paluck said she has discussed the possibility of having a common license expiration date with the Education Standards and Practices Board. However, she said, the board believed it was not sufficiently staffed to handle the amount of work this would generate. She said right now an individual's teaching license expires on the individual's birthday. She said the expiration date is printed on the teaching license.

Representative R. Kelsch said the federal government has in place requirements for highly qualified teachers. She said in the reauthorization of the Elementary and Secondary Education Act, it appears that requirements regarding teacher qualification will stay or even be increased. She said the approval and accreditation systems currently in place are antiquated. She said that is why this study was proposed. She said as the Legislature Assembly continues to put more money into education, there needs to be greater accountability. She said while there is no desire to increase the amount of paperwork that is required of teachers and schools, there is certainly the desire to ensure that children are in safe environments with well-qualified teachers.

Ms. Paluck said schools are required to send in their MISO reports by September 15. She said 472 schools have to state the number of teachers they have, the number of class periods they have, and the number of students assigned to each class, among other things. She said although her unit would like to receive the data about November 1, frequently it is not considered clean at that point. She said sometimes enrollments change and MISO forms need to be changed. She said when the reports are finally turned over to the unit, two staff members go to work on the elementary reports and two staff members go to work on the high school reports. She said the first thing her staff looks at are the approval issues. She said the letters of approval should be out, according to department rules, by December 31. She said she still has a pile of accreditation reports on her desk. She said they have not yet been sent out. She noted today's date is March 30. She said as of March 30,

approximately a dozen schools have not been approved.

Ms. Paluck said when she asks administrators if they know whether they have teachers teaching out of field or if they have unlicensed teachers, the response she receives is they do and that it is their job to ensure that the law is being followed. She said the only reason she has for the existing process of going back and double-checking that which the administrators are already doing is the fear that somebody might be lying. She said the information that her unit checks is information that is provided by the schools and school districts. She said much of what her staff does is duplicative of federal requirements and duplicative of processes already undertaken by the Education Standards and Practices Board with respect to teacher licensure. She said there is a tremendous amount of assistance from the Education Standards and Practices Board for staff members who are not appropriately qualified. She said her staff could be used to help schools improve systemically rather than engaging in the administrative double-checking that is required.

Representative R. Kelsch said the Legislative Assembly has addressed any concerns about not being able to trust school district superintendents. She said that was a concern, particularly in the area of transportation. She said she believes that we can trust our school district superintendents with the approval information as well.

Senator Bakke said it seems that with today's access to technology, if the Education Standards and Practices Board enters data regarding the qualification of teachers and the fields or course areas in which they may teach, schools and school districts should not be required to reenter that information and the Department of Public Instruction should not be required to double-check every last entry. She said if computers would talk to each other, everybody who has a stake in this would know right away who is or is not qualified.

Representative Rust said no matter how diligent people are, there is the opportunity to miss a teacher's license expiration date. He said when this happens, the teacher is out of compliance and the school or school district is out of compliance. He said it is not that much unlike driver's license renewals. He said occasionally, a person does forget to renew the person's driver's license on time.

Representative Rust said he believes under the No Child Left Behind Act a school must notify parents if children are not being taught by a highly qualified teacher, after a certain number of days.

Ms. Paluck said schools have to notify parents if the children are attending a school that has not met adequate yearly progress. She said the notification also has to take place if it is a Title I school.

Senator Oehlke said the Insurance Department deals with the licensure of insurance agents. He said those licenses can be renewed online. He said when he takes continuing education credits, the individual or

entity that offers the course must verify his completion and provide that information to the Insurance Commissioner. He said perhaps someone ought to see if the software used by the Insurance Commissioner would be compatible for teacher license renewals.

Ms. Paluck said each teacher is responsible for ensuring that the teacher's license is current. She said a teacher should not have to rely on the employing school or school district or on the Department of Public Instruction.

Senator Bakke said in looking at the five elements of school approval, it appears that teacher licensure is within the purview of the Education Standards and Practices Board. She said in addition, obtaining criminal history record checks for teacher licensure is within the purview of the Education Standards and Practices Board. She said even ensuring that teachers are teaching only in those course areas or fields for which they are licensed is arguably within the purview of the Education Standards and Practices Board. She said ensuring that all required subjects are offered seems to be within the purview of the Department of Public Instruction. She said we could probably speed up the approval process between the Education Standards and Practices Board and the Department of Public Instruction.

Ms. Paluck said if the Education Standards and Practices Board is responsible for teacher licensure, it does not make sense to duplicate that within the Department of Public Instruction. She said it would be more beneficial to the students of North Dakota if the talent and resources within the Department of Public Instruction would be used to assist schools in educating the students, rather than requiring that staff members sit and line-check how particular boxes are filled in by school personnel. In addition, she said, if a school or school district elected not to offer a particular course, such as physical education, the Department of Public Instruction would certainly hear about that very quickly from other teachers, board members, parents, and even students.

In response to a question from Representative Monson, committee counsel said one of the issues that came up in discussions about the approval process is whether licensure should be left up to the schools and or the school districts as part of the hiring and continuing employment of teachers. She said the question was asked whether the Department of Public Instruction should have a role in duplicating that effort.

In response to a question from Representative Monson, committee counsel said the earlier discussion focused on the professionalism of principals and superintendents of this state and, given that level of professionalism, could they be trusted with ensuring that their teaching staff were in fact appropriately licensed. She said the law requires proof of licensure upon hiring, at least within the public system. She said as for teaching in the appropriate course area or field, all that is needed is for an individual to turn the license over and look at the list of

course areas or fields that the teacher is authorized to teach. She said the Century Code makes it a Class A misdemeanor for someone to issue a written statement if that individual does not believe it to be true. She said if someone is filling out a MISO form and if it is later discovered that the individual lied about a teacher's license or about the course area or field in which a teacher was teaching, that individual is guilty of a Class A misdemeanor.

Senator Bakke said it is inconceivable to expect the Department of Public Instruction to check every single teacher every single year with respect to licensure and with respect to the course areas or fields in which those individuals are teaching.

Senator Bakke said since the MISOs are state forms and not required by the federal government, the department or the Legislative Assembly could determine what information should and should not be requested on those forms.

In response to a question from Representative Monson, committee counsel said some of the suggestions could be accommodated by requiring in law that each school principal or superintendent ensure that their respective teachers are duly licensed and teaching in the appropriate course areas or fields and further requiring that they report the information to the Superintendent of Public Instruction at the time and in the manner required by the Superintendent. She said that type of provision coupled with the misdemeanor for falsely reporting information on a government document arguably would enable the removal of certain duties that are currently assigned to the Department of Public Instruction within the approval process.

Representative Monson said Section 15.1-13-17 requires that an individual engaged in the profession of teaching be duly licensed by the Education Standards and Practices Board or approved by the Education Standards and Practices Board. He said that provision applies to public and nonpublic schools. However, he said, Section 15.1-13-18 only requires individuals to present proof of licensure when being hired by a public school district. He said it is not clear that a private school is expected to meet this requirement as well. He said that is probably a section that needs to be clarified as well.

Representative Monson said the North Dakota Century Code and the North Dakota Administrative Code authorize the Education Standards and Practices Board to impose a fine on an individual who teaches without being licensed. He said the fine is set at \$50 for each day the individual practices without a license and the fine is capped at \$250. He said that does not seem like a very large amount given how much a teacher could earn within the scope of a year. He said he also wonders if there should be a grace period or if the fine should be imposed beginning the day after the teacher's license expires.

Ms. Paluck said if a teacher is found to be teaching with an expired license and asked to leave the classroom, that is an extremely embarrassing

situation for the teacher. She said either the teacher or the school district may pay the fine.

Representative Monson said if a highly qualified teacher is removed from a classroom because that individual's license has expired and a substitute who perhaps is not highly qualified is placed in that classroom for a period of time, we need to ask ourselves whether we have done what is in the best interest of those students. However, he said, the law is the law and the Department of Public Instruction needs to have clear guidance regarding enforcement.

In response to a question from Senator Bakke, Ms. Paluck said all public and nonpublic schools must meet the approval criteria set forth in the Century Code.

In response to a question from Representative Monson, Ms. Paluck said if a teacher is found to be teaching without a license, Department of Public Instruction personnel generally contact the principal and the individual teacher.

With the permission of Chairman Monson, Ms. Bev Nielson, North Dakota School Boards Association, presented testimony regarding the first two statutory elements of approval. She said the reason the law contains requirements for school approval is because North Dakota has a compulsory attendance provision. She said if students attend a school that is not approved, those students are not meeting the requirements of the compulsory attendance law.

Representative R. Kelsch said if compulsory attendance requirements are the critical components of school approval, why are we maintaining a system that does not allow for a determination of school approval until December or even January of a given school year.

Ms. Nielson said most people would agree that it is very important to have effective teachers. She said she does really care how an individual got to be an effective teacher. She said sitting a certain number of hours to obtain particular credits or to obtain a particular certificate is not necessarily the mark of an effective teacher. She said the more appropriate measure is probably whether the students are learning that which they are supposed to learn. She said the whole field of education is moving toward a focus on student achievement. She said one of the questions listed in the points of discussion is whether consequences for noncompliance should be weighed if student performance exceeded expectations. She said as we look to redesign our school approval and possibly school accreditation laws, we should focus not on some statutory requirements that have been in existence since statehood, but rather on what is appropriate for and supportive of the education of our children. She said if an individual has been teaching successfully for several years and that individual's license expires, pulling that individual from the classroom is not in the best interest of the children. Likewise, she said, if a school or school district is unable to find a duly qualified teacher to teach in a particular course area or field, closing the entire

school because it does not meet one of the approval criteria is not in the best interest of the children. She said we need to start looking at waiver periods or grace periods or student achievement. She said raising student achievement is a much more significant focus than counting minutes in determining how long students are sitting at their desks.

Ms. Nielson said we want good schools and we want our students to achieve. She said that will take thinking outside of the box, rather than just making minor changes to our current ancient system. She said it appears as if the reauthorization of the Elementary and Secondary Education Act will require us to define effective teachers based on student growth. She said highly qualified teachers may or may not be a part of that equation.

Representative R. Kelsch said the latest information she has regarding the reauthorization of the Elementary and Secondary Education Act is that the requirements for highly qualified teachers will remain and requirements for effective teachers will be added. She said even though it may appear that some of this is putting the cart before the horse with respect to what the federal government is going to require, it is important that we in North Dakota have an idea of the direction we would like to go.

Representative Monson said the approval system is broken. He said we have laws on the books and no way to enforce them. He said we need to clarify what the role of the department is with respect to enforceability, and on those points that we believe are important for the education of our children, we need to ensure that the law has appropriate teeth and is being appropriately enforced.

In response to a question from Senator Bakke, Ms. Nielson said an effective teacher is not necessarily a licensed teacher. She said rather than a teaching license, an individual might have a Ph.D. in a given field. She said the question is whether that individual is effective in teaching the children. She said that criteria might not be provable on the first day that individual is in the classroom. However, she said, if a licensed teacher walks into a classroom, proving that that individual is effective on the first day is not going to happen either.

Senator Bakke said when she attended university, she had professors who were very knowledgeable in their field but were not effective teachers because they did not have a pedagogical background. She said it is a mistake to believe that just anybody who knows the material can teach. She said it is important that a person have a pedagogical background and an understanding of child development in order to teach.

Ms. Nielson said Senator Bakke is a licensed teacher as is she and therefore the tendency is to assume that only licensed teachers should be teaching children. However, she said, she also is aware of individuals who have been licensed teachers but ineffective teachers.

With the permission of Chairman Monson, Mr. Doug Johnson, Executive Director, North Dakota

Council of Educational Leaders, said his members recognize that the approval and accreditation system needs to be streamlined. He said there is still a great deal of confusion between the two systems. He said his members are supportive of using a compliance document and understand that criminal penalties exist for lying on such a document. He said his members would not be supportive of increasing the financial penalties. He said as the law stands, the fine may seem like a relatively minor amount. However, he said, an individual could lose one's teaching license for certain violations.

In response to a question from Representative R. Kelsch, Mr. Johnson said the criminal penalties in the law are applicable if an administrator knowingly claims something to be true and it is not. He said in either a court proceeding or an administrative proceeding, there would be finding of fact to determine whether the administrator merely made an error on a form or misrepresented the facts.

In response to a question from Representative Hunskor, committee counsel said at the outset of this study both Department of Public Instruction staff and she looked at approval requirements in other states. She said much as with education finance, school approval processes are tailored to the different interests in the different states. She said in many states the Department of Public Instruction is given blanket authority to set criteria for the approval of their schools.

SCHOOL APPROVAL - REQUIRED SUBJECTS

At the request of Chairman Monson, committee counsel presented the three remaining elements of school approval. She said the third element of school approval requires a school to offer all subjects required by law. She said Section 15.1-21-01 addresses what must be provided to elementary and middle school students, and Section 15.1-21-02 sets forth the high school courses that must be made available. She said with respect to the high school level, this is not the section that establishes what students must take in order to graduate. She said it simply sets forth those subjects that schools must make available to those students. She said the law allows this to be done by classroom or individual instruction and distance-learning, including interactive video, computer instruction, correspondence courses, postsecondary enrollment, etc.

Committee counsel said there seems to be agreement among Department of Public Instruction personnel and representatives of the various education interest groups that with all of the options available for "delivery" there is no excuse for any school or school district not to make the requisite courses available. She said if that is in fact the case, the committee might want to determine whether it is then important or necessary for Department of Public Instruction personnel to line-check data and verify that

the courses are in fact being made available. She said the question is whether in the normal course of events a failure on the part of a school or school district to include certain courses would be brought to the attention of the Department of Public Instruction by teachers, parents, or students.

Committee counsel said if an entity were trying to establish itself as a school in this state, the entity would need approval from the Superintendent of Public Instruction. She said as part of the approval process, it is incumbent upon the Superintendent to verify that the entity will in fact be teaching all the subjects required by law. However, she said, in the case of an established school, what happens if that school elects to omit a science course. She said if a school is an established school and determines that science is incompatible with its religious beliefs, what should the Department of Public Instruction do.

Committee counsel said the statutory role of the Department of Public Instruction is to ensure that students are offered all subjects required by law. She said they do this by ensuring that a particular box is checked. She said there is no required followup regarding what is in fact being taught within that course name and no followup regarding whether it is being taught well. She said the question for the committee is whether this is an appropriate use of time and resources.

In response to a question from Representative Mueller, Ms. Paluck said in order to become an accredited school, whether through the North Central regional accrediting body or through the state accreditation process, a school must be approved.

In response to a question from Representative Monson, Ms. Paluck said it is more important that we measure students on their proficiencies, rather than on the amount of time spent sitting in a particular seat.

Representative Rust said he is not certain that one should disregard time on task. He said if one group of students is in a classroom for 140 days and a second group of students is in the classroom for 170 days, that second group, having spent more time in the classroom, usually will show greater achievement.

SCHOOL APPROVAL - HEALTH, FIRE, AND SAFETY LAWS

At the request of Chairman Monson, committee counsel presented the fourth element of school approval. She said the fourth element requires that each public and nonpublic school be in compliance with all local and state health, fire, and safety laws. She said the Century Code requires the State Fire Marshal, or the marshal's designee, to inspect each public and nonpublic school at least once every three years. The State Fire Marshal provides a report to the school district superintendent or the administrator in the case of a nonpublic school and to the Department of Public Instruction. She said if there is a deficiency, the school district superintendent or the school administrator in the case of a nonpublic school is to

submit a plan of correction to the State Fire Marshal and remedy the situation within a time period acceptable to the State Fire Marshal. She said the law does not address what should happen if this is not done. She said if the State Fire Marshal finds an imminent fire hazard, the State Fire Marshal immediately must notify the school board, the school district superintendent, and the Department of Public Instruction. She said if the Superintendent of Public Instruction recommends immediate closure, the local school board and the school district superintendent "may" close some or all of the school. She said a parallel provision is in place for nonpublic schools.

Committee counsel said if the board of a school district or the governing board of a nonpublic school decides it will not close the school, despite the recommendation of the Superintendent of Public Instruction, should the Department of Public Instruction consider the school to be approved.

In response to a question from Representative Monson, Ms. Paluck said she recently received a fire inspection report that cited 135 violations. She said some of the violations are repeat violations. However, she said, the school involved is a Bureau of Indian Education school.

In response to a question from Representative Monson, Ms. Paluck said because it is a Bureau of Indian Education school, it does not receive state aid. However, she said, North Dakota children are attending that school.

Senator Bakke said even though it is a Bureau of Indian Education school, if there is a fire in the building the state could be held liable.

With the permission of Chairman Monson, Dr. Wayne Sanstead, Superintendent of Public Instruction, said the fire inspection was done for the Standing Rock Agency by the Great Plains Region. He said multiple attempts to contact the individual having authority over the school and the inspection process have failed. He said we do not know what our liability is in the event something happens to these children.

In response to a question from Representative Boucher, Dr. Sanstead said the school involved is the Standing Rock Community School.

Representative Boucher said he believes the Standing Rock Community School is not a Bureau of Indian Education school but rather a P.L. 93-638 tribal contract school. He said if the school were a Bureau of Indian Education school, the Department of Public Instruction could deal directly with federal officials, and they would be more likely to act on the matter expeditiously. He said P.L. 93-638 contract schools are under the jurisdiction of local tribal governments. He said this is something that needs to be addressed immediately. He said Mr. Scott J. Davis, Executive Director, Indian Affairs Commission, has been very aggressive about becoming involved in these types of issues. He said Mr. Davis should be brought into the discussion if that has not already happened.

In response to a question from Representative R. Kelsch, committee counsel said in the case of an imminent hazard, the local school board "may" close some or all of the school. She said it does not have to close the school. She said that causes problems for the approval process. She said if the Superintendent of Public Instruction recommends closure and the local school board elects not to close the school, is that school considered to be an approved school.

Representative Monson said he wonders if it is not time to consider a law change to require that a school district close a school upon a recommendation of immediate closure by the Superintendent of Public Instruction.

Representative R. Kelsch said if we put some teeth in the law, we also would need to require that accommodations be made for those students. She said they would need to be bused to some other location or otherwise accommodated.

Committee counsel said that requirement is in the law. She said in the case of a closure the school district superintendent must cooperate with the Department of Public Instruction to make adequate arrangements for the interim education of children.

In response to a question from Representative Boucher, committee counsel said with respect to fire inspections, the Century Code has two sections. She said one section deals with public schools, and the ensuing section deals with nonpublic schools. She said regardless of whether a tribal contract school is considered a public or a private school, the school must abide by the same requirements for fire inspections and remedying deficiencies. She said the approval requirements apply to all schools and that includes all provisions relating to fire inspections.

Dr. Sanstead said there is a joint powers agreement in effect between the public school district and the tribal contract school.

Senator Bakke said it should not make any difference whether the children in attendance at this school are from the reservation or from an adjoining school district. She said these are North Dakota schoolchildren. She said they appear to be in a dangerous situation and we need to address that.

In response to a question from Senator Bakke, Representative Monson said home educators are not subject to a fire inspection of the environment in which they are educating children. He said home education is not considered to be delivered in a "school."

Representative R. Kelsch said if home educators are seeking to provide education to students other than their own children and if they wish to provide such education to those children in environments other than their own homes, such as churches, then perhaps consideration needs to be given to extending the requirements for fire inspection to accommodate those circumstances as well.

Representative Mueller said the State Fire Marshal has the authority to close down restaurants, clubs, and all sorts of other public buildings if it is determined the building is a fire hazard. He said it seems that

perhaps we need to extend the authority of the State Fire Marshal in this instance.

Senator Bakke said this seems to be one of the areas in which we should be able to say if the State Fire Marshal determines that the school is an imminent risk, the State Fire Marshal should notify the Superintendent of Public Instruction, and the Superintendent of Public Instruction should close the school.

Representative Monson said the way the law is written right now, it allows Dr. Sanstead to recommend immediate closure and then places the responsibility for action back on the local school board and the school district superintendent. He said they may close some or all of the school. He said they do not have to close some or all of the school.

In response to a question from Representative Monson, committee counsel said the present language pertaining to the State Fire Marshal conducting an inspection of public and nonpublic schools came about at the recommendation of an interim Education Committee. She said it was a highly contentious issue. She said the language providing that if the Superintendent of Public Instruction recommends immediate closure, the local school board and the school district superintendent "may" close some or all of the school was left as being permissive rather than mandatory because legislators felt that no duly elected school board would, upon being informed that imminent fire hazards were present at a school, allow children to remain in an unsafe environment. Therefore, she said, the statute allowed the final say with respect to closing or keeping open a school to remain with the local community.

Representative J. Kelsh said he clearly remembers the interim discussion referenced by committee counsel. He said legislators were of the opinion that it was too intrusive to have the state Superintendent of Public Instruction come in and mandate closure of a local school. He said our thinking on these issues should not be colored by whether anybody in the past has ever been killed in a school fire. He said we need to ensure that no one will ever be killed in a school fire.

Dr. Sanstead said this committee was talking earlier about seat time and monitoring how many minutes students receive instruction in the various subjects. He said he recently encountered a personal circumstance in which his granddaughter was ill and had to miss several days of school. He said the child's mother arranged to have her connected to the classroom via Skype. He said she was able to participate in every minute that school was on during the period of her illness. He said the unresolved question was whether the child was in fact in attendance during those days. He said the point is technology is requiring that we rethink many of the basic premises that have surrounded education for decades.

Representative Mueller said even though the number of fire code violations is very high, it is

important to recognize that not all violations are assigned the same degree of seriousness. He said before too much is done, further information should be gathered about the nature and extent of the violations.

SCHOOL APPROVAL - CRIMINAL HISTORY RECORD CHECKS

At the request of Chairman Monson, committee counsel presented the fifth element of school approval. She said the fifth element states that a school must have conducted all criminal history record checks required by Section 12-60-24. She said in 2003 a large number of requests were made for legislation authorizing record checks for specific positions. She said because this involved the Bureau of Criminal Investigation, the Attorney General's staff was asked to consider these requests as an agency bill draft and coordinate and consolidate them for consideration by the Legislative Assembly. She said an Attorney General's opinion in 2008 provided that under Section 12-60-24, public and nonpublic schools may request criminal history record checks, but they do not have to request such checks.

Representative Monson said before the Education Standards and Practices Board licenses an individual, that individual is required to undergo a criminal history record check.

In response to a question from Representative Rust, committee counsel said school districts determine on their own whether they should ask for a criminal history record check prior to hiring an individual. She said the discussions regarding liability are left to take place between the individual school boards and their respective legal counsels.

Senator Oehlke said the Devils Lake School District conducts criminal history record checks on all potential employees. He said the school district also conducts criminal history record checks on individuals who are not employed by the school district, such as coaches.

In response to a question from Representative Monson, committee counsel said at the time the bill authorizing criminal history record checks was being considered by the Legislative Assembly, a line was added to the statutory elements of school approval providing that in order to be an approved school, the school must have conducted all criminal history record checks required by Section 12-60-24. She said Section 12-60-24 does not require criminal history record checks, it merely authorizes certain entities to obtain such checks.

Representative R. Kelsch said the committee will need to determine what role record checks should play in the approval process of schools. She said unfortunately, the world has gotten to the point where it is necessary that we have record checks on any individuals having contact with students. She said we require criminal history record checks of day care workers and foster parents.

Chairman Monson said the committee will need to consider whether it wants to require criminal history record checks only of new hires or of all staff currently employed. He said there will be a certain financial burden that comes with that.

With the permission of Chairman Monson, Ms. Nielson said the intent of the Attorney General's bill was to ensure that only certain entities could call up and obtain criminal history record checks.

Ms. Nielson said the provision regarding criminal history record checks allows school boards to require criminal history record checks of volunteers. She said if school boards are going to be required to obtain criminal history record checks, there will have to be some discussion about the added expenses that the boards will incur in so doing. She said in addition, those districts that have elected to request criminal history record checks of volunteers have found a reduction in the number of individuals willing to be volunteers. She said it is not that people feel they have something to hide, they are just hesitant to have their fingerprints sent to the federal government.

Ms. Nielson said criminal history record checks are required for teachers. She said consideration could be given to extending such requirements to all other employees. However, she said, if the Legislative Assembly elects to extend the requirement to volunteers, it needs to understand this would include every parent who drives to a field trip and occasionally helps out in a classroom.

Ms. Nielson said the North Dakota School Boards Association told districts that once the statute giving them access to the information was enacted, they incurred the liability.

In response to a question from Representative R. Kelsch, Ms. Nielson said the North Dakota School Boards Association concluded that Section 12-60-24 gave the school districts the authority to require criminal history record checks of existing employees. However, she said, the association was concerned with respect to what the options were in the event a criminal history record check disclosed something undesirable about a tenured employee. She said districts also have had to decide what prior activities preclude an individual from employment. She said it was not necessarily a predatory act that was the subject of the discussion, but things such as convictions for driving under the influence.

In response to a question from Representative Monson, Ms. Nielson said a criminal history record check costs approximately \$50.

COMMITTEE DISCUSSION

Representative Rust said he believes the approval process should be contingent on a certificate of compliance signed by the principal of the school, the superintendent of the school district, and the president of the school board. He said this document could be signed at the August or September meeting of the school board and then submitted to the Department of Public Instruction.

In response to a question from Representative Monson, Representative Rust said the compliance check could consist of the elements of approval that are currently in the law.

Senator Bakke said she is supportive of the compliance checklist. She said the current approval process is so cumbersome it just does not have any purpose.

Representative Rust said it would also be appropriate to place on the compliance form the penalty for knowingly providing false and misleading information. He said it would also be appropriate to require that the Department of Public Instruction audit a certain number of schools or school districts each year to ensure accurate responses are on the compliance form.

Representative R. Kelsch said she is concerned about the issue of timeliness. She said even if we require only a compliance form, we need to ensure that the form is sent to the Department of Public Instruction on a timely basis. She said she is concerned that even if the potential penalty is stated on the compliance form, school personnel are going to assume requirements that have not been enforced in many years are not going to be enforced from this day forward. She said it is completely inappropriate that some schools or school districts are not returning their paperwork for months and receiving state funds while they are ignoring the law.

Representative Monson said he agrees that there should be some financial sanction so that if school districts do not file the appropriate paperwork by the required date, a set amount per day is subtracted from their state aid.

Representative Rust said many years ago a certificate of compliance was due on or about September 15. He said the October foundation aid payment did not go out if the compliance report had not been submitted. He said his recollection is that at the very least that was the threat. He said he would not have a problem requiring a similar sanction in the current law. He said if we set a required date during the third week of September, that allows for at least one board meeting to take place in September.

Representative Monson said that is in effect what the Department of Public Instruction currently does. He said it withholds the dollars, and when the reports are submitted, the withheld dollars are returned to the school district. He said he believes the money needs to be withheld permanently and not returned upon submission of a state form.

Representative R. Kelsch said if the penalty is not meaningful, then the only thing we have done is add another level of paperwork. She said there is no reason why superintendents should not be expected to return the required paperwork to the Department of Public Instruction on time. She said if we are going to expect the schools to return their paperwork by a date certain in September, we also need to ensure that the Department of Public Instruction is going to expedite its approval and accreditation reviews.

Representative Monson said while withholding state aid is an effective response with respect to the public school districts, there is no similar consequence that the state can apply to the nonpublic schools.

Representative J. Kelsh said we have to keep in mind who we are trying to punish. He said if we withhold state aid, the superintendent or the principal who did not get the paperwork in on time receives no consequences. He said if we withhold state aid, the only consequences are to the students. He said the fines should be imposed on the superintendent, the principal, or the school district business manager, but not on the students.

Representative R. Kelsch said we need to remember that 70 percent of state aid goes to pay school district salaries. She said she believes that a reduction in state aid to a school district because of late paperwork will not go over very well with patrons of the district. She said perhaps what we need to do is require that the patrons of the district are notified by a letter that state aid is being reduced because district personnel did not submit the required paperwork in a timely manner.

Representative J. Kelsh said school personnel are professional people. He said they know the dates that paperwork must be submitted to the Department of Public Instruction. He said there is clearly something wrong with the thinking out in the field. He said if there is a problem with the school districts being able to submit their information in a timely manner, then perhaps we should change the required date of submission. He said it is not the fault of the school board or district. He said the principals and superintendents are the ones that are there running the operations on a daily basis.

Senator Oehlke said perhaps there should be a nice, simple, short form and a very complicated, multipage, long form. He said if the individual responsible for submitting the short form does not get it in on time, then maybe the punishment is to require that the long form be completed. He said that way the individual who did not get the paperwork done in a timely manner actually has to bear the burden of the additional work.

Representative Monson said perhaps we could allow school districts to request one extension of 14 days. He said this would be comparable to requesting an extension for filing income taxes. He said the requirement would be that the extension must be requested before the due date.

Representative R. Kelsch said we pay our principals and superintendents pretty well across the state. She said we need to recognize that strong schools begin with strong leaders. She said she would certainly be open to suggesting that individual salaries be withheld. However, she said, that is something that could be addressed at the local level, rather than at the state level. She said the issue before us is that over the years, regardless of when paperwork was submitted, no consequences were

imposed. She said schools and school districts have been allowed to get by with late submissions.

Committee counsel said if a school or school district's situation changes after the required filing is submitted, is the intent to ask that an amended document be submitted to the Department of Public Instruction.

Representative R. Kelsch said in the working world if there is a change of status, generally paperwork reflecting that change needs to be filed. She said it should be no different with schools and school districts. She said she believes that a school or school district would want the Department of Public Instruction to know of any change of status whether that be increased student enrollment, staffing changes, etc.

Representative Mueller said the compliance report, as suggested by Representative Rust, is a much simpler, easier, and shorter document. He said if school personnel cannot get that to the Department of Public Instruction in a timely manner, then some serious financial penalties need to be imposed.

In response to a question from Representative Monson, Mr. Christopher Dodson, Executive Director, North Dakota Catholic Conference, said a penalty is not needed in the case of nonpublic schools. He said the greatest fear in the nonpublic sector is that the school would be closed for noncompliance. In addition, he said, the compulsory attendance requirement is that every child must attend either a public school or an approved nonpublic school. He said if a nonpublic school is not approved, the nonpublic school loses the students.

No further business appearing, Chairman Monson adjourned the meeting at 4:30 p.m.

L. Anita Thomas
Committee Counsel

ATTACH:1