

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

**EDUCATION FUNDING COMMITTEE**

Wednesday, March 14, 2018  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Donald Schaible, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Senators Donald Schaible, Kyle Davison, Ralph Kilzer, Erin Oban, David S. Rust; Representatives Pat D. Heinert, Richard G. Holman, Dennis Johnson, David Monson, Mark S. Owens, Mark Sanford, Cynthia Schreiber-Beck, Denton Zubke

**Others present:** See [Appendix A](#)

**It was moved by Senator Rust, seconded by Senator Oban, and carried on a voice vote that the minutes of the January 25, 2018, meeting be approved as distributed.**

**ELEMENTARY AND SECONDARY EDUCATION  
STATE AID AND FUNDING FORMULA STUDY**

At the request of Chairman Schaible, Ms. Maggie D. Anderson, Director, Medical Services Division, Department of Human Services, provided information ([Appendix B](#)) regarding Medicaid funding provided for services in schools, including services covered and reimbursement levels. Ms. Anderson said applied behavioral analysis services were added to the Medicaid state plan in July 2017. She said the Department of Human Services (DHS) is currently in the process of evaluating school-based Medicaid services and policy and has collaborated with the Department of Public Instruction (DPI) to ensure federal Individuals with Disabilities Education Act requirements are considered along with Medicaid rules. She said policy changes are still in draft form. She said qualified services must be:

- Provided to students who are eligible for Medicaid on the date of service;
- Authorized or prescribed in the eligible Medicaid student's Individualized Education Program (IEP) which must be updated as Medicaid-eligible services are initiated or discontinued;
- Rendered by an enrolled Medicaid provider who is either an employee of or contracted through a school;
- A service covered under the Medicaid state plan;
- Documented appropriately; and
- Billed to Medicaid by a public school district or special education unit.

Ms. Anderson said covered services include physical, occupational, and speech-language pathology therapies; audiology; behavioral health; skilled nursing services provided to children with complex medical needs; transportation to and from IEP services from school; and applied behavior analysis. She said health services billed by schools can be delivered via telemedicine; however, no originating site fee is allowed. She said noncovered services include services not provided directly to the child, such as attendance at staff meetings, staff supervision, member screening, development, and use of instructional text and treatment materials; communication between the provider and child that is not face-to-face; transportation to and from home to school; population screenings, such as lice checks; services considered experimental or investigational; services considered educational or instructional in nature; and general medication administration not related to the child's condition. She said DHS will continue meeting with various stakeholders requesting expanded services. In addition, she said, the department will be amending the Medicaid state plan to allow enrollment of registered nurses employed by or contracted through schools to provide skilled nursing services, sending revised policy to schools enrolled to bill Medicaid services, and preparing a fiscal estimate of additional nonfederal match needed for expanded services. She said the nonfederal match for the expanded services is generally 50 percent and this funding is not currently in the DHS budget.

In response to a question from Senator Davison, Ms. Anderson said currently most of the nonfederal match is provided by the schools through an offset to the district's foundation aid. However, she said, some districts are providing services in schools, but claims for reimbursement are not made through the school, resulting in the use of state general fund dollars for the nonfederal match. She said the match for services billed in this manner is not

included in the match certified by DPI. She said if services were expanded and the nonfederal match were provided through DPI, DHS would still need additional federal authority for the increase in services. In addition, she said, DHS must also receive certification of the nonfederal match from DPI. She said a significant increase in the number of claims would also require additional oversight.

In response to a question from Senator Davison, Ms. Anderson said currently only physicians may authorize services included in the IEP; however, nurse practitioners and physician assistants are currently allowed to serve as primary care providers, so DHS is considering allowing them to authorize IEP services.

In response to a question from Senator Oban, Ms. Anderson said if a child is Medicaid eligible and receiving a covered service outside of the school, the provider is reimbursed whether or not there is an IEP. She said if the service is needed for the child's education, then it should be part of the IEP and Medicaid becomes the primary payer. She said if the service is not critical to the child's education, it could be delivered outside of the school. She said DHS is meeting with DPI and a behavioral health provider to discuss targeted case management for children with serious emotional disturbances in school who may not otherwise be on an IEP.

At the request of Chairman Schaible, Mr. Adam J. Tescher, Director, School Finance and Organization, Department of Public Instruction, provided information ([Appendix C](#)) regarding funding for the nonfederal match, special education contracts, and DPI reimbursement for Medicaid and special education contract services. Mr. Tescher said the student contract system is used to reimburse school districts for high-cost students and students that are in placement for reasons other than education. He said placement in a residential facility may result from action by an agency or parents. He said when a student is placed outside of the district by an agency or parents, the resident school district is responsible for the statewide average cost per student. However, he said, if the school district makes the decision to place the student outside of the district, the school district is responsible for four times the statewide average cost per student for school placements. He said DPI receives a monthly Medicaid reimbursement report from DHS and 50 percent of the reimbursements are withheld from school districts' state aid payments. He said if the district's state aid payment is not sufficient to cover the Medicaid withholding, the school district must pay the difference to DPI. He said the amount withheld is certified and paid to DHS. He said approximately \$1.7 million is withheld and remitted to DHS each biennium. He said the placing agency prepares a notification of placement in the state contract system. He said this notifies both the resident district and the educating district of the placement. He said either the residential facility or the educating district may build the contract online through the DPI contract system. He said third-party payments are noted on the contract.

Mr. Mark Lemer, Business Manager, West Fargo Public Schools, said the district supports the changes proposed by DHS. He said currently schools must have a physician's prescription for every service in an IEP. He said allowing other providers to authorize services, with the exception of skilled nursing services, is beneficial for school districts. He said school districts support the expansion of Medicaid services in schools because the expansion will allow schools to access federal funds for services they are already providing. He said the expansion would not affect the DPI budget because the nonfederal match is paid by school districts.

In response to a question from Senator Oban, Ms. Gerry Teevens, Special Education Director, Department of Public Instruction, said IEP processes vary by school district. She said if a child is Medicaid eligible, but the needed service is not related to their education, there is not an IEP. However, she said, the child could still receive services through Medicaid at a clinic.

At the request of Chairman Schaible, Ms. Alison Zima, Director of Information Services, South East Education Cooperative, provided information ([Appendix D](#)) regarding a statewide Medicaid billing consortium. Ms. Zima said the South East Education Cooperative (SEEC) is one of eight regional education associations in the state. She said SEEC collaborates with nine special education units in its regional education association. She said SEEC developed a Medicaid billing consortium because verifying Medicaid eligibility for students was difficult and a number of special education units were either not maximizing Medicaid reimbursements or not submitting for Medicaid reimbursement. She said SEEC recruited partners, invested in software, and provided training and support to establish and expand the consortium. She said the consortium includes 12 special education units, including 67 school districts. She said SEEC continues to assist and support special education units accessing Medicaid reimbursement for services they are required to provide. She said goals include expanding the consortium to assist more special education units and collaborating with DHS to improve documentation of school-based services and expand reimbursable services for special education units.

In response to a question from Chairman Schaible, Ms. Zima said SEEC is planning to market the service to other special education units and could provide the service statewide.

In response to a question from Senator Rust, Ms. Zima said stakeholders have discussed seeking a more efficient way for DHS to collect the nonfederal Medicaid match.

Senator Davison suggested the state pay the Medicaid match instead of deducting it from the district's state school aid.

Chairman Schaible called on Mr. Robert Lech, Superintendent, Jamestown Public Schools, to provide information regarding eight legislative workshops to be held across the state to increase awareness regarding school funding, including federal funding, local funding sources, and the state school aid formula. Mr. Lech said while the workshops have been developed for legislators, all education stakeholders are welcome to attend.

At the request of Chairman Schaible, Mr. Bill Strasser, Director, Great Western Network Interactive Television, provided information ([Appendix E](#)) regarding the delivery of K-12 video distance learning in the state and an interactive television (ITV) distance learning consortium. Mr. Strasser said the Great Western Network Interactive Television (GWN) consortium consists of 53 member schools and, except for occasional grants for equipment matching funds, does not receive direct funding from the state. He said each GWN school pays a \$6,000 annual fee, regardless of size, for network administration, teaching staff, and equipment. In addition, he said, GWN schools also pay \$300 per semester for each student receiving an ITV class. He said this funding is used to reimburse the sending site school for the ITV teacher's wages. He said consortia have merged over the years and there are currently six different ITV consortia in the state. He said consortia groups may cross borders as necessary to obtain classes from each other. He said class offerings include foreign languages, science, mathematics, family and consumer science, agriculture, social studies, and various career and technical classes. He said the consortia groups also work with several of the colleges to provide students with dual-credit opportunities. He said ITV class enrollments continue to exceed 1,000 students each year.

In response to a question from Chairman Schaible, Mr. Strasser said as technology improved, consortia were able to merge and grow in size. He said challenges to consolidating into one statewide group include varying time zones and class schedules. He said schools have access to classes from any of the consortia. He said if a school requests a class at a certain time and it is not available at that time in any of the consortia, an alternative is accessing an online class through the Center for Distance Education (CDE).

In response to a question from Senator Davison, Mr. Strasser said without guidance, some students may attempt to accelerate the completion of online classes. He said consortia are developing hybrid or blended learning courses where teachers meet with students face-to-face and various learning management systems are used to communicate with students.

In response to a question from Senator Davison, Mr. Strasser said the lower prices charged by CDE compete with classes offered by the consortia. However, he said, CDE is important because they offer classes the consortia does not.

In response to a question from Representative Schreiber-Beck, Mr. Strasser said while the curriculum and delivery of these types of classes in North Dakota is regional, the infrastructure is provided by the Information Technology Department.

In response to a question from Representative Schreiber-Beck, Mr. Strasser said enrollment includes college dual-credit classes and has been stable for several years.

In response to a question from Representative Heinert, Mr. Strasser said he administers GWN. He said one additional employee assists with PowerSchool and GWN shares a business manager with a member school.

Chairman Schaible called on Ms. Kathy McCracken, Director, Central Dakota Distance Learning Consortium, to provide information regarding the Central Dakota Distance Learning Consortium (CDDL). Ms. McCracken said the consortium uses teachers from member schools to provide classes. She said the CDDL has 38 member schools and approximately 300 to 325 students. She said the CDDL charges \$3,750 for membership and \$300 per student per semester for a class.

In response to a question from Senator Davison, Ms. McCracken said it would be beneficial to have a statewide learning management system similar to PowerSchool.

At the request of Chairman Schaible, Mr. Ryan Skor, Director of Finance, State Treasurer's office, provided information ([Appendix F](#)) regarding revenue received from the leasing of land acquired by the United States for which compensation is allocated to the state under 33 U.S.C. 701(c)(3), including total funding received and how funding is distributed to counties, townships, and school districts. Mr. Skor said the State Treasurer's office receives distributions from the federal Office of Natural Resources Revenue and the United States Army Corps of Engineers, which include amounts for lands acquired by the United States for flood control purposes. He said the funds are

distributed to counties based on land compensated. He said counties allocate the funds, pursuant to North Dakota Century Code Section 21-06-10, 50 percent to school districts in the county which have lost land subject to taxation because of the acquisition of lands by the United States for flood control, 25 percent to the county for roads, and 25 percent to the organized townships, if any, which have lost land subject to taxation because of land acquisitions by the United States for flood control. He provided a listing of flood control distributions by county for fiscal years 2011 through 2017, and year-to-date for fiscal year 2018. He said total funding received annually by the counties ranged from \$3.3 million in fiscal year 2011 to \$45.5 million in fiscal year 2014. He said flood control distributions for Dunn, McKenzie, and Mountrail Counties are received monthly and increased in fiscal years 2012 through 2014 due to royalty and bonus payments related to increased oil exploration and production. He said in fiscal year 2017, counties received a total of \$8.1 million for distribution.

At the request of Chairman Schaible, Mr. Tescher provided information ([Appendix G](#)) regarding revenue received by various school districts from the leasing of land acquired by the United States for which compensation is allocated to the state under 33 U.S.C. 701(c)(3), the revenue offset for these districts in the state school aid formula; the effect on the state school aid formula of any compensation received by school districts for lands flooded due to the FM Area Diversion Project; and in-lieu of revenues in oil-producing counties, including how revenues are distributed to various school district funds and a comparison of revenue deposits to revenues offset in the state school aid formula. He said 18 school districts received at total \$3.9 million in federal flood control funding during the 2016-17 school year. He said 75 percent of this funding, or \$2.9 million, was deducted in the state school aid formula for the 2017-18 school year. He said the federal flood control funding is a separate distribution by the county and DPI guidance relating to school district financial accounting provides 100 percent of this funding be deposited in the school's general fund. He said the FM Area Diversion Project could affect the state school aid formula for area schools in two ways. He said land flooded as part of the diversion would decrease taxable valuation and any in-lieu of taxes funding received by area school districts from the state or others may be considered local revenue and could be deducted in the state school aid formula. He said whether or not payments for flooded lands that are part of the FM Area Diversion Project are deducted in the state school aid formula pursuant to Section 15.1-27-04.1, would depend on how the payments are structured. He said because the state's school aid funding formula is based on providing an adequate level of education, any increase or decrease in local revenue deducted in the formula results in a corresponding decrease or increase in funding provided by the state.

Mr. Tescher said the State Treasurer distributed a total of \$36.8 million in oil and gas production, coal production, and coal conversion tax revenue to school districts during the 2016-17 school year, of which 75 percent, or \$27.6 million, was deducted from the districts' 2017-18 state school aid formula payment. He said the remaining 25 percent was not deducted as part of the school districts' funding formula. He said DPI guidance relating to school district financial accounting provides 100 percent of this funding be deposited in the school's general fund. He reviewed a copy of the school district payments in-lieu of property taxes worksheet the department receives from county auditors each year. He said revenue from federal flood control and oil and gas production, coal production, and coal conversion tax revenue are all deposited into the school's general fund and are deducted at 75 percent in the state school aid formula. He said a majority of the remaining revenues, deducted in the state school aid formula at 100 percent, are deposited into various school district funds based on mill levy distribution. He said this could result in the deduction of certain revenue at 100 percent in the formula even if only a portion of the revenue is deposited in the school district's general fund.

Senator Rust suggested the committee receive information by school district regarding total local revenue received by revenue type deducted in the state school aid formula.

In response to a question from Chairman Schaible, Mr. Tescher said counties deposit the various in-lieu of taxes differently and any change to the deduction of in-lieu of revenues deposited in other funds in the formula would require legislation, including legislation to require counties to report the deposit data.

Mr. Tescher provided information regarding the effects of imputing in-lieu of revenue into taxable valuation in the state school aid formula on state school aid and property taxes. He said the department collaborated with the Tax Department to prepare the analysis. He said instead of deducting local in-lieu of revenue from the state school aid formula, the department was asked to determine the effects of imputing the taxable valuation of the in-lieu of revenue and adding it to the actual taxable value of the district prior to calculating the deduction for 60 mills and the 12 percent limit on property tax increases. He provided an analysis of the effects on five school districts, including McKenzie County School District, Minot Public Schools, West Fargo Public Schools, Bismarck Public Schools, and Wahpeton Public School District. He said if in-lieu of revenue is imputed for purposes of the state school aid formula, then a determination regarding the effects of the increased property valuation on local property tax assessment would also have to be made and addressed. He said the calculations provided are an estimate of one way to implement the policy of imputing the in-lieu of revenue into taxable valuation. He said there could be other methods but establishing a base year is important.

In response to a question from Chairman Schaible, Mr. Tescher said because the level of funding per weighted student unit is set, any changes that result in increases in the amount of property tax deducted in the formula decrease the amount of state school aid paid by the state. However, he said, school districts' total funding would not be affected if property tax assessment limits were also adjusted. He said total funding would be affected by changes to in-lieu of revenue offset in the formula.

In response to a question from Representative Sanford, Mr. Tescher said with the exception of hold harmless calculations and the 12 percent limit on annual increases, the current formula is easy to calculate. He said imputing value from in-lieu of revenue would make the formula more complicated.

At the request of Chairman Schaible, Dr. Aimee Copas, Executive Director, North Dakota Council of Educational Leaders, provided information ([Appendix H](#)) regarding a comparison of resources across school districts. She said the North Dakota Council of Educational Leaders surveyed schools regarding services that lacked adequate resources. She said 101 schools responded representing approximately 98,000 students. She said the needs identified most often in the survey responses include school resource officers, behavioral health support, and other safety-related resources. She said the survey includes school district comments and information regarding how district needs were determined.

Mr. Lemer said he worked with Mr. Tescher on the analysis of the effects of imputing in-lieu of revenue into taxable valuation in the state school aid formula on state school aid and property tax. He said in the past, imputations in the state school aid formula were solely the responsibility of DPI. He expressed concern that imputing value in the current formula will, because it impacts counties levies, require consistent application by 53 county auditors, numerous superintendents, and even school boards. He said there may be other ways to address the effect of in-lieu of revenues used for infrastructure in the state school aid formula.

In response to a question from Representative Sanford, Mr. Lemer said some districts are not considered on the formula because the formula's hold harmless provision is based on funding that was mostly local and varied widely when the formula was implemented. He said these disparities have remained after the formula's implementation. He said removing the hold harmless provision to bring all schools on to the formula would significantly impact schools that have set budgets based on their resources.

Dr. Steven Holen, Superintendent, McKenzie County School District, said because in-lieu of revenue is deposited in the general fund, the formula assumes this revenue is used for operations. He said McKenzie County School District uses a significant portion of its oil and gas tax revenue for infrastructure. He suggested oil and gas tax revenue used for infrastructure be deposited in the district's other funds where it could be used for infrastructure and not offset in the state school aid formula. He said oil and gas tax revenue used for operating expenses could still be deposited in the school's general fund and offset in the state school aid formula. He said imputing taxable value causes confusion because it creates fictitious values that become a factor in the state aid calculation.

In response to a question from Chairman Schaible, Dr. Holen suggested distributing oil and gas tax revenue in the same fashion as the district levies mills. He said oil and gas tax revenues deposited in the general fund could be offset in the formula; however, oil and gas tax revenues deposited in the district's other funds should not be offset.

### **OTHER COMMITTEE RESPONSIBILITIES**

At the request of Chairman Schaible, Ms. Gail Schauer, School Approval and Opportunity Director, Department of Public Instruction, provided information regarding the status of the innovative education program established pursuant to 2017 Senate Bill No. 2186. Ms. Schauer said administrative rules related to the program were presented to the Administrative Rules Committee in December 2017. She said because the statute requires 1 year of planning for an innovative education program, there are two applications. She said the first is a planning proposal and the second is an implementation application. She said Northern Cass School District applied to the program before the rules were finalized, but had done the necessary planning, so the program was approved. She said DPI has provided information on the program to administrators via email and newsletter, posted information online, and developed a webinar. She said the department has been working with four additional school districts that may be submitting proposals.

In response to a question from Chairman Schaible, Ms. Schauer said DPI does not have any concerns regarding the applications.

In response to a question from Representative Holman, Ms. Schauer said programs will vary by school district, but the Northern Cass School District program encourages students to complete requirements quickly so they can participate in internships and job shadowing. She said DPI will review academic scores, retention, and other outcomes that should be assessed.

At the request of Chairman Schaible, Mr. Tescher reviewed an annual report ([Appendix I](#)) on the financial condition of school districts. He said the annual report is published in February for the preceding school year. He said the report includes information regarding mill levy rates, revenues, expenditures, average cost per pupil, enrollment, teachers and salaries, and number of graduates.

Representative Owens suggested the committee receive additional funding information for the districts reviewed by the committee--McKenzie County, Minot, West Fargo, Bismarck, and Wahpeton. He suggested the committee review detailed information for the 2016-17 school year regarding property taxes paid versus property taxes deducted in the formula for those districts. He suggested the analysis also include a detailed listing of actual local revenue received by the school district by revenue source and fund compared to the local revenue offset in the state school aid formula for the 2016-17 school year. He suggested the committee receive an analysis of the effects on district's state school aid, of distributing the various types of local revenue in the same proportion as the district's revenue from mill levies.

Chairman Schaible said the committee will meet on Tuesday, May 8, 2018, in Fargo. He said the committee will tour two SmartLabs in the Fargo area. He said the committee will discuss potential changes, if any, the committee may recommend to the state school aid funding formula.

No further business appearing, Chairman Schaible adjourned the meeting at 2:28 p.m.

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Senior Fiscal Analyst

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