

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### **NO CHILD LEFT BEHIND COMMITTEE**

Tuesday, October 28, 2003  
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 Hunskor, Lisa Meier, David Monson, Margaret Sitte; Senators Dwight Cook, Layton Freborg, Gary A. Lee, Ryan M. Taylor

**Member absent:** Representative Clark Williams

**Others present:** See Appendix A

**It was moved by Senator Freborg, seconded by Senator Lee, and carried on a voice vote that the minutes of the previous meeting be approved.**

Chairman Kelsch called on Dr. Wayne Sanstead, Superintendent of Public Instruction, who presented testimony regarding implementation of the No Child Left Behind Act. His testimony is attached as Appendix B. He said the state's plan has been referenced by the Council of Chief State School Officers as a model containing provisions worthy of replication.

Chairman Kelsch called on Mr. Greg Gallagher, Director of Education Improvement, Department of Public Instruction (DPI), who presented testimony regarding the implementation of the No Child Left Behind Act. His testimony is attached as Appendix C. He said a state accountability system must demonstrate progress in student achievement on state academic standards and state assessments, it must apply to all public schools, and it must hold public schools accountable. He said the standards must specify what students should know and be able to do, they must contain coherent and rigorous content, they must encourage the teaching of advanced skills, and they must describe proficiency levels that determine mastery and offer complete information of students' progress toward mastery.

Mr. Gallagher said the state has also developed and implemented an alternate assessment for students with significant disabilities. He said this assessment allows for modified content standards and alternate achievement standards. He said federal regulations provide that the percentage of students held to alternate achievement standards for the determination of adequate yearly progress may not exceed 1 percent of all students assessed.

Mr. Gallagher said the No Child Left Behind Act requires each state to determine adequate yearly progress based on state assessments and to define that progress in a manner that applies academic

standards as the basis for determining proficiency; is statistically valid and reliable; results in continuous and substantial improvements for students; measures the progress of all students with consideration for ethnicity, disability, limited English proficiency, and economic disadvantage; and includes graduation rates for high schools and one other state-defined indicator, such as attendance rates, for elementary schools.

Mr. Gallagher said on August 21, 2003, DPI released the first draft of the adequate yearly progress reports. He said DPI was required to release this first draft despite the fact that approximately 40 percent of the schools had not yet submitted their student membership reports. He said during the subsequent three-week period, DPI conducted a mandatory review, correction, and appeal process. He said on September 13, 2003, DPI closed the reporting process and on September 17, 2003, DPI released a public statement reporting the results. He said since September 13, 2003, DPI has entertained written requests for further appeals by schools. He said DPI is prohibited from entertaining appeals pertaining to the rules that were negotiated with the United States Department of Education.

Mr. Gallagher said of the 497 public schools in the state, 369 met adequate yearly progress, 47 did not, and 81 were listed as having insufficient data to allow a determination regarding adequate yearly progress.

Mr. Gallagher said a school is considered to have met adequate yearly progress if, considering statistical reliability, its students' scores meet or exceed the state's annual performance goal for the composite and for each subgroup and if the student participation rate meets or exceeds 95 percent of the goal for the composite and for each subgroup. He said if the school is an elementary school it must meet or exceed an attendance rate of 93 percent and if the school is a high school, it must meet or exceed a graduation rate of 98.9 percent.

Mr. Gallagher said the use of the phrase "considering statistical reliability" is important in regard to adequate yearly progress. He said when DPI reports that a school did not make adequate yearly progress, it means that DPI can say so with 99 percent certainty.

Mr. Gallagher said within this first year's application of the rules, every provision of the accountability system performed as designed. He said the statistical reliability requirement protected schools from identification based on current year data. He said the statistical reliability requirement protected schools from identification based on the combining of multiple years' data. He said schools that could be identified with 99 percent reliability as not meeting the state's performance goals were appropriately identified as not making adequate yearly progress.

Mr. Gallagher said based on the identification of schools that did not make adequate yearly progress during 2002-03, no new schools were placed on program improvement. He said six schools that were previously identified for program improvement were removed from the list because they made adequate yearly progress for two consecutive years. He said currently 23 schools are identified as program improvement schools.

Mr. Gallagher said the state accountability plan contains provisions that require DPI to study the plan. He said DPI expects to conduct a comprehensive review of the effects of binomial distribution on composite and disaggregated student achievement rates, on participation rates, on attendance rates, on graduation rates, and its possible adoption for testing Safe Harbor. He said DPI will also look at the possibility of adopting Safe Harbor for both secondary indicators--attendance and graduation--as originally proposed by DPI but rejected by the United States Department of Education. He said DPI will conduct a quality control analysis of critical data collection and handling points, including the cross-checking and validation of primary data sources. He said DPI will analyze the effects of the emerging state data warehouse as a mechanism to expand the state's assessment system. He said if the state can produce evidence that other multiple measures, including classroom grading, are aligned with the state's achievement standards, then the definition of the state's assessment system might be expanded and the state's accountability system might be made more inclusive of relevant instructional practices.

Mr. Gallagher said before improvements can be considered for the state's accountability plan, DPI must thoroughly assess the current mechanisms and produce evidence regarding the impact of those mechanisms. He said DPI must present this empirical evidence to the United States Department of Education in order to petition for any specific improvements to the accountability system.

Mr. Gallagher said DPI has just completed the first iteration of this new accountability system. He said the first iteration has produced significant findings that must be verified, cross-checked against the original design, and applied appropriately within various scenarios to understand the plan's impact. He said DPI has taken the first steps in conducting a

comprehensive study of the efficacy of this system. He said, therefore, any calls for significant adjustments to the system are at this time premature.

Mr. Gallagher said Appendix A of his handout includes the criteria for determining which students may properly be given the state alternate assessment. He said the state alternate assessment is a portfolio-based assessment that is administered according to rules. He said the determination regarding student eligibility rests entirely with the student's school and the individualized education program process. He said the regulations set forth by the United States Department of Education simply state that we can use no more than 1 percent of the total student population for inclusion into proficiency. He said it is not a restriction that limits only 1 percent of the students to participation in the alternate assessment.

In response to a question from Representative Sitte, Mr. Gallagher said state standards in terms of their rigor do increase with each grade level. He said we need to determine if our schools have the programming necessary to meet the state standards. He said the state standards clarify expectations. He said we are also in a developmental stage with respect to standards. He said the first generation of standards applied only to grades 4, 8, and 12. He said the districts are expected to go through and back-map and create curricula based on what they believe the standards to be. He said that takes both time and effort. He said we are finding that districts have deficiencies regarding what content is taught at what time, especially in the area of mathematics. He said districts are beginning to align their curricula, identify deficiencies in their curricula, and make corrections.

In response to a question from Representative Sitte, Mr. Gallagher said there is no intention at this time to align our standards with the Minnesota system. He said if down the road we would try to align a state level assessment system with state achievement standards, we would need to determine if doing so would incorporate locally driven grading, testing, and similar elements. He said we would also need to determine if doing so would or would not move us toward more standardized achievement across the state. He said if we were to go that route, we would have to determine whether we could do it and whether that would be desirable. He said there is great merit in having teachers communicate with each other about the achievement standards across the state. However, he said, it is within the purview of the districts and the schools themselves to determine what the grading and achievement standards should be.

In response to a question from Representative Sitte, Mr. Gallagher said irrespective of what other models might be out there, if we believe, and many educators do, that assessing is so important that we

should look at all the possible approaches to it, including bringing in multiple measures that are determined at the local level, we should walk down that road. However, he said, we also have to be cognizant that the moment we walk down that road, we would have to legitimize a system based on an achievement standard that can be shared across the state. He said that becomes the big issue. He said there is a tradeoff with everything.

In response to a question from Representative Monson, Mr. Gallagher said the state mathematics standards at grade 12 do not represent calculus-level courses. He said the standards are reflective of what North Dakota teachers believe students should have across the board. He said there are expectations that students be exposed to certain core material. He said we have a large number of students who do not have exposure to some content areas. He said we have no standard approach in this state regarding the governance that we have and the methods by which schools lay out courses and programs. He said mathematics teachers themselves are still discussing how mathematics courses can be realigned to better introduce students to the balance of the state standards. He said the data is suggesting that there are insufficiencies in the course selections and course opportunities. He said teachers have testified that we need to give serious consideration to how we align our courses. He said future assessments in the state will occur in the fall of the junior year. He said that will place a greater focus on the freshman and sophomore material. He said the downside is that this move will not give us a sufficient understanding of the instruction and assessment occurring in grades 11 and 12.

In response to a question from Senator Cook, Mr. Gallagher said special education is a pivotal area where identification occurred. He said 71 schools were first identified as not meeting adequate yearly progress. He said this number was reduced when schools provided correct information. He said the changes were almost entirely based on student attendance and graduation numbers. He said the changes were not based on assessment results.

In response to a question from Senator Cook, Mr. Gallagher said by 2005-06 there will be assessments for grades 3, 4, 5, 6, and 8. He said there will be a greater likelihood of making identifications in the elementary and middle schools. He said many of those which now are labeled as having insufficient information will be reportable. He said it is not known whether the schools will be above or below expectations.

In response to a question from Representative Delmore, Mr. Gallagher said North Dakota has unique provisions regarding statistical reliability in the areas of attendance, participation, and graduation. He said DPI also wanted to be able to apply statistical reliability in the areas of participation, attendance, and

graduation rates. He said DPI argued that what was appropriate for achievement should be equally appropriate for the other areas. He said the United States Department of Education took the position that the law did not entertain such opportunity. He said in the end the United States Department of Education allowed DPI to implement that position but added that it was an area worthy of study. He said the United States Department of Education was not willing to let DPI use Safe Harbor on secondary indicators like attendance and graduation rates. He said the United States Department of Education was, however, willing to grant that to some other states. He said the United States Department of Education did not operate under a cookie cutter approach in determining which states were or were not awarded certain provisions. He said the matter of Safe Harbor for secondary indicators is still an area that DPI intends to pursue with the United States Department of Education. He said DPI also proposed applying the reliability factor to Safe Harbor itself. He said this would deal with up to three years of information. He said the United States Department of Education was not receptive to that proposal. He said DPI still believes that the proposal merits study and consequently put it into the DPI accountability plan. He said DPI will study the effects of binomial distribution across the board. He said that is by far the superior approach to protecting schools while making information available to the public. He said we must do so not only on achievement but also on participation, attendance, and graduation. He said we must apply Safe Harbor on those and we must conduct a study of Safe Harbor itself and the effect of three-year trending, as opposed to one year. He said based on the precedents that have been established through other states' negotiations, he believes that North Dakota is still very much in a transitional stage with the United States Department of Education and truly waiting for the United States Department of Education to arrive at its own philosophical determination regarding what an appropriate accountability plan might be. He said he believes those discussions will take place in the very near future--right after DPI has the data analyzed and published. He said North Dakota is among the few states with populations so small that very minor things could result in the exclusion of huge numbers of schools and in effect nobody would be held accountable. He said on the other hand, it is important to make certain that balance occurs.

In response to a question from Representative Delmore, Mr. Gallagher said the 1 percent use of alternate assessments put forth by the United States Department of Education was based on nationwide research indicating that students with significant disabilities could be included within the accountability system provided there are alternate achievement standards. He said the level was not always 1 percent. He said at one point it was set at one-half

of 1 percent. He said he would not be surprised to see a reevaluation by the United States Department of Education regarding the 1 percent use of alternate assessments. He said, however, that is entirely within the domain of the United States Department of Education. He said the best way to deal with this matter is to produce meaningful data and provide it to the United States Department of Education. He said local school personnel must have the latitude to determine, through the individualized education program process, who should be given alternate assessments. He said such decisions should not be impacted by the effect that the 1 percent cap might have on the district or on the state. He said the United States Department of Education's position is that if you exceed 1 percent, it must be determined whether that was an appropriate use of the alternate assessment, as per the guidelines. He said North Dakota had one-half of 1 percent who were engaged in the alternate assessment. He said at this time there is not enough data to pursue the issue. He said we need to understand that the United States Department of Education will be moved only by data, not by personal reasons or philosophies. He said alternate assessments are an opportunity for good quality assessments. However, he said, it is also an area that can be abused. He said finding the proper level is the challenge. He said North Dakota is not the only state grappling with what is a good quality assessment for a student with disabilities.

In response to a question from Representative Delmore, Mr. Gallagher said whether the 1 percent is applied at the district level or at the state level can result in very different outcomes. He said we have districts that are very small. He said one child assessed through the alternate assessment would already exceed a 1 percent cap. He said as a state we can absorb a 1 percent cap. He said if we exceed the 1 percent cap, we need to determine what penalty would be applied to the state. He said the United States Department of Education is sensitive to the fact that some districts have students with particularly high levels of significant disabilities and that a 1 percent cap would be problematic. He said that opens the door to a determination that it might be proper for such districts to exceed the 1 percent cap. He said the guidance on that is unclear. He said at the state level the 1 percent cap can be monitored much more clearly. He said DPI has argued to the United States Department of Education that we have districts in which some of these rules cannot be appropriately applied.

Chairman Kelsch called on Mr. Warren Larson, Superintendent, Williston Public School District, who presented testimony regarding the No Child Left Behind Act. His testimony is attached as Appendix D. He said there are no laws that can be enacted to make the perfect teacher. He said some of our finest teachers, including individuals who have been

selected as teacher of the year, had only minors, not majors, in the areas they were teaching. He said today such individuals would not be considered to be highly qualified. He said such individuals were selected as teacher of the year not because they were highly qualified, but because they were highly skilled. He said do you want your children being taught by a teacher who has taken all of the right classes and met the requirements of a highly qualified teacher or by a teacher who is highly skilled in helping children learn how to learn.

Mr. Larson said some groups want to add more stringent requirements and burdens to our school districts. He said this committee will be asked by some who have never been in a classroom and by some who have never managed a school district to adopt more regulations to this already unmanageable law. He said this committee may hear phrases like "binomial distributions" and other statistical facts and fallacies. He said we must approach the No Child Left Behind Act with great legislative prudence. He said the law as written has many unanswered questions. He said there are many details and interpretations that are yet to be worked out. He said it is reported that there are 11 states that have refused to send in data on the No Child Left Behind Act. He said they are on a wait-and-see basis.

In response to a question from Representative Kelsch, Mr. Larson said the state should not even think of going beyond the federal law. He said there are rumblings that we are going to go beyond the federal law. He said there may be rules and sanctions that could already be beyond the federal law. He said he is concerned that we are going to step beyond the ramifications of the federal law. He said the intent of the No Child Left Behind Act is really good, but the implementation is pathetic. He said the No Child Left Behind Act was hastily put together and it was not put together well.

In response to a question from Representative Kelsch, Mr. Larson said he does not have any examples right now of where or how the state has gone beyond the federal law. He said some things might be coming up.

In response to a question from Representative Delmore, Mr. Larson said meeting the highly qualified teacher standard will be one of our greatest challenges. He said some superintendents will cite examples of teachers retiring and leaving the profession. He said the head of his high school mathematics department has only a minor in mathematics. He said the individual teaches many workshops and is a very gifted teacher. He said that teacher has stated that he will not go through the work and the humiliation of proving that he is a good teacher. He said that individual says he will retire.

Mr. Larson said the portfolio assessment is probably the direction everyone is going to go. He said the Praxis II will not be ready before the deadline.

He said he still wonders how that will make a better teacher. He said superintendents go through transcripts and they can find highly qualified teachers. He said they hire highly skilled teachers because they can assess that. He said no law can do that.

Chairman Kelsch called on Dr. Don Piper, Professor Emeritus, University of North Dakota, who presented testimony regarding the No Child Left Behind Act. His testimony is attached as Appendix E. He said he supports the intent of the No Child Left Behind Act. He said he is troubled by the workings of the No Child Left Behind Act and particularly so by its workings in North Dakota. He said there are two major problem areas--highly qualified teachers and adequate yearly progress.

Dr. Piper said the real solutions will happen legislatively at the federal level. He said teachers should be permitted to teach in their minors as well as in their majors. He said we have had that in North Dakota and it has worked fairly well. He said there is considerable research to determine who is an effective teacher. He said there is no compelling research to indicate that students taught by an individual who has a major do any better than students taught by an individual who has a minor in a subject matter.

Dr. Piper said he has been in education for 52 years. He said he has removed teachers, but he cannot recall one instance in which a teacher was removed for lack of knowledge in a content area. He said in the majority of our small schools one teacher is assigned to teach the various social studies courses and another to teach the various science courses. He said the No Child Left Behind Act would require a teacher to have four majors in order to teach the various social studies courses. He said if we found a teacher with four majors, that individual certainly would not remain in North Dakota at our current teacher salary levels.

Dr. Piper said we should use cohort testing to determine adequate yearly progress rather than comparing the test scores of fourth graders one year to the test scores of fourth graders in another year. He said those are two different groups of students. He said the only reason we would test fourth graders one year and compare those results to the scores of fourth graders from a previous year is to penalize schools. He said with respect to the testing of special education students, we should develop and implement simplified alternative testing at the student's instructional level rather than at that student's grade level. He said there is nothing to be gained by once a year administering a high-stakes test in reading and mathematics at the student's grade level. He said we have special education students classified at the 10th grade level and we are instructing them at the second or third grade level.

Dr. Piper said DPI has had a lack of communication with and input from the North Dakota education community. He said DPI should be required to

engage in a complete review and a revision if necessary of the North Dakota state plan, with direct and continuing involvement of representatives of the education community chosen by the North Dakota Council of Educational Leaders, the North Dakota Education Association, and the North Dakota School Boards Association. He said DPI has submitted to the United States Department of Education at least four no child left behind state planning documents during the period from January 31 through September 2003. He said these documents were submitted without any comprehensive and continuing involvement from the major education groups. He said these education groups were not even allowed to read the documents before they were submitted. He said on January 15, 2003, a number of administrators met with representatives of DPI and pleaded to see the draft copy of the state plan, which was submitted to the United States Department of Education on January 31, 2003. He said they were told that they could not see the document because a draft was not available. He said two weeks later the document was sent to the United States Department of Education and that document was 71 pages in length. He said as recently as October 15, 2003, DPI issued a 66-page request for proposal (RFP) regarding contracts for the assessment process during the next three to five years. He said the RFP includes timelines, things that will be required of the contractor, and the number of teachers who will meet to look at the cut scores. He said none of the major education groups were involved in any direct two-way communication to put together this RFP. He said it is incredible to think of all that has been done without direct input from the major education groups in the state.

Dr. Piper said he was part of the audience for a United States Department of Education peer review meeting on March 5, 2003. He said members of the audience were not permitted to speak. He said near the end of that meeting it was concluded that the Superintendent of Public Instruction should have a statewide advisory group on the No Child Left Behind Act. He said it is seven months later and he believes that no such group exists. He said DPI must be required to establish two-way and direct communication with the education community of North Dakota and with the representatives chosen by the members of that community and not only with those chosen by DPI.

Dr. Piper said the interim No Child Left Behind Committee should communicate its concerns and those of others in the state to the appropriate people in Washington, D.C., and share those concerns directly rather than assigning DPI to share those concerns. He said until now the discussions between DPI and the United States Department of Education have involved primarily DPI and the United States Department of Education. He said this committee

should get involved in this series of discussions. He said the committee should encourage DPI to reestablish direct and continuous communication with the education community in this state. He said such communication has not existed since the 1970s. He said the leaders of DPI see their primary role as working with the United States Department of Education and being the regulatory arm for no child left behind in the state of North Dakota. He said this is not the leadership role that DPI should have.

Chairman Kelsch called on Dr. Edward Slocum, Superintendent, New Town Public School District, who presented testimony regarding the No Child Left Behind Act. He said his school is one of those listed on the wall of shame and is in its fifth year of not meeting adequate yearly progress. He distributed a document entitled *Results of Bracken Basic Concept Scale 2002-2003*. The document is attached as Appendix F. He said the state should not enact legislation that would allow the occurrence of some of the dire consequences spelled out in the No Child Left Behind Act for schools that are in their fifth year of not meeting adequate yearly progress. He said the state should not allow the firing of entire teaching staffs or the taking of control from duly elected local school boards. He said he knows that the state is under a lot of pressure from the federal government to amend laws so that it will be able to fully implement the No Child Left Behind Act. He said the No Child Left Behind Act includes as an option the possibility of the state dismantling a local school board and taking over a school district. He said he hopes that this will not be done in North Dakota. He said, likewise, teachers should not be fired based on students' test results alone. He said the North Dakota Century Code describes a process that requires incompetence to be proven on a case-by-case basis with due process rights ensured.

Dr. Slocum said the Legislative Assembly did a good job in allowing teachers to come out of retirement and fill vacancies in our school districts. He said if that legislation had not been passed, he would not have a speech therapist in his school. He said his school district employs two individuals under that provision. He said allowing school boards to use signing bonuses for hard-to-fill positions was also good legislation. He said if that provision had not been enacted, he would still be missing two special education teachers. He said he has a high degree of confidence in and respect for many DPI staff members and in Dr. Sanstead for trying to implement a deeply flawed piece of federal legislation. He said Ms. Laurie Matzke, Title I Coordinator, DPI, has been very communicative with school district personnel. He said he feels the same way about Ms. Janet Welk, Executive Director, Education Standards and Practices Board. He said she is trying to follow the federal requirements and still maintain some degree of common sense.

Dr. Slocum said a large number of students in the New Town Public School District start kindergarten barely verbal. He said because of this, the school board authorized all-day, everyday kindergarten about five years ago. He said many of the school districts listed as not making adequate yearly progress are predominantly American Indian. He said the New Town Public School District is 95 percent American Indian at the elementary level, 95 percent American Indian at the middle level, and 85 percent American Indian at the high school level. He said starting school without being ready is common in many reservation schools.

Dr. Slocum said the improvement plan given to the New Town Public School District by DPI provided them with five options--replace key staff, implement a new curriculum, operate under new management, extend the schoolday and school year, or restructure the school. He said the district extended the schoolday by 30 instructional minutes in kindergarten through grade 12. He said the board did talk about replacing key staff, which he said meant firing all of the teachers and starting from scratch. He said that would be lamentable in this era of teacher shortages. He said he has trouble every year filling his vacancies. He said being listed as not meeting adequate yearly progress is not helping his situation. He said when one looks at the district's standardized test scores, one does see improvements from year to year. He said when one looks at the district's attendance data, one can see the challenges faced by the teachers. He said the No Child Left Behind Act does not require parents to do a better job of sending their children to school on a regular basis. He said the school district is not getting the help and support it needs from the tribal court system or from the social services system. He said until you begin to hold parents responsible, you cannot put the entire blame on teachers.

Dr. Slocum said the United States Constitution gives states the responsibility for education and yet we have federal micromanagement through the No Child Left Behind Act. He said the federal government is becoming so desperate about education in the United States that it has threatened to take the reins of control away from local school boards and make teachers and students feel badly about themselves for a lousy 1.5 cents on the dollar.

In response to a question from Representative Sitte, Dr. Slocum said he has not separated out how much it would cost to implement the No Child Left Behind Act. He said his district spends about \$6,000 per year to educate a student. He said special education students require a greater amount. He said the state average for special education students is about 12 percent of the population. He said the special education population in the New Town Public School District is 27.5 percent of the total student body. He said the 1 percent allowance for alternative

assessments is woefully inadequate. He said if the New Town Public School District received money from the Department of the Interior, the New Town Public School District would be more like the Mandaree Public School District, which spends almost triple per student what New Town can. He said the added cost of the No Child Left Behind Act is significant. He said the district employs 70 licensed teachers and 35 aides. He said it is hard to find aides with two years of college in a community where 80 percent of the students qualify for free and reduced lunches. He said in South Dakota, Wyoming, Montana, and Minnesota, as well as North Dakota, most of the failing schools are predominantly American Indian schools. He said we cannot conclude that American Indian people are stupid and we cannot conclude that only mediocre teachers are drawn to work on reservations. He said he has some wonderfully competent staff.

In response to a question from Senator Cook, Dr. Slocum said if the school district does not meet adequate yearly progress during the sixth year, the board would have to plan for reorganization and during the following year, it would have to allow students to attend schools outside the district.

In response to a question from Representative Kelsch, Dr. Slocum said many of his staff are not going to pursue majors in their content areas. He said they will instead pursue the portfolio options. He said many were initially threatened by the portfolio options. He said once they got over the insult that it represents to their competence, they decided that rather than get out of teaching, they will go through with the portfolio.

Representative Kelsch said many of the problems that have been cited pertain to federal-level actions. She said we need to look at what we can do at the state level.

Dr. Slocum said he does not think North Dakota can afford to give up the federal funds that are tied to the No Child Left Behind Act. He said we desperately need those funds to provide services to the students. He said we should not look at passing laws that would usurp the authority of a duly elected school board and we should not pass laws that would enable school districts to engage in the blanket firing of teachers based on test scores alone. He said the North Dakota Century Code already allows for the dismissal of a teacher based on the individual's performance.

Chairman Kelsch called on Mr. Dick Schaffan, Superintendent, Solen-Cannon Ball Public School District, who presented testimony regarding the No Child Left Behind Act. He said his school is 100 percent American Indian. He said his school is also on the wall of shame. He said four years ago he started with a group of 15 students entering high school. He said of his senior class, five of them will probably graduate this year. He said three did not have enough credits and seven are dropouts. He

said four were assigned by the tribal courts. He said they are 19 years old and the most credits any of them have are probably around 10. He said those individuals will never graduate by the time they reach the age at which they can walk out of there. He said they certainly have no desire to do well on the standardized test. He said three from last year did not have enough credits and they will be taking the test again. He said they did not have the desire to take the test last year and they do not have the desire to take the test this year. He said the tribal court says they will be in school or go to jail. He said this is one of the scenarios he has to put up with and this is one of the reasons that his district may never make adequate yearly progress.

Mr. Schaffan said he has about a 30 percent graduation rate. He said he is constantly fighting these circumstances. He said they would like to educate those students who want an education. He said they do not know what to do with the others.

Mr. Schaffan said the committee should convey his points to representatives of the federal government. He said he hopes that North Dakota will not go beyond that which the federal legislation requires.

Chairman Kelsch called on Mr. Mike Forsberg, Elementary Principal, Bottineau Public School District, who presented testimony regarding the No Child Left Behind Act. He distributed a document entitled *Comparative CTBS scores class of '08 & '09*. The document is attached as Appendix G. He said sometimes a class does not reach the ability level of the preceding class. He said it would be much better to use cohort testing to measure progress.

Chairman Kelsch called on Mr. Paul Trautwein, Principal, Surrey High School, who presented testimony regarding the No Child Left Behind Act. His testimony is attached as Appendix H. He said the concept of the No Child Left Behind Act is wonderful but impractical. He said legislators need to be considerate of the teachers. He said teachers need to be told exactly what will be expected of them in order to meet the "highly qualified teacher" standard.

In response to a question from Representative Delmore, Mr. Trautwein said he passed around the last portfolio rubric. He said he had a general discussion about it at the last staff meeting. He said many of his teachers feel as if that is a way they would like to go. He said others are wondering how they will get through this. He said he has an individual who has taught for 15 to 20 years who is a fantastic teacher and his students have gone on to greatness. He said now we have to go back and ask this individual if he has the numbers in his portfolio that will allow him to continue teaching the subjects. He said whether a teacher is highly qualified is coming down to meeting a number. He said administrators are well-trained. He said administrators are supposed to observe teachers, to understand what good teaching is, and to make sure that good teaching occurs in a classroom.

Mr. Trautwein said he does have teachers who will look for other options. He said he cannot afford to replace one-third of his staff. He said it will probably be more like one-half of his staff because there will be other schools in the same situation and they will be trying to hire away his good teachers. He said he honestly believes that he has absolutely no weak teachers in his school. He said he wants to make certain that when 2006 comes along, he does not have to lose good teachers because they are not highly qualified.

In response to a question from Representative Sitte, Mr. Trautwein said most of his elementary teachers meet the highly qualified standard. He said the problem seems to be at the middle school and high school levels. He said he is having great difficulty determining which courses can be taught by middle school teachers based on the areas in which they have their degrees. He said he wonders whether he will have to build schedules based on what his teachers are allowed to teach or whether he will have to hire extra teachers to come in for a class or two.

Chairman Kelsch called on Mr. Doug Johnson, Assistant Executive Director, North Dakota Council of Educational Leaders, who presented testimony regarding the No Child Left Behind Act. His testimony is attached as Appendix I. He said the North Dakota Council of Educational Leaders supports student assessments and holding schools accountable for student achievement. He said he wonders if it would be possible to change the North Dakota state plan so that it defines adequate yearly progress of special education subgroups. He said members of the North Dakota Council of Educational Leaders, the North Dakota Education Association, and the North Dakota School Boards Association should be represented in the selection of new state assessments and in the determination of cut scores for the areas and grade levels that must be assessed under the No Child Left Behind Act.

Chairman Kelsch called on Ms. Bev Nielson, North Dakota School Boards Association, who presented testimony regarding the No Child Left Behind Act. She said the North Dakota Congressional Delegation is working very hard to amend the No Child Left Behind Act so that it will work better. She said Governor John Hoeven and the members of the Legislative Assembly must communicate their concerns to Congress and to the executive branch. She said we have to make the No Child Left Behind Act work better in North Dakota. She said she agrees with Mr. Gallagher when he says that the United States Department of Education is not interested in philosophy, but rather in data.

Ms. Nielson said the Legislative Assembly needs to help school districts financially. She said the districts lack the resources to align curricula and implement standards. She said implementing the requirements of the No Child Left Behind Act takes

time on the part of administrators and on the part of teachers. She said we will not see student progress until we require full-day kindergarten. She said we will also need to ensure that summer school is available to all students at all levels. She said tutoring, transportation, and special services are additional factors. She said if we are going to ask teachers to become highly qualified, we are going to need additional resources to pay them better.

In response to a question from Representative Sitte, Ms. Nielson said all students can benefit from additional instructional time.

Chairman Kelsch called on Ms. Nancy Sand, North Dakota Education Association, who presented testimony regarding the No Child Left Behind Act. Her testimony is attached as Appendix J. She said the North Dakota Education Association is very concerned about the requirements for highly qualified teachers. She said North Dakota Education Association members are being urged to voice their concerns at the federal level and she urges the members of the Legislative Assembly to do the same.

Chairman Kelsch called on Ms. Dena Larson, Director, Upper Valley Special Education Unit, who presented testimony regarding the No Child Left Behind Act. Her testimony is attached as Appendix K. She said she and her colleagues are struggling with how the No Child Left Behind Act and the Individuals With Disabilities Education Act mesh. She said the Individuals With Disabilities Education Act is based on individuality while the No Child Left Behind Act is based on group progress. She said the challenge is finding an assessment system that is effective for both disabled and nondisabled students. She said there is no simple, easy answer. However, she said, the two key components are collaboration and communication.

Ms. Larson said the No Child Left Behind Act can provide us with an opportunity to improve our system of education for all children. She said she supports the concept of an advisory committee that includes both regular and special educators and both administrators and teachers. She said the duty of the committee would be to provide feedback to DPI, assist with problem solving, and look at research to develop sound measures for educating and assessing students in the areas of reading and mathematics. She said this group could also provide input to the state Division of Special Education regarding revisions to the alternate assessment procedure. She said progress has been made in the area of communication between DPI and members of the education community. She said at each meeting there is a better understanding of the operational specifics within the state plan and the rationale behind the requirements. She said there continues to be a need for closer coordination between DPI and school personnel. She said knowledge after the fact causes frustration, confusion, and anxiety. She said clear



and consistent communication is essential. She said the committee can support the use of an advisory committee to ensure that DPI receives input on issues. She said everyone can work together to implement the No Child Left Behind Act. She said we can go to the federal representatives as a united group and propose changes to the Act.

In response to a question from Representative Delmore, Ms. Larson said she does not know if we can change the state plan. She said state plans do vary and, therefore, she assumes there is some level of flexibility.

Chairman Kelsch called on Dr. Gary Gronberg, Assistant Superintendent of Public Instruction, who presented testimony regarding the No Child Left Behind Act and what the no child left behind assessment system is designed to measure. He said the No Child Left Behind Act has its roots in the Elementary and Secondary Education Act of 1965. He said that legislation was put in place to help those students who came from poor homes. He said poverty was the focus of the Elementary and Secondary Education Act and specifically the education of students who came from that level of deprivation. He said poverty is still a subgroup. He said the federal government has provided billions of dollars to states so that they can raise the achievement level of poor students up to the standard of everyone else. He said now some subgroups have been added because of historical poor performances. He said these subgroups include students with disabilities, students whose parents speak a language other than English in their home, and ethnicity. He said in some areas that means African American students or Latino students. He said in areas such as North Dakota, this means principally American Indian students.

Dr. Gronberg said the No Child Left Behind Act is trying to determine whether in our state there is an achievement gap between students from such subgroups and other students. He said in North Dakota we show the same lack of achievement among the subgroups as does every other state. He said the law is designed to require that we put services in place to close that achievement gap. He said the federal money is to be used to bring those subgroups as far as we can get them toward the achievement levels of other groups whose members are performing well. He said we need to be able to measure the achievement of the subgroups in relation to others not in those groups and we need to determine how well each school is doing in closing that achievement gap. He said the query is not how well the fourth grade or the sixth grade is doing. He said the query is how well is the school doing in closing that achievement gap. He said the measure of our accountability system comes with the development of the school report card. He said we need to tell those in our state who are spending \$1.4 billion per biennium how well our schools are doing. He said we

need to tell them whether we are being good stewards of the money that we are spending for education at the elementary and secondary level.

Dr. Gronberg said in its October 2003 newsletter, the North Central Association Commission on Accreditation and School Improvement states one must be clear about what one intends to measure before a valid, productive assessment program is developed. He said the association maintains that assessing program growth will yield different information than will the assessing of cohort growth and that program growth assessments are easier for teachers to design, implement, and understand at the school level. He said the association maintains that teachers often complain that the outcomes for which they are held accountable are beyond their control. He said teachers do not control the ability level of students, the number of students, the students' family background, the level of parental support, nor the native languages of the students. He said teachers do not control the cohort.

Dr. Gronberg said conversely what happens within the classroom--the educational program--is largely under the control and influence of teachers. He said the educational experiences that students engage in, the teaching techniques used, the timing and pace of the curriculum, and how learning is practiced are reinforced and are largely controlled by the teacher. He said program growth focuses on the impact of these variables. He said program growth is in fact what the accountability system required by the No Child Left Behind Act is designed to measure. He said it is designed to give us an annual snapshot of how well we are doing the things that we can control and how well students are learning based on our control of those factors.

Dr. Gronberg said schools accredited by the association have been focusing on program growth for the last 15 years as part of the performance-based accreditation. He said the accountability system is not an invention of the No Child Left Behind Act. He said this has been what practice has shown us for the last 15 years. He said it has enabled us to ask how well a school is doing, how well a school's curriculum is performing, and how well a school's textbook series is doing in getting students to learn in the kinds of reading methodologies that the school is using. He said it has enabled us to ask how well all the subgroups that have traditionally not performed well are doing. He said this is the report card that we are now delivering through the No Child Left Behind Act. He said this is information that supposedly we have had and have been using for 15 years. He said perhaps this information is showing us that some change is in order.

Dr. Gronberg said there are ways to use multiple assessments. He said what controls the use of multiple assessments is dollars and cents. He said the only thing that stops us from using multiple

assessment methods and testing students more than once a year is money. He said the question we need to ask is whether we can get a picture of a particular point in time. He said we need to ask if that is the ultimate picture of how students perform. He said the answer is probably no. However, he said, we can measure from year to year to determine if the program has been making progress. He said if a program is undergoing change, such as with the use of new textbooks or new reading theories, we need to know the results year after year. He said one cannot just measure a cohort group and follow them to determine the effect of the changes.

Representative Monson said he does not see how Dr. Gronberg can say that a cohort group is not as controllable with respect to testing as is program growth. He said if one has 1,000 students that may be accurate, but North Dakota schools do not have those kinds of numbers. He said when one looks at 10 to 12 students in grade 4, or even 20 to 30 students, there is much variability.

Dr. Gronberg said the association would disagree with Representative Monson's position regarding cohort versus program testing. He said the association maintains that one cannot control student ability levels, numbers, family backgrounds, level of parental support, or native languages. He said that is what one gets when one follows a cohort. He said that is the time at which all the individual student variables come out. He said what we are trying to measure is program improvement. He said we are trying to find out whether we are making a difference in terms of those things that we can control. He said we need to ask whether we need to change the amount of instructional time for reading in order to get better achievement levels. He said we need to ask whether we need to change the level of instruction. He said we need to ask whether we need to use the whole word approach or a phonetic approach. He said the teachers control such factors.

Representative Monson said there are so many variables that we cannot control which affect the test scores and that are vitally important to adequate yearly progress. He said one example is parental input. He said that is why he believes it is so much more reliable to test the cohort and see whether we are making progress from year to year with those same students. He said that makes so much more sense than considering only those things that we can control in a fourth grade classroom. He said if one had a huge sample, he could see how program growth testing could work but, given the number of variables, he just cannot agree with program testing.

Dr. Gronberg said there needs to be some frame of reference if a school is going to make programmatic changes. He said if a school is going to change its curriculum, we need to know the basis for such a decision. He said the alternative is to assume that we are good enough and will never have to make any

such changes. He said if a school determines that the majority of students in a cohort do not exceed a 100 IQ, and consequently makes program changes, what happens when the next cohort group arrives. He said we have to at some point measure the things about which we can make some decisions. He said if we just measure cohort growth and do not measure program growth, we do not have the data to make any sort of programmatic changes or curricular changes or to determine whether we need to reemphasize or double the instructional time in a particular area. He said the alternative is to throw up our hands, claim that there are so many variables that are beyond our control, and then merely teach to the middle of the road and believe that is the best we can do.

Representative Monson said if one is not seeing adequate yearly progress within a cohort, that should tell one that changes are needed in the program. He said if the group is not making adequate yearly progress, then that should be a clue that something needs to be changed.

Dr. Gronberg questioned what happens when in one graduating class there are four merit scholars and in the next graduating class there are none. He said if a school makes program changes based on the fact that a cohort group has students who ultimately turn out to be national merit scholars, does the school then implement different instruction the next year when the cohort has 10 students with learning disabilities. He said you cannot make a change and follow that all the way through based on those factors that change from year to year.

In response to a question from Representative Kelsch, Dr. Gronberg said we cannot control variables. However, he said, we have to make decisions regarding our curriculum based on what the results are year after year. He said if we show that our fourth grade students are continually performing at a low level, perhaps we need to look at how we are teaching not only in the fourth grade, but also in the earlier grades. He said the No Child Left Behind Act wants us to look at how each school is doing and performing based on consistent numbers. He said the No Child Left Behind Act asks whether a school's fourth graders are learning. He said in the future, as we begin to assess in grades 3 through 8, we will also be able to determine whether third graders and others are learning. He said having discussions about whether it is more appropriate to assess cohort growth rather than program growth is moot because at this time, the No Child Left Behind Act requires us to measure program growth. He said the No Child Left Behind Act is designed to close the achievement gap between students in the subgroups and students not in the subgroups.

In response to a question from Representative Sitte, Dr. Gronberg said cohort testing has its role. However, he said, the question posed by the No Child Left Behind Act is how well the school is doing in

reducing its achievement gap between the subgroups and the school as a whole, not how an individual class is doing or how an individual student is doing. He said that is why we produce a school report card. He said we give parents feedback on how their child is doing and we have done so for years. He said the purpose of testing is not solely and strictly for instructional purposes. He said it is also to see how the school is doing in the instructional approach that it has taken. He said that is what the law requires.

In response to a question from Representative Sitte, Dr. Gronberg said under the assessment system required by the No Child Left Behind Act, given the fact that some students have individualized education programs, the question is where the school stands with regard to the other students in the school. He said this is not a measure of how the individual student is doing or whether the student is achieving with regard to the student's own individualized education program. He said the measure that is being used is whether there is still an achievement gap between the students with individualized education programs and all other students. He said we are measuring how well the school is doing with respect to getting its special education students involved in the regular curriculum with the same instructional standards as other students.

Dr. Gronberg said in testing special needs students, schools can use alternate assessments. He said schools can use the test as it exists, without any special accommodations, and schools can use the test with accommodations. He said if a student's individualized education program requires that an accommodation be made, that can be done. However, he said, in such a circumstance, the student's test result is counted along with the regular assessment results. He said we do have students with disabilities who can perform and do perform at a proficient level. He said one can take an alternate assessment and still not be proficient in one's performance. He said the alternate assessment is individually designed by the student's individualized education program team and teacher. He said the accommodations are determined the same way.

In response to a question from Senator Cook, Dr. Gronberg said if a school like Solen-Cannon Ball is starting out with 15 freshmen and only five are graduating, someone needs to ask why. He said perhaps someone needs to examine if the program is keeping the students' interest. He said perhaps someone needs to determine if the students see any gain in the end product or if they are in fact at the school because they are required to be by state law. He said the message is we cannot continue to do the same thing at a school like Solen-Cannon Ball and get the same poor results, especially since we are touted as having one of the highest graduation rates in the country. He said we cannot decide that we will not count our American Indian students because

doing so lowers our graduation rate. He said North Dakota is one of the top states in the percentage of high school graduates that go on to college. He said North Dakota also is one of the top states in the percentage of college freshmen that drop out. He said you have to look at the issues over a longer term. He said you cannot look at just one year's worth of data and draw conclusions.

Senator Cook said the problem with the No Child Left Behind Act is that if one looks at a school like Solen-Cannon Ball and concludes that the school is failing, there may well be other factors that need to be looked at in addition to the school. He said many of the people in the audience are concerned about fairness issues with respect to the No Child Left Behind Act. He said we need to find solutions to the graduation rate at the Solen-Cannon Ball school. He said he does not believe that the solutions will be found in either the No Child Left Behind Act or in our education system.

Chairman Kelsch called on Mr. Bob Rutten, Director of Special Education, DPI, who presented testimony regarding the assessment of students with disabilities under the No Child Left Behind Act. He said the No Child Left Behind Act is considered to be a general education Act. However, he said, because the No Child Left Behind Act requires that students with disabilities be included in the overall measure of a school's performance, a furor has been created across North Dakota and across this country. He said a lot of people who work in the area of special education are rather stymied by the requirements of the No Child Left Behind Act. On the other hand, he said, there are many people who are truly rejoicing at the communication that has begun to take place between general educators and special educators as a result of the No Child Left Behind Act.

Mr. Rutten said the most recent version of the Individuals With Disabilities Education Act, which was reauthorized in 1997, contained the first references to alternate assessments. He said the premise behind alternate assessments is that they provide greater consideration of students with disabilities in school and state policy decisions. He said if all students are included in a school's educational accountability, then the expectation for students with disabilities increases too. He said outcomes could be used to improve the quality of programs for students with disabilities at all levels.

Mr. Rutten said under the Individuals With Disabilities Education Act, states were required to have in place a model of an alternate assessment by July 1, 2000. He said North Dakota did in fact have an alternate assessment in place at that time. He said when the No Child Left Behind Act was enacted, it required disaggregation by subgroups, including students with disabilities. He said the alternate assessment suddenly became a much larger piece of the schools' national accountability process. He said all states are

really scrambling to put into place alternate assessments that take into account the achievements of students with disabilities. He said there has been very little guidance from the federal government regarding the development of alternate assessments. He said it has been left up to the states to develop valid reliable alternate assessments. He said North Dakota's model is similar to that used by roughly one-half of the states.

Mr. Rutten said during the last three years, DPI provided training on alternate assessments to large groups of participants. He said as we have become aware of the requirements of the No Child Left Behind Act and the implications of including the disability subgroup in the assessment process, there are more and more teachers and administrators paying attention to the options for assessment. He said many people are concerned about the manner in which students with disabilities should be assessed. He said the assessment is a dignity issue. He said students with disabilities have often not been included in a school's assessment. He said it was common practice to exclude students with disabilities on the days when the assessments were given. He said for a long time we have been undervaluing students with disabilities.

Mr. Rutten said in a column written by United States Senator Frist, it was stated that another frequent criticism of the No Child Left Behind Act is that it unfairly tests special education students on the same material as students in regular classes. He said the column goes on to state that on its face, this seems like a valid criticism because special education is for students who have unique educational difficulties. He said the column provides that the problem is that when you look more closely at the faces who are assigned to these classes, you find that many of the students who have been excluded from the formal assessment process are often students whose abilities have been underestimated.

Mr. Rutten said most special education students can take and pass challenging achievement tests and it is in their and society's best interest that they do so. He said for students with genuine disabilities, holding schools accountable is crucial to their educational opportunities and career preparation. He said for the small group of students who cannot reasonably be expected to master a normal school curriculum, federal legislation permits schools to use alternate assessments. He said that is the piece that has not been largely understood and is certainly being argued about on the federal level. He said at the same time that the Individuals With Disabilities Education Act is being reauthorized by Congress, it is caught up in much of the debate swirling around the No Child Left Behind Act. He said we are getting mixed messages from Congress and the United States Department of Education regarding what they intend to do regarding the No Child Left Behind Act. However, he said, we

do not have the final word from Washington about the requirements. He said DPI is sharing what it does know and what it hears from the federal level.

Chairman Kelsch called on Ms. Doreen Strode, Division of Special Education, DPI, who presented testimony regarding the No Child Left Behind Act. She said her background is in severe disabilities and she serves as a regional coordinator with the Division of Special Education. She said one of her primary responsibilities involves alternate assessments. She said about 12 to 13 percent of North Dakota students are in special education. She said only about one-half of 1 percent have participated in the alternate assessment. She said that number is expected to increase in the future. She said many students with disabilities participate in the regular assessments either with or without accommodations. She said special education includes speech pathology. She said a student in the special education subgroup could have a speech impediment, a learning disability, autism, or an emotional disability. She said there are 13 categories. She said alternate assessments are going to encompass only a small percentage of those students. She said there has been some confusion regarding how many students can participate in the alternate assessment. She said what DPI is telling people in the state is that the individualized education program teams must determine whether an alternate assessment is appropriate for a student and that DPI is not limiting the number of students who may take the alternate assessment. However, she said, it appears that the federal government may place a cap on the number of those students who can be figured into the adequate yearly progress formula.

Ms. Strode said the alternate assessment is a portfolio-based assessment. She said DPI requires a student's teacher to fill out certain information regarding the number of settings in which the student performed the skill, who helped the student perform the skill, etc. She said these are all based on best practices in the area of severe disabilities. She said the other part requires the individualized education program team to come up with a goal or an objective that measures the standard on which the student is working. She said data over a period of nine weeks has to be accumulated. She said the data has to be graphed and then a parent and a teacher validation must be added. She said reliability checks are conducted thereafter.

Ms. Strode said additional training was offered to clarify the area of accommodations. She said the accommodations that are permitted are the same as those allowed during the regular schoolday.

In response to a question from Representative Kelsch, Ms. Strode said the state alternate assessment went through many committees from its inception in 1997. She said the committees included teachers and special education directors. She said the assessments were written by those committees

with copious input and expertise from the field. She said when first implemented, statewide training was provided to special education teachers and directors and to whomever wanted to attend. She said the training has continued to be offered annually. She said the last few years DPI has used conference call training. She said this year the training was scheduled on three different dates in September in order to accommodate individual schedules. She said DPI trained approximately 500 individuals across the state. She said there is constant input. She said input is given back to the teachers regarding each assessment that is done and the teachers and directors give input back to DPI. She said, as a result, the assessment has gone through three revisions. She said the assessment was made a lot clearer and the recent feedback is that the assessment has improved immensely and that it is easier to understand. She said we even pay our teachers to attend the training sessions. She said the DPI staff is always available for questions.

With the permission of Chairman Kelsch, Mr. Gallagher said the critical thing that distinguishes program assessments from cohort testing is that program assessments are based on state standards. He said in cohort testing, there is a natural growth within the cohort from year to year. He said cohort testing is a reference back to itself.

Representative Kelsch said there seems to be confusion about the fact that the No Child Left Behind Act requires the school to take a look at itself and evaluate what is going on in the school. She said some people assume that all we are focusing on is the number that comes up at grades 4, 8, and 12. She said we have not talked about the schools taking a look at what is happening in the intervening grades. She said many do not seem to understand that the No Child Left Behind Act is trying to get our schools to look at what they are doing before and after the three grades being currently assessed. She said the No Child Left Behind Act is trying to get schools to look at their entire system and determine whether they are being successful.

Mr. Gallagher said a group of teachers is putting together detailed standards applicable for kindergarten through grade 12. He said the standards will give school districts something against which they can compare their own curriculum. He said schools are given the lead responsibility under the No Child Left Behind Act to problem solve around issues that go beyond the walls of the schools. He said these issues include family and community support. However, he said, schools have also been given the task of identifying problems and issues and determining how and by whom those problems and issues will be addressed.

Mr. Gallagher said on October 15, 2003, DPI issued an RFP for the next generation of assessments in the state. He said the RFP is fairly detailed,

as required for procurement in the state, to make sure that we get a product that will serve our purposes well. He said the RFP is based on several documents that were studied over a period of time with the assistance of some administrators and teachers across the state. He said the assessment procedures that we have had were rather straightforward. He said we would take the lowest bid, because that was all we could afford. He said now the requirements of the law are much more prescriptive. He said the tests need to have certain specifications and quality assurances built into the system. He said with the assistance of a group of teachers and administrators who make up the standards assessment learning and teaching team, a review was done on a series of proposals regarding the structuring of an RFP that would allow the field to make the best choice of an assessment. He said the RFP that is being used is predicated on work that was done by a collaborative group of states called the Education Leadership Council. He said the approach to the RFP lays out all of the technical specifications and quality assurances that any legitimate assessment should have. He said it also includes the requirement that a group of people coming from the field, including administrators and teachers, and people outside of education will aid in the selection of the best proposal. He said in December 2003 DPI will gather a couple of committees from a group of nominated people in the field. He said one of the committees will be made up of teachers who will review the proposals for alignment with state standards and the other committee, which will be made up of teachers and administrators, will determine which are the best of the proposals. He said the recommendations will be passed on to the state Superintendent of Public Instruction because, under state law, he has the responsibility for supervising the assessment process.

In response to a question from Representative Kelsch, Mr. Gallagher said during November, DPI will request nominations for committee members from the field. He said there was a meeting about a week ago with the North Dakota Council of Educational Leaders at which there was discussion about the need to identify and bring in the right people. He said we need to have representatives who are administrators and teachers. He said we also need to have individuals who are not from the field so that they can offer their observations regarding what is a good quality assessment. He said the committees need to look at the capacity of the vendor--the technical specifications and safeguards--that are built into the assessment. He said they must also consider the cost. He said there are certain things we know we need and a variety of other aspects that we will have to select from based on the amount of money we have available to us in the years to come.

Mr. Gallagher said from the moment that the No Child Left Behind Act was signed into law, an array of

activities began to happen. He said these activities included several layers of application. He said there was no master application that appeared at any one time. He said he discussed the various aspects of the application process at the July 8, 2003, meeting of the interim No Child Left Behind Committee, as well as during the 2003 legislative session. He said through the nomination process, DPI has had teachers from the field who have participated in the drafting of the state content standards, in the drafting of the state achievement standards, and in the alignment of state standards to state assessments. He said DPI has also had, through the nomination process, teachers from the field examining the achievement standards to arrive at the cut scores that were established in the assessments. He said there has also been assistance from various other committees. He said there is an Individuals With Disabilities Education Act advisory committee that assists DPI on matters related to special education. He said there is also a Title I practitioners' committee that provides guidance to DPI on issues related to Title I. He said since 1997 DPI has used a particular study group called the standards assessment learning and teaching team. He said the standards assessment learning and teaching team integrates people from the field with department personnel. He said the team is made up of individuals who delve into the details of the regulations and statutes and make suggestions regarding best practices. He said this has resulted in the establishment of state protocols governing the development of standards and in the establishment of state protocols for our assessments. He said the protocols state that RFPs will be developed in a fashion that makes reference to and integrates the North Dakota Council of Educational Leaders recommendations on RFPs.

Mr. Gallagher said throughout the process there have been challenges of time and location that needed to be overcome. He said there has been a lot of activity and a lot of work in a very short period of time. He said throughout that, there have been periods during which DPI had to get products moving forward while trying to incorporate insight and input from the various committees. He said there have been times when DPI has had to anticipate matters prior to actually receiving rules and instructions regarding what to do. He said DPI has used, as best it could, the insight and input from the respective committees. He said the standards assessment learning and teaching team spent a fair number of months reviewing proposals regarding what constitutes good reliability measures for an accountability system. He said it was not until October 2002 that DPI received its first inkling regarding the regulations and it was not until December 2002 that the regulations regarding assessments were released.

Mr. Gallagher said the input that DPI received was from the studied consideration of its various committees. He said DPI has also had regular meetings with

the North Dakota Council of Educational Leaders. He said that has been going on for a number of years. He said these sorts of activities occurred in addition to periodic meetings with the North Dakota Education Association and the North Dakota School Boards Association. He said the issue at hand is whether the input opportunities satisfied all of the participants. He said DPI takes very seriously the recommendations and input from the groups that have been asked to participate. He said there is a distinction regarding the offering of the best insights from established study groups and whether everyone is in agreement with the offerings. He said there is no guarantee that the parties seeking a particular response or outcome will be completely satisfied.

Mr. Gallagher said on page 69 of the state accountability plan it provides that DPI will form a state level advisory committee to advise the state Superintendent of Public Instruction on the development and review of all state adequate yearly progress policies and submit recommendations to the state Superintendent. He said the plan provides that the state Superintendent will review and approve the disposition of all recommendations. He said the plan anticipated the development of this advisory committee by July 2003. He said that provision was inserted at the request of DPI based on the recommendation of the standards assessment learning and teaching team. He said DPI was unable to meet the July 2003 date. He said there have been a number of issues associated with the rollout of adequate yearly progress. He said from July to October 2003 DPI had to collect the information and put forth the reports. He said DPI is at that point of now being able to move forward with an advisory committee. He said whether the outcomes will be to the satisfaction of all participating cannot be predicted, but it is understood that DPI has to make the effort. He said the accountability plan is very clear and DPI is prepared to move forward with it.

In response to a question from Representative Kelsch, Mr. Gallagher said there is no question that it would have been desirable to form the advisory committee sooner rather than later. However, he said, the development of the accountability plan was needed under a truncated timeframe. He said DPI was running into issues of capacity, not commitment.

In response to a question from Senator Cook, Mr. Gallagher said the members of the various advisory committees were nominated by the field and then selected by DPI. He said that is a governance model that takes into account the fact the state Superintendent of Public Instruction is an elected constitutional officer and has primary responsibility for the duties regarding the administration of the No Child Left Behind Act.

Senator Cook said he understood that the administrators wanted to choose from among themselves the individuals who would meet with DPI and discuss

the entire statewide plan. In response to a question from Representative Kelsch, Mr. Gallagher said he will supply the committee with the names of current advisory board members.

In response to a question from Representative Meier, Mr. Gallagher said the ultimate responsibility rests with the duly elected state Superintendent of Public Instruction for seeking and heeding advice.

Dr. Sanstead said the North Dakota Council of Educational Leaders and DPI have agreed to meet quarterly regarding the implementation process and changes to the state plan. He said they also agreed that the North Dakota Council of Educational Leaders will submit names to the state Superintendent for a number of positions that are considered advisory. He said he certainly wants to follow their suggested nominees. He said less than a week ago he met with Mr. Johnson and submitted a list of 11 administrators' names, 10 of which had been requested by the United States Department of Education because the state will have a visit on November 12 by the United States deputy secretary of education. He said the purpose of the visit is to obtain input from the field, from DPI, and from legislative leaders. He said the North Dakota Council of Educational Leaders accepted the individuals he selected. He said that kind of cooperation and collaboration is evident and ongoing. He said when he met with the North Dakota Council of Educational Leaders last week, the special education directors were particularly appreciative of the hours and hours of training that went into preparing them to deal with the assessment process. He said he commends the Division of Special Education for its efforts in this regard.

Dr. Sanstead said it would have been nice to create the advisory committee first and then address the issues of adequate yearly progress. However, he said, the timeframe was very narrow and the federal officials wanted to have the state's adequate yearly progress completed. He said he has also been told that by asking for the presence and participation of classroom teachers and administrators in the development of the state plan, he was taking away from the classrooms and the schools the very best teachers and administrators in order to involve them in doing the state's business. He said there has been a lot of involvement from the field. He said DPI needs to rely on such input because the DPI staff is spread very thin.

Dr. Sanstead said DPI understands that revisions to the state plan will be necessary. He said all state plans will be amended. He said he takes great umbrage at the earlier comments that communication has been lacking between DPI and the field. He said he knows a great deal of communication has gone on between DPI and the field. He said even yesterday he spent an hour on the telephone with one of the administrators who spoke this morning regarding the

difficulty that he was having with adequate yearly progress.

Dr. Sanstead said while we have some superintendents who would fight to the death for their teachers, there are other superintendents who would value the opportunity to remove some of their less competent teachers.

Dr. Sanstead said when the United States Department of Education peer review process took place, he was there. He said the federal team conducting the review did not allow anyone to ask any questions. He said they were seeking information regarding what North Dakota had done to comply with the No Child Left Behind Act. He said they were not there to listen to people in the audience.

Dr. Sanstead said there is ongoing discussion and research regarding the impact of the No Child Left Behind Act and its cost. He said the Council of Chief State School Officers is going to bring together the best people it can find from academic communities to look at what the No Child Left Behind Act is doing to states and school districts and even to students and teachers. He said the cost of the No Child Left Behind Act will be contingent upon how much money the federal government will make available to the states.

At the request of Chairman Kelsch, Ms. Laurie Matzke presented testimony regarding the No Child Left Behind Act. She said everything we do in education is now impacted by the No Child Left Behind Act. She said the law states that those schools that were in program improvement status before the No Child Left Behind Act was enacted must remain in program improvement and in the same category as before. She said the result is that a number of school districts like New Town are put in a scary position. She said no new schools have been added based on the 2002-03 data. She said if a school is in program improvement status and there is insufficient data, that school remains in a holding pattern. She said we have one school in year 3 and there are 12 schools in year 4. She said most of those schools are there because they either made adequate yearly progress for one year but not for two consecutive years or they were in that insufficient data category. She said we have 10 schools in year 5. She said this group includes New Town. She said in year 5 a school has a menu of options under the No Child Left Behind Act. She said it can replace key staff, impose a new curriculum, acquire new management, extend the schoolday or school year, or restructure. She said DPI will leave that decisionmaking up to the local board. She said DPI will not have any role in making suggestions about which one of the options a school board should implement. She said that is strictly a local decision. She said DPI did not remove or in any way limit the options that a school board had under the No Child Left Behind Act. She said there are

some schools that might want to select one of the listed options.

Ms. Matzke said year 6 is considered to be a planning year. She said if a school enters year 7, it has available a menu of options, including deferring administrative funds to program improvement, offering signing bonuses and merit pay to get or keep staff, offer school choice across district boundaries, or consult with an outside expert. She said the No Child Left Behind Act does not address what happens after year 7. She said that is one of the points that will be discussed with federal officials in an upcoming meeting.

In response to a question from Senator Cook, Ms. Matzke said DPI is not assuming that the phrase "new management" means a new school board. She said DPI is assuming that it means a new principal or a new superintendent. She said North Dakota has no mechanism in place for the state to take over school districts. She said if teachers are to be dismissed, the school districts will still have to follow the North Dakota dismissal laws.

In response to a question from Representative Kelsch, Mr. Dean Koppelman, Superintendent, Dickinson Public School District, said he has a junior high school and a senior high school identified as not meeting adequate yearly progress with respect to the special education subgroup. He said he has not had one telephone call from parents. He said his staff, and especially the special education staff, were bothered by the designation. He said he does not know whether people are not concerned if just one subgroup is not making adequate yearly progress or if the people do not understand the No Child Left Behind Act.

Chairman Kelsch called on Dr. Piper who said we are not dealing with bad people. We are just not in agreement with respect to what is happening and what should be happening. He said it is not possible to eliminate the gaps in the achievement levels of students all over this nation. He said his philosophy of education is that one will have students at various levels of education and the goal should be to raise the level for all students. He said when we have done that, the gaps will still exist. He said until those philosophies are brought much closer together, we are not going to make progress.

Representative Kelsch said we can discuss whether communication should have happened earlier. She said we are at the point now when we need to have concrete recommendations. Dr. Piper said the heart of the problem is that communication between DPI and the education community has not existed.

Chairman Kelsch called on Mr. Curt Eddy, Superintendent, Drayton Public School District, who presented testimony regarding the No Child Left Behind Act. He said the Act has many layers behind which one can hide. He said when there is a law that

is so big that it cannot be explained effectively to school boards, it should be dumped. He said when he was hired 11 years ago, he worked for the Drayton School Board. He said now he is subservient to DPI. He said he has observed DPI becoming a mouthpiece for the federal government. He said there has been a transfer of power and responsibility that has taken place in the past 11 years. He said now everybody is positioning themselves to address the federal law. He said we have witnessed the federalization of public education. He said he wants as much local control as he can get. He said he wants his school board to control the destiny of his school. He said he does not want someone else telling his board when and what should take place and the problem is so serious that it is beyond our ability to address it in any reasonable timeframe.

In response to a question from Representative Sitte, Mr. Eddy said we should ask ourselves whether we are better off sacrificing the No Child Left Behind Act and living without the federal funds. He said with the amount of federal funds he receives for the Drayton Public School District, he could sacrifice the No Child Left Behind Act and not notice it. He said 1.5 percent of his budget is postage. He said the question is if you accept it, can you afford to keep it. He said nobody has determined what it will cost. He said one should look at the number of personnel we have hired who have nothing to do with improving education.

Chairman Kelsch called on Ms. Cam Leedah, home educator, Leonard, who presented testimony regarding the No Child Left Behind Act. She said the No Child Left Behind Act does not affect her family directly because she is a home educator. She said many parents are overwhelmed by the No Child Left Behind Act and they prefer to let the experts and school board members deal with it. She said with federal funding of education, there will be strings. She said we should forget about federal funding for education. She said we are a resourceful state. She said we are told that if we lose the federal money, some people will lose their jobs. She said the reality is if it is not the No Child Left Behind Act, it is another Act and we should be brave enough to forget the federal government when it comes to education.

Chairman Kelsch called on Dr. Kent Hjelmstad, Superintendent, Mandan Public School District, who presented testimony regarding the No Child Left Behind Act. He said we are in the midst of massive change. He said we need to have a shared vision. He said maybe that shared vision was dropped because of haste, but it is not too late to still develop that vision. He said if we do not have a shared vision, we have confusion and anxiety. He said we need to have the skills to make the change. He said we have heard that there is a lack of understanding about what to do and how to do it. He said he commends the Education Standards and Practices Board because



they have tried to tell us how they are forming things and they have gathered input that helps administrators acquire the skills to know what to do with their staff. He said we need incentives. He said he has told Senator Kent Conrad's staff that help needs to be forthcoming or the result will be no different from the special education legislation in which we were promised 40 percent of the cost. He said Senator Conrad agreed that we need flexibility and funding. He said there are so few incentives for us in this state. He said time is another factor. He said he has heard one principal state that all of his staff meetings are spent talking about the No Child Left Behind Act. He said he does not believe that DPI understands how frustrating it is to be in the trenches and try to do something while wearing blinders. He said we need the skills so that we do not have anxiety and we need a shared vision and incentives. He said we also need general resources coming from the next Legislative Assembly. He said if we are going to partake of this giant change, we will need some resources. He said the Mandan Public School District can use Title I set-aside dollars to help its elementary and junior high school teachers become highly qualified. He said the board cannot use such dollars to help the high school teachers become highly qualified because the high school is not a Title I school. He said in many cases Title II dollars are already being used. He said as a district Mandan cannot agree to help just the elementary and the junior high school teachers and not help the high school teachers become highly qualified. He said he will need the help of the Legislative Assembly to make teachers highly qualified if they are not in a Title I school.

Dr. Hjelmstad said when test scores were set, we had confusion, anxiety, and false starts. He said his teachers are still telling him that was not done the way they wanted it done. He said as we contemplate change we need to link shared vision, skills, incentives, resources, and action plans. He said democracy is backward with the No Child Left Behind Act.

Dr. Hjelmstad said one of his schools has approximately 500 students. He said the school also has 13 students who are either disabled or in a low socioeconomic bracket and those 13 students made the school be cited as not making adequate yearly progress. He said that school had over 470 students who scored well. He said that is not a failing school. He said he does have some students in specific demographic areas that need to improve. He said he strongly encourages anyone having anything to do with the No Child Left Behind Act to stop having a wall of shame. He said a standardized test will tell only which students come from low socioeconomic backgrounds. He said none of those students, teachers, or schools improve education by being on a wall of shame. He said he has been at a school after it was put on school improvement and watched teachers cry. He said one needs seven positive reinforcements for

every negative. He said this is coming out much too negative. He said in effect he has 470 students who were outvoted by 15. He said he has a community that believes that school failed. He said the community does not know that 15 students in a special category did not improve enough. He said someone has to get out that information. He said we need a lesson in conflict resolution. He said when you have a conflict, you have a stimulus. He said that is the No Child Left Behind Act. He said ultimately there is a response if it is handled poorly. He said between the conflict and the stimulus, there should be a freedom box. He said our freedom box is missing. He said with North Dakota's local control and independent spirit, we really notice when our freedom box is gone.

Dr. Hjelmstad said we need ownership. He said our schools need to own the change. He said that can only happen when there is input. He said when the cut scores were set, a group of people yelled help, but the scores were not changed. He said in conflict resolution we ultimately ask whether it is an adversarial situation or a collaborative situation. He said we need to work on whichever one we think is best. He said we have a massive number of schools, including Fargo, Bismarck, Mandan, Turtle Lake, Garrison, and Underwood, that had researched and chosen a different test because it was efficient and technologically based and it allowed for remediation. He said if the die is already cast in terms of test selection, then those schools are not being heard while DPI is picking a test to help students learn better. He said we need to decide whether we are adversaries or whether we will collaborate.

Dr. Hjelmstad said we need leadership with input and collaboration and one sees more clearly with collaboration. He said 30 years ago collaboration was not used in education and we were told what to do, when to do it, and how to do it and it was done. He said it does not work that way anymore. He said society has changed. He said we should make an assessment of what the state needs, not what the federal government is forcing down our throats.

Dr. Hjelmstad said we no longer feel like we are in the top four of all states nationally. He said the people from New Town, Solen-Cannon Ball, and Mandaree certainly do not feel as if they are in the top four. He said neither do the people at Mary Stark Elementary, Fort Lincoln Elementary, or Riverside Elementary. He said we have forgotten that we are pretty good. He said we could do better and we want to do better. He said we do not want to have higher standards than others because we already have them. He said he does not want to follow Texas. He said we have to assess our needs and build for North Dakota. He said it takes a little backbone, but we need to stand up.

Dr. Hjelmstad said professional development will be necessary. He said we need to train our teachers to do things differently. He said despite our success,

we have often taught based on a textbook and we gathered dust with a curriculum. He said it is time to set the textbooks aside and do instructional strategies based on the content that we believe is necessary. He said we need a specific strategy with input to improve performance. He said we are wasting too much time with the adversarial conversations. He said we have to have an outcome that we desire in a positive mode. He said he has some specifics. He said we must not exceed the federal requirements set forth in the No Child Left Behind Act, as they are going to change. He said we must create an input mechanism. He said we have to demand cohort testing. He said we need to stress our composites. He said we need to help our disaggregated groups, but we should not play those as our feature. He said there should be no wall of shame, as that only makes it more difficult to educate and improve those children. He said we should reduce our four levels of proficiency to three levels by removing the "partially proficient" category. He said we are creating an unusual, almost immeasurable problem with major equivalencies and portfolios. He said a minor in German, history, or library science will get you the same teacher that a major in English gets you. He said neither the students nor the test scores will know the difference. He said the federal government needs to hear us say that we will allow teachers with minors to teach in North Dakota. He said we were so far ahead of everyone else in the 1960s when we put them in place. He said the federal government will not withhold our money because we are in the top four nationally and we are demanding to retain teaching in one's minor.

Dr. Hjelmstad said there is a huge scab out there regarding cut scores. He said people are not satisfied. He said they should be revisited. He said the choosing of an assessment device has to be done with input and that input has to be timely. He said with the items he is looking into, he would have the results back in 48 hours, not 48 months. He said we have to get national input.

In response to a question from Representative Kelsch, Dr. Hjelmstad said he had very minimal parental reaction. He said people understood that students who come from poverty get off to a slow start. He said if we present test results and adequate yearly progress negatively, we will have people thinking that the sky is falling.

In response to a question from Representative Monson, Dr. Hjelmstad said it is mathematically impossible not to make the list of failing schools at some point.

Chairman Kelsch said the No Child Left Behind Act was a bipartisan Act. She said Undersecretary Hickock will be coming to the state soon. She said she is in frequent communication with him and with the North Dakota Congressional Delegation. She said she does relay the concerns she hears about the No Child Left Behind Act.

Senator Cook said there is not a lot to do other than to find out where the concerns are. He said there are a number of things that we could do during the next legislative session. He said at a recent Council of State Governments meeting, he heard a presentation by Ms. Jane Krentz, National Center for Educational Outcomes at the University of Minnesota. He said we should see if she will come out and discuss legislators' policy options.

Representative Sitte said the advisory committee or this committee should review any new assessment before it is chosen. She said if we are again changing the testing mechanism, more people should have input regarding the new selection.

Senator Cook said DPI should provide an estimate of what implementing the No Child Left Behind Act will cost this state.

Senator Freborg said several states have already looked at what the No Child Left Behind Act will cost them. He said we should contact them to see what criteria they used in establishing their cost estimates.

Representative Monson said Dr. Hjelmstad brought forth various suggestions, as did Dr. Piper. He said the committee should look at the specific recommendations to determine which we can pursue.

Chairman Kelsch said the advisory groups should share with the committee their minutes of meetings with DPI.

Chairman Kelsch said all participants need to ensure that the lines of communication are kept open and that there is a working relationship between DPI and the individuals who have to administer the No Child Left Behind Act at the school district and school level.

Chairman Kelsch adjourned the meeting at 4:30 p.m.

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L. Anita Thomas  
Committee Counsel

ATTACH:11