

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

NO CHILD LEFT BEHIND COMMITTEE

Tuesday, July 8, 2003
Harvest 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 Linda Christenson, Dwight Cook, Layton Freborg, Gary A. Lee

Member absent: Senator Ryan M. Taylor

Others present: See Appendix A

At the request of Vice Chairman Lee, Mr. John D. Olsrud, Director, Legislative Council, reviewed the Legislative Council supplementary rules of operation and procedure.

At the request of Vice Chairman Lee, committee counsel presented a background memorandum entitled *No Child Left Behind Act of 2001 - Background Memorandum*.

Chairman Kelsch called on Dr. Wayne Sanstead, Superintendent, Department of Public Instruction, who presented testimony regarding the No Child Left Behind Act. Dr. Sanstead said the Department of Public Instruction received a June 27, 2003, letter from the United States Secretary of Education accepting the state's accountability plan under Title I of the No Child Left Behind Act. The letter is on file in the Legislative Council office. He said he believes and his staff members believe that the No Child Left Behind Act can work in North Dakota. He said North Dakota has long required schools to have improvement plans and intervention strategies that will make a difference for students. He said North Dakotans often reference our successes, but when we take a hard look at our performance data, we see that we have much room for improvement. He said we are seeing disparities in the performance of our students, especially among those who are economically disadvantaged or disabled. He said the Legislative Assembly will have to take a look at the economic commitment that will have to accompany the statutory requirements of the No Child Left Behind Act. He said we must not forget that the system exists for the education of our children.

Chairman Kelsch called on Dr. Gary Gronberg, Department of Public Instruction, who presented testimony regarding the state level administration of the No Child Left Behind Act. Dr. Gronberg distributed a document entitled *No Child Left Behind Standing Committee - Presentation by the North Dakota*

Department of Public Instruction. The document is attached as Appendix B. He said the No Child Left Behind Act and many of the documents prepared by the Department of Public Instruction staff have been placed on a compact disk (CD) under the same title. The CD is on file in the Legislative Council office.

Dr. Gronberg said many of the elements that are now contained in the No Child Left Behind Act were initiated in North Dakota during the early 1990s. He said North Dakota has for years required school districts to use the CTBS and the Terra Nova to provide testing information.

Dr. Gronberg said much will be said about the requirement that all children need to be proficient in reading and mathematics by 2012. He said it is the goal of the No Child Left Behind Act to make that happen. He asked how could legislators set a lower standard? How could anyone say that only 80 percent of our children need to be proficient?

Dr. Gronberg said the more teachers know about their subject matter, the more knowledge they will be able to impart to their students. He said we also know that parents have to play an important role in the education of their children. He said parents need to know what is going on, whether their child's teacher is highly qualified, and how their child is doing in school.

Dr. Gronberg said early childhood education is also emphasized under the No Child Left Behind Act. He said North Dakota does not require that school districts offer kindergarten classes. He said if school districts provide kindergarten, the state provides per student payments. He said we do not accommodate prekindergarten classes.

Dr. Gronberg said in North Dakota there is a gap between what our statutes require for an individual to teach and what the No Child Left Behind Act requires for an individual to be a "highly qualified" teacher.

In response to a question from Representative Williams, Dr. Gronberg said a lot of what North Dakota has done in the area of teacher qualifications has been driven by the types of schools in this state, the settings in which they are located, and the degree of local control which has been demanded. He said there has been a belief that teachers should have a broad knowledge of a great number of things. He said because of demographics, North Dakota has required teachers to teach many things. He said

there is a belief that we cannot afford to have multiple teachers. He said in the 1960s North Dakota recognized that teachers required some content knowledge. He said at that time North Dakota required teachers to have at least a minor in the subjects they were teaching. He said other states have decided there is merit to requiring that teachers teach only in areas in which they hold majors. He said other states have surpassed North Dakota's requirements.

In response to a question from Representative Kelsch, Dr. Gronberg said in the past, Department of Public Instruction staff hoped they could provide technical assistance to school districts and schools. He said the No Child Left Behind Act places both paperwork demands and requirements for the provision of technical assistance to schools. He said many of the programs are being run by one individual. He said that person will be able to accommodate the reporting requirements, but that person will not be able to provide technical expertise in the field.

Chairman Kelsch called on Ms. Beverly Fischer, Grants Manager, Department of Public Instruction, who presented testimony regarding North Dakota's consolidated application for programs. Ms. Fischer said the Department of Public Instruction staff prepared a document entitled *Guidance for the Consolidated Application for Federal Title Funding*. She said the document is prepared for the benefit of school districts so they would have an easy reference guide regarding the information they need to prepare for the department. She said the document is included in Appendix B. She said the No Child Left Behind Act encourages the consolidation of applications for some of the various programs.

Ms. Fischer said the No Child Left Behind Act permits some school districts to combine their allocations. She said because some districts are very small, the amount of funding that each receives would not allow for any significant accomplishments. She said those districts can combine their applications and reporting, in addition to combining their funds, in order to operate a larger program.

Ms. Fischer said Appendix B also includes a comparison of appropriations received from the United States Department of Education during the 2001-02, 2002-03, and 2003-04 school years.

Ms. Fischer said many of the federal funds are supplemental in nature. She said in 2001-02, 12.5 percent of a school district's budget was based on federal revenue. She said this may lead to some maintenance of effort and supplanting issues down the road. She said school districts are required to maintain at least 90 percent of their nonfederal funds from one year to the next. She said if school districts maintain only 87 percent, the state has to withhold 3 percent. She said maintenance of effort is also a factor at the state level.

In response to a question from Representative Kelsch, Ms. Fischer said changes in student populations are factored into the determination regarding a school district's maintenance of effort from one school year to another. She said disasters such as the Grand Forks flood are addressed through federal waiver provisions.

In response to a question from Senator Cook, Ms. Fischer said the small rural schools achievement grant program and the rural and low-income schools program provide appropriations directly to the school districts without going through the Department of Public Instruction.

With the permission of Chairman Kelsch, Dr. Sanstead distributed copies of a document entitled *Education in the Senate Labor-H Subcte Mark*. The document is attached as Appendix C. He said the Senate markup includes \$54.6 billion in discretionary spending for the United States Department of Education.

Chairman Kelsch called on Ms. Laurie Matzke, Department of Public Instruction, who presented testimony regarding Title I of the No Child Left Behind Act. Ms. Matzke said if a school's poverty level is above 40 percent, it can operate schoolwide Title I programs. She said about 10 percent of North Dakota schools offer schoolwide Title I programs. She said the rest offer targeted programs.

Ms. Matzke said there is a requirement in the No Child Left Behind Act that Department of Public Instruction staff provide technical assistance to school districts and schools. She said it will be difficult for department staff to go out in the field and provide technical assistance and updates to school districts because of competing requirements for staff time and attention.

Chairman Kelsch called on Mr. Greg Gallagher, Department of Public Instruction, who presented testimony regarding Title II of the No Child Left Behind Act. Mr. Gallagher said Title II deals with teacher and principal training and recruitment. He said professional development activities are generally broken into two parts--content knowledge and classroom practices. He said Title II offers a great deal of flexibility. He said the requirements are geared toward the needs of each school district. He said the state role is one of monitoring school districts to ensure that the goals of the No Child Left Behind Act are being fulfilled.

Chairman Kelsch called on Ms. Fischer who presented testimony regarding Title II Part D of the No Child Left Behind Act. She said the purpose of Part D is to improve student achievement through the use of technology in elementary and secondary schools. She said school districts must have an approved technology plan. She said at least 25 percent of a school district's allocation must be spent on ongoing, sustained, intensive, and high-quality professional development. She said school districts are only

allowed to carry over up to 50 percent of their allocation into the ensuing school year.

In response to a question from Representative Sitte, Ms. Fischer said information regarding the impact that technology investment has on student achievement will be compiled in the near future.

Chairman Kelsch called on Dr. Gronberg who presented testimony regarding Title III of the No Child Left Behind Act. He said Title III pertains to English language acquisition, language enhancement, and academic achievement. He said the purpose of Title III is to ensure that limited English proficient students, including immigrant children and youth, develop English proficiency and meet the same challenging state academic content and achievement standards that other children are expected to meet. He said schools use Title III funds to implement language instruction programs designed to help the students achieve these standards. He said Congress has determined that the principal language for instruction of limited English proficient students should be English.

Dr. Gronberg said three North Dakota school districts applied for four-year grants under the Native American and Alaska Native children program. He said the districts were not successful.

Chairman Kelsch called on Ms. Pat Anderson, Department of Public Instruction, who presented testimony regarding Title IV of the No Child Left Behind Act. Ms. Anderson said Title IV addresses safe and drug-free schools and communities. She said \$1,834,000 in Title IV funds were made available to North Dakota school districts during this last school year. She said 93 percent of the funds is allocated to school districts. She said up to 3 percent is used by the Department of Public Instruction for administrative duties and the remaining 4 percent is used for the provision of technical assistance.

Chairman Kelsch called on Ms. Rosey Sand, Department of Public Instruction, who provided testimony regarding the 21st century community learning centers program. Ms. Sand said North Dakota has approximately \$1.44 million in grants available for distribution under this program this year. She said the program requires participants to meet a scientifically based research standard and prohibits participants from operating the program during school hours. She said since this is a community effort, proposed programs do have to feature parental involvement. She said anyone, regardless of which school the person attends, may participate in the program. She said the only requirement is that at least 51 percent of the participants must come from a school in which at least 40 percent of the students are from low-income families.

Chairman Kelsch called on Mr. Gallagher who presented testimony regarding Title V of the No Child Left Behind Act. He said Title V pertains to innovative programs. He said school districts may use the

allocated funds for teacher professional development activities, community services, health services, and general school improvement activities.

Mr. Gallagher said school districts receive a certain amount of funds each year based on the allocations. He said if the school districts do not expend all their funds during a period of time, the Department of Public Instruction may place the unspent dollars in a pool for allocation to other purposes. He said this assures that extra dollars are not returned to the federal treasury but remain and are used within this state.

Mr. Gallagher said the state is eligible to receive \$3.4 million annually for assessments under the No Child Left Behind Act. He said if there is ever a time that Congress does not adequately fund the assessment initiative, the obligation to administer the test during that period is eliminated. He said the assessment initiative has a high priority in Congress. He said that is the cornerstone of accountability in the No Child Left Behind Act. He said the \$1.2 million that the North Dakota Legislative Assembly appropriated must be maintained. He said the \$3.4 million is an annual addition.

Chairman Kelsch called on Ms. Anderson who presented testimony regarding persistently dangerous schools. She said with the input of school administrators throughout the state, the Superintendent of Public Instruction adopted a definition of a persistently dangerous school. She said a public school is persistently dangerous if, for a period of two consecutive years, there occurred a firearms violation that resulted in a one-year expulsion of a student and that at least 1 percent of the student population or five students, whichever is higher, were expelled for violent criminal offenses, including homicide, assault, kidnapping, sex offenses, robbery, and inciting a riot.

Ms. Anderson said Department of Public Instruction staff are presently gathering data and will, by August 8, 2003, determine whether any schools in this state meet the definition of persistently dangerous. She said if any school meets the definition, students attending the school will have the option of transferring to another public school in the district or in a contiguous district.

Chairman Kelsch called on Ms. Matzke who presented testimony regarding highly qualified teachers and paraprofessionals. She said the No Child Left Behind requirements apply to teachers of core subjects, not to counselors, physical education teachers, etc. She said core subjects include English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

Ms. Matzke said North Dakota has 34 schoolwide Title I programs. She said in schools that have schoolwide programs, all teachers have to meet the quality provisions. She said in schools that have targeted Title I programs, only those teachers who are

paid with Title I funds need to meet the quality provisions.

Ms. Matzke said Department of Public Instruction staff are telling school districts with schoolwide Title I programs that they should try their best to find a highly qualified teacher. She said if a school district is unable to do so, ramifications are not immediately forthcoming because neither the testing option nor the portfolio options are available for use yet. However, she said, in schools with targeted programs, there is no flexibility in the application of the highly qualified teacher requirements.

Ms. Matzke said 5 percent of all Title I funds must be set aside for use in helping teachers become highly qualified.

Ms. Matzke said the Superintendent of Public Instruction revised the reading and mathematics credentials to address the teacher qualification provisions of the No Child Left Behind Act. She said a public hearing on the proposed rule changes is scheduled for July 9, 2003.

In response to a question from Representative Monson, Ms. Matzke said it would be a lot of work for an elementary teacher to become highly qualified to teach mathematics in a Title I high school. She said July 1, 2006, is the deadline for currently licensed teachers. She said the higher standards apply immediately only to newly hired teachers.

Ms. Matzke said paraprofessionals must also obtain at least an associate's degree, complete at least two years of study at an institution of higher education, or meet a rigorous standard of quality, which includes an assessment of mathematics, reading, and writing. She said the proposed rules governing paraprofessional qualifications will also be addressed at the public hearing on July 9, 2003.

Mr. Gallagher said the state must demonstrate its adoption of challenging content and achievement standards. He said he expects to have a lot of discussions in the coming months regarding the reasonable accommodations and alternate assessments that are required by the No Child Left Behind Act. He said in the coming years we will be able to test students in each grade from 3 through 8 and in grade 11.

Mr. Gallagher said North Dakota's approach to defining adequate yearly progress involves keeping an eye on the goal and the goal was and continues to be the improvement of student achievement. He said in any given class there will be some students who will perform above and some who will perform below a proficient level. He said the goal is to move all of the students toward an increase in proficiency.

Mr. Gallagher said North Dakota uses the binomial distribution system. He said it is a more intense level of review and therefore results in a higher level of confidence in the determinations of adequate yearly progress. He said groups of fewer than 10 students are not used in calculating adequate yearly progress. He said one never wants to identify a school as not making adequate yearly progress if the sample is too small to safely do so. He said the other problem is when one has a small school that should be identified as not making adequate yearly progress and that call is not made.

Ms. Matzke said 23 North Dakota schools have been identified for program improvement. She said there is still some confusion as to whether 2001-02 data is taken into account in identifying schools for program improvement. She said if a school does not make adequate yearly progress for seven years, the options provided in the No Child Left Behind Act are not applicable under North Dakota laws. She said North Dakota has therefore negotiated possible alternatives. She said those alternatives include deferring administrative funds for program improvement schools, offering signing bonuses or merit pay to retain exemplary staff, offering school choice across district boundaries, and contracting with an outside expert.

Chairman Kelsch adjourned the meeting at 4:00 p.m.

L. Anita Thomas
Committee Counsel

ATTACH:3