

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### NO CHILD LEFT BEHIND COMMITTEE

Monday and Tuesday, March 22-23, 2004  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative RaeAnn G. Kelsch, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives RaeAnn G. Kelsch, Bob Hunsakor, Lisa Meier, David Monson, Margaret Sitte, Clark Williams; Senators Dwight Cook, Layton Freborg, Gary A. Lee, Ryan M. Taylor, Rich Wardner

**Others present:** See Appendix A

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

Chairman Kelsch welcomed Senator Rich Wardner to the interim No Child Left Behind Committee.

At the request of Chairman Kelsch, committee counsel presented information regarding the No Child Left Behind (NCLB) Act cost reports prepared by Ohio and Minnesota. Committee counsel also presented an update of legislative action regarding the NCLB Act in other states.

In response to a question from Representative Monson, committee counsel said she does not recall that either the Ohio or the Minnesota report referenced costs associated with the retention of students.

Chairman Kelsch called on Ms. Wendy Evans, Deputy Secretary's Regional Representative, United States Department of Education, who presented testimony regarding the history of the NCLB Act, the history of federal funding for education, and the latest United States Department of Education policy modifications to the NCLB Act. Her testimony is attached as Appendix B. She said the NCLB Act is not new law. She said it is the reauthorization of the Elementary and Secondary Education Act (ESEA), which was originally enacted in 1965 during the administration of President Lyndon B. Johnson. She said prior to that time there had been no allocation of federal funds to individual states for the purpose of kindergarten through grade 12 education. She said the ESEA was enacted to close the achievement gap between privileged and underprivileged children. She said the ESEA was reauthorized in 1994 during the Clinton administration and named the Improving America's Schools Act (IASA).

Ms. Evans said 1994 statistics showed there had been no narrowing of the achievement gap, despite

30 years of federal funding. She said the 1994 Improving America's Schools Act sought to change the way education is delivered by encouraging comprehensive systemic school reform, upgrading instructional and professional development to align with high standards, strengthening accountability, and promoting the coordination of resources to improve the education of all children. She said in order to receive funding under the Act, states were required to submit to the United States Department of Education an accountability plan that included standards and assessments; develop challenging content standards and student performance standards; develop a system of high-quality yearly student assessments, including assessments in reading and mathematics that could be disaggregated by gender, racial, and ethnic groups, as well as English language proficiency, migrant status, disability, and economic status; and demonstrate adequate yearly progress based on their assessment systems.

Ms. Evans said the 1994 Improving America's Schools Act unfortunately contained no timeline for states to meet those requirements and no consequences for states that did not meet the requirements. She said when President George W. Bush took office, only 11 states were in compliance with the 1994 law. She said only 11 states had assessment systems in place. She said between 1994 and 2001 the achievement gap had not narrowed and no state had been denied funding for not meeting the requirements of the law.

Ms. Evans said the NCLB Act was passed by an overwhelming bipartisan vote in Congress. She said this time Congress wanted to ensure that states complied with the law and therefore included timelines and guidelines. She said as the 1994 Improving America's Schools Act the NCLB Act required states to submit an accountability plan of standards and assessments. She said unlike the 1994 Improving America's Schools Act the NCLB set a June 2003 date for compliance. She said as of June 10, 2003, all 50 states, the District of Columbia, and Puerto Rico had submitted their accountability plans.

Ms. Evans said as the 1994 Improving America's Schools Act the NCLB Act required states to implement challenging content standards and performance standards. She said as the 1994 Improving America's

Schools Act the NCLB Act required states to set up a system of high-quality assessments and to disaggregate the results according to subgroups. She said unlike the 1994 Improving America's Schools Act the NCLB Act provided funds to the states for the development and implementation of their assessment systems.

Ms. Evans said as the 1994 Improving America's Schools Act the NCLB Act required states to demonstrate adequate yearly progress. She said unlike the 1994 Improving America's Schools Act the NCLB Act provided options for students in attendance at schools that continued not to meet their goals of adequate yearly progress.

Ms. Evans said people fail to realize that the NCLB Act leaves it up to each individual state to set its own standards and to determine what assessment system it will use to measure the achievement of its own students. She said under the NCLB Act states were given the flexibility to provide the substance for adequate yearly progress in their own plans; define advanced, proficient, and basic achievement levels; define minimum group size for purposes of accountability; define their major racial and ethnic subgroups; determine annual measurable objectives in their timeline for reaching 100 percent proficiency by the conclusion of the 2013-14 school year; integrate adequate yearly progress with their previously existing accountability plans; account for unique schools such as small rural schools; determine content and achievement standards applicable to tests for new teachers; and determine the standards applicable to experienced teachers.

Ms. Evans said people forget that it has only been nine months since all state accountability plans were put in place.

Ms. Evans said it is not true that the NCLB Act is an unfunded mandate. She said President Bush's budget proposal for fiscal year 2005 boosts education funding to \$57.3 billion. She said that is an increase of 36 percent since President Bush took office. She said North Dakota is expected to receive \$32.9 million for fiscal year 2005 Title I funding. She said that is an increase of \$11.2 million over 2001 levels. She said for fiscal year 2005, North Dakota is also to receive \$3.5 million for its student assessment system. She said prior to the Act state assessments were required but no federal funding was provided.

Ms. Evans said people frequently state that the federal law is underfunded because the level of appropriation is below that which was authorized. She said Congress sets the funding and spending caps for all bills. She said the authorizing committees establish a dollar figure that is a maximum spending limit for a particular bill. She said the Appropriations Committees then consider all federal expenses and establish an appropriation level for each bill. She said this is the case with all bills, not just education bills and not just with the NCLB Act.

Ms. Evans said the United States Department of Education has made a tremendous effort to speak with and listen to members of the public, legislators, school administrators, teachers, school board members, parents and others about the NCLB Act. She said last week the United States Department of Education issued three new policies regarding the highly qualified teacher aspect of the Act. She said the first policy provides that teachers in eligible rural districts who are highly qualified in at least one subject will have three years to become highly qualified in any additional subjects they teach. She said the second policy change would authorize states to allow science teachers to demonstrate that they are highly qualified in either broadfield science or in individual fields of science. She said the third policy expands the high objective uniform state standard of evaluation process for veteran teachers who teach multiple subjects. She said states may streamline their process by developing a method for those current multisubject teachers to demonstrate their subject matter competency through only one multidisciplinary high objective uniform state standard of evaluation. She said such teachers would not have to go through the high objective uniform state standard of evaluation process for each subject they teach.

Ms. Evans said the United States Department of Education has also allowed limited English proficiency students during their first year of enrollment to have the option of taking the reading content assessment in addition to taking the English language proficiency assessment. She said these students would also take the mathematics assessment, with accommodations, as appropriate. She said states may but would not have to include results from the reading and the math content assessments in adequate yearly progress calculations. She said students would be counted as participants in the 95 percent testing requirement for adequate yearly progress purposes. She said the United States Department of Education also provided that for purposes of adequate yearly progress calculations, states may have up to two years to include students who have attained English proficiency in the limited English proficiency subgroup.

Ms. Evans said the United States Department of Education also issued new regulations modifying the previous regulations regarding the testing of special education students and the way test scores are counted toward adequate yearly progress. She said schools will have the flexibility to count the "proficient" scores of students with the most significant cognitive disabilities who take assessments based on alternate achievement standards. She said students are likely to achieve proficiency on alternate tests that are structured just for them. She said the testing of such students is determined by their individualized education programs. She said those proficient scores may be counted for purposes of adequate yearly progress,

provided the number of proficient scores does not exceed 1 percent of the number of all students tested in that grade. She said the new regulations provide states with flexibility in calculating adequate yearly progress. She said their use is at the discretion of each state.

Ms. Evans said for the first time in history every state has an approved accountability plan to ensure academic proficiency for each student. She said achievement gaps are being identified and addressed. She said the success of schools is now being measured on the academic achievement of all students so that students who need help are not hidden in the averages. She said the NCLB Act is only two years old. She said states have done a tremendous job of setting their goals and standards and are working hard to make them a reality.

Ms. Evans said the goal of the NCLB Act is that no child be left behind. She said statistics from the national assessment of educational progress found that in 2003 only 30 percent of all public school fourth graders scored at or above proficient. She said that means that only 30 percent of fourth graders can read at the fourth grade level. She said perhaps all schools will not reach 100 percent proficiency by 2014 and perhaps some schools will reach only 75 or 80 percent proficiency. She said we would rather fall short of a lofty aspiration than start out with lower expectations.

In response to a question from Representative Delmore, Ms. Evans said Wyoming claims that its teachers are at the 98 percent level with respect to being highly qualified. She said a national statistic is not yet available. She said the focus of the NCLB Act seemed to swing more toward subject matter competency rather than pedagogy.

Representative Sitte said North Dakota has some of the highest national assessment of educational progress reading scores in the nation. She said we have learned that some of the American Indian schools have fallen through the cracks. She said she is troubled by hearing about federal flexibility when we in North Dakota have a better system than that which is being advocated under the NCLB Act.

Ms. Evans said each state has the flexibility to develop its own standards and to be accountable.

In response to a question from Representative Monson, Ms. Evans said Wyoming's teacher qualifications are tied to its school accreditation process and that is why Wyoming was able to quickly determine the percentage of its teachers that are and are not highly qualified.

Representative Delmore said she believes a huge cost could be engendered as a result of lawsuits filed because schools have failed to meet the goals of the NCLB Act.

Ms. Evans said President Bush was concerned that even though so much of the law was in place in 1994, states were not abiding by the law and there

were no consequences to those that did not abide by the law.

Chairman Kelsch called on Dr. Gary Gronberg, Assistant Superintendent, Department of Public Instruction (DPI), who presented testimony regarding the recent NCLB Act regulatory and administrative changes. Dr. Gronberg said we often hear that teachers are unhappy about the NCLB Act's teacher standards. He said we hear individuals say that one size does not fit all in terms of the NCLB Act's applicability to rural states. He said others claim there is not enough money tied to the Act and that it is nothing short of an unfunded mandate. He said we also hear about the rebellious attitude of schools, of state education associations, and of state legislatures, particularly with respect to states' rights and the role of the federal government in education. He said our challenge is to address the difficulties of the Act. He said we can proclaim ourselves "good" but the data is telling us something else. He said we need to remember that the intent of the Act is to give our students a better shot at success in tomorrow's world than we are giving them currently.

Dr. Gronberg said we need to look at how our students are doing and at how they have done since the law was passed. He said DPI has participated in two different studies done by the General Accounting Office. He said one study focused on how rural states were dealing with the issues and requirements of the NCLB Act. He said the other looked at how the United States Department of Education can successfully implement the Act.

In response to a question from Representative Delmore, Dr. Gronberg said there is a formal process the state must go through to amend its accountability plan so it can take advantage of the most recent regulatory provisions.

Chairman Kelsch called on Mr. Greg Gallagher, Director of Education Improvement, Department of Public Instruction, who presented testimony regarding the regulatory and administrative changes applicable to the NCLB Act. His testimony is attached as Appendix C. He said at each of this committee's previous meetings, DPI submitted documentation regarding the implementation of the Act in this state. He said DPI is moving forward with the adoption of its content and achievement standards in English language arts, mathematics, and science. He said the science standards will be effective for the 2005-06 school year. He said content standards relate to what students should know and be able to do. He said they are to contain coherent and rigorous content, encourage the teaching of advanced skills, describe levels that determine proficiency, and offer complete information about a student's progress toward proficiency.

Mr. Gallagher said on February 3, 2004, DPI received and accepted the final draft of the revised content standards in English language arts and

mathematics from the appointed drafting committees and Mid-continent Research for Education and Learning. He said for the first time this will establish content standards in English language arts and mathematics for kindergarten through grade 12 students. He said it is believed that by August 2004 achievement standards will have been fully integrated into the content standards. He said the new content and achievement standards will undergo no further revision until the next scheduled review cycle in 2009.

In response to a question from Representative Sitte, Mr. Gallagher said the standards are available on the DPI web site.

Mr. Gallagher said DPI is proceeding with the science standards. He said DPI contracted with Mid-continent Research for Education and Learning to be the project facilitator. He said DPI has also contracted with 35 teachers to serve on the primary drafting committee. He said all drafts are made available for comment across the state. He said DPI has contracted with an additional 30 teachers to serve as peer editors and reviewers of the work done by the primary committee. He said this effort will take place between March 2004 and January 2005. He said the administration of the science assessments for grades 4, 8, and 11 will begin in October 2006. He said the resulting achievement data will constitute the baseline upon which the state's cut scores will be determined.

Mr. Gallagher said the NCLB Act requires that state assessments be used to assess the achievement of all students; be aligned to the state's academic content standards; be valid, reliable, and consistent with nationally recognized professional and technical standards; allow state discretion to assess in other subject areas based on approved standards; provide for reasonable accommodations and alternate assessments; provide individual reports that are interpretive and diagnostic; provide disaggregated reports for subgroups; protect privacy and family values; and enable itemized score analysis for assessing student needs.

Mr. Gallagher said the state has dealt with the technical quality of its assessments during the last several years. He said from 2001 through 2004, CTB/McGraw-Hill has served as the primary contractor for the development and administration of the state assessments. He said the assessments were developed according to industry standards, validated for content alignment, and calibrated to state achievement standards as set by state teachers. Since 2000, he said, DPI has conducted three separate technical quality peer review sessions regarding the state's assessment system. He said they are facilitated by the United States Department of Education and conducted by committees of independent assessment specialists. He said these technical quality peer reviews monitor the compliance of each state with respect to meeting the technical

assessment provisions of the NCLB Act. He said peer review committees analyze each system against a variety of criteria, including alignment to standards, the inclusion of all students, test validity and reliability, the reporting of results, public accessibility, support services, accountability measures, and other matters.

Mr. Gallagher said DPI is mindful of its duty to supervise the development, administration, reporting, and improvement of the state's assessment system. He said doing so is an inherently complex endeavor. He said to accomplish the monitoring of the many quality assurance measures within the state's assessment system, DPI has contracted with and regularly consults with a committee of assessment specialists who constitute the state's technical advisory committee.

In response to a question from Representative Delmore, Mr. Gallagher said the requirement of the law is that the assessment be in terms of a state standard, not against another cohort. He said regardless of which class of students is subject to the assessment, that class will be assessed against the state standard. He said both the NCLB Act and the state accountability plan provide for a growth approach as well. He said even if a school does not meet adequate yearly progress, one can show growth according to the rule of safe harbor. He said the state accountability plan allows for several years of data to be rolled up in case one sees a good cohort one year and a drop in the performance the next year. He said it allows the grouping of several years performance in order to show the relative programmatic strength of the school. He said there is no provision in the Act that allows for cohort review, i.e., measuring the progression of one class. He said cohort testing can show the progress of one group of students. He said in accordance with the Act, we are trying to determine if there has been progress within all groups that constitute a school.

In response to a question from Representative Delmore, Mr. Gallagher said whether or not programmatic assessments set schools up to be failing schools must be addressed by examining the data. He said there is a weighted measure that is applied in determining adequate yearly progress. He said we look at several impact approaches on some schools. He said the rolling together of scores has a mitigating effect on the poor performance of any one class. He said the drop in the scores of a class or even of a student will impact a school's final results. He said the data is there to show how well the school is doing collectively. He said it does not necessarily mean that one poor performance will have an aggregate effect across all sections.

In response to a question from Representative Delmore, Mr. Gallagher said the NCLB Act is very attuned to the needs of the various subgroups. He said every school, school district, and state reports not only on the aggregate performance of its students

but also on the performance of specific subgroups. With respect to special education, he said, there are provisions within the new regulations that allow flexibility regarding accommodations and alternate assessments based on an alternate achievement standard. He said because of this new flexibility, an assessment that takes into account the specific needs of a student can be given. He said a large number of special education students receive little or no accommodations in their assessments. He said this is an area of immediate concern. He said we need to ensure that during the assessments, special education students are given the accommodations they need in accordance with their individualized education programs.

In response to a question from Representative Delmore, Mr. Gallagher said only one-half of 1 percent of our students were using an alternate assessment. He said the regulations allow 1 percent. He said under the regulations, it would be possible to have as high as a 5 percent participation rate in an alternate assessment. He said the question that would arise is that if only 10 percent of our students are special needs students and not all of them have disabilities that are significant cognitive disabilities, would we ever reach that participation rate? He said if we did reach that 5 percent rate and if we had a 20 percent achievement of proficiency that would constitute the 1 percent and it would be identified as the 1 percent at the district and state level.

Representative Delmore said the problem is that a statewide average does not get to the truth of the matter within individual school districts.

In response to a question from Representative Delmore, Mr. Gallagher said the data does not show that any district has reached the 1 percent cap. He said we are seeing a fairly uniform application across the state. He said we are also seeing that we need to provide greater clarification to those who are administering the assessments. He said we need to ensure that those administering the assessments understand that students having individualized education programs can receive alternate assessments or appropriate accommodations.

In response to a question from Representative Monson, Mr. Gallagher said the reports show the performance of each grade and class. Consequently, he said, anyone can track cohort progress. He said current regulations do not provide an exception for the performance of a particular cohort. He said the regulations are clear that adequate yearly progress is based on the overall performance of students in a given school. He said if one had a kindergarten through grade 8 school, one would combine the effects of the students in grades 3, 4, 5, 6, 7, and 8 into a weighted measure to determine if they reached the level of the state's achievement scores. He said if they did all is fine and if they did not there is no exception for a "funky" third grade class. He said

there is no flexibility given for the state to pursue such exceptions. He said that is not allowed under the regulations.

In response to a question from Senator Cook, Mr. Gallagher said DPI has a committee that is looking at the February 2004 regulations regarding the 1 percent cap, the definition of significant cognitive disability, and the alternative achievement standard. He said the committee has indicated great discomfort with the low number of special education students receiving accommodations. He said in some categories one-half to three-fourths of the identified students had not received any accommodations. He said we have to trust the level of review being done at the individualized education program sessions when accommodations or alternate assessments are considered. He said it is at the individualized education program level that decisions to use or not to use accommodations or alternate assessments are made. He said the only consideration at that level is what is appropriate for the particular student. He said we are seeing a lower than expected use of accommodations and that is being reviewed to ensure that people in the field are mindful of the option for accommodations and perhaps even alternate assessments.

In response to a question from Senator Cook, Mr. Gallagher said even though the giving of assessments requires some level of preparation, North Dakota has been participating in assessments for many years. He said the improvement of assessments should be one of the most important things that we do. He said good quality data matters, as does ensuring that people are comfortable in a testing situation.

In response to a question from Senator Wardner, Mr. Gallagher said if a kindergarten through grade 8 school tested students in grades 3 through 8, one would take each of the individual grades and use a weighted measure because each of the grades has a different proficiency level that is identified with it. He said both the federal government and our outside technical advisors have said that is the proper way to do it. He said one must weigh the impact or proficiency for a particular school and then one can see how the students' performance measures against the proficiency level set by the state. He said if the students' performance does not meet the state's proficiency level, a series of statistical reliability checks are conducted to ensure that a school is not identified as not having met adequate yearly progress unless there is a 99 percent certainty that the school did not make adequate yearly progress. He said even then safe harbor is used to see if the school showed improvement. He said improvement is defined as reducing by 10 percent the number of students who are not proficient. He said if the school does not make it under safe harbor another level of review is applied. He said this time DPI takes the weighted measure of the current year and compares it to the

weighted measure of the previous year. He said if by bringing those measures together it raises the composite performance of the school, the school is deemed to have met adequate yearly progress. He said if the school still did not meet adequate yearly progress, another level of review is applied. He said three years of accumulated data is reviewed to determine what would have been the effect of the overall achievement level. He said each one of the quality checks has been employed by some school at some point to protect it against a bad identification. He said there is no mechanism for giving a waiver to a particular cohort because it has the perceived effect of lowering a school's overall performance. However, he said, the rules do provide a number of protections to ensure accuracy before identification of a school as not meeting adequate yearly progress.

In response to a question from Representative Delmore, Mr. Gallagher said we now have available to us three years of data that can be rolled up. He said this enables us to make the necessary quality review.

In response to a question from Representative Delmore, Mr. Gallagher said he is not aware of any standards that have been changed. He said cut points, standards, and rules have been set. He said there have been no changes in the rules up to this point. He said there has been some evolution of federal requirements. He said we have already made reference to the individualized education program and limited English proficiency rule changes. He said those deal with particular subgroups and can be easily incorporated into the state's assessment plan.

Mr. Gallagher said on October 15, 2003, DPI issued a request for proposals that would address the North Dakota state assessments for the coming three- to five-year period. He said in December 2003 DPI convened two separate committees to review all proposals and to submit a recommendation regarding the preferred bid to the state Superintendent. He said CTB/McGraw-Hill received the contract and there were no appeals from any of the other vendors. He said DPI and CTB/McGraw-Hill have completed the contract for the administration of state assessments from 2004 through 2009. He said the contract is worth \$9,892,440.

Mr. Gallagher said DPI and CTB/McGraw-Hill have also developed a business plan detailing future activities. He said within the next several weeks, teams of educators will review and select test items to align to the state's standards, conduct test item bias sessions, establish the most appropriate model for test item breadth and depth analysis, conduct the actual analysis, review all test coordination materials, and review all student and school achievement reports.

In response to a question from Senator Cook, Mr. Gallagher said there were no appeals from any of the vendors. He said in determining who should be the successful bidder, DPI put together two committees--one committee consisted of 40

individuals who were responsible for alignment review and the other committee consisted of 20 individuals who were responsible for conducting a detailed proposal review. He said the members of the groups felt that the process was proper, well-balanced, and allowed for the consideration of a number of factors. He said there were no overt objections from any of the individuals participating in the review. He said the comments from the field related to the request for proposal process itself. He said they thought there should have been increased importance placed on computer-based assessing and that DPI should have been more proactive in moving toward computerized assessments.

Mr. Gallagher said DPI reviewed the work of several different states regarding computerized assessments. He said a consortium known as the Education Leadership Council had examined computerized assessing across the country. He said it was DPI's opinion that to proceed into computerized testing at this time would have been ill-advised. He said the principal concern comes with the infrastructure and its appropriateness for the use of computerized assessments. He said that is why DPI opted for a pilot program to introduce computerized assessing rather than undertaking a wholesale changeover. He said South Dakota tried computerized assessing and abandoned the effort because of infrastructure problems. He said the group felt that it was important to have assessments that allowed for extended responses not just true and false or multiple choice but assessments that allowed students to truly demonstrate their understanding and skills. He said computerized assessing is very much in its infancy.

In response to a question from Senator Cook, Mr. Gallagher said there are a number of school districts that have moved toward computerized assessing to see how well students start and end each year.

In response to a question from Representative Delmore, Mr. Gallagher said the Legislative Assembly has appropriated approximately \$600,000 a year for state assessments and the federal government has given the state \$3.4 million a year. He said North Dakota will be able to fund its state assessments at its current level of federal and state appropriations. He said DPI will request \$900,000 a year to maintain the quality of our assessments. He said the responsibility to absorb the cost of the assessments is that of the state from the revenue it receives under Title VI.

In response to a question from Representative Delmore, Mr. Gallagher said the state has historically funded a minimal level of assessments in English language arts and mathematics. He said the state has been appropriating money for assessments for many years. He said during the last two bienniums, the annual appropriation level for assessments has been \$600,000. He said Congress has supported the authorized level of funding for assessments. He said

should that level ever drop, the state would not have to administer the assessments.

Mr. Gallagher said the state has secured funding through a discretionary grant with eight other states via the Mountain West Consortium Project to develop English language proficiency assessments. He said these assessments will offer the state a standards-based means to measure a student's English language proficiency. He said the assessment is expected to be available for statewide use by spring 2005.

Mr. Gallagher said state law requires DPI to bring the results of assessments to this committee. He said the grade 12 assessments are now in their third year and beginning next year the assessments will be given to students in grade 11 rather than grade 12. He said we have three years worth of data now regarding the progress of our students in English language arts and mathematics. He said overall proficiency in reading has risen about five percentage points, which he said amounts to a 10 percent improvement over the 2001-02 baseline data. He said the overall proficiency results for mathematics rose 3 percent, which is about a 9 percent increase over the baseline data. He said we are seeing a general decrease in the lower levels and a general increase in the proficiency levels. He said the results for grades 4 and 8 are expected to be available in May 2004.

Mr. Gallagher said the data shows that we have seen student growth across the board in both reading and mathematics. He said the objective is to have as much movement as possible into the categories of proficiency.

In response to a question from Representative Delmore, Mr. Gallagher said the teachers who have been involved in the development of the standards and the alignment of the standards have observed that the students' test scores are less a reflection of the number of units that they take and more a reflection of what constitutes a unit. He said students success goes right to the curriculum itself. He said the way the high school mathematics curriculum is traditionally structured, it tends not to deal with certain standards. He said regardless of how many units a student takes, that student's success is still dependent on what is in the unit.

In response to a question from Representative Delmore, Mr. Gallagher said our standards resonate quite well with standards from across the country. He said it is not the standard that is the difficulty but rather the students' exposure to the standards. He said there has been great discussion regarding how high school curricula should be structured. He said in many instances a portion of the standard is not being incorporated into the curriculum.

Representative Delmore said some students are not being taught the particular standards because they are not taking the mathematics classes that are

aligned to the standards. She said we are therefore setting them up for failure and for being deemed nonproficient.

Mr. Gallagher said there is a high-level policy statement that students must be taught to the standards--breadth of the standards and to the depth of the standards. He said schools are told to work their curriculum so that students are taught what they need to know and be able to do. He said if schools are identifying curriculum that is not doing justice to the standards, then that curriculum needs to be amended. He said many teachers are working very hard to map their curriculum to the standards.

Mr. Gallagher said we talk about high-quality instruction. He said that concept goes right to high-quality teachers and to issues of content knowledge and preparedness. He said teachers need to be able to understand the content and translate that through a good instructional experience for the students. He said this issue goes right to the heart of whether or not schools have aligned their curriculum. He said we have aligned assessments and the assessments are showing that we have gaps in performance. He said the field is also indicating that we have gaps in the curriculum.

In response to a question from Representative Delmore, Mr. Gallagher said standards go through an extensive review process. He said if a school is seeing gaps in student performance and hearing from its teachers that there are gaps, one cannot blame the standard. He said at that point one has to look at the curriculum.

Representative Monson said there is nothing wrong with our curriculum provided the students take it. He said he is concerned about the student who opts for a vocational track and decides that he does not want to take algebra or an advanced mathematics course. He said he wonders if Mr. Gallagher is telling schools that they have to offer such courses or that such students have to take such courses. He said such students will never become proficient in mathematics unless they actually take the curriculum. He said our teachers are doing a fine job of teaching the curriculum. He said the curriculum is fine but the students are not taking the curriculum. He said he wonders if every student will be required to take and pass advanced mathematics. He said that is the problem with requiring every student to meet adequate yearly progress and become proficient in mathematics.

Mr. Gallagher said the issue is not advanced math. He said our assessments contain only a few items that address advanced mathematics and those are a good way of identifying our more advanced students. He said if one determines that a student needs certain skills, it is important that the student acquire those skills, regardless of the courses that the student takes. He said whether the student takes a vocational approach or takes an algebra course, the curriculum

needs to do justice to the standards. He said the courses need to incorporate the standards. He said if the courses do not do this, one needs to ask what is it about a school's curriculum that allows students to avoid the standards.

Representative Monson said there are students who want to pursue music and art and they do not want to take mathematics. He said students will never be proficient in mathematics if they do not want to take and learn mathematics.

Representative Sitte said some people believe the mathematics standards are rather controversial. She said a school district may choose to use the Saxon mathematics series. She said that series does not align with the standards established by the National Council of Teachers of Mathematics. She said Saxon is a more traditional approach to the teaching of mathematics. She said a lot of small town schools and most of the parochial schools still use the Saxon mathematics series. She said the students are not permitted to use calculators until algebra II. She said the implantation of ideas in the mind is foremost. She said students do not deal with statistics until they get into algebra II. She said her understanding from teachers who helped write the mathematics assessments is that the state is not even testing algebra II. She said the test basically just goes through geometry. She said students who have taken mathematics using a different textbook series might have very proficient mathematics skills. She said they may go on to be fabulous electrical engineers and not have any problems at all with upper level mathematics. She said because students did not learn standards in the way DPI laid them out, because their school's curriculum did not map or align with DPI's, and because DPI's politically correct test has been aligned to its politically correct standards, students who are probably very proficient are being found to be nonproficient.

Mr. Gallagher said we are then dealing with the prospect that we are graduating students who are not being exposed to a considerable area of the curriculum and they are not showing proficiency in that regard. He said the state standards are silent with respect to which text should be used and which curriculum should be used. He said the standards set forth an expectation regarding what students should be encountering in terms of content. He said the state has an obligation to ensure that students are exposed to certain content. He said in addition to talking about the overall costs of the NCLB Act, we also need to talk about the cost to society of graduating people who do not have sufficient background in key areas. He said that lack of preparation then gets transferred to industry, which must then pay the cost of raising the proficiency level of new hires.

Mr. Gallagher said the assessments expect a moderate level of performance. He said we are not looking at a whole lot of test items that start moving

into the advanced areas. He said the vast majority of test items are designed to determine whether or not there has been a grasping of five key mathematical concepts. He said if a student is not exposed to statistics, we can just walk away from that and say, well, that is just the way it is. However, he said, we should be asking ourselves what disservice are we doing to that student. He said that student has a right to receive exposure to a variety of concepts. He said the reason that the teachers of the state go through the standards drafting and dialogue process is so that the final standards reflect the value of the profession. He said the standards reflect what the profession and what the state believes students are entitled to receive. He said the local level has to discuss the areas in which they are finding deficiencies and then discuss what needs to be done to correct that situation.

Representative Sitte said all local control has been removed from the writing of the standards. She said no longer is a school that would choose to use Saxon math be able to do so. She said her children have had a solid mathematics background and consequently had no difficulty in university level electrical engineering classes. She said DPI should not say there is only one way to teach mathematics.

Mr. Gallagher said there are certain knowledge points that are important for people to acquire. He said the point of a standard is not the method by which it is taught, it is the fact that it is covered. He said there is no dispute about which textbooks a school district wants to use. He said a student, regardless of the textbook used, has the right to be exposed to certain content. He said standards deal with content, not with instructional preferences.

In response to a question from Representative Kelsch, Mr. Gallagher said mapping against ACT or SAT does not necessarily align with North Dakota standards. He said North Dakota's ACT scores have been flat for a number of years. He said we are seeing the same kind of score spread as we do with the state assessments.

Mr. Gallagher said the United States Department of Education has a process for the amendment of state accountability plans. He said when a state puts forth a proposal to improve, update, or in any way amend its plan, it needs to submit a policy statement and supporting data. He said supporting data is critically important to the review process.

Mr. Gallagher said the regulations that address highly qualified teachers are within the purview of the Education Standards and Practices Board, not within the purview of DPI. He said the recent regulations have hinged on what is a "small rural" school. He said the latest regulations, in defining what constitutes a "small rural" school have used the same definition as that used for the small rural school achievement program. He said it is an arbitrary convoluted determination. He said DPI will ask the United States

Department of Education to use a different definition of "small and rural." He said it would be preferable to use the same definition as that used to allocate Title I funds. He said if that suggestion was accepted, only about five districts in the state would not qualify as "small and rural." He said if this were done, teachers would gain an extra year before having to meet the standard of "highly qualified."

In response to a question from Representative Delmore, Mr. Gallagher said DPI does not have a role in defining what constitutes a highly qualified teacher. He said DPI is responsible only for defining what constitutes "small and rural." He said the broader it can keep the definition of "small and rural," the more teachers it can include under the extended timeline for becoming highly qualified.

Representative Delmore said she wonders, given the fact that North Dakota is 50th in the nation in teacher salaries, who will pay when teachers are told that they need 20, 30, or 40 hours in order to be able to teach in various subject areas.

Mr. Gallagher said within the authorization of the NCLB Act, there are increased Title II funds and various Title I set-aside funds that can be used to assist teachers in becoming highly qualified. He said some districts have a great deal of flexibility and can use federal funds to pay for testing, courses, and any other expenses incurred by teachers in their quest to become highly qualified. He said those expenditures are left to the discretion of the individual districts when they put together their budgets for the use of their federal funds.

Representative Delmore said the problem is that the money is taken from one place and applied to another use. She said we are still looking at a limited pot of money and if we use money for one purpose it is not available for another. She said perhaps some districts would like to use some of the money for other things such as inservice training. She said depending on the needs of the teachers in a particular district, it could become prohibitively expensive to get everyone up to par.

Mr. Gallagher said the federal government took the old Title II funds, which amount to about \$2 million for North Dakota, added the funding source for the old Goals 2000 program and the class size reduction funds, and then added another \$2.5 million. He said what was \$2 million for the state under the old 1994 Act grew to \$13 million under the NCLB Act. He said these dollars are able to be used for the purpose of hiring highly qualified teachers or for the continuing support and training of highly qualified teachers.

In response to a question from Senator Cook, Mr. Gallagher said North Dakota has not turned back any funds related to Title II. He said funds have been reallocated from districts that were underspending. He said funds are available to districts for 27 months. He said if a district is not spending a sufficient amount by the halfway point, DPI makes some of the

remaining money available to other districts through a discretionary grant. He said in this way the state ensures that all money coming into the state is in fact spent.

Mr. Gallagher said DPI is committed, as it has been in the past, to working with various advisory groups on advancing its accountability provisions, the overall state plan, impact data, and proposed amendments to the plan. He said there have been a variety of instances during the past years in which DPI has used people from the field and standing committees as well. He said the areas in which DPI sees particular emphasis is the Title I Practitioners Committee. He said that is a committee authorized under federal law to offer policy and practice advice to the state. In addition, he said, the standards, assessment, learning, and teaching team, which was established by DPI, provides DPI with the development and implementation of the standards-based assessment and accountability system. He said DPI has long had an advisory group dealing with Individuals With Disabilities Education Act.

Mr. Gallagher said in order to conduct an integrated analysis of the state accountability plan, DPI proposed to the United States Department of Education that it form an ongoing accountability committee. He said the committee would include five individuals from the Title I Practitioners Committee, five individuals from the Individuals With Disabilities Education Act Advisory Committee, five individuals from the standards, assessment, learning, and teaching team, one individual representing the North Dakota Education Association, one individual representing the North Dakota Council of Education Leaders, one individual representing the Indian Affairs Commission, one legislator appointed by the Legislative Council, one individual appointed by the Governor, and three individuals from DPI.

In response to a question from Representative Delmore, Mr. Gallagher said when one looks at the three current committees that would make up the greatest portion of this accountability committee, i.e., the Title I Practitioners Committee, the Individuals With Disabilities Education Act Advisory Committee, and the standards, assessment, learning, and teaching team, one finds that a large number of those committee members are teachers. He said he cannot say with certainty how many members of the accountability committee will be teachers versus administrators.

Representative Kelsch said it would be meritorious to have at least two legislators appointed to the accountability committee--one from each chamber--so that when discussions occur on the legislative floor, each house would have someone with particular expertise.

Mr. Gallagher said there is an issue that has arisen in regard to the tribal schools and the Bureau of Indian Affairs (BIA). He said BIA has its own

school accountability system. He said BIA has orally expressed interest in transferring that responsibility to the state. He said the tribal schools would move away from a norm-referenced accountability system and toward a standards-based system handled by DPI.

Mr. Gallagher said DPI has entered into a contract with TetraData for the development and implementation of a statewide data warehouse. He said the purpose is to advance data-driven decisionmaking. He said this has been advocated for years and will be under the direction of the state's Information Technology Department.

Mr. Gallagher said the Government Accounting Office has conducted two separate reviews of the NCLB Act's impact on rural states and the accountability system within the state. He said one cannot study the impact of something such as the NCLB Act without first doing sufficient groundwork and collecting data from the state and from districts. He said a study of the Act's impact deals both with achievement and with finances. He said not all studies are of equal value or even credible. He said a recent study regarding the impact of the Act referenced the Augenblick study on adequacy. He said the report stated that North Dakota should anticipate a 31 percent increase in funding in order for it to meet the requirements of the Act. He said such a statement is blatantly wrong. He said the Augenblick study was not designed to determine the impact of the Act on North Dakota. He said its purpose was to look at the state's adequacy issues. He said misstatements like those do not advance good policy discussions. He said just because something is published does not make it right.

Mr. Gallagher said there has been about a 25 percent increase in federal funding because of the NCLB Act. He said there are also other dynamics in the mix, including recent statements by some states regarding the fact that they cannot even manage to spend all of their funds. He said this has resulted in a leveling off of federal funding. He said there are obviously different perceptions of what services and what funds are in fact needed. He said regulations and guidance are still evolving and we have no way of knowing what impact they will have in the future.

Mr. Gallagher said if this committee wants to pursue an accurate assessment of the NCLB Act on North Dakota, it should consider an investment of time and money, both at the state and the district levels. He said the Council of Chief State School Officers has recently released a request for proposal to conduct an analysis regarding the impact of the Act on all states and school districts. He said the premise of this effort lies in the strength and clarity of its numbers. He said the more states that work in common within the purview of a reputable research design, the more likely we will have a clear picture of the Act's impact.

In response to a question from Representative Williams, Mr. Gallagher said home educated students are not a part of the NCLB Act accountability provisions.

In response to a question from Representative Delmore, Mr. Gallagher said a small number of states have looked at what the different components of the NCLB Act might cost. He said most of the states have not waded in with an extensive analysis of the Act, in part because of the same difficulty that we have encountered. He said at best there is an uncertainty regarding how one should categorize the cost impact analysis. He said that is why participation in the Council of Chief State School Officers study should be considered. He said that would at least apply common criteria to the effort. He said as we have seen from the Ohio and Minnesota cost reports, there are wide variations in the criteria that are being applied to determine the cost of the Act. He said accurately determining the cost of the Act to the state of North Dakota cannot be done by DPI alone. He said such an effort would require the cooperation and participation of all school districts in the state and the amassing of a great deal of data.

In response to a question from Representative Kelsch, Mr. Gallagher said when the Council of Chief State School Officers initiates a study such as the proposed one, there is usually an upfront cost for participation.

In response to a question from Senator Cook, Mr. Gallagher said the representatives of the North Dakota Education Association and the North Dakota Council of Education Leaders on the statewide accountability committee will be selected by those groups, not by DPI.

Chairman Kelsch called on Dr. James Comerford and Dr. Mark Heidorn who presented testimony regarding the North Dakota assessment program. Their testimony is attached as Appendix D.

Dr. Heidorn said a document at the end of his handout discusses the Fry readability test. He said CTB/McGraw-Hill uses the Fry readability index. However, he said, it is just one of many things that are done to come up with the passages and the questions that go into a reading test. He said the determination of a passage comes about in two ways. He said first there is the selection process and second there is the empirical or proof process. He said when passages are selected for the assessments, they are reviewed from a variety of points, one of which has to do with readability indices. He said several readability indices are run because they do not agree with each other and because they are based on different circumstances. He said the Fry readability index is based on the average number of sentences per hundred words and the average number of syllables per hundred words. In addition, he said, there are various qualitative approaches that are taken, including concept mapping, vocabulary reviews, and the load and flow

reviews. He said given all of these considerations, the passages are ultimately selected through professional educator judgments and other analyses. He said once the passages are selected, they are administered at three grade levels--the grade level below the target level, the target level, and the grade level above the target level. He said that helps to verify that the passages are appropriate for measuring students at the particular grade level for which they will be used. He said even within the assessments the grade level of the passages will vary somewhat. He said all of the content is not spot-on for that grade level because we are measuring a band of students. He said when one looks at an eighth grade test, one will see some passages that are exactly at that level, some that are a little easier, and some that are a little harder. He said the passages will have been proven through national tryouts and standardization applications. He said one does not and cannot say that all of the passages on the seventh grade test are 7.2 because that would reflect just one aspect of the determination. He said indices are used but they are only one part of what goes into the determination.

Representative Sitte said she recently proctored the 12th grade assessment and had an opportunity to converse with several teachers. She said they and she wanted to know what the range was for the 12th grade assessment, i.e., was it classified at the 10th grade level, the 8th grade level, or the 6th grade level. She said she also wanted this same information for the fourth and eighth grade assessments.

In response to a question from Representative Sitte, Dr. Heidorn said the range of the 4th, 8th, and 12th grade assessments can be demonstrated in several ways, including the performance of the students and the range of the various indices used to measure the passages.

Representative Sitte said CTB/McGraw-Hill should simply take the Fry readability index or any of the other indices used throughout the nation and give us a number.

Dr. Comerford said when one looks at the collective data, one sees that the range goes from one grade below to one grade above the level being tested. He said he does not like to just reference a readability number. He said if one takes any single indicator and does a readability study on Macbeth and then does another readability study using the same formula on Robert Frost, one might get a misread. He said the Fry readability index is dependent on the number of sentences and the number of syllables. He said a Robert Frost poem would generate a much lower readability level than the sophistication of the passage might otherwise warrant. He said the Fry readability index does not measure the challenges in interpretation. He said that is why other indicators are used to determine the grade level of a passage. He said the final method of determining grade level is

giving it to students at the grade level for which it is designed and seeing if it in fact is appropriate.

Representative Sitte said if the passages were given to a 12th grade class that collectively read only at the 9th grade level, we would end up saying that now the 9th grade reading level has become the senior reading level because that is all that the seniors are handling. She said we need to use something that is objective in determining what the grade level of our assessments actually is.

Dr. Comerford said with respect to computer assessments, CTB/McGraw-Hill is looking at areas of online or web-based reporting. He said it is dynamic. He said one can do searches and selects on the reports. He said if it is used correctly it could cut down on turnaround time, including the time that it takes to pass out papers and pencils. He said work is also being done in the area of online student assessments. He said that includes research and development on the engine. He said high-stakes testing needs to be secure. He said we cannot have a situation in which a student who is taking a test on one site can leave that site to search for answers. He said we also need to ensure that the web site can handle open-ended questions, not just multiple choice questions. He said open-ended questions allow students to respond more creatively.

Dr. Comerford said in a high-stakes test environment we need to ensure there is comparability. He said we need to determine if students answer the questions the same way online versus on paper. He said research to date shows they do not. He said item formats are another issue. He said research is being done to link online assessments for classroom use and standardized tests. He said there are many areas in which online testing can provide something more than what we are doing currently.

Dr. Comerford said we need to look at different ways to score online tests so that we can get more information out of them than we could from the paper and pencil variety. He said we also need to look at ways to use the tools of the engine to provide links to proper instruction based on that student's individual test results. He said we need to look at ways of making this available to all students. He said we need to provide applicability to special education students and English language learners.

Dr. Comerford said a number of other states are looking at piloting online testing and others are looking at the development of classroom assessments online in a low-stakes environment and using that as a way to pilot the concept and address the infrastructure issues that will come out. He said teachers determine when classroom assessments are conducted. He said state assessments have to be conducted within a certain window. He said we need to determine what will happen when 500,000 students all get online at the same time. He said we need to know whether the infrastructure can handle the load.

He said other states have found it is very difficult to test their students online in a three-week window. He said there is also an additional issue governing test security when that many students are online.

Dr. Comerford said the sense from other states is that computerized testing is the way to go but we need to take it slowly and ensure the necessary components are present.

In response to a question from Representative Delmore, Dr. Comerford said CTB/McGraw-Hill works with 22 states and 10 to 15 large urban school districts. He said CTB/McGraw-Hill scores about 10 million students per year.

Dr. Heidorn said in the northern region there are about 14 testing programs. He said the programs are of two basic types--a purely customized program, wherein a state, through its request for proposal, requests that a test be developed just for it based on its standards. He said those are more costly and take more time to implement. He said we generally see those in the larger states. He said the other model is that being used in North Dakota. He said CTB/McGraw-Hill is using an existing bank of test items to create a North Dakota test. He said CTB/McGraw-Hill can do that fairly quickly and be ready to administer the test this fall. He said CTB/McGraw-Hill has a robust item bank and it can use the research and the scaling that already exists for those items to create the kind of test that can be done more efficiently but still meet the standards of the state.

In response to a question from Senator Cook, Dr. Heidorn said there are a number of competitors that offer computerized testing.

In response to a question from Senator Cook, Dr. Heidorn said in moving the North Dakota test from the 12th grade to the 11th grade, the test items will be selected based on the standards for the 11th grade.

In response to a question from Senator Cook, Dr. Comerford said the State of Illinois offers an 11th grade assessment that measures state standards and also measures the ACT. He said the ACT is part of the 11th grade test. He said he believes that the ACT portion is voluntary.

In response to a question from Senator Cook, Dr. Heidorn said CTB/McGraw-Hill has the English language learner program in California but does not do the overall state assessment.

Senator Cook said he wonders if we can determine the relationship between a student's score on the state assessment and the student's placement test at a university.

Dr. Comerford said one can do a study on anything so long as sufficient data exists. He said one of the challenges of doing a study such as that suggested is determining the percentage of students who took the tests.

Senator Cook said it would be interesting to tie the state assessment and the college placement tests together.

Mr. Gallagher said a good reliable data link is required to look at such comparisons. He said we have not had that type of data link in the past.

Dr. Comerford said in October 2003 DPI published a request for proposal for an expanded assessment program to meet the needs of the state and the NCLB Act. He said teams from CTB/McGraw-Hill and DPI will meet regularly to decide on overall test design, specific standard-to-item blueprint, alignment of the core items to North Dakota standards and the test blueprint, the development of a single continuous North Dakota scale for grades 3 through 8 and 11 for mathematics and English language arts. He said the scale allows one to do a variety of things, including measure interim growth, measure growth across the grades, and do studies comparing longitudinal data. He said this development plan and test design has a number of benefits, including that they measure state standards in a valid and reliable manner. He said budgets and time are two factors that enter into testing issues. He said we need to be able to test students within a reasonable amount of time.

Dr. Comerford said several steps are taken to ensure validity and reliability. He said validity and reliability begin with item development. He said good items tend to bring good valid and reliable tests. He said the second step involves minimizing bias and the third step involves depth and breadth review. He said we want to know that the items measure the appropriate content area, the depth of the content area for that particular grade level, and the breadth across that grade level and across the content area.

Dr. Heidorn said he wants to address quality in two ways--content and accuracy. He said we need to look at quality in the sense of alignment and determine whether what is on the test is worthy of being tested. He said when test items are selected, they are reviewed by North Dakota educators with respect to the maps, match, and alignment and verified that they are on target. He said they will be guided by issues of breadth--the number of items assessing each standard and the depth--which refers to the types of cognitive tests that are involved in the items. He said at the basic level that means recognizing and recalling, at the next level that means applying, and at the final level that means concluding, explaining, evaluating, and extending.

Dr. Heidorn said the scores on the test will be calibrated and scaled using item response theory procedures in order that conclusions can be drawn about students' scores as they go across grade levels and ultimately related to the performance level criteria that will be established for the assessment. He said North Dakota educators will be involved in reviewing the test or the bookmark procedure and to make recommendations about where those criteria should be set. He

said the educators will be involved in determining the proficiency levels--the performance level statements that are associated with the various levels of proficiency that will be reported on the test.

Dr. Heidorn said the accuracy aspect of quality refers to the quality control measures that are in place during the processing of the test. He said at all levels from the creation of the test books through printing, distribution, scanning, scoring, and reporting, there are quality measures in place. He said one such aspect is called the materials integration review. He said when a box of test materials arrives at a school, it is made up of several components. He said there are test books, administrator manuals, manuals for the school, and manuals for the district. He said an integration review takes place when all the materials are completed and before they are printed. He said this ensures that the cross-referencing is accurate. He said this is done through a mock test in which people are read the instructions and then given the test. He said it is one final step in verifying that the answer choices are correct, the instructions are correct, and the materials are integrated appropriately.

Dr. Heidorn said there is also a "green" team review. He said this is a review that takes place before the materials are shipped to districts. He said a quality team sits down, opens a box that will be shipped to a district, and goes through it to ensure that all of the materials, the shipping documents, labels, etc., meet the specifications prior to being shipped.

Dr. Heidorn said the most critical area is that of student scores. He said within CTB/McGraw-Hill there is a dual system in which independent scaling and item response theory operations are tested independently to ensure they are correct. He said it starts with the verification that all of the data is clean and correct and then goes through the various item response theory analytical processes. At the request of North Dakota, he said, an independent third party is asked to also review the data to ensure that the scores are exactly the same. He said this group is referred to as the Human Resources Research Office. He said before reports are sent out, there is yet another process referred to as a "red" team review. He said all of the data that is printed on the reports is scrutinized electronically, a file of each student's responses is created, and then every score calculated for the student is indicated in that file. He said the scoring and summaries on the report are independently verified. He said all these various levels of review help to ensure the quality of the test and are vital in ensuring the reports truly represent the students' achievements in relation to the North Dakota standards.

Representative Delmore said sometimes during high-stakes testing students do nothing other than color in the circles. She said she wonders what can be done to ensure that those scores do not count.

She said on other tests the proctors have removed some of the students and not counted the scores.

Dr. Heidorn said the policy of the state is followed when students just color in the circles. He said students who respond to very few items are usually identified. He said there is not a procedure in place to identify students who randomly bubble their answer sheet.

In response to a question from Representative Delmore, Dr. Comerford said the test results can be used to look at what an individual student knows and does not know, as well as what the class knows and does not know. He said one of the benefits of testing across a large number of students, i.e., across a grade, is that one can look for patterns that are not related to teacher issues or to individual student issues, but which are probably curriculum issues. He said there is an opportunity to look at the data from the point of view not only of the student but also of the teacher. He said it is an opportunity to look at what the teacher is emphasizing and how the students did, given the amount of time that the teacher spent on his or her favorite part of the curriculum. He said there is also an opportunity for the data to be examined by the principal, the school district administrator, and the state.

Chairman Kelsch called on Dr. Thomas Fisher, State Assessment Technical Advisor, Fisher Education Consulting, who presented testimony regarding the NCLB Act. Dr. Fisher said for 27 years he was the director of testing at the Florida Department of Education and is now retired. He said he dealt with all testing programs, including kindergarten through grade 12, college testing, teacher certification, and principal certifications. He said prior to that he was with the Michigan testing program. He said he began his career as a classroom mathematics teacher. He said he has also served two terms on the national assessment of educational progress governing board.

Dr. Fisher said when one issues a competitive bid, it is because one wants to be a good steward of the taxpayer dollar. He said that is what competition is all about and that is what the request for proposal issued by North Dakota sought. He said it also sought to find a vendor who could deliver the testing services that were required by the state and by the NCLB Act. He said the acquisition of services through outsourcing is a recognition of what one's own staff cannot do.

Dr. Fisher said a number of years ago the Florida legislature hired one of the big eight accounting firms to determine whether or not, given all of the money that was being spent on testing, the state should simply bring it in house and create its own capability. He said the conclusion was that a state should not do so, simply because it was impossible to keep both the equipment and the employees up to date. He said with outsourcing one can take a small staff and arm them with great capability.

Dr. Fisher said North Dakota's request for proposal was a multiyear request. He said it had several base years and extensions. He said it was open to any interested vendor and the only restriction was that the vendor had to have the experience to do the work. He said the particular design called for the use of existing tests augmented with additional items so that the combination of the original and the additional items would cover the depth and breadth of the state standards. He said that alignment was one of the very first issues that had to be addressed. He said a test could not be considered if it was not properly aligned to the state standards.

Dr. Fisher said when the proposals came in, the state went to a multistep evaluation process. He said the first step looked simply at whether or not the vendor had submitted all of the necessary statements. He said the next step was the technical part. He said the company had to indicate how it proposed to get the job done. He said that step also included the alignment issue. He said 40 people were involved to assure that the proposals were properly aligned. He said then the 20-person evaluation committee rated the proposals based on the technical factors. He said the cost factors were not shared at this time. He said the committee did not select the winning vendor. He said it merely offered recommendations to the state Superintendent. He said there were four bidders. He said whether or not a company chooses to bid is often a factor of the company's own work schedule at the time.

Dr. Fisher said there is a common denominator in the responsibilities of all legislators, i.e., allocating scarce dollars to multiple sources while worrying about education, infrastructure, prisons, state health plans, and welfare. He said the United States Constitution assigns to each state the responsibility for developing its own education system. He said the way education is delivered in this state is up to the legislature. He said Hawaii has one school district and Florida has 67. He said each Florida county has its own school district. He said not all that long ago there were 3,000 school districts in some midwestern states. He said Michigan has about 660 districts. He said each state determines how its education system is organized and how education is delivered within its boundaries. He said we have always assumed that curriculum was developed and was being delivered and that students were learning. He said the problem is that none of these assumptions was verified. He said it was not until the 1970s that large scale student testing came into being. He said beginning in the 1970s computer capability was increasing as was our interest in school accountability.

Dr. Fisher said about the same period of time the national assessment of educational progress began. He said there was great fury over the idea that there was a national monitoring test. He said it was only when Congress agreed that there would be no

information produced at the state level, district level, school level, or student level did national assessment of educational progress actually come about.

Dr. Fisher said in about 1990 Congress changed the law to permit voluntary state testing. He said the NCLB Act is the latest iteration in this long-term exploration of and increased interest in what our children are learning and how well they are learning. He said the NCLB Act is designed to accomplish four things. He said people have content expectations, i.e., what students should know and be able to do. He said people are going to deliberately set out to measure how well students are doing. He said people need a reporting structure to keep citizens, parents, students, legislators, governors, decisionmakers, and others aware of what is happening. He said data is power and data enables one to make informed decisions and to better allocate resources. He said people want improved programs to help the students that data reveals are not progressing, and the whole idea is to better prepare students.

Dr. Fisher said the NCLB Act is unique in many ways. He said one of the unique features that has caused controversy is that no longer can one look at an average score for a district or a state and determine that adequate progress is being made. He said an average score hides what is going on in subgroup populations. He said that is why the NCLB Act specifically requires reporting on many different subgroups. He said that subgroup reporting requirement is managing to focus attention on an otherwise well-performing school. He said that causes people to get very nervous and concerned.

Dr. Fisher said the NCLB Act has a goal of 100 percent efficiency. He said nobody knows if we can get there. He said maybe the 100 percent proficiency is a lofty goal and by trying to achieve it, we will get closer than we ever thought possible. He said states everywhere are dealing with the same problems as North Dakota. He said they are all working hard to implement their assessment and accountability programs. He said most had to expand their testing programs. He said many had to modify their accountability programs. He said Florida was capable of tracking individual students and measuring gains. He said the NCLB Act did not initially allow that. He said it was only after two or three other states who were capable of measuring gain complained and as a result the United States Department of Education opened a little window and allowed the adequate yearly progress plans of those states to take into account both status and gain.

Dr. Fisher said most states had to create their tracking systems from scratch because they did not have the ability to identify individual students and track them over time. He said states will have an incredible amount of power when they can monitor individual students--where they are or were, what

program they were in, what courses they took, and how they progressed.

Dr. Fisher said most states had to improve their reporting structures. He said all have had to consider improved ways of teaching. He said all have had to find ways to handle their English language learners and students who need alternative assessments.

Dr. Fisher said there are undoubtedly costs associated with the NCLB Act. He said there are also costs for not doing what the NCLB Act requires. He said there are costs associated with graduating students who cannot read and compute at an adequate level. He said in Florida, 50 to 65 percent of the graduating high school students routinely fail their placement tests in the community colleges and have to enroll in remedial courses. He said that is a cost and somebody has to pay college teachers to teach students what they should have learned in high school. He said there are costs associated with drop-outs and with providing remediation. He said in the southern states only 17 percent of students actually graduated or were still enrolled three years after enrolling in a community college. He said there are costs to industry and business when they cannot hire employees who are capable of reading the instruction manuals. He said there are costs to future generations if graduates are not competent. He said jobs are being outsourced.

Dr. Fisher said we need to ask whether we are better off today than we were 30, 20, or even 10 years ago in our knowledge of what is happening in our schools, how well our schools are functioning, and what kind of solutions should be considered. He said we know so much more and have so many more tools at our disposal. He said in the middle of the battle everything looks confusing. He said when we look at where we were even 10 years ago, we can see that we have made progress. He said we are going to find ways to work through these challenges. He said we are going to find workable solutions and we are going to find instructional programs for those students who are not progressing.

Dr. Fisher said there will be modifications at the federal level either through amendments or through guidance and regulations. He said he is not here to be a ringing endorser of the NCLB Act. However, he said, we need to step back and put some perspective to the challenges that have come before us. He said there are solutions to these challenges just as there have been solutions to prior challenges in education.

Senator Cook said most of the people in the room received their high school education prior to the 1970s. He said he does not believe that back then there was much of a problem with employers hiring high school graduates who could not read. He said back then if a student could not read that student was not given a high school diploma. He said that is not the case today. He said maybe we just need to correct that.

Senator Cook said the NCLB Act has a number of categories for students based on ethnicity, disabilities, and economic status. He said he believes there should be an additional category based on the level of a student's desire to come to school or on a student's attendance rate. He said the biggest problem we have in this state is that some students do not fare well in school because of their attitudes. He said often those students are not even in the classroom. He said the same reasons that we justify special treatment for students who do not speak English should also be applied to students who come from a family that does not require the student to come to school. He said all the discussion about testing and data collection is valid provided we are discussing students who want to come to school each day and learn.

In response to a question from Senator Cook, Dr. Fisher said the state is capable of creating whatever reporting categories it wishes because the state is in charge of its own assessment data. He said if a state wishes to have that data it can require it. He said whether or not the NCLB Act may include such data in the future is up to the United States Department of Education.

Dr. Fisher said one cannot teach a student who is not in the classroom. He said during the last several weeks there has been increased discussion regarding absenteeism. He said in the olden days the sheriff would go out and drag the student back to school. He said a number of people are trying to determine how to prevent students from bailing out. He said one way is to work with parents and get them involved. He said most parents want their children to be successful in school. He said a lot of parents are working two jobs and they simply do not have the time to be as supportive as they should be. He said it is not impossible to find stories of inner city schools that have all of the problems mentioned and yet manage to succeed because the school has a dynamic leader who is making things happen.

Dr. Fisher said schools exist for a purpose--to educate our children. He said the children have a responsibility to go to school and learn. He said teachers have a responsibility to go to school and teach and parents have a responsibility to support the other two. He said there are some parents who are not as supportive as they should be, there are some teachers who are perhaps teaching in the wrong areas, and there are some students who for whatever reason do not want to be in school.

Senator Cook said under the NCLB Act, if a student comes from a dysfunctional family, does not come to school, and does not achieve, it is the teacher who is held accountable. He said that is one of the problems with the Act. He said in order to be successful we have to address attendance issues.

Senator Cook said having a subgroup based on attendance would reflect the importance of parental responsibility. He said he does not know if we can

hold a school responsible for failing if the only reason it failed is that parents are not sending their children to school.

Dr. Fisher said under the NCLB Act it is the school that is responsible or accountable, not the individual teacher. He said years ago California approached the federal government and argued it has a unique population that brings with it certain difficulties in instruction. He said California asked that its grade on the national assessment of educational progress be adjusted to reflect this population. He said the request was denied. He said California was told that the purpose of the national assessment of educational progress was to reflect what is actually happening in the schools.

Dr. Fisher said we know there are students who are not in attendance and we know there are parents who do not care. He said there are students who do not speak English as a principal language and students who are of a low socioeconomic status. He said the public schools exist to educate all students. He said just because a student is a minority or is from a low socioeconomic bracket does not mean that the student is not capable of succeeding.

Dr. Fisher said if you walked out to the poorer areas of Bismarck and interviewed the parents, most would say that they want better educational opportunities for their children. He said you can find examples of how people have faced challenges and turned them into successes at school.

In response to a question from Representative Monson, Dr. Fisher said Florida has the capability to track cohorts and is doing so. He said Florida built it into their adequate yearly progress plan. He said the Florida plan takes into account both status and gain. He said he does not believe that the United States Department of Education would approve gain alone.

Representative Sitte said we began our day by hearing Ms. Evans state that for some time we have been trying to address an achievement gap. She said we know we are leaving some children behind. She said we spend a lot of time talking about students who are at the bottom and we lose sight of the majority of our students who need academic challenge. She said all legislators understand that it is our responsibility to uphold the state constitution. She said the United States Constitution delegated to the states the responsibility for education. She said school districts in this state cannot accurately predict the cost of the NCLB Act. She said no one can because we do not know what the rules are going to be next week or next year. She said she wonders if we would not be better off just ensuring that every fourth grader is reading at the fourth grade level and then testing those students with the Iowa Tests of Basic Skills. She said if the student is not reading at the fourth grade level that student should be retained. She said she would be willing to require that a student read within two years of grade level. She said she cannot understand how

we can continue to play all of these games with safe harbor and find all of these rules to exclude children who are still not learning how to read.

Dr. Fisher said you must not lose track of the brighter students. He said the NCLB Act specifically requires challenging standards for all students. He said the NCLB Act is set up to challenge the more capable student as well as the less capable student. He said this is not a minimum competency system.

Dr. Fisher said since we know that performance at grade level is a mediocre standard, why would we want to use a national percentile of what currently exists as a goal. He said that is why the NCLB Act is written more toward the criterion referenced approach. He said the NCLB Act requires each state to establish its own content standards and build a test to measure those standards. He said in that way each state can push the envelope for its own students and not be washed into whatever happens to be the national average.

Dr. Fisher said legislators talk a lot about retention and they tend to say that if a child cannot read at the fourth grade level, hold him back. He said in 1976 Florida adopted the nation's first required high school graduation test. He said it resulted in six separate lawsuits and took four years in federal court. He said high stakes for an individual student is different from high stakes for a school. He said if you set up a system in which a fourth grader is not promoted, there will be legal problems. He said the real issue is not what grade a student is in but what he knows, what he does not know, and how we can get him more time on task. He said perhaps we need to take that fourth grader who is not yet able to read and direct him onto a side path where he gets intensive summer school. He said when that student starts school in the fall, maybe he does not do anything other than focus half of his day on reading rather than on the regular curriculum. He said reading, writing, and mathematics are the priorities. He said some students do not learn algebra as quickly or as early as others. He said some students' mental reasoning and abstraction gifts have not matured far enough. He said they will struggle. He said some students can do algebra in the eighth grade while others need more time. He said it is the same thing with reading. Consequently, he said, holding a student back might not be necessary if one can find another avenue of instruction.

Representative Delmore said the NCLB Act has made us look at education. However, she said, there is a difference between equal opportunity for all students and all students being equal. She said the NCLB Act requires not only that the services be provided but that all students turn out the same. She said some students, no matter how much help they get, will never master algebraic concepts.

Dr. Fisher said the NCLB Act has gradations of achievement levels. He said North Dakota has four levels. He said the NCLB Act does not suggest that

all students will be equal. However, he said, it does require all students to become proficient. He said proficiency is only one of several different levels.

Dr. Fisher said we should assume for a moment that North Dakota had its own standards, its own assessments, and its own five levels of achievement and that the federal government was not in the picture. He said everybody would get excited and over time, progress would be made. He said pretty soon all of the students or 90 percent of the students or 80 percent of the students would be in the top level of achievement. He said nobody would be in the bottom level. He said two conclusions could be reached. He said the first conclusion would be that this is good. He said the second conclusion would be that it is time to reset the standards and start all over again.

Dr. Fisher said many people believe mistakenly that once standards are set, they are fixed forever. He said education has infinite possibilities. He said there is no reason to assume that one could ever discover the maximum that students can learn.

In response to a question from Senator Cook, Dr. Fisher said the available data in Florida, and it probably is the same way here, reveals that students who graduated from high school were not adequately prepared for postsecondary work. He said part of that is the reflection of the idea that a high school diploma is a minimum competency graduation requirement. He said one can talk about raising standards but practically one cannot fail 80 percent of a graduating class. He said giving a student a high school diploma is not the same as indicating that the student is ready to go to college. He said those students who do not take a college preparatory curriculum will go straight into remedial classes at college.

Dr. Fisher said in order to close the gap between those students who can pass the college placement and those who cannot, there needs to be a commitment to better prepare students from a very early age. He said the biggest battle he had while in Florida pertained to the mathematics requirement in the test for elementary teachers. He said some believed that an elementary teacher needed to know no more mathematics than that of the level at which the individual taught. He said why would someone say this about mathematics and not about reading or writing. He said we would not think about suggesting that the individual teaching reading to the students in grade one only needs to be able to read at the first grade level. He said students do not learn mathematics if the person trying to teach them does not know why things are done in a particular way, does not like mathematics, or does not understand mathematics. He said if a student gets a bad mathematics teacher for three years in a row, that student's mathematics skills are doomed and not recoverable. He said the gap can be closed but it will take a lot of effort

because so many dimensions of the issue have to be attacked.

Chairman Kelsch recessed the meeting at 4:00 p.m. and reconvened the meeting on Wednesday, March 23, 2004, at 9:00 a.m. She welcomed Representative Rick Berg to the committee. She said the committee members had been given a copy of a memorandum that was sent to all school district superintendents in the state. She said the memorandum indicated that if the superintendents wished to testify in front of this committee about the challenges they have encountered in implementing the NCLB Act, they needed to notify the committee counsel by a date certain and ask for time on the agenda. She said Dr. Charles DeRemer was the only one who complied with the request.

Chairman Kelsch called on Mr. Gallagher to present testimony regarding the difference between content standards and curricula. He said DPI distributed extensive documentation regarding the state's content standards at this committee's July 2003 meeting. He said in February 2004 the updated content standards for English language arts and for mathematics were released. He said he anticipates that these will carry us through 2009.

Mr. Gallagher said content standards are designed to be high level statements of what students should know and be able to do. He said standards address a particular content area, such as mathematics, and establish major areas of learning to which each student should be exposed. He said content standards include broad definitions that become the foundation for curricula.

Mr. Gallagher said standards address only content. He said they are silent with respect to any issues of methodology, to approach, or to how they should be integrated with other courses. He said methodology, approach, and integration are covered under curriculum mapping and are to be done at the local level. He said the state's role is simply to put forth the broad definitions--the standards--and it is the districts' role to produce a curriculum.

Mr. Gallagher said although curriculum can be developed by a lot of different means, in the end, it is generally the teachers who sit down, look at what they are teaching, and determine if there are gaps between what is being taught and what the standards articulate. He said after that the teachers decide what is the best method for getting the material across to students. He said teachers are responsible for discussing the materials to be used and the instructional strategies to be used. He said the law is silent with respect to any particular text series that a school might select or with respect to how a school or district might restructure its courses. He said a district might decide to incorporate certain mathematics standards into its science curriculum.

Mr. Gallagher said content standards simply state what every North Dakota student should know and be

able to do. He said the standards serve to ensure a comparable educational experience throughout the state. He said how well we do at teaching and learning is then assessed by the state assessments. He said the state assessments have to be based on something and that something is the state content standards.

In response to a question from Representative Delmore, Mr. Gallagher said school districts can add to or balance their curricula with other state or nationally recognized standards. He said when North Dakota teachers gather to draft the state's content standards, they make liberal use of standards from a variety of different settings, including national associations governing particular subjects. He said if districts choose to bring in additional standards, they are perfectly able to do so. He said there are no restrictions placed on them. He said the state standards simply require that at the very least, students will have this minimal level of exposure.

Representative Delmore said the Grand Forks Public School District was one of the first school districts to implement a standards-based curriculum and it aligned its curricula to both state and national standards.

Mr. Gallagher said the standards are the primary goals for achievement defined by North Dakota teachers. He said the assessments are the ultimate indication of whether our goals are being achieved.

Representative Delmore said she believes that we are expecting more than mere student exposure. She said she believes that we are expecting student mastery of the standards.

In response to a question from Representative Delmore, Mr. Gallagher said exposure to standards is a matter of instruction. He said Representative Delmore referred to the expected student "mastery" of the standards. He said we have levels of "proficiency" and we determine whether those levels have been achieved through our assessments. He said when one assesses there needs to be some reference point against which the results are measured. He said in the days of old our results were referenced in terms of a national norm. He said that was before we had any considered opinion about what constitutes proficiency. He said a national norm does a disservice if it is used as the standard for reporting student achievement because it does not indicate if a student has achieved the level of proficiency that we would require for a particular grade level. He said our proficiency levels, which are defined by North Dakota teachers, identify what the expected level of achievement is. He said we no longer hand over the referencing of a report to the statistics of a national norm. Instead, he said, now our teachers set the levels of achievement that we expect of our students.

In response to a question from Representative Kelsch, Mr. Gallagher said in the past North Dakota students have been toward the top of all states in

national assessment of educational progress results. However, he said, in recent years North Dakota's results have been flat or falling behind those of other states. He said North Dakota students are in the 30 percent proficiency level for national assessment of educational progress. He said while the national assessment of educational progress is comparable in terms of content, its levels of proficiency tend to be somewhat more arduous than our state assessments. He said national assessment of educational progress scores show us performing lower than what our state assessment scores would indicate. However, he said, when one tracks out both scores, they mirror each other sufficiently well enough to demonstrate similar movement. He said that is a scaling issue. He said on our state assessments, North Dakota teachers indicate the levels of proficiency. He said for the national assessment of educational progress test that is determined by teachers from across the country.

In response to a question from Representative Kelsch, Mr. Gallagher said the states that are showing the greatest improvement are those that have over the last several years demonstrated a greater commitment to rigorous standards.

Representative Sitte said she and Ms. Jean Newborg, Department of Public Instruction, used the Fry readability test on three passages from the grade 12 English assessment. She said one passage was a 7th grade reading level, one was a 9th grade reading level, and one was a 9.5 grade reading level. She said when people talk about how difficult this test is, they have to realize that our seniors are being tested at grade levels from seven through nine. She said she did not apply the Fry readability test to the fourth and eighth grade assessments. She said it would be equally interesting to see how difficult those assessments are.

Representative Kelsch said she is somewhat concerned that if the reading passages are in fact at the seventh through ninth grade levels, we have a problem because our test scores indicate that a significant number of our 12th grade students are not showing proficiency.

Representative Sitte said the NCLB Act has generated a pool of scientifically based research. She said the Reading First book is an enormous piece of work in which the federal government has documented 35 years of reading research and has proven that phonics works. She said it beats whole language, Dick and Jane readers, and everything under the sun. She said 10 years ago, our eighth grade mathematics scores were the best in the nation. She said our national assessment of educational progress scores have been going down since that time. She said when she provides substitute teaching services, she notes that teachers her age require their students to memorize multiplication tables. She said in many classrooms teachers are gone one day a month for

training in the new mathematics standards. She said they are learning new mathematics methods and the students are counting out eight times seven squares. She said the students are not using multiplication tables and she believes we are not using scientifically based methods. She said mathematics education has been steered away from multiplication tables and toward manipulative processes and our scores are going down. She said she believes we are not making the right decisions.

Mr. Gallagher said the method used to teach students is a local school decision. He said standards merely identify content. He said standards do not prohibit students from memorizing multiplication tables. He said they require that students understand multiplication. He said the method of instruction to accomplish this end is a local decision.

Representative Delmore said in learning we can never be static. She said research will vary in many things. She said she believes that the NCLB Act is driving certain teaching methods because the Act requires that we not leave any child behind. She said if the phonetic approach does not work for one student, we as teachers have to be prepared to use more than one method to get things across. She said different students respond to methods other than those which have been considered the norm for so many years.

Mr. Gallagher said it is up to the teachers and the local schools and districts to determine which teaching methods will best serve their students. He said teachers are expected to be attentive to content and sensitive to its delivery.

Representative Delmore said if a state already has a high level of proficiency, it is much harder to show significant improvement on a test like national assessment of educational progress. She said if a state's proficiency level is at the 95th percentile, it is much harder for that state to move three percentage points to the 98th percentile than it is for a state that was at the 40th percentile to move to the 50th percentile.

Mr. Gallagher said if we were dealing with performance levels that were very high, then incremental change would become more difficult. However, he said, our test scores and levels of proficiency are not close to Representative Delmore's example. He said our results on a variety of indicators, together with our flat performance on the national assessment of educational progress, the ACT, and on our own state assessments, indicate that we are not there. He said on the national assessment of educational progress we are seeing performance levels that tend to be below the 50th percentile. He said in reading we are seeing higher proficiency levels at the fourth grade and thereafter we are seeing a decline through the eighth and then the 12th grades. He said we are also seeing gender differences in the results. He said we are not close to

being at a proficiency level where we could begin to see diminishing rates of return.

Representative Delmore said when we talk about state averages we miss the high levels of proficiency that we know exist at certain schools. She said we have lies, damn lies, and statistics. She said an average of an average does not show the whole story.

In response to a question from Representative Delmore, Mr. Gallagher said what separates lies, damn lies, and statistics is the clarity with which the information is being reported. He said in North Dakota we report on aggregate and on the district, school, classroom, and student level. He said we are seeing schools that are achieving well and those which are not. He said we have schools with proficiency ratings in the 0 to 10 percent range in both reading and mathematics. He said we also have schools that have reading and mathematics proficiency ratings in the 90th to 100th percentile. He said the lowest scores tend to come from the smallest schools. He said when we come to the middle we note certain interesting dynamics. He said some of our schools achieve at a lesser level and some achieve at a greater level. He said if one would do a breakdown regarding the impact of economic disadvantage across the state, one would see a general pattern--schools having students with lower economic status will have reduced performance levels. He said schools that have students with higher economic status tend to have increased performance levels. He said that is true across the country as well as in North Dakota. He said we also see the reverse, i.e., schools with lower income students and high performance and schools with higher income students and low performance. He said the NCLB Act allows us to identify those that do well and replicate where one can. He said we do not know what is happening in our schools and how to respond unless we have data.

Mr. Gallagher said now that we are in the third year of our assessment data we are finding that the data is stable, reliable, and profound. He said there is a lot of information that we are just beginning to unearth. He said we can take a look at the state as a whole, every district, school, and classroom. He said we are seeing certain patterns emerge. He said we have an overall sense about the state and we know pretty much about what is happening in some of the schools. He said proficiency is based on an agreed definition of what a student should know and be able to do.

Representative Sitte said from 1991-95 our eighth grade CTBS scores were 770 through 778. She said we were one of the top mathematics performers at that time. She said in the year 2000 our score dropped to 691. She said this dramatic drop in our performance statewide should have raised a red flag. She said this committee should be discussing the

implications of this drop taking place at the same time DPI is implementing these new standards.

Mr. Gallagher said making a connection between the effort to move forward with standards-based education and a drop in CTBS mathematics scores is spurious. He said there is no connection. He said the role of standards-based education is only now beginning to see the light of day in schools. He said in North Dakota there was no money with which to fund the development of content standards until the Improving America's Schools Act reauthorization in 1994. He said we did not start drafting content standards until 1997 when we first gathered a committee and worked on English language arts and mathematics. He said mathematics only began in 1999. He said the actual work of taking the state content standards and incorporating them in school curricula only happened in the last couple of years. He said no rational association can be made between falling CTBS test scores in the 1990s and the implementation of standards-based education.

Representative Sitte said Goals 2000 was an objective standards-based methodology. She said our test scores dropped when we started implementing these federally advised standards or mandates.

Mr. Gallagher said the rollout of standards has only occurred in North Dakota in the last couple of years. He said any connection is not supported by the data.

Representative Kelsch said you cannot just lump the whole state together by using a state average score. She said you really need to be looking at where scores are higher and where they are lower.

Mr. Gallagher said in order to make improvements one must look at the test results of individual schools and classrooms.

Chairman Kelsch called on Dr. Charles DeRemer, Assistant Superintendent, Fargo Public School District, who presented testimony regarding implementation of the NCLB Act. He said we need to look at how the graduation rate is calculated. He said the graduation rate is the number of ninth graders who graduate with their peers four years later. He said a school district is responsible for the education of special needs students until they are 21. He said many of these students are not ready to graduate with their peers and it is legitimate that a district provide them with services until they are 21. However, he said, they should not be counted with others to determine a district's graduation rate. Furthermore, he said, the Fargo Public School District also educates a significant number of students who are English language learners. He said if they come into the district at age 15 or 16 and if they have never been in a school prior to that, they will not graduate with their peers. He said we cannot put 13 years worth of education into three or four years if the students

cannot speak any English. He said they too are counted for purposes of the graduation rate.

Dr. DeRemer said the Fargo Public School District is able to offer a lot of courses and because of that there are a significant number of students who elect not to graduate with their peers but instead to spend additional time and gain exposure to other courses of interest. He said they too are counted in the graduation rate.

Dr. DeRemer said the determination of a graduation rate is done to verify that students have gone through a particular process. He said the only method of verification we have is the counting of seat time. He said we should be talking about students being proficient, rather than just requiring seat time.

Dr. DeRemer said why should we require that a student sit for a whole year in algebra I if that student is already proficient at that level. He said we should give such students the credit without first requiring that they meet the Carnegie unit. On the other hand, he said, if some students need more time why not give it to them. He said we should be able to design summer school programs to meet the needs of students. He said the law requires at least 60 hours of mathematics or reading remediation for summer school. He said not all students need that amount of time. However, he said, the only way that a school district receives state aid for summer school is if the district ties students down for 60 hours. He said students who do not need quite that much time often elect not to go to summer school because they do not want to spend 60 hours in that fashion.

Dr. DeRemer said we also need to take into account those students who get general educational development (GED) diplomas. He said as long as we are willing to accept a GED as an equivalency exam, then it should be treated equivalently. He said many GED candidates graduate within one or two years of the date on which their peers graduated. He said some even graduate the same year. He said they are not now considered graduates. He said we should define graduation rates to include any student who graduates within two years of his or her peers.

Dr. DeRemer said his other concern deals with professional development. He said the Fargo Public School District has done nothing to increase the time that teachers have available for professional development. He said we need to find time for professional development in our school calendar. He said most of the professional development takes place in the summer or during a schoolday, thereby requiring teachers to be out of the classroom. He said that is not good for students. He said the best person to be in the classroom is the classroom teacher, not a substitute. He said we should do whatever we can to ensure that the classroom teacher is there as much as possible. Therefore, he said, we need to find time in our school calendar to provide professional development opportunities and currently we cannot do that.

Dr. DeRemer said we have not statutorily increased time in the school calendar for professional development in at least the last 15 years. He said research regarding how changes are made in our curriculum and in our programs shows that it is done by continuous, ongoing, professional development. He said it has to happen regularly, not for a week in the summer and not again for six months.

In response to a question from Representative Kelsch, Dr. DeRemer said the Fargo Public School District has considered Saturdays as an option for professional development.

In response to a question from Senator Cook, Dr. DeRemer said the NCLB Act uses graduation rates as a secondary indicator. He said the Fargo Public School District has a high English language learner population and those students are counted in the graduation rates. He said a student is classified as an English language learner based on a test. He said the test includes about five levels for purposes of obtaining financial reimbursement. He said if a student works hard, learns to speak English, and does well on the test, the student is no longer considered to be an English language learner. That being the case, he said, how can we ever get that group to 100 percent efficiency? He said the regulations now allow a school district to count English language learner students for an additional two years. He said they should be counted for the duration of their high school careers.

Representative Delmore said asking teachers to come in on a Saturday for professional development is no more fair to teachers than to any other employees. She said we should consider lengthening the school year and then devoting some of the extra days to teacher inservice activities. She said she has done teacher inservice on Saturdays, sometimes even without pay.

In response to a question from Representative Delmore, Dr. DeRemer said we have a 180-day school calendar in a 365-day year. He said there is no reason why we should continue trying to fit everything in a little box. He said we need to extend the school year. He said there is no reason why we should have to start after Labor Day and end before Memorial Day. He said the only obstacle is a mindset. He said we should have one day of professional development every month. He said our teachers are crying for that right now. He said we have also become much better at providing professional development. He said the Fargo Public School District hires very few individuals from outside to come in and do their professional development activities. He said most such activities are conducted by district staff.

In response to a question from Representative Delmore, Dr. DeRemer said ideally we should have professional development consisting of one week in the summer, two or three days before school starts,

one day each month during the school year, and at least two to three days after the conclusion of the school calendar. He said that would have a great impact on improving student achievement.

Representative Kelsch said the concern with providing one day a month for professional development is that many North Dakota families have two working parents. She said they either have to find a sitter for their children or leave the children at the mall for the day.

In response to a question from Representative Kelsch, Dr. DeRemer said the issue of taking certain days off for professional development can be addressed. He said what Fargo parents have indicated is that they would be okay with providing one day off every month for professional development activities, provided the district gives parents sufficient notice of when that will occur and further provided that it is systematic, i.e., the first Wednesday of every month.

Dr. DeRemer said he told Senator Dorgan that he really likes what the Act is trying to do. He said its problem is that it is overwritten and too complicated. He said the federal government should set the goals and then get out of the way. He said if the goal is student achievement, the federal government should let the districts decide if all their teachers need to have doctoral degrees.

Ms. Evans said the new policies that were issued by the United States Department of Education last month address Dr. DeRemer's issue regarding English language learner students. She said for purposes of adequate yearly progress calculations, school districts may maintain English language learner students in that subgroup for up to two years after they have attained proficiency.

Mr. Gallagher said the wording of the newly issued federal regulations allows DPI to automatically roll those provisions into the state accountability plan. He said the provision is considered to be effective now and DPI will go through the paperwork to incorporate the provision in the state plan.

Mr. Gallagher said the current graduation rates in the state accountability plan are based on the federal regulations. He said the regulations state clearly that school districts can only have a four-year graduation window. He said there is a window that DPI intends to pursue for students with special needs. He said if a special needs student has an individualized education program that anticipates a graduation date beyond the standard four years, that student would be treated for purposes of determining adequate yearly progress as having the later graduation date. He said there is currently no latitude for such circumstances. He said DPI agrees with Dr. DeRemer in that the graduation rate requirements now take into account only traditional students.

In response to a question from Representative Kelsch, Mr. Gallagher said in order to pursue such a

change in the state plan, DPI would have to send a letter to the United States Department of Education stating what evidence will be produced. He said this issue is one of principle rather than one involving data.

In response to a question from Representative Monson, Mr. Gallagher said it is the intent of DPI to immediately enact and enforce the new provisions regarding both the individualized education program and English language learner students. He said the wording that has come forth from the United States Department of Education specifically on the English language learners states that the provision can be incorporated immediately and the paperwork will catch up down the line. He said when we get into the individualized education program issue there are several layers and some will require changes to our state accountability plan. He said DPI has a specific committee looking at the individualized education program issue because it is a much more complicated matter. He said there are some tradeoff issues that have to be addressed. He said he believes that the individualized education program issue is one that will go before the special 25-member accountability team. He said we need to ensure that the case we put forward is both factual and well-reasoned.

In response to a question from Representative Delmore, Mr. Gallagher said if a student does not meet the four-year limit on graduation, the student is deemed as not having graduated on time. He said current federal regulations do not recognize general educational development status. He said we have no possibility of addressing that at the state level until there is a change in the federal regulations.

Mr. Gallagher said when DPI was putting together the state plan, it held a series of telephone conversations with representatives from all of the alternative schools. He said they participated in the structuring of the state accountability plan. He said there is no reliable way for an alternative high school in North Dakota to have its own independent accountability plan. He said students come in from a variety of different districts and schools. He said the state plan does not require accountability reporting regarding alternative schools. However, he said, every student is tracked back to the district from which the student came for purposes of determining graduation rates and assessments.

Chairman Kelsch called on Dr. Don Piper, Walsh-Pembina School Districts representative, who presented testimony regarding the NCLB Act. His testimony is attached as Appendix E. He said the superintendents of the school districts that he represents have not reviewed his testimony and he takes full responsibility for it. He said the committee should not make any judgment about the fact that there are so few superintendents in attendance. He said they are very busy people and while the NCLB Act is a busy topic, so is teaching kids and running schools.

He said some are a little more cynical and have indicated that they have tried very hard for the past two years to affect how the NCLB Act is treated in the state and administered by DPI. He said they have seen no impact for their efforts and they have no reason to believe that coming down for the duration of this meeting would change that. He said the superintendents know that there are some very bright and knowledgeable people on the committee. He said they believe that the committee members understand the problems that the superintendents are facing and that they understand some of the things that should be done. However, he said, the Legislative Assembly took away the committee's power and there is not much that the committee can do right now. He said he will give the committee six specific recommendations.

Dr. Piper said he is deeply committed to the concept and the title of the NCLB Act. However, he said, he would have called the Act good education for all children. He said that is in fact what we need and the NCLB Act does not accomplish that. He said he and DPI have a fundamental difference in opinion about the purpose of education. He said the assistant superintendent of DPI told this committee at an earlier meeting that the purpose of the NCLB Act is to eliminate the gap between the highest achievers and the lowest achievers. He said he believes that there are higher achievers and lower achievers and that we should be trying to raise all children to their highest possible level of education. He said that gap will never be eliminated and he does not want it to be eliminated. He said it is against human nature, against the history of this country, and against the history of humanity.

Dr. Piper said the people who have written this Act and those who have put together our state plan are engaged in irrational exuberance. He said that is defined as not endowed with reason or understanding and lacking usual or normal clarity or coherence. He said an example is joyously unrestrained enthusiasm. He said the NCLB Act cannot succeed. He said the Act calls for a 100 percent graduation rate, a 100 percent attendance rate, and a 100 percent proficiency rate. He said to get a hundred percent of anything is simply unrealistic. He said we have been told that these are goals. He said they are not goals, they are legislated mandates.

Dr. Piper said the NCLB Act has two noneducational problems. He said the NCLB Act focuses totally on teacher characteristics not on teaching performance. He said it requires all teachers to have a major in the area in which they teach but says nothing about how good they must be as teachers. He said the NCLB Act focuses entirely on a once-a-year snapshot, high-stakes test but only in the areas of English language arts and mathematics, and eventually science. He said it does not extend to the whole education scene. He said it does not

concentrate on continuous progress in student learning. He said we will increase student learning only when we have increased teaching performance and when we require continuous student learning as opposed to simply meeting the minimum level of proficiency that is required.

Dr. Piper said his first recommendation is that teachers be permitted to teach in their minors as well as in their majors. He said this will work. He said in North Dakota we have allowed teachers to teach in their majors and minors for many years. He said according to our state plan, we can no longer do this. He said Ms. Evans pointed out that there is research relating to the importance of having highly qualified teachers. He said there is no comprehensive, compelling research that indicates that teachers who have a major are highly qualified and that teachers who have only a minor are not highly qualified. He said there is no research to indicate that students taught by teachers with a major learn any more than the students of teachers who are teaching in their minor. He said that unfortunately is written into our state plan. He said a call was made to Rene in the federal office and he said you cannot allow your teachers to teach in their minors. He said that was the end of that. He said he would not have taken Rene's answer. He said he would have written into our plan that our teachers can teach in their majors and minors, submitted that to Washington, and allowed them to turn it down and tell us why this is not possible, as opposed to rolling over and playing dead. He said Wisconsin and Idaho did that. He said as of October 29, 2003, Idaho had 98.1 percent of its classes taught by highly qualified teachers and Wisconsin had 98.6 percent. He said the reason for that is they asserted that their teacher licensure policies already assure that certified teachers are highly qualified and, therefore, they have no highly objective standards. He said we did not choose to play that game.

In response to a question from Representative Kelsch, Dr. Piper said he is not aware of any research showing that students taught by teachers with minors do equally well compared to those who are taught by teachers with majors. He said he has seen some research that shows teachers who are qualified in content knowledge do a better job of teaching than those who are not. However, he said, when they do that research they lump minors and majors together.

Dr. Piper said his second recommendation has to do with adequate yearly progress. He said we should use cohort groups to test for actual progress in meeting adequate yearly progress rather than comparing the results of the fourth grade test from this year to the fourth grade test from next year. He said you have to compare the same group at two different periods of time. He said you cannot just test status, you have to test gains. He said we have been told that we cannot test for gains but only for status.

He said we were told again yesterday afternoon that we cannot engage in cohort testing. However, he said, Dr. Fisher then mentioned that Florida and several other states test both for status and gain. He said they got by with doing this. He said, therefore, he wants to know why we did not do that. He said all we can hope for in education is that we are making kids better each day, each week, and each year. He said growth and knowledge is what we have to work toward. He said the one-shot test is a very small measure of student learning. He said we all have days when we are not at 100 percent. However, if one of those days is a test day, that is the measure.

Dr. Piper said his third recommendation is that the state develop and implement simplified alternative testing at the students' instructional level, not at their grade level, for special education students and perhaps for English language learners. He said in 1974 we decided that there were kids who simply could not cut it at a given grade level and so we started developing individualized education programs for them. He said it allowed these students to be instructed at and measured at a level they were capable of handling. He said the NCLB Act requires that such students be tested at the grade level they are in regardless of their abilities. He said we have students in the 11th grade who are being instructed at the 6th or 3rd grade level. He said they are tested at the 11th grade level. He said alternative means are adaptations for the test. He said he wants them tested at the level at which they are instructed. He said it would have been worth a try to write that into our plan.

Representative Kelsch said she was looking at the minutes from the October 2003 meeting of the No Child Left Behind Committee. She said at that time Dr. Piper presented four recommendations to the committee. She said the first three recommendations he has made today are the same as those from the October presentation. She said in the interest of speeding things up and since the first four recommendations are already on the record, it would be appreciated if Dr. Piper would focus on his two new recommendations.

Dr. Piper said the reason he included the four recommendations is that there has been virtually no progress on those and the administrators he represents said he must remind the committee of those recommendations.

Chairman Kelsch said the minutes from the October 2003 meeting do include Dr. Piper's first four recommendations.

Dr. Piper said he is disappointed that he was not hired by DPI to come and testify because then he would be given unlimited amounts of time.

Chairman Kelsch said Dr. Piper was given an opportunity to be on the agenda. However, she said, she tries not to allow redundant testimony. She said in this case she has both the minutes from the

October 2003 meeting, which include his written testimony, and her own handwritten summary of his testimony. She said it would be helpful to hear his new recommendations.

Dr. Piper said his fifth recommendation has to do with revisions to North Dakota legislation. He said we should begin to revise all North Dakota legislation and state plans that are already in place so that we can take advantage of whatever changes and flexibility come from the United States Department of Education. He said Ms. Evans states that many changes are already being made in the law and in the regulations. He said we are likely to see many more. He said we have written into state law and into our state plan a lot of material that is in the NCLB Act. Therefore, he said, as changes are made, we have to be very careful or we will be locked into our own regulations, laws, and state plan. He said we need to look at House Bill Nos. 1086 and 1489 and Senate Bill Nos. 2065 and 2418.

Dr. Piper said his sixth recommendation has to do with state leadership in education. He said we have pleaded for nearly two years to be much more involved in the way the NCLB Act is handled at the state level. He said that effort has been unsuccessful. He said he recommends legislation to establish a state board or commission of education which would appoint and supervise a North Dakota commissioner or superintendent of education. He said we need a state level system of education that is comparable to our local school district structure with a chief state school officer appointed by and responsible to a state board or commission. He said presently chief state school officers are appointed in 42 states or entities. He said the movement during the past century has been away from elected state school officers and toward appointed officials. He said no one would want to do away with their school board and allow their district to be governed solely by a superintendent who is elected by popular vote and is not answerable to any type of board. He said if a board of education that appoints and oversees a superintendent makes sense in our local districts it would also make sense for the state of North Dakota.

Dr. Piper said DPI staff has already told the committee about its attempts to involve the field in the NCLB Act. He said this is a charade. He said Mr. Gallagher proposed a new statewide advisory committee. However, he said, we are two years into the NCLB Act and this committee has not yet been formed and operational. He said the proposed 24-member committee is to consist of five members from the Title I Practitioner's Committee. He said that group has existed for years and advises Ms. Laurie Matzke. He said there are also to be five members from the Individuals With Disabilities Education Act Advisory Committee. He said that committee also has existed for some time and also advises Ms. Matzke. He said Ms. Matzke does not need any more advice

from the field. He said she is a hardworking decent person who tries very hard to do her job. He said she communicates with the field all of the time. He said he is not asking for more two-way communication with Ms. Matzke. He said the advisory committee will also have five members of the standards, assessment, learning, and teaching team. He said that team has existed for some time and gives advice to upper level members of DPI. He said he can name one member of the standards, assessment, learning, and teaching team and possibly a second member. He said he cannot name the other members. He said since he does not even know who they are, the committee can decide whether or not they are representative of the field. He said those fifteen members are not new to anything. In addition, he said, the advisory committee is to have three members from DPI. He said that leaves only one member each from about six other groups who would be on this committee.

Dr. Piper said we must have a state level education organization the primary mission of which is to work with and truly represent the education community throughout the state rather than to serve primarily as a regulatory agency for the federal government. He said if such an organization had been in place, we would not have had to form an oversight committee for the NCLB Act.

In response to a question from Representative Kelsch, Dr. Piper said the 2003 Legislative Assembly enacted a bill governing teacher qualifications. He said the bill contains dates that may now be inappropriate because of regulatory flexibility given by the United States Department of Education. He said one would think that the state plan would be a nimble way of dealing with regulatory changes. However, he said, we have already seen that we cannot expect significant changes to the state plan.

In response to a question from Representative Sitte, Dr. Piper said North Dakota ought to take responsibility for the education of its own children. He said we are now spending millions of dollars to comply with the NCLB Act. He said at its very essence the NCLB Act is nothing more than a mammoth testing situation. He said if we took those millions of dollars and hired a few people who knew what they were doing and gave them the tools to improve curriculum and improve teaching in the state, we would do a lot better and get a lot more for our dollars. He said we could do that without significant money from the legislature. He said he taught history for many years and he knows how to do that. He said we are having a lot of students fall through the cracks. He said very little of that has to do with their abilities. He said it has to do with their environment, with how they come or do not come to school, and with how they treat what happens to them in a school situation. He said if you do not have students in class it is pretty hard to teach them.

Chairman Kelsch called on Ms. Janet Welk, Executive Director, Education Standards and Practices Board, who presented testimony regarding the status of highly qualified teachers in North Dakota. Her testimony is attached as Appendix F. She also distributed a document entitled *Procedures and Guidelines TOOLKIT for North Dakota's Major Equivalency Teacher Requirements for NO CHILD LEFT BEHIND ACT (NCLB) 2001*. The document is attached as Appendix G.

Ms. Welk said there are about 1,200 teachers who have been identified to date as not yet meeting the highly qualified standard. She said in some of the larger districts there is more flexibility to move teachers to areas in which they are deemed highly qualified. She said some of the smaller districts do not have that type of flexibility.

Ms. Welk said 33 states already test their teachers. She said North Dakota is one of the last five states to begin testing its teachers. She said when you hear someone say that all of Wisconsin's teachers are considered to be highly qualified that means those individuals either had a major or completed a test. She said Wisconsin has been a testing state for years. Therefore, she said, Wisconsin can brag about their highly qualified teachers. She said North Dakota has not been a testing state and has had some other issues to address. She said we are still continuing to allow minors in North Dakota. She said we are using portfolios to document that individuals with minors are highly qualified. She said teachers can document their minor and the work they have done in the education field to verify that they are in fact highly qualified. She said the two big areas of concern relate to the use of composite degrees and to elementary teachers teaching at the middle school level. She said she is unaware of what all other states are doing. She said some are continuing to use composite degrees. She said Montana is very similar to North Dakota. She said North Dakota will allow an individual with a composite degree in science to teach chemistry, provided the individual has 12 hours of chemistry. She said a minor in chemistry would require 16 hours. She said based on our standards for teacher education and based on the fact that such an individual already has another science major, we believe that is the best we can require in North Dakota. She said we do not believe that we could require a major in every field or a test. She said these requirements apply both to science and social studies. She said Montana is doing the same thing except that Montana requires 10 hours and requires the teachers to pass a test. She said North Dakota does not require the test if the individual meets the 12-semester-hour requirement.

Ms. Welk said the Education Standards and Practices Board computer system is being upgraded to enable better and more timely communication regarding the status of teachers becoming highly qualified. She said the Education Standards and

Practices Board's administrative rules governing program approval standards will be forwarded to the Attorney General's office next week. She said no comments, either written or oral, were received during the public comment period.

In response to a question from Representative Delmore, Ms. Welk said the major equivalency issued by the University System will appear on the individual's transcript. She said it will then have to be placed on the individual's license.

In response to a question from Representative Delmore, Ms. Welk said if the University System issues a transcript stating that a teacher has a major equivalency in mathematics, the Education Standards and Practices Board will not contest that determination.

In response to a question from Representative Hunskor, Ms. Welk said the holder of a life certificate will still have to meet the requirements for being a highly qualified teacher.

In response to a question from Representative Hunskor, Ms. Welk said every teacher in North Dakota is highly qualified in at least one area, given the fact that each teacher has a teaching license based on a major. She said a substitute teacher does not need to meet the highly qualified standards.

In response to a question from Representative Hunskor, Ms. Welk said if a person graduated recently and has only one transcript, the process is fairly simple. She said the Education Standards and Practices Board has hired a licensing specialist who is a retired administrator. She said it takes this individual a minimum of four hours to complete one transcript review.

In response to a question from Representative Hunskor, Ms. Welk said whether or not an individual has taken a core content course is not the indicator. She said the concern is whether or not that core content course has been issued through the continuing education department or through an approved teacher education department. She said one can use continuing education credits for the portfolios. She said continuing education credits have no standards. She said North Dakota is continually criticized for allowing as continuing education what is referred to as "underwater basket weaving." She said the Education Standards and Practices Board decided that if a teacher who has a degree in biology wants to teach chemistry, the 12 semester hours that the Education Standards and Practices Board would use to count toward that chemistry major equivalency has to be from an approved teacher education program. She said those hours cannot be continuing education hours. She said the Education Standards and Practices Board has not been evaluating continuing education credits. However, she said, if someone wants to become highly qualified, that person can use continuing education credits within the portfolio option.

Representative Hunsakor said the Education Standards and Practices Board has done everything it can to help teachers become highly qualified within the constraints of the federal law. He said he spent some time going around to nine or 10 schools in his district and found that 15 percent of the teachers were not highly qualified. He said of those 36 teachers, 24 indicated that they would take the portfolio option to become highly qualified. He said the problem he sees is that when the teacher completes the portfolio, that teacher is not any better or any more highly qualified than when the teacher started the portfolio process. He said the only thing that we have accomplished is that we made the teachers state their qualifications. He said the superintendents in the schools he visited indicated their belief that all of their teachers are highly qualified and are doing an excellent job.

Representative Hunsakor said he taught for 35 years. He said the ability to motivate students, to set high performance goals for students, and to have control of one's classroom are far more important than subject matter and content knowledge. He said if he is not smart enough to teach algebra, he will go through a book the night before. He said perhaps we should test teachers to see if they can motivate students and have control in their classrooms.

Ms. Welk said with respect to the portfolio, the Education Standards and Practices Board wanted exactly what we have. She said its philosophy was that we not go one step beyond what the federal government required of us. She said there was a rumor going around that the portfolio would be like the national board portfolio and that it would take 300 to 400 hours. She said the portfolio option is nothing more than basic documentation. She said it shows what a teacher has done and that the teacher is therefore considered to be highly qualified. She said Kansas is using much the same system. In fact, she said, about 15 states are using the portfolio as a means to document that their existing teachers are highly qualified. She said every year our administrators evaluate our teachers and that is what keeps them highly qualified based on pedagogy. She said that is our system of accountability. She said beginning in 2006 new elementary teachers will be taking two tests--one on content and one on pedagogy.

In response to a question from Representative Monson, Ms. Welk said because the portfolio is funded with a grant, there is an end date of October 2005. She said she intends to request federal dollars to extend the portfolio option through that school year.

In response to a question from Representative Williams, Ms. Welk said there is a lot of research saying that teachers who graduate from accredited schools with majors have students with higher levels of achievement. She said Minnesota no longer lets its teachers teach with minors. She said many states

have already given up the use of minors. She said that is the national trend.

In response to a question from Senator Cook, Ms. Welk said she does not anticipate that the Education Standards and Practices Board will be making a lot of changes at its upcoming meeting. She said the reason is we were not meeting the criteria of a major or a test in science. She said we were already letting a biology teacher with 12 semester hours in chemistry teach chemistry. She said that did not meet the federal guidelines. She said she believes that the Education Standards and Practices Board will look at the plan option. She said that is where an individual who is minimally qualified could be put on a plan for three years and during that time become highly qualified.

In response to a question from Senator Cook, Ms. Welk said an individual who is deemed highly qualified in North Dakota may not be deemed highly qualified in Minnesota or South Dakota. She said a test has some credibility with it. She said the portfolio option is North Dakota based. She said a portfolio is evaluated by North Dakota teachers. She said our portfolio will probably not be recognized by other states. She said she has heard that some states may consider accepting a neighboring state's determination of highly qualified. However, she said, she believes that in order to get licensed an individual will probably have to pass the test applicable to the state in which the individual is seeking a license.

Ms. Welk said one of our concerns is that other states are graduating elementary teachers without any science. She said since we will shortly begin testing our students in the area of science, it is likely that elementary teachers coming from other states will be put on a plan to acquire one science.

In response to a question from Senator Cook, Ms. Welk said if someone decided to walk away from the teaching profession rather than use the portfolio option to become highly qualified that is too bad. She said the portfolio process is very easy and takes a maximum of three hours.

In response to a question from Representative Delmore, Ms. Welk said in 1959 the major-minor law set North Dakota ahead of other states. She said many states just managed to catch up within the last 10 years. She said the major-minor law sent many elementary teachers back to the classroom. She said in 1969 she was enrolled at Minot State University and there were many elementary teachers in the classrooms trying to obtain their baccalaureates. She said North Dakota has not done a lot with that process since. She said we require 32 hours for a major. She said the national average is 30. She said some states have less. She said Mississippi used to have 24. She said what constitutes a major is up to each state. She said ours is set at 32 because it includes a two-hour methods course and 30 hours of content.

Ms. Welk said other states have moved ahead of us. She said North Carolina requires 39 semester hours and it requires that every teacher take a test in every subject they teach. She said North Carolina also has a mentoring program.

Ms. Welk said we graduate about 350 elementary teachers each year. She said the University System uses the elementary program as a cash generator. She said perhaps we need to direct some resources to incentives so that we can encourage students to become mathematics and science teachers. She said each year about 700 teachers are eligible to retire. She said only about 250 of those retire each year.

In response to a question from Representative Sitte, Ms. Welk said middle school teachers must have a major or a test in every subject they teach. She said this was not a requirement in North Dakota. She said we now require only 16 semester hours of our existing teachers. She said individuals graduating in 2006 and thereafter will have to have 24 semester hours. She said the federal government requires that the same standards be applied to all individuals teaching the same subjects. She said a high school teacher would have had to have a major or a minor to teach English at the middle school level. She said an elementary teacher could have done the same with only eight semester hours. She said the Education Standards and Practices Board therefore settled on 16 hours. She said it is not a major but it is as flexible as the Education Standards and Practices Board could possibly be.

In response to a question from Senator Taylor, Ms. Welk said if an individual teaches multiple subjects and is deemed qualified for three periods a day but not for the remaining periods, it becomes difficult to assess whether that individual should be termed highly qualified or not. She said local administrators have the opportunity in many cases to change teachers' workloads so that they can teach in the areas in which they are highly qualified.

In response to a question from Representative Kelsch, Ms. Welk said Wyoming is not a testing state. However, she said, Wyoming requires significantly higher hours in order to obtain a minor.

Chairman Kelsch called on Dr. Doug Johnson, Assistant Executive Director, North Dakota Council of Educational Leaders, who presented testimony regarding the administration of the NCLB Act. His testimony is attached as Appendix H. He said it is important that the federal government streamline both the No Child Left Behind Act and Individuals With Disabilities Education Act regulations with a view to reducing paper compliance and requiring a greater focus on instruction. He said it is also necessary that the resources be provided so that the goals of universal proficiency can be obtained.

Chairman Kelsch called on Ms. Bev Nielson, North Dakota School Boards Association, who presented testimony regarding the NCLB Act. She said the

problem with the NCLB Act is that it is attempting to make an ideal the standard. She said she is troubled that the NCLB Act requires the concentration of limited resources on everything. She said we need to be realistic about our mandates given the fact that the schools have no control over the students that come to them.

Chairman Kelsch called on Ms. Gloria Lokken, who presented testimony regarding the NCLB Act. She said the North Dakota Education Association continues to believe that no child should be left behind. She said, however, all students do not learn at the same rate and will not all meet the standards. She said many of the North Dakota Education Association's concerns have been addressed by this committee during the previous two days. She said they are concerned about the costs to the state, especially the incidental costs that we have not yet recognized. She said they also want to ensure that there is a maximum amount of flexibility.

Chairman Kelsch called on Ms. Laurie Matzke, Title I Director, Department of Public Instruction, who said one reason that other states are seeing increases in their student achievement scores while North Dakota is flattening is that North Dakota lags behind other states in early childhood education. She said we are one of the few states which does not mandate kindergarten. She said almost all of our kindergarten programs are still half-day rather than full-day programs and we have very few preschool programs. She said schools are being encouraged to use some of their Title I funds to create full-day kindergartens, at least for their Title I students. She said the Grand Forks School Board recently voted to hold full-day kindergarten.

Ms. Evans said there was a clear direction from Congress regarding documentation of individuals regarding their status as highly qualified teachers. She said the mover and shaker behind the documentation of teachers was Congressman George Miller (D-California). She said Congressman Miller is in his 15th term and represents a district with poorly performing schools. She said the Individuals With Disabilities Education Act is up for reauthorization and hopefully Congress will look at streamlining it. She said that decision will be up to Congress, not up to the United States Department of Education. She said the new NCLB Act regulations that came out in December 2003 address how the testing of special education students is counted for purposes of adequate yearly progress. She said the regulations provide that states may use alternate achievement standards for students with cognitive disabilities in meeting Title I requirements. She said an alternate achievement standard is an expectation of achievement or performance that differs in complexity from a grade level achievement standard.

Representative Berg said he is always concerned about states' rights' and unfunded mandates and

particularly about unfunded mandates that are passed down to local school districts. He said he is also pleased to see the requirements for accountability. He said the political reality is that this is a hot issue in Washington, D.C., and it is not going to go away regardless of who wins in November 2004. He said there are Republicans and Democrats who want to marry money and accountability at the federal level. He said there are those who want to identify poor schools so they can ask for more money from the federal government and there are those who just want accountability put in place. He said we find ourselves waiting for federal regulations and then scrambling to comply. He said the federal government wants states to have more flexibility. He said if there are areas with which we are having difficulty, we should go to Congress and to the United States Department of Education and let them know how we propose to do things in North Dakota. He said he does not believe that anything dramatic will happen before the election. However, he said, after the election he believes there will be dramatic changes to the NCLB Act. He said he supports holding local districts accountable but giving them the flexibility to accomplish that goal. He said Secretary Paige has said that to date only one state has asked for flexibility.

Senator Cook said he supports the purpose behind the NCLB Act. He said he has heard that one-half of the blacks, Hispanics, and American Indians in this country do not graduate from high school. He said that is a problem and a challenge and a principal focus of the NCLB Act. He said he is concerned with the manner in which the NCLB Act seems to circumvent state legislatures. He said most of the policies that are going to affect our schools are set forth in the state accountability plan and legislators have no input into that plan. He said many people who are involved in education also feel they were left out of the plan development process. He said he wonders how legislators who are constitutionally responsible for the education policies of the state get involved in the process. He said we could draft legislation providing that North Dakota will not participate in the NCLB Act unless a variety of things are addressed. He said if we go through that exercise we would prompt good dialogue regarding changes that could be made in our state accountability plan, i.e., changes that we have the flexibility to make.

Senator Cook said he has a memorandum from United States Senator Byron Dorgan stating that the Senator believes there is enough flexibility in the law to allow North Dakota to change the way it is currently measuring adequate yearly progress. He said we could communicate some changes we would like to have made to DPI and to Congress.

Representative Delmore said she has spoken to our Congressional Delegation about the effects of this Act on North Dakota. She said it is sometimes difficult for people in Washington, D.C., to understand the

effects of their actions on the states. She said there are now 20 plus states that have expressed their displeasure. She said we should get on board and have a voice regarding what we believe are the flaws in the Act. She said no one can argue with the title of the Act or with the attempt to have accountability. She said however, we can have input regarding what is being done.

Representative Delmore said she would like to look at teacher numbers and see what we can do to keep teachers in the state and in the classroom. She said we are already a low-pay state and we have a teacher shortage. She said even some of our major cities are experiencing teacher shortages in the areas of mathematics and science. She said even if we produce individuals who can teach in these areas, the reality is that other states can pay them more and can offer them more than we can. She said she would like to know how Wyoming so quickly reached a 98 percent compliance level when that seems to be a problem in this state.

Senator Freborg said we are all a little guilty of articulating more negatives than positives. He said we could get out of the NCLB Act but it would cost us some or all of our title programs. He said we cannot get an accurate idea of what it will cost to implement the NCLB Act above the amount given to us by Congress. He said we either need to become supportive of the NCLB Act and begin to look at the positives or we need to get out. He said at every meeting most of the questions and comments are rather negative. He said we hear a lot of "Why do we need to do this?", "We cannot comply," "Can we not change this?", "Hopefully the feds will allow more flexibility," etc. He said we either need to consider getting out or we need to take a proactive stand on the NCLB Act.

Senator Freborg said rather than to react to what is happening, we need to act. He said we are the policymaking branch of government and we can set policies to do whatever we want in North Dakota. He said we cannot go beyond that. However, he said, if we are not happy with something that DPI has done, we can fix it. He said we can control what happens.

Senator Freborg said someone indicated that we are already deeply involved with this Act, we have passed legislation to implement the Act, and such legislation will be hard to change. He said every two years we can enact new legislation to do exactly what we want to do with respect to the Act. He said by the next meeting we need to decide whether to get in or out. He said he expects we will continue to support the NCLB Act. He said he imagines we will elect to stay in. He said we all want to offer our students a better education and there is a lot of good in this Act. He said if we do that, we need to speak positively and become active rather than reactive. He said the members of this committee will be the leaders within the Legislative Assembly regarding NCLB Act recommendations and discussions. He said we need to

come out with something positive and we should begin to work on it.

Representative Monson said in 2003 we passed legislation related to the NCLB Act. He said we should see if the legislation is still valid or in need of amendment.

Chairman Kelsch said she believes that during the 2003 legislative session we tried to stay as flexible as we possibly could. She said we did not paint ourselves into a box or into a corner.

Representative Monson said many are still frustrated with the changes that are coming from the federal government. He said we are told that some of those changes will be implemented automatically and other things will require action on our part. He said we need to be proactive, not reactive. He said we need to review where we are and determine whether there are things that we want Congress to change.

Representative Sitte said she does not believe we have been negative. She said we are told that we have to comply with federal regulations. She said some are chafing because we are told that we are trying to eliminate the gap between the highest and the lowest students and when we look at our test scores, we see that our 8th grade mathematics test scores are coming down. She said it seems that we are trying to bring down all children. She said the emphasis has been on meeting federal regulations. She said we should take a hard look at what our children are learning. She said having only 18 percent of North Dakota high school graduates reading at a 9th grade level and thinking that is great is not acceptable. She said we need to see our achievement increased. She said she would like the committee to see test data going back 20 to 30 years, look at the changes and the trends, and try to figure out why our educational end product is diminishing. She said instead of just trying to meet federal regulations, we should be proactive. We should bring in the best minds, the best superintendents, and the best people we can find to give us their suggestions on how we can make our education system the very best in the nation. She said North Dakota has been there before and we can be there again.

Senator Cook said we should create another adequate yearly progress subcategory for students

who miss a certain number of days. He said we need to discuss that and determine whether there is any merit to the idea. He said if we decide that is the way to go, we then need to determine how we would need to make it happen. He said we need to find out how we can amend our state plan.

Chairman Kelsch said we have truancy laws on the books. She said we need to determine why those laws are not being enforced. She said we no longer have truancy officers. She said she would like DPI to follow up on its documentation regarding the new federal flexibility regarding the testing of special education students. She said this committee needs to become very serious about what it wants to do with the Act and how to allow our own flexibility. She said if we need to send a resolution to Congress regarding changes that need to be made, then we should do it. She said if anything is going to happen, it has to come out of this committee. She said at the next meeting we need to look at the legislation that we have passed and what changes need to be made and what direction we want it to go.

Chairman Kelsch said if members have ideas, they need to come prepared to the next meeting. She said they should discuss their thoughts and ideas with other committee members and contact the Legislative Council staff if they wish to have bill drafts presented. She said Representative Sitte commented earlier on test scores having gone down. She said one of the biggest reasons for the decline is the lack of parental guidance in the home. She said often children are placed in front of a television because parents are busy. She said often parents do not provide their children with books and instructional materials and do not limit television hours. She said parental responsibility is a difficult area in which to legislate.

Chairman Kelsch adjourned the meeting at 12:30 p.m.

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L. Anita Thomas  
Committee Counsel

ATTACH:8