

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

EDUCATION SERVICES COMMITTEE

Thursday, September 23, 1999
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Ray Holmberg, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Ray Holmberg, Tim Flakoll, Jerome Kelsh, Rolland W. Redlin; Representatives Bruce A. Eckre, Lyle Hanson, Jon Martinson, Darrell D. Nottestad, Dorvan Solberg

Members absent: Senators Layton Freborg, Pete Naaden, David O'Connell; Representatives Michael D. Brandenburg, David Monson, Laurel Thoreson

Others present: See Appendix A

At the request of Chairman Holmberg, Mr. John D. Olsrud, Director, Legislative Council, presented a summary of the Legislative Council's supplementary rules of operation and procedure.

Chairman Holmberg welcomed the committee members. He said it is the committee's goal not to make substantive changes in the law but rather to ensure that the law conforms to actual practice. He said some sections will be very sensitive. He said it should be remembered the Legislative Assembly has already passed these laws and the role of this committee is not to second guess the appropriateness of prior legislative decisions but to ensure that those decisions are clearly reflected in verbiage that can be understood by all.

At the request of Chairman Holmberg, committee counsel presented a background memorandum entitled *Provisions of North Dakota Century Code Title 15 Which Relate to Elementary and Secondary Education - Part II Background Memorandum*.

HOME EDUCATION

At the request of Chairman Holmberg, committee counsel distributed a bill draft that creates North Dakota Century Code (NDCC) Chapter 15.1-23, relating to home education.

Chairman Holmberg said NDCC Section 15-34.1-06, which is current law, defines home education, covers who is qualified to provide home education, sets forth which subjects must be taught, sets forth the number of hours which must be set aside for teaching each day, sets forth the number of days which must be set aside for teaching each year, sets requirements for annual recordkeeping, requires the filing of an annual statement of intent to provide home education, and covers what must be included in the annual statement.

Chairman Holmberg said the rewrite begins by dropping the definition of home education. He said it is self-explanatory and there appears to be no good reason to maintain it.

Section 15.1-23-01

Chairman Holmberg said Section 15.1-23-01 addresses just the statement of intent to provide home education. He said, similar to current law, it must be filed 14 days before the beginning of home education or within 14 days of establishing a child's residence in a school district and once each year thereafter. He said the content of the statement remains the same with one exception. He said current law requires proof of an immunization record. He said the rewrite simply requires that the statement of intent include the record. He said perhaps the statement of intent should include a "copy" of the actual record.

Section 15.1-23-02

Chairman Holmberg said Section 15.1-23-02 segregates the qualifications of a parent providing home education. He said, again, the rewrite maintains the current verbiage.

Section 15.1-23-03

Chairman Holmberg said Section 15.1-23-03 provides that home education must cover those subjects required by law to be taught to public school students. He said current law sets forth the statutory sections that list the required subjects. He said the statutory reference was omitted because subject requirements might be statutory or administrative.

Section 15.1-23-04

Chairman Holmberg said Section 15.1-23-04 requires specific recordkeeping on the part of the parent providing home education. He said that too is current law.

Section 15.1-23-05

Chairman Holmberg said Section 15.1-23-05 addresses the monitoring requirements for a parent who has only a high school diploma. He said this too is current law. He said the monitoring must take place for the first two years or until the child

completes the third grade. He said if the child tests below the 50th percentile on a standardized achievement test, the parent must be monitored for at least one more year or until the child scores higher than the 50th percentile.

Section 15.1-23-06

Chairman Holmberg said Section 15.1-23-06 begins to deal with the multiple concepts found in Section 15-34.1-07. He said that section addresses standardized achievement tests, responses to various scores, and the monitoring of progress. He said Section 15.1-23-06 segregates the law regarding the monitoring of progress. He said the monitor is to be a licensed teacher, and progress is to be reported to the district superintendent or to a county superintendent if the district does not employ its own superintendent.

Section 15.1-23-07

Chairman Holmberg said Section 15.1-23-07 reworks Section 15-34.1-09 and, like current law, requires that the teacher monitoring a child notify the child's school district of residence. He said it also provides that if the teacher is not employed by a school district, the parent providing the home education is responsible for the monitor's costs.

Section 15.1-23-08

Chairman Holmberg said Section 15.1-23-08 again tries to make sense of the multiple concepts in Section 15-34.1-07. He said it requires a standardized achievement test to be taken by the child in grades 3, 4, 6, 8, and 11. He said the test can be the one used by the school district in which the parent resides or, in the alternative, the child can take a nationally normed standardized achievement test. He said this section refers to the district in which the "parent" resides, whereas other sections refer to the district in which the "child" resides. He said the committee needs to determine which reference is appropriate.

Section 15.1-23-09

Chairman Holmberg said Section 15.1-23-09 provides that the school district pay for the test if it is the one used by the district and that the parents pay for the test if a different test is selected by them. He said, like the previous section, this one refers to the parent's school district of residence rather than the child's school district of residence.

Section 15.1-23-10

Chairman Holmberg said Section 15.1-23-10 also parallels current law. He said this section provides that the child's standardized test results must be filed with the school district in which the parent resides. He said if the child scores less than the 30th percentile, an assessment by a multidisciplinary team is required, under rules adopted by the Superintendent

of Public Instruction. He said two changes have been made in this draft. He said current law requires that the child be "professionally" evaluated by a multidisciplinary team. He said the word "professionally" was dropped on the assumption that that is the manner in which a multidisciplinary team functions. He said current law also requires that the evaluation be done under guidelines established by the Superintendent of Public Instruction. He said, as of October 1999, these guidelines are to have been replaced by rules adopted under the Administrative Agencies Practice Act. He said if the multidisciplinary team finds that a child is not disabled, a remediation plan must be developed and used. He said failure to do this renders the parent in violation of the compulsory attendance law.

Section 15.1-23-11

Chairman Holmberg said Section 15.1-23-11 provides that the remediation plan becomes the basis for assessing progress. He said it remains in place until the child scores above the 30th percentile on a standardized achievement test or achieves a score that shows one year of academic progress. He said this section parallels current law found in Section 15-34.1-07(2).

Section 15.1-23-12

Chairman Holmberg said Section 15.1-23-12 is also taken from Section 15-34.1-07(2). He said if the multidisciplinary team determines that the child is disabled, the parent must file and follow an individualized education program.

Sections 15.1-23-13 and 15.1-23-14

Chairman Holmberg said Sections 15.1-23-13 and 15.1-23-14 were enacted in the 1997 legislative session as temporary law and were made permanent in the 1999 legislative session. He said these sections set the parameters for a parent to home school an autistic child. He said the rewrite makes no changes to current law.

Section 15.1-23-15

Chairman Holmberg said Section 15.1-23-15 is also a 1999 law. He said it clarifies that a child receiving home education can participate in extracurricular activities under the auspices of the child's school district of residence or under the auspices of an approved nonpublic school. He said a selection must be made and included within the statement of intent required by Chapter 15.1-23. He said once the selection has been made, the child is subject to the transfer rules of the North Dakota High School Activities Association. He said no changes were made to the present law.

Section 15.1-23-16

Chairman Holmberg said Section 15.1-23-16 was enacted in the 1997 legislative session. He said it clarifies the manner in which high school diplomas may be issued in the case of children who receive home education. He said a child's school district of residence, an approved nonpublic high school, or the Division of Independent Study may issue a diploma if the child has met the issuing entity's graduation requirements. He said those same entities may also issue a diploma if the child has completed 17 units of high school coursework from the minimum required course offerings established by law. He said under this latter circumstance, the issuing entity may indicate on the diploma that the child was provided with home education. He said, again, no changes were made to the 1999 law.

Section 15.1-23-17

Chairman Holmberg said Section 15.1-23-17 states that state agencies, school districts, or county superintendents may not be held liable for any damages from a parent's failure to educate a child. He said this is present law found in Section 15-34.1-10.

Section 15.1-23-18

Chairman Holmberg said Section 15.1-23-18 states that for purposes of foundation aid, a child receiving home education is deemed enrolled in the child's school district of residence if the child is monitored by a licensed teacher employed by the school district in which the parent resides. He said because this section references both the child's and the parent's school district of residence, an effort should be made to reconcile the references.

Testimony

Chairman Holmberg called on Ms. Cam Leedahl, home education provider, Leonard, North Dakota, who presented testimony regarding the rewrite of the home education chapter. She said the rewrite makes the home education law much easier to read. She asked the committee to consider a change to Section 15.1-23-02. She said that section sets forth the qualifications parents must have in order to provide home education. She said one of those qualifications is a baccalaureate degree. She said she knows of one parent who has multiple doctoral degrees but not a baccalaureate degree. She said perhaps the section should be amended to provide that a parent have "at least" a baccalaureate degree.

In response to a question from Representative Martinson, Ms. Leedahl said she did not know how many people experienced difficulty or conflicts with requirements such as the date on which statements of intent need to be filed.

In response to a question from Representative Hanson, Dr. Gary Gronberg, Assistant

Superintendent, Department of Public Instruction, said children who receive home education are tracked by their monitors and by the public school districts in which they take courses. He said the Superintendent of Public Instruction does not collect and tabulate the statements of intent to provide home education, and therefore, the superintendent does not have the exact count of children receiving home education.

In response to a question from Representative Eckre, Dr. Gronberg said unless the Superintendent of Public Instruction has some statutory basis to require that the information regarding the number of children receiving home education be reported, he does not foresee the superintendent actively seeking that information.

Representative Nottestad said in his years as a principal, he found that the children who received home education had a very good academic background. He said, however, there might be situations in which children could fall through the cracks.

In response to a question from Senator Flakoll, Ms. Leedahl said the law limits the amount of monitoring that can be done because the determination to be made is whether the parent is competent to provide home education. She said the child must still meet all standardized test requirements.

In response to a question from Senator Redlin, Ms. Leedahl said a monitor will contact a parent to set up a time and then the monitor will come to the house, look through the child's papers, and assess whether the child is progressing adequately. She said usually a teacher from the local school district conducts the monitoring.

In response to a question from Senator Kelsh, Ms. Leedahl said some parents do not appreciate being monitored, especially if their children are doing very well.

Chairman Holmberg called on Dr. Gail Carlson, home education provider, Sheyenne, North Dakota, who presented testimony regarding the rewrite of the home education chapter. She said she wished to address the provision in current law that requires a parent providing home education to have a baccalaureate degree, as opposed to the suggested change that the parent have "at least" a baccalaureate degree. She said she has a doctorate in veterinary medicine and a Ph.D. in respiratory exercise physiology from Kansas State University. She said she has 12 years of postsecondary education but, because she was admitted to veterinary school after her third year of college, she does not hold a baccalaureate degree. She said when she wanted to home school her children, she was told that a literal reading of the law required her to take the national teachers exam because, despite her two doctoral degrees, she did not have a baccalaureate degree.

In response to a question from Senator Flakoll, Dr. Carlson said the requirements to enter veterinary medical school are very broad-based.

It was moved by Representative Nottestad that page 2, line 4, of the bill draft be amended to provide that a parent may provide home education if the parent has a baccalaureate or a graduate degree. The motion failed for lack of a second.

Representative Eckre said a person can be in a two-year program and then get admitted to chiropractic school and become a doctor of chiropractic. He said he does not believe that a person who has completed a two-year program and then graduates from chiropractic school is able to be a teacher.

Representative Hanson said this verbiage had been agreed to by the Home School Association initially and perhaps should be left alone.

At the request of Chairman Holmberg, Ms. Janet Placek, Executive Director, Education Standards and Practices Board, said there is a national teachers exam that is being phased out in June 2000. She said the wording on page 2, line 5, should be replaced so that it references "a" national teachers exam rather than "the" national teachers exam. She said each institution has its own cutoff score. She said around 2000 or 2001, there will be a state cutoff score.

Representative Nottestad said with respect to changing references to the child's immunization record, we should shy away from merely having the form on file. He said the record should be updated and for that reason it is appropriate to require an annual filing.

It was moved by Representative Nottestad, seconded by Representative Martinson, and carried on a voice vote that page 1, line 17, of the bill draft be amended to reference a copy of the child's immunization form.

It was moved by Representative Martinson, seconded by Representative Nottestad, and carried on a voice vote that page 2, line 5, of the bill draft be amended to reference "a" national teachers exam.

Chairman Holmberg called on Mr. Tom Decker, Director of School Finance and Organization, Department of Public Instruction, who said because a child is not old enough to have a residence, the reference in the bill draft should be to the parent's district of residence.

It was moved by Representative Martinson and seconded by Representative Hanson that those sections of the bill draft which reference both a child's school district of residence and the parent's school district of residence be reconciled to reference only the parent's school district of residence.

With the permission of Chairman Holmberg, committee counsel said there are numerous references throughout the Century Code to a child's school district of residence. She said those references are found not only in this chapter, but also in chapters dealing with school finance, student transportation, nonresident tuition, open enrollment, special

education, postsecondary enrollment options, and the annexation of property. She said it would be advisable to examine the references throughout the code before determining a direction with respect to references in a single chapter of the code.

With the consent of the second, Representative Martinson withdrew the motion.

Chairman Holmberg asked committee counsel to examine other statutory references to school districts of residence and report her findings to the committee at the next meeting.

TEACHER PERSONNEL ISSUES

At the request of Chairman Holmberg, committee counsel distributed a bill draft that creates NDCC Chapter 15.1-17, relating to teacher personnel issues.

Section 15.1-17-01

Chairman Holmberg said Section 15-38.2-01, which is present law, provides that every teacher employed in a school district or educational institution supported by public funds in this state has the right to review the contents of that person's personnel file originating after original employment. He said in rewriting Section 15-38.2-01, there were a few things that needed to be clarified. He said present law refers to teachers employed in school districts or educational institutions supported by public funds in this state. He said that latter reference includes state institutions of higher education. He said what it was intended to include is teachers employed by state institutions such as the School for the Deaf, the School for the Blind, or the Youth Correctional Center. He said the rewrite consequently states that a teacher employed by a school district or by a state-supported institution that provides elementary and secondary education to its students may review the documents.

Chairman Holmberg said present law provides that a teacher has a right to review the contents of the teacher's personnel file originating after original employment. He said there is some uncertainty as to what precisely is meant by original employment. He said the rewrite provides that the teacher may review documents generated and placed in the teacher's personnel file after the teacher was employed for the position. He said the last two sentences of Section 15.1-17-01 are taken from present Section 15-38.2-05, which states that upon written request, the teacher must be furnished a reproduction of any material in the teacher's personnel file excluding those references and information given at the time the person was being evaluated for employment. He said present law requires that the teacher pay for the cost of such reproduction.

Chairman Holmberg said present law provides for a duty, but the law does not designate who is given that duty. The statute says only that the teacher must be furnished with certain material. He said the rewrite provides that, upon written request, the school

principal, administrator, or school district superintendent must furnish the material.

Chairman Holmberg said although Section 15-38.2-05 states that the teacher is entitled to copies of "any material in his personnel file excluding those references and information given at the time he was being evaluated for employment," that specific language does not appear in the rewrite because the first part of Section 15.1-17-01 limits the teacher's access to documents generated after employment. He said both present law and the rewrite maintain the provision that the teacher is responsible for copying costs.

Section 15.1-17-02

Chairman Holmberg said Section 15-38.2-02 provides that the teacher may submit a written notation regarding any material, and the notation must be attached to the file copy of the material in question. He said this reference raises questions regarding what is meant by a written notation. Is it handwritten or typewritten? Does it include e-mails or faxes? Is it a formal communication or a marginal note? He said the section also raises a question regarding to whom the notation should be directed. He said a third question involves who should attach the notation to the file copy.

Chairman Holmberg said the rewrite consequently states that a teacher may provide the school district superintendent with a written response to any document in the teacher's personnel file. He said in the case of teachers employed by state institutions, they may give their written responses to their administrator. He said the recipient, be it the superintendent or the administrator, is then responsible for attaching the teacher's written response to the appropriate document and returning both the document and the teacher's written response to the teacher's personnel file.

Section 15.1-17-03

Chairman Holmberg said Section 15-38.2-03 provides that if a teacher believes any material placed in the teacher's personnel file, other than formal evaluations, is inappropriate or in error, the teacher may seek review by the school administration and the school administration must grant the review. He said if the teacher is dissatisfied with the review, the teacher may request, and must receive, a formal review before the school board regarding the placement of the material in the teacher's file.

Chairman Holmberg said present law does not make clear whether the first review by the "school administration" means the superintendent, the building principal, or some other entity. He said, therefore, it was provided in the rewrite that if a teacher believes a document in the teacher's personnel file is inappropriate or inaccurate, the teacher may request that the file be reviewed by the

building principal, or in the case of a teacher employed by a state institution, that the file be reviewed by the administrator of the school.

Chairman Holmberg said if the teacher is dissatisfied with the outcome of the review, the teacher is entitled, upon written request, to have the file reviewed by the school board. He said Chapter 15-38.2 does not address any appeal level for teachers employed at state institutions and neither does the rewrite.

Section 15.1-17-04

Chairman Holmberg said Section 15-38.2-04, which is present law, and the rewritten version are substantively the same. He said they provide that if a complaint is filed against a teacher or against an individual for whom the teacher is administratively responsible, and if the complaint is to be placed in the teacher's personnel file, the school principal, administrator, or school district superintendent must notify the teacher of the complaint. He said the rewrite names the individuals who are responsible for notifying the teacher, whereas present law merely provides that the complaint is to be drawn to the attention of the teacher.

Section 15.1-17-05

Chairman Holmberg said Section 15-38.2-06, which is present law, provides that it is a Class B misdemeanor for any person in any public school district or in any state institution to maintain a secret file concerning any teacher to which the teacher does not have access as provided in this chapter. He said the rewritten version makes some semantic changes. He said it provides that it is a Class B misdemeanor for any person "employed" by a school district or a state-supported institution to maintain documents about a teacher unless the teacher has access to those documents, as provided by this chapter. He said to say broadly that it is a misdemeanor for any person "in any public school district" to maintain those documents in fact refers to residents of the district, not just to those employed by the district. He said the rewrite also eliminates reference to a "secret" file. He said if a teacher knows about the file, it is not a "secret" file. He said the rewrite therefore refers to the maintenance of documents to which the teacher does not have access.

Testimony

Chairman Holmberg called on Mr. Larry Klundt, Executive Director, North Dakota Council for Educational Leaders, who presented testimony regarding the rewrite of the teacher personnel issues chapter. He said Section 15.1-17-03 should include an intermediate level of appeal to the school district superintendent before a teacher may appeal to the school board. He said most such matters will get resolved in

this fashion and will not have to involve the school board.

In response to a question from Senator Redlin, Mr. Klundt said anonymous complaints are treated seriously until such time as they are disproved. He said if a complaint goes into a teacher's file, the teacher must be informed.

Chairman Holmberg called on Ms. Bev Nielson, North Dakota School Boards Association, who presented testimony regarding the rewrite of the teacher personnel issues chapter. She said she too would support an amendment to provide for an intermediate level of appeal to a school district superintendent in Section 15.1-17-03.

Chairman Holmberg called on Ms. Nancy Sands, North Dakota Education Association, who presented testimony regarding the rewrite of the teacher personnel issues chapter. She said she too would support an amendment to provide for an intermediate level of appeal to a school district superintendent in Section 15.1-17-03. She said she would be interested in offering alternative language for committee consideration with respect to Section 15.1-17-05.

Chairman Holmberg said Ms. Sands may offer her suggestion at the next meeting of the committee.

It was moved by Senator Flakoll, seconded by Representative Eckre, and carried on a voice vote that Section 15.1-17-03 of the bill draft be amended to add an intermediate level of appeal to a school district superintendent.

OPEN ENROLLMENT

At the request of Chairman Holmberg, committee counsel distributed a bill draft that creates NDCC Chapter 15.1-31, relating to open enrollment.

Section 15.1-31-01

Chairman Holmberg said Section 15.1-31-01 sets forth the procedure for open enrolling a student. He said it literally takes present law, as found in Section 15-40.3-01, and repeats it using eight subsections. He said there is one minor change that needs to be noted. He said in subsection 8, on page 2, reference is made to the student's parent, whereas current law refers to the student's parent or legal guardian. He said this is not done to remove the authority from a legal guardian. He said the only way one can become a legal guardian is if a court grants that status. He said when the court grants that status, it gives one the right to act "in loco parentis"--in the place of the parent. Consequently, he said, whatever a parent can do, so can a legal guardian, and therefore the statute does not have to maintain the reference to "a parent or a legal guardian."

Section 15.1-31-02

Chairman Holmberg said Section 15.1-31-02 sets forth the circumstances under which an application for open enrollment may be denied. He said as in

current law, which is found in Section 15-40.3-02, an application may be denied only if it would result in more than a 20 percent drop in students from the previous year's average daily membership.

Section 15.1-31-03

Chairman Holmberg said Section 15.1-31-03 provides that once a student is enrolled in an admitting district, the student must remain enrolled in the admitting district until the student graduates, moves, submits an application for enrollment in another district, or returns to the district of residence. He said the rewrite takes the content of present law, as found in Section 15-40.3-03, and repeats it using four subsections.

Chairman Holmberg said one thing to note is that present law frequently refers to "foundation aid." He said sometimes it is not clear whether the law is talking just about per student payments or other state payments as well, such as transportation. Therefore, he said, the rewrite replaces the phrase "foundation aid" with reference to a specific payment or payments. He said this section includes references to per student payments and tuition apportionment payments.

Section 15.1-31-04

Chairman Holmberg said Section 15.1-31-04 provides that the school district of residence must pay costs to the admitting district if the student involved has disabilities. He said this section reiterates current law as set forth in Section 15-40.3-04.

Section 15.1-31-05

Chairman Holmberg said Section 15.1-31-05 covers the payment of transportation expenses for students who are open-enrolled. He said as in current law found in Section 15-40.3-05, a school district of residence may provide transportation to a student participating in open enrollment. He said if the district of residence will not transport the student, the admitting district may, and then the admitting district is entitled to state payments.

Section 15.1-31-06

Chairman Holmberg said Section 15.1-31-06 requires that a school board set standards for the acceptance and denial of open enrollment applications. He said as in current law it suggests what the standards may address and gives a board the option of not considering any open enrollment applications. He said the content of Section 15.1-31-06 is the same as Section 15-40.3-06, but the rewrite uses subsections.

Section 15.1-31-07

Chairman Holmberg said Section 15.1-31-07 provides that if a student, as a result of a dissolution, resides in a district other than the one the student

chooses to attend at the time of the dissolution, the student is not subject to this chapter and may attend school in the chosen district. He said this is the same language as is found in current law, Section 15-40.3-07.

Testimony

With the permission of Chairman Holmberg, Mr. Decker distributed a document entitled *Open Enrollment 97-98*. The document is attached as Appendix B. Mr. Decker said only six or eight districts do not allow any open enrollment. He said overall the open enrollment law is working very well.

At the request of Chairman Holmberg, Ms. Trisha McCarthy, South Central Prairie Special Education Director, said the 1999 Legislative Assembly changed

the special education provisions to include an 80/20 payment split. She said that was not made applicable to the open enrollment chapter and perhaps it needs to be added at this point.

Chairman Holmberg adjourned the meeting at 1:30 p.m.

L. Anita Thomas
Committee Counsel

ATTACH:2