

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

EDUCATION COMMITTEE

Tuesday, October 12, 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, Rod Froelich, Lyle Hanson, Brenda Heller, Bob Hunsakor, 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, Layton W. Freborg, Dave Oehlke

Member absent: Representative Dennis Johnson

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 Senator Oehlke, seconded by Representative Mueller, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

SCHOOL APPROVAL

At the request of Chairman Monson, committee counsel presented a bill draft [[10078.0200](#)] relating to school approval. Committee counsel said the committee considered an earlier version of this bill draft at the last meeting. She said this bill draft is intended to streamline the school approval process through the use of a very simple check-the-box type of compliance report.

Committee counsel said each school principal would be required to verify that all of the teachers are licensed or approved to teach, that all of the teachers are teaching only in the course areas or fields for which they are licensed or approved, that the school meets all statutory curricular requirements, and that the school has been inspected by the State Fire Marshal and either has no deficiencies or is addressing its deficiencies in a plan of action approved by the State Fire Marshal.

Committee counsel said as for a criminal history background check, this committee asked that the statute clearly require all new hires having unsupervised contact with students to be subjected to a background check. She said all of the above conditions are in the current approval law. She said the only new criteria is the one pertaining to school improvement. Under current law, she said, each school must engage in a review process that is designed to improve student achievement through a continuous cycle of improvement. She said because most schools already engage in this, either through

the state accreditation process or through AdvancED, Department of Public Instruction personnel suggested that this process should be required of every entity that wants to call itself a school.

Committee counsel said the compliance report is to bear the signature not only of the school principal but also of the school district superintendent and the president of the school board or their respective counterparts in the case of a nonpublic school. She said the compliance form is to be filed before 5:00 p.m. on September 15 or on the date of the authorized extension. She said the Superintendent of Public Instruction is required to send electronic reminder notices on September 10 and 14 and to post the list of approved and unapproved schools on the department's website.

Committee counsel said if a school fails to meet the requirements of this bill draft, the district of which it is a part will have a prorated amount of state aid subtracted from the total to which it is otherwise entitled. She said if these same provisions are not met by a nonpublic school, the Superintendent of Public Instruction will notify the parents, either directly or through local media outlets; indicate that the school is unapproved; and further indicate that their continued utilization of the school makes them in violation of the state compulsory attendance provisions.

Committee counsel said the Superintendent of Public Instruction may delay imposing the sanctions for an unapproved school if the required submission of the compliance report is an impossibility because of a natural disaster, an unauthorized or illegal act by a third party, a death, a medical or personal emergency, an operational interruption, or governmental action such as an emergency order or evacuation. However, she said, there is an additional requirement. She said in order to delay imposing the sanctions, the Superintendent of Public Instruction must also determine that the report, had it been submitted, would have demonstrated compliance with the approval requirements.

Committee counsel said another new addition to this bill draft provides that the Superintendent of Public Instruction will notify schools and school districts of the records that they need to keep in order for the superintendent to verify the compliance reports. She said it also gives the Superintendent access to the records at any time and provides that the Superintendent may conduct scheduled or

unscheduled site visits to ensure the accuracy of the compliance reports. She said if this bill draft is adopted, the Superintendent of Public Instruction would have the ability to recreate accreditation requirements. She said the bill draft does provide that the accreditation rules must incorporate measures of student achievement and bear a direct relationship to improving student achievement.

At the request of Chairman Monson, Ms. Linda Paluck, Director, School Approval and Accreditation, Department of Public Instruction, presented testimony regarding the bill draft. Ms. Paluck distributed a document entitled *School Approval and Accreditation - What Schools Must Do* ([Appendix B](#)).

Ms. Paluck said it is her expectation that this document will be filed and signed electronically. She said when this report is filed with the Superintendent of Public Instruction, it will be taken at face value and schools will be approved based on this document.

Ms. Paluck said some in the field are concerned about the requirement that the filing take place by September 15. She said there is a sense that this does not give them sufficient time. However, she said, September 15 is for most schools the conclusion of week three. She said with the ability to request an extension, school districts will be given until the conclusion of their fifth week of school to file the compliance report.

In response to a question from Representative Monson, Ms. Paluck said the expectation is that schools meet the state's approval requirement on the first day of school.

Representative R. Kelsch said the requirement of filing on September 15 seems very reasonable. She said it is important that the reports are turned in and that we know our students are in approved schools. She said there is no reason that this needs to take more than a month.

Ms. Paluck said arrangements will be made to send out electronic notices on September 10 and 14 and to post a listing of approved and unapproved schools on the department's website. She said this information could also be provided to the local media.

Ms. Paluck said some in the field consider the subtracting of state aid for noncompliant schools to be controversial. However, she said, if we do not expect our approval laws to be enforced, why do we have them. She said most in the field recognize that a financial sanction will have the greatest chance of encouraging participation.

In response to a question from Representative Monson, committee counsel said the North Dakota Century Code contains no language that would prohibit a school board from placing monetary sanctions in a superintendent's or in a principal's contract, in the event that the school district faces the loss of state aid as a result of a superintendent's or a principal's actions or inactions.

Representative Rust said a number of years ago there was a law providing that a principal could not be paid unless two fire drills actually were held.

Representative Rust said he is supportive of the September 15 filing requirement. He said if a school district does have a prorated amount of state aid subtracted, that is likely to happen only once. He said after that, the school district will certainly remember to submit the compliance report.

Representative R. Kelsch said publishing the list of approved and unapproved schools in a newspaper or making that information available to the media is a good idea. She said parents need to know what is going on at their schools.

In response to a question from Representative Rust, Ms. Paluck said the education improvement process should be engaged in by every school. She said right now, over one-half of all North Dakota schools obtain AdvancED accreditation. She said this is what we used to refer to as North Central Association accreditation. She said AdvancED serves every state in the nation and 67 countries. She said the cost to our schools for participation is \$625 per year. She said it is a major vehicle in the drive toward school improvement. She said if some schools do not wish to pay that amount or cannot pay that amount, they can participate in the state school improvement process. She said there is no charge for that.

Ms. Paluck said in the last two years she has made changes to the state education improvement process so that it parallels AdvancED. She said these parallels can be found in leadership requirements, governance requirements, assessment requirements, and curricular requirements.

Representative J. Kelsh said he wonders what would happen if a school is unable to hire a qualified teacher by September 15 or with the extension by September 30.

Ms. Paluck said schools or school districts would need to participate in virtual education. She said they could start with the North Dakota Center for Distance Education. She said there are many excellent online programs. She said while it may be strange for many of us who are older, virtual education is not strange to the younger generation. She said every student should have access to a highly qualified teacher. She said virtual education provides that opportunity, and schools do not have to wait for four or six weeks to initiate the process.

Representative Monson said this bill draft would make the school improvement process part of the approval criteria. He said people need to understand that the school improvement process is just one part of the entire accreditation process.

With the permission of Chairman Monson, Ms. Bev Nielson, Assistant to the Executive Director, North Dakota School Boards Association, presented testimony regarding the bill draft. Ms. Nielson said when background checks were first legislated, they were required only of new teachers not of those already in the profession. She said it is her understanding that if a teacher who has been grandfathered in moves to a new district and begins a new job, that individual would be considered a "new

hire" and would be required to obtain a background check.

Representative Monson said that is correct.

Ms. Nielson said the other concern she has is the possibility that schools would be considered unapproved because they are waiting on a background check for a school cook or a janitor.

Representative Monson said individuals can be hired to perform those functions, they just cannot have unsupervised contact with students.

In response to a question from Representative Meier, Ms. Nielson said the background checks usually take two weeks to three weeks to process.

With the permission of Chairman Monson, Mr. Doug Johnson, Executive Director, North Dakota Council of Educational Leaders, presented testimony regarding the bill draft. Mr. Johnson said the September 15 date is a concern to administrators. He said that is the time when their MISO reports are due. In addition, he said, many school boards meet only once a month. He said getting the signatures might be problematic. He said for administrators, having a September 30 deadline with an extension available until October 15 would be far preferable.

With the permission of Chairman Monson, Representative R. Kelsch introduced Ms. Ekaterina Lebedeva. She said Ms. Lebedeva is on a legislative fellowship under the auspices of the National Conference of State Legislatures, and she is here studying American campaign processing.

Ms. Lebedeva said she is from the city of St. Petersburg, which has a population of 8 million, and she is a member of the city's Municipal Council. She said her husband is also a legislator and belongs to a different party.

NORTH DAKOTA COMMISSION ON EDUCATION IMPROVEMENT - UPDATE

At the request 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 commission exists to advise the Governor and the Legislative Assembly on education policy matters. He said the commission recognizes that all policy decisions, however, come through the Legislative Assembly. He said through passage of 2007 Senate Bill No. 2200 and 2009 House Bill No. 1400, North Dakota has become known nationally as a state that made great progress in education policy and especially in the innovative funding of education. He said those first two efforts evidenced major breakthroughs in the areas of equity and adequacy. He said the current phase is one of fine-tuning and finishing the work of the prior two interims.

Lt. Governor Dalrymple said the commission recommends that the current technology factor be replaced with a data collection factor, which will be geared to assisting with the installation and implementation of PowerSchool. He said the commission will also be recommending a change in

the computation of imputed valuation per student for purposes of determining the equity payment.

Lt. Governor Dalrymple said there will be changes in the definition of and funding for isolated schools, changes in the weighting factor for special education, an increase of \$500,000 for special education contracts, and a discontinuation of the maximum growth in per student funding by the second year of the biennium.

Lt. Governor Dalrymple said the commission will recommend that 70 percent of all new money again be put into teacher compensation increases, and the commission may recommend that there be an increase in transportation funding.

Lt. Governor Dalrymple said the commission will recommend changes in the funding and organizational structure of the Center for Distance Education and a clarification that the 23 units for a high school diploma is a minimum requirement. He said the commission is recommending that there be an alignment of placement requirements between kindergarten through grade 12 and higher education, that North Dakota continue working with other states in the development of common core standards, and that each student in grade 7 or grade 8 take a career course planning program.

Lt. Governor Dalrymple said in addition, it will be recommended that American sign language be considered a foreign language for purposes of high school graduation requirements, that grant dollars be appropriated to approve the alignment of language arts between kindergarten through grade 12 and higher education, and that the State Board of Higher Education develop a plan for advising centers on campuses.

Lt. Governor Dalrymple said with respect to the academic and career and technical education scholarships, the commission will recommend that an ongoing and permanent funding source be identified. He said the scholarship dollars will be in competition with other needs at the elementary and secondary level, as well as in higher education.

Lt. Governor Dalrymple said the North Dakota Commission on Education Improvement continues to believe in the necessity of regional education associations and the vital role they play in a sparsely populated rural state. He said the commission will recommend that the purpose of the regional education associations be related to five particular areas--professional development, technology support, school improvement, data collection and analysis, and curriculum development. He said the commission also will be recommending that each regional education association employ a coordinator on a 12-month contract.

Lt. Governor Dalrymple said the commission will recommend extending the current mentoring program to first-year teachers in special education, teachers affiliated with regional education associations, teachers affiliated with career and technical education centers, and first-year principals. He said the

commission will recommend covering the expenses of the Professional Development Advisory Committee, which was established in 2009, and will recommend an alternative to the existing system of teacher compensation. He said this alternative will recognize hard-to-staff positions, positions requiring added knowledge or skills, professional development acquisition, measures of student growth, and added responsibilities. He said this will be a modest beginning to a progressive concept.

Lt. Governor Dalrymple said the cost of the commission's recommendation will reflect the completion of the adequacy process. He said per student payments will be increased, but the exact level is yet to be determined.

NORTH DAKOTA EARLY CHILDHOOD EDUCATION COUNCIL - REPORT

At the request of Chairman Monson, Lt. Governor Dalrymple presented the report of the North Dakota Early Childhood Education Council in his capacity as chairman of that council. He said the council will be recommending continued funding for the child care grant program, which is designed to expand existing and initiate new child care facilities. He said the program operates under the Department of Commerce. He said the council also recommends that grants be made available to school districts so they can provide safe spaces for early childhood education programs. He said these programs are not necessarily run by the districts but by other entities. He said they will provide opportunities for districts to experience having four-year-olds on their premises and become familiar with the benefits of early childhood education.

Lt. Governor Dalrymple said the council also recommends grants for the "gearing up for kindergarten" program, which is offered on the North Dakota State University campus. He said the program provides experiences for four-year-olds and their parents. He said it is aligned with North Dakota early learning guidelines. In addition, he said, it will be recommended that this program be made available on a statewide basis.

Lt. Governor Dalrymple said the council recommends that school districts be given clear statutory authority to expend local dollars for early childhood education programs.

In response to a question from Representative Mueller, Lt. Governor Dalrymple said many school districts are already operating early childhood education programs. However, he said, the North Dakota Century Code does not authorize the districts to raise and use local dollars for such programs.

In response to a question from Representative J. Kelsh, Lt. Governor Dalrymple said high-quality instruction is the greatest factor in a student's success.

In response to a question from Representative Skarphol, Lt. Governor Dalrymple said the cost to continue the current education system is \$54 million.

He said the state will also be seeing a very high cost of continuation in the human services area. He said while we have good revenue coming in, we will be facing substantial increases in the cost of sustaining the initial programs.

In response to a question from Representative Meier, Lt. Governor Dalrymple said the second draft of the commission report will be made available later today or possibly tomorrow.

AUTISM SPECTRUM DISORDER TASK FORCE - REPORT

At the request of Chairman Monson, Ms. JoAnne Hoesel, Director, Division of Mental Health and Substance Abuse Services, Department of Human Services, presented the report ([Appendix C](#)) of the Autism Spectrum Disorder Task Force in her capacity as chairman. She distributed a document entitled *Resource Booklet for Children With Autism Spectrum Disorders*. The document is on file in the Legislative Council office. She also distributed a document entitled *Autism Spectrum Disorder Task Force 2010 State Plan*. The document is on file in the Legislative Council office.

Ms. Hoesel said there is no registry of individuals with autism spectrum disorder in North Dakota. Nationally, she said, 1 child out of 91 children is diagnosed with autism. She said the Department of Public Instruction has noted an increase in the number of children with autism. She said of the 12,059 students diagnosed with a disability in the North Dakota public school system, 4.5 percent have autism as their primary disorder.

Ms. Hoesel said the task force has seven recommendations, including continued funding for the task force; money for a statewide autism spectrum disorder conference; hosting of a meeting of professionals who currently screen young children; funding the training of screeners in conjunction with existing conferences in disciplines such as health, education, family support, and therapy; funding a dedicated autism spectrum disorder coordinator; funding training across agencies and disciplines to build awareness of autism and autism spectrum disorder; and funding a second Medicaid waiver for individuals between the ages of 14 and 26 who have been diagnosed with autism.

In response to a question from Representative Meier, Ms. Hoesel said their suggestions are merely ways in which the Legislative Assembly could move forward with respect to autism spectrum disorder. She said the task force did not request a specific funding level.

In response to a question from Senator Oehlke, Ms. Hoesel said research is showing that certain communicative delays can be diagnosed around the age of 18 months.

Senator Oehlke said the deaf community is trying to identify hearing loss very early in a child's life. He said perhaps there could be more collaboration in their efforts and those interested in autism or autism

spectrum disorder. He said perhaps multiple screenings could be conducted in a time-effective and efficient manner.

In response to a question from Representative Monson, Ms. Hoesel said there is a need to keep on top of the research and to keep service providers aware of the latest techniques in service delivery.

WEATHER-RELATED SCHOOL CLOSURES

At the request of Chairman Monson, committee counsel presented a bill draft [10086.0100] relating to gubernatorial waivers of required class rescheduling. She said current law provides that if because of severe weather or other emergencies a school or school district remains closed or provides less than a full day of instruction, every effort must be made to reschedule the classes so that students receive their statutorily mandated number of days. She said if, however, doing this would create "undo hardship," the Governor can be asked to waive the rescheduling in whole or in part. She said current law provides that the Governor may not grant a waiver for less than a full day of instruction. She said taken literally, this would mean that if the buses are sent home two hours early on a Monday, the Governor could not waive the rescheduling of those two hours. She said what has happened in practice is that if the buses are sent home two hours early on a Monday, two hours early on a Tuesday, and two hours early on a Wednesday, those three 2-hour periods are being added together to form a "whole day" and that day is then being waived. She said the manner in which the waivers ought to work is a matter of policy. She said if the intent is to require a literal reading of the statute, this bill draft is not necessary. However, she said, if it is felt that segments of days should be added together to form whole days for purposes of waiver, then the bill draft is necessary in order to statutorily support the current practice.

In response to a question from Representative Hanson, Representative Monson said as long as students are at school, it is considered a regular schoolday and there is no need to request a waiver.

Representative Wall said the study regarding weather-related closures came about because sometimes school administrators were reluctant to send buses home early. He said the safety of the students should be paramount.

STATUTORY REPORTS

Mr. Jerry A. Coleman, Director of School Finance, Department of Public Instruction, presented a report ([Appendix D](#)) regarding the financial condition of school districts.

Mr. Coleman presented a report ([Appendix E](#)) pertaining to school districts in which more than \$50,000 was excluded in the determination of their ending fund balance.

Mr. Coleman presented a report ([Appendix F](#)) relating to notices received from boards and school

districts which determine that providing at least 70 percent of all new money received for per student payments and supplemental operations grants to increase compensation paid to teachers, counselors, and career advisors would result in the school districts having insufficient fiscal resources to fund other district obligations.

Mr. Girish Budhwar, Research Analyst, Management Information Systems, Department of Public Instruction, presented a report ([Appendix G](#)) relating to school district employee compensation.

Mr. Greg Gallagher, Director of Standards and Achievement, Department of Public Instruction, presented a report ([Appendix H](#)) pertaining to scores of the test aligned to the state contents standards in reading and mathematics.

Mr. Kenneth Steiner, School Finance Division, Department of Public Instruction, presented a report ([Appendix I](#)) pertaining to school districts that received one-time supplemental grants and the expenditures, obligations, or other commitments they incurred as a result of receiving the grants.

Ms. Paluck reported that no schools or school districts requested waivers of any accreditation rules. She reported that no schools or school districts requested waivers of Section 15.1-21-03.

Mr. Tracy Korsmo, Information Technology Department, presented a report ([Appendix J](#)) from the Statewide Longitudinal Data System Committee.

COMMITTEE DISCUSSION

Chairman Monson asked the committee to consider the bill draft relating to school approval.

Representative Mueller said the bill draft requires the Superintendent of Public Instruction, in the case of a nonpublic school, to notify the parents of students enrolled in the school, either directly or through local media outlets, that the school is unapproved. He said he believes that same provision should be made applicable to public schools as well.

Senator Bakke said perhaps there would be merit in requiring a list of the approval criteria that were not met.

Representative Monson said that if the school is labeled unapproved by the Superintendent of Public Instruction, the media will certainly ask why.

It was moved by Representative Mueller, seconded by Senator Bakke, and carried on a roll call vote that the bill draft be amended to require the Superintendent of Public Instruction to notify the parents of students enrolled in a public school, either directly or through local media outlets, that their school is unapproved. Representatives Monson, Froelich, Hanson, Heller, Hunsakor, Karls, R. Kelsch, J. Kelsh, Mock, Mueller, Myxter, Rust, and Wall and Senator Bakke voted "aye." Senators Freborg, Erbele, and Oehlke voted "nay."

Representative Rust said the bill draft actually lowers standards in that under current law, schools are literally forced to become accredited in order to

receive their full state aid allotment. He said this bill draft would provide payment based on school approval rather than on the higher standard of accreditation.

Representative Monson said in his opinion the bill draft is actually raising the standards for those schools that are currently just approved by requiring that they participate in school improvement.

Representative Rust said right now schools risk losing state aid if they are not accredited. He said if state aid is no longer tied to accreditation, schools will choose not to be accredited but just to be approved.

Ms. Paluck said this committee has seen the current system of points and calculation tables that is used to determine accreditation. She said schools only need to get 85 percent of their points and not 100 percent. She said if the schools do not achieve even this, the worst that happens is that they become "accredited warned" for another year. She said money has never been taken away from a school district because of failure to meet accreditation standards.

Dr. Gary Gronberg, Assistant Superintendent, Education Improvement, Department of Public Instruction, said the old input-based accreditation process will go away under this bill draft, and it will be replaced by new accreditation standards. He said this bill draft does not make the school improvement process go away. In fact, he said, it makes the school improvement process a requirement for every school in this state. He said what we are trying to make go away are requirements such as the number of books one has to have in the library. He said those are meaningless input measurements. He said we need to focus on what makes a difference in the education of students.

In response to a question from Representative Monson, Dr. Gronberg said the Department of Public Instruction supports the bill draft as written.

Representative Monson said this bill draft would improve all of our schools.

It was moved by Representative J. Kelsh, seconded by Representative Myxter, and carried on a roll call vote that the bill draft, as amended, relating to school approval be approved and recommended to the Legislative Management. Representatives Monson, Hanson, Heller, Hunskor, Karls, R. Kelsch, J. Kelsh, Mock, Mueller, Myxter, Rust, and Wall and Senators Bakke, Erbele, Freborg, and Oehlke voted "aye." Representative Froelich voted "nay."

Representative Froelich said he opposes the bill draft because it penalizes students.

Representative R. Kelsch said this bill draft is all about the students and making sure they are in a safe place. She said the discussion about approval and accreditation has been ongoing for many years. She said this is a bill draft that can be supported by all the parties, and it is in the best interest of the students of North Dakota.

Representative J. Kelsh said if an individual is being paid \$60,000 to \$80,000 annually and the individual is unable to file the reports on time, there is something wrong.

Representative Monson said school boards should target the individual who is to blame and not look to the state to put such concepts into law.

Representative Hunskor said the only way students get hurt under this bill draft is if the administrator is not doing the administrator's job. He said this bill draft will help to ensure that administrators do their jobs and all the students will benefit.

Chairman Monson said right now, we have something in the law that is not being followed by either the Superintendent of Public Instruction or the Governor. He said the question before this committee is do we want to continue with the current language or do we want a bill draft that reflects current practice.

It was moved by Representative Rust, seconded by Representative Wall, and carried on a roll call vote that the bill draft relating to gubernatorial waivers of required class rescheduling be approved and recommended to the Legislative Management. Representatives Monson, Froelich, Hanson, Heller, Hunskor, Karls, J. Kelsh, Mock, Mueller, and Rust and Senator Bakke voted "aye." Representative R. Kelsch and Senators Freborg, Erbele, and Oehlke voted "nay."

Representative Monson said during the legislative session, perhaps consideration should be given to the number of reports that are statutorily required.

Senator Bakke said perhaps the reports could be provided in electronic form so that legislators could digest them at their leisure.

Representative R. Kelsch said as the Legislative Assembly is providing more and more funding, it is imperative that there be accountability.

It was moved by Representative Hanson, seconded by Senator Bakke, and carried that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and present the report and recommended bill drafts to the Legislative Management.

It was moved by Representative Mueller, seconded by Representative Karls, and carried that the committee be adjourned sine die.

No further business appearing, Chairman Monson adjourned the committee sine die.

L. Anita Thomas
Committee Counsel

ATTACH:10