

2009 HOUSE EDUCATION

HB 1552

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1552

House Education Committee

Check here for Conference Committee

Hearing Date: February 9, 2009

Recorder Job Number: 9034

Committee Clerk Signature

Carmen Hart

Minutes:

Vice Chair Lisa Meier chaired this hearing.

Rep. Merle Boucher, District 9, appeared in support of HB 1552. Years back the language was changed from Indian schools to federal schools. I don't think anyone perceived that there may be future problems that could develop or arise out of this simple change at that time. It was perceived that federal schools would encompass Indian schools. Little did we know that as time would go on that out in Indian country we would see the evolutionary process of public Indian schools called contract schools. This sort of muddied the water and made it very difficult for people to understand and the interpretation to take place. The real problem in all of this is that we have these contract schools that are in essence funded federally. They operate and exist in a public realm on our Indian reservations. They would have been included as being eligible under the original law where it said Indian schools because they meet the definitions of Indian schools and our public schools. Consequently, just by a matter of definitions we have created a problem. Another thing that we need to take into consideration and it is my belief that these Indian children are a part of our school census. When we compute school census and we compute the foundation aid or per pupil student payment, these kids are included. Once division is made, they are included in that number that is divided into the total amount of money that we designate for per pupil payment. Yet at the

same time during the course of time because of their eligibility or status, those dollars are not distributed out to those schools for those students. Consequently, the kids are figured for census purposes and arriving at a distribution figure. Yet, because of a complication or an oversight in the law, those dollars are not distributed to those schools. What this bill would actually allow these schools to do in the school districts where these schools are located is to do just like we are doing now with the local school districts contracting with federal schools. It would allow the local school districts where these kids reside and where these kids are their local responsibility to see that they are educated to do the same thing that they are doing with the federal school. The only thing is they can do the same contract arrangement with a tribal school. An example is within the Dunseith school district is a K-8 school called Dunseith Indian Day School with 140 some students that attend this school. These kids live and reside within the Dunseith Public School system. This particular school got Indian child education payments—ISEP money. They received no other types of funding other than various types of federal funding. Many of those students in that school setting are also called nonbeneficiary students. They are nonbeneficiary students because they are not enrolled or qualified for ISEP dollars and were receiving no state foundation aid monies. You have a district that is impacted by the presence of tribal and trust and public lands where your tax base is small and so as a management and administrative decision, they developed a contract arrangement to educate these students. The contract monies, the per pupil student payment, goes to the Dunseith school district. The Dunseith school district is responsible for those dollars. They in turn do keep back some of the dollars for administrative costs, but then they pay the remaining balance of that per pupil payment towards the education of those children under a contract basis at the day school. The day school has to request the dollars from the Dunseith Public School System. Initially we made a mistake. I know there are some people in this room that

want to amend this bill, and I agree with those (blank portion on the recording, came back at 16:02)...Allow a local school contract with a tribal school. Those children living in that district are the responsibility of the local district. (Answering Rep. John Wall's question) ...exists the Dunseith Indian Day School and also exists a lot of what we call tribal trust land that is nontaxable. You start out with a public district that is a low tax base. You have a lot of students and you have the existing facility that is located at the Day School campus.

Rep. John Wall: I am still a little confused. Are there two schools in the district?

Rep. Boucher: There are two campuses in the district.

Rep. John Wall: But under current open enrollment a student who goes to the Indian Day School the foundation aid money does not follow that student? Is that correct?

Rep. Boucher: Under our definitions of open enrollment, I don't think it would apply. Under the definitions of existing law that we have at the present time that allows for this contract arrangement, it does apply through a contract agreement with the Dunseith school district and the Dunseith Indian Day School.

Rep. John Wall: If the money is following now, what is the problem for the nonbeneficiary student?

Rep. Boucher: The money follows both the nonbeneficiary and the enrolled student. I used the example, though, that they had some of those students who were citizens of North Dakota where there was absolutely no money going toward their education in a public school setting. That helped solve that part of the equation, but all of these kids who lived in a public school and so consequently if they all went to the Dunseith campus, they would be our responsibility. Because we have an existing campus that is a good facility and we are utilizing that facility, it is not costing the people of the Dunseith school district more money to add on to make room requirements. It is giving them an option to educate their children within their community.

Rep. Lyle Hanson: How many students are we talking about?

Rep. Boucher: I don't have an immediate number. I know around the state of North Dakota there would be several hundred. In my district there are about 140-150 kids at the Day School campus. They are receiving the foundation aid money through this contract arrangement. In the Belcourt school system is the Ojibwa School. There are about 400 some students at that campus. In our area there are about 500-600 students. Statewide I would guess 1,000 or more.

Rep. Lyle Hanson: With this foundation aid and BIA money? Is just foundation aid going to the Dunseith school?

Rep. Boucher: The Day School gets ISEP money and other federal program dollars and then they get the enhanced benefit of the contract to educate those kids yet to come about through the contract arrangement. They have no local tax base. There is no tax base there.

Rep. Bob Hunsakor: The funding that is used to educate the students in the Dunseith Day School as through the Dunseith school district, would it be handled differently under 1552 or the same?

Rep. Boucher: It is my belief that it would be handled the same. The only thing is we are acknowledging that there is another public school entity in Indian country called a tribal school where right now our law allows us to deal with the federal school. They are all public schools and they are all children of that district.

Rep. David Rust: I wrote this down. It would allow a local school to contract with a tribal school just like they can with the federal school. Is that what you said?

Rep. Boucher: Yes, like they do under current law.

Rep. Rod Froelich, District 31, appeared in support. This problem has persisted for years. Some of our schools are school district schools. Some of them are cooperative agreement

schools. Some of them are Native schools. The one thing you have to remember is when the state does a census, it counts every one of those students. Because of this glitch in the law, they don't get paid. That is why you have these supplemental payments. These students are getting counted but there is no money for.

Rep. Karen Karls: When you are talking about the school census, is this the one that they use to take in Bismarck door to door? Is that the school census? Is this the average daily attendance census?

Rep. Froelich: I believe it is the average daily one, but I am not an expert. The superintendent from Standing Rock is here. He can answer that question for you or someone from DPI.

Rep. Phillip Mueller: Who is not getting the money and why aren't they getting it?

Rep. Froelich: The superintendent here can explain it to you. They do have a cooperative agreement in Standing Rock. I believe it goes up to a certain grade. I am going to defer it to the superintendent. Remember it is a fairness issue. The kids are being counted but there is no money for them.

John Derby, Interim Superintendent for Standing Rock Ft. Yates Community School, appeared. We have a little over 800 students in our school. We are what we call a Bureau of Indian Education grant school. We are also Ft. Yates public school. What we have is a joint powers agreement. I have two school boards. I have a public school board comprised of seven and then I have a grant school board comprised of five. In the 1960s when John Kennedy came on board, his administration offered then what we call Indian self determination. In 1974 the US Congress passed the Indian Self Determination and Educational Assistance Act. What it did primarily is it gave Indian tribes the right to contract services that were formerly provided by the Bureau of Indian Affairs and Indian Health Service.

Now it has been expanded to other of the 13 government agencies. Federally recognized tribes which basically are treaty tribes—there were 400 treaties signed going back to 1778 when the Delaware Tribe signed the first treaty with the US government and ended in about 1873. These are what we call federally recognized tribes. They signed treaties to give up huge tracts of land to the United States in lieu of making sure that their people were taken care of. As a result of these treaties, there were reservation areas established. What we have here is the Indian Self Determination and Educational Assistance Act that gave treaty tribes the right to contract with the federal government to provide services. Indian Self Determination—In other words, instead of Bureau of Indian Affairs coming in and saying here's what's best for you, we are going to provide a program and we are going to educate your children because we know what's best so federal government said we are not going to do that anymore. You are a tribal government and tribal government has four things. It has land, a tribal government, makes laws, and has subjects, enrolled members. Before this period, in order to be a member you had to have at least one fourth degree Indian blood. This was challenged in the 1980s. Since that time no longer does the federal government determine who or who isn't an Indian. That is determined by the tribe now. If a child is not an enrolled member but if his parent or grandparents are enrolled members, they can be included as part of the US Department of Education's definition of an Indian. We have a situation with our grant school with a total this year is 668 in our ISEP. We have about 170 that are not included in this. They come under the Ft. Yates public school district.

Rep. John Wall: What students aren't getting funding?

John Derby: We make sure all of our students are counted. As far as the public school kids, they get the funding for formula and if they are eligible for special education, they are included

there. If they are eligible for Title I, they are included there. With the Indian Education Act if they are not enrolled but their parent or grandparent are enrolled, they get title for that.

Rep. Phillip Mueller: Does this bill do anything for Standing Rock? If it does, could you tell us how?

John Derby: I haven't seen any numbers. I think what it would do if there are programs in which the tribal school would be able to contract, definitely we would be interested in contracting. The assistant superintendent gave me a handout to present. **(See Attachment 1.)** These are all the programs that are available and what he came up with.

Rep. Lyle Hanson: Do you have two high schools or one? Two elementary?

John Derby: Two high schools. One elementary. By the way our middle school was made up of public school funds.

Rep. Dennis Johnson: Do you get all foundation aid or all state programs for your public school?

John Derby: We are not counting these 600. We get funding for 170.

Rep. Dennis Johnson: That is what is in your public school? Then your elementary, the BIA schools, you are getting all your ISEP money for the BIA school?

John Derby: Our elementary was originally BIA.

Rep. Dennis Johnson: To add to your conversation to go public with the elementary school? You don't want to be under...?

John Derby: The grant school board is reluctant to give up any of their economy jurisdiction.

Steven Emery, School Attorney, appeared. He liked the bill but has come up with an amendment. **(See Attachment 2.)**

Rep. Jerry Kelsh: Is there a difference between a federal school and a grant school and a tribal school.

Steven Emery: Yes, sir. The federal school is sort of like the Air Force school. The BIA school is a grant school and the BIA operates those directly. When we only had those two categories when this language was federal, there wasn't a problem because the only people that we were talking about that would enter into the contract were federal officials. Now under public law 100-297 which is under 25 USC, Section 2501 and whatever sections follow it, in that tribally controlled schools section of the law, it makes clear that the Bureau of Indian Affairs wants us to have locally controlled Indian school boards.

Rep. Bob Hunsakor: Some students, if I am hearing you right, are not being funded in your Indian schools at the same rate as the students in the public schools of North Dakota. If this were to pass, then they would be brought up to the same level?

Steven Emery: The school wouldn't be able to replace the ISEP money. It would be able to use the money in different areas so as to bring up, for example, the facilities to a better standard of maintenance. There would be more access, for example, to buy better textbooks to make sure that the curriculum is the state of art curriculum.

Rep. David Rust: It appears as if there is about a \$3.9 million fiscal note just for Standing Rock. Am I to understand that probably each of the Native American schools or public schools on Native American soil could probably have a similar type of expenditures?

Steven Emery: All of them that are contract schools under public law 100-2917 would.

Rep. David Rust: I am surprised I did not see a fiscal note come with this bill.

Vice Chair Lisa Meier: I am surprised as well.

Rep. Dennis Johnson: ISEP money, how much is that per student?

Steven Emery: I know that it is less. He asked someone behind him. I think it is \$3,400 for everything per student.

Opposition

Bob Marthaller, Director, School Organization and Special Projects, Department of Public Instruction, appeared in opposition. **(See Attachment 3.)**

Rep. David Rust: Evidently there are 638 students at Standing Rock that need a foundation aid payment, special ed. payment, Title I payment, school improvement, Title III, etc. Are there no North Dakota monies from the foundation aid payment given to Standing Rock students?

Bob Marthaller: To the best of my knowledge, that foundation aid does not go to the Standing Rock community schools. We wondered why there wasn't a fiscal note attached to this bill as well. If there were 1,500 students roughly that would have an impact on the foundation aid formula, and I would ask to defer this to Jerry Coleman.

Rep. David Rust: Jerry, I am trying to put this into perspective. At one time there was a Ft. Yates Public School and a Standing Rock Community School. One I believe is a public school and one I believe might have been a BIA school. Does that mean the public school students get money through the foundation aid and the BIA does not? How does that work?

Jerry Coleman, Department of Public Instruction, appeared. There is a Ft. Yates public and there is Standing Rock. Currently they are involved in a joint powers agreement. They are actually operating as one school. For foundation aid purposes, though, they will claim the students that are governed under the public school board out of Ft. Yates Public so we pay for roughly 200 public school students. The Standing Rock is tribally controlled and their funding comes through the BIA. Just how that funding works, I don't know.

Rep. David Rust: What I see here is probably what would happen is that they would get both funding from the state and from BIA. Is that...?

Jerry Coleman: That is what I am inferring the whole purpose of this is for is to get foundation aid to go to Standing Rock and how they are actually fully funded as a tribal school, I am not sure how that works.

Bob Marthaller: I would stab that becomes part of the problem in trying to determine how much dollars is coming through BIA and how much foundation aid dollars should go to support those students.

Rep. Phillip Mueller: We started this whole discussion about a school in Dunseith that I understood wasn't being paid or getting money for the students that they had there because of some glitches in the law. What I think I am hearing now is it is a whole different story. This bill puts it into a whole different scenario. Can you reconcile those two scenarios?

Bob Marthaller: Yes, I think I can. There is an existing contract that does allow foundation aid dollars to flow to the Dunseith Public School in support of the Dunseith Day School. The Dunseith Day School is getting public funding.

Jerry Coleman: To clarify that, the Dunseith Public entered into the realm of Dunseith Day but Dunseith Day is a federally owned and operated school. There is a piece in Century Code that allows that arrangement to happen. There is a distinction that it is a non tribally operated school. It is a federal school.

Rep. Bob Hunsakor: Going to the Dunseith situation, if every student up there is getting a full allotment of state funds and then are they getting federal funds beyond that for all of those students?

Jerry Coleman: That is my understanding. The Dunseith Day should be fully funded as a federal school and because of this agreement to—there is a piece of law that allows for agreements between a public school and a federal school for education of their students. This is how this particular arrangement works so we give them full foundation aid, and they have a contract to provide additional services to those Day School students.

Rep. Bob Hunsakor: Are they getting federal funds above and beyond the state funds?

Jerry Coleman: Yes. The feds operate that school. They hired the teachers. They provide the curriculum. They operate that particular school. The agreement is with the federal government and the Dunseith Public school district.

Rep. Lyle Hanson: Any South Dakota students coming into Ft. Yates?

John Derby: They would have to reside within the Ft. Yates public school. That is where they only count—on the public side. The grant school being that we serve the whole reservation we do have inter American students from South Dakota.

Rep. Lyle Hanson: They don't receive any state money? It is all federal money for those students?

John Derby: It is all federal for the ones in South Dakota.

Rep. Jerry Kelsh: Isn't that federal money that follows that Native American student basically money in lieu of any property value behind them?

Bob Marthaller: I believe that is the case.

Rep. Jerry Kelsh: A student in Harvey or wherever would have had property value behind them just like __ and funding from the state. At one time property value was most of it. Wouldn't it be somewhat fair that these students get money also?

Bob Marthaller: I don't know if it is up to me to determine what is fair.

Jerry Coleman: There are two types of federal funding. I think what you were referring to was impact aid. That comes through the Dept. of Education and that is ultimately a replacement of property tax. Our air force bases deal in that regard. The ISEP money comes from the Bureau of Indian Education, and that is the one I know less about. This is the funding source that provides the grants for these tribally controlled schools that they were mentioning under federal law 100-297 and I am assuming that should be full funding to operate those schools not just replacing the property tax.

Rep. Phillip Mueller: Is there somebody that is not getting money at Dunseith or Ft. Yates or anyplace else that ought to be getting state money because of a glitch in federal law?

Jerry Coleman: That I am not aware of. Foundation aid funding is to go to public school districts.

Rep. Phillip Mueller: What is this bill going to do?

Jerry Coleman: I believe what this bill is designed to do is to allow schools that are in the public school district to enter into an agreement with the tribally controlled school to educate all the kids within the boundaries of their resident school district so they would qualify for foundation aid.

Rep. Phillip Mueller: Why would a school district do that?

Jerry Coleman: To gain access to foundation aid for those students that were getting served under that tribally operating school.

Rep. Phillip Mueller: We would have a pretty classic case of double dipping?

Jerry Coleman: On the surface that certainly appears that way but today there may be more in the details that I don't know about.

Neutral

Cheryl Kulas, Executive Director, ND Indian Affairs Commission, appeared. She provided some clarity to some of the questions that have been raised. **(See Attachment 4.)**

Rep. Dennis Johnson: The numbers may not be accurate, but I look at the BIA school in my area and it is probably a similar situation that you have at Ft. Yates. The 550 students you have here and the four surrounding schools there are 841 students. The surrounding schools are getting the ISEP money for educating those students away from the BIA school.

Rep. John Wall: In my district we have a school, Circle of Nations residential school. Currently they have some students who take classes in Wahpeton public school district. If this

bill passes, could Wahpeton public school district enter into the contract with Circle of Nations whereby every student at Circle of Nations would receive foundation aid payments?

Cheryl Kulas: I think Circle of Nations is a tribally chartered school that is chartered differently than any of the other schools. I don't know if it is a BIA school. In terms of the contracting DPI is the regulatory agency that would be able to respond to that question.

Jerry Coleman: I don't much about the organizational structure of Circle of Nations. I just know that they are not under the direction of a public school district. That is the major distinction here. To get state foundation aid it has to be operated through the public school district.

Rep. Phillip Mueller: Did you say that Rolla and Rolette are school districts that are basically getting paid foundation aid but they are not receiving any kind of federal funds to supplement those students' education?

Cheryl Kulas: I don't know what the full funding is for Rolette but I would think that they should be getting impact aid. If they are not, I wouldn't know why they shouldn't be eligible for it especially those schools that have large enrollment for the American Indian kids. This is an issue that Rep. Boucher and I have talked about at some point is that because of the growing population a lot of those schools are being impacted by American Indian students.

Steve Emery appeared to make a further point. We are not double dipping. We are asking for is the ability to make our schools as good as the schools on the air force bases.

The hearing was closed.

(Attachment 5 was provided.)

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1552

House Education Committee

Check here for Conference Committee

Hearing Date: February 11, 2009

Recorder Job Number: 9222

Committee Clerk Signature

Carmen Hart

Minutes:

Chairman Kelsch: Apparently the amendment that was sent around is a mandated study.

(See Attachment 1.) I am going to tell you right now we don't need it. The reason we don't need it is because we already passed out two Indian study resolutions from this committee.

Just because this one says shall it is not going to make too much of a difference. Both of

those are education related. I will resist it. I typically don't lay my hand on the table too wide open. All of the things that I look in here I think will probably be addressed in those studies.

Rep. Jerry Kelsh: That is if only they are chosen to be studied.

Chairman Kelsch: I don't like mandated studies. If you want a study resolution, put it as a study resolution. I don't like it when we amend bills in studies.

Rep. Jerry Kelsh: We have done quite a bit of research and studying into what happens here.

There are federal schools, grant schools, public schools, and tribal schools. There are some of those students that only get one source of funding. It is about 1,000 of them in the state of North Dakota. Everybody else either gets a grant from the federal government. They get BIA and property tax and state foundation aid payments. These 1,000 kids only get what comes from the federal government which is about \$4,200 as of right now. That is where the

unfairness comes in. Those kids are expected to be educated on about half of what all the

other kids in the state of North Dakota are expected to be educated. If we don't put the amendments on, I am going to support the bill as it is.

Chairman Kelsch: The students that are not receiving the adequate education funding as you alluded to, are they all in one school district?

Rep. Jerry Kelsh: No, I don't believe they are. They are scattered all over on different reservations. They have totally different types of schools on these reservations—the grant schools and the federal schools like the air base schools. Down in Standing Rock there isn't a federal school. There are about 600 of them not getting the proper amount.

Chairman Kelsch: Where are those kids going to school? Are they going to Standing Rock? Are they going to the public school? In the public school we would be funding them. Are they going to the tribal school?

Rep. Jerry Kelsh: I wish Rep. Boucher was here because they know the details. Those are the people that we have been working with trying to find these answers. They both agree that there are at least 1,000 students in the state of North Dakota that do not get proper funding and they are Native American children.

Chairman Kelsch: If they are going to a public school, they are getting the same foundation aid as everybody else. It has to be a nonpublic school. It has to be one of the tribal schools. Of course, those tribal schools can become public schools, and we have money socked away for those school districts should they decide to participate in the public school system. It is the same thing with the private schools.

Rep. Jerry Kelsh: They changed the law. It went from Indian schools to federal schools. That is where the problem as I understand it comes about. When the BIA as testified the other day made the decision that the local tribes could run their affairs better than the federal government that added to that problem. What you are saying, Madame Chairman, is

absolutely right. They could become public schools. Some places they are not willing to do that for whatever reason. Does that mean we should hurt because of what the adults are doing that we should be hurting the children?

Rep. Lyle Hanson: I think a couple of them are public schools with a very little tax base.

Chairman Kelsch: Some of them are public schools but aren't receiving? Okay.

Rep. Dennis Johnson: We have had this discussion up at Four Winds too. The elementary is BIA. The high school is public. The taxes on the land that we farm in that district are pretty low because it is just going to the high school. The money is set aside for the BIA school. They have this discussion every ten years. They want more money. They want to get both the ISEP money and the public money but they don't want to come under the osmosis of DPI. You have students going to Warwick, Minnewauken, and Devils Lake. There are more students going off that reservation. Those neighboring schools are described to get that ISEP money and they are doing well. It is a mess.

Rep. David Rust: HB 1552 is almost identical to current law which is in 15.129-10. A school board may contract with federal officials for the education of students in a federal school. That is in statue right now. It is my understanding only one school in North Dakota qualifies for those funds. It is the Dunseith Day School. It is also my understanding that if you were to approve 1552 that you probably are looking at a fiscal note of about \$13 million. We recently received a e-mail from Rep. Froelich. He said that they get \$4,370 per student and yet their per student cost is \$10,000. I am wondering where is the \$6,000 coming from? That doesn't jive with me.

Rep. Phillip Mueller: I apologize to the committee making a comment regarding double dipping. It was a question asked not an accusation made. I don't know if I have sat through a more confusing bill presentation in my entire career in the legislature and that was frustrating

for me. At the beginning we did count those kids in terms of making the budget up. They are reluctant to become public schools. If that is a good reason or not on their part, I am not going to make a comment on that. If they did that, this problem goes away. I don't think we need to make it mandatory but certainly I think it needs to be studied and further examination of the whole issue.

Rep. David Rust: Personally, I would like to see a fiscal note on 1552. What is the difference between somebody who chooses to become a tribal school and send their kids to a tribal school and in a way people who choose to send their kids to a private or parochial school who absolutely get no funding?

Rep. Phillip Mueller: Nothing. If you are thinking that all the background and circumstances are common with the kids that go to St. Mary's here versus being at Standing Rock, I don't know that you could make that comparison.

Chairman Kelsch: The reason there is not a fiscal note on this bill is because while there is a fiscal effect it would just be spread out within the current appropriation.

Rep. Mike Schatz: One of the things we heard the other day was that there are two school boards in one district. I have no idea why. That is a very confusing thing that they have themselves have decided to do. I don't think it has to be. I know pretty much for a fact that the BIA schools' pay scale is one heck of a lot different than pay scale here in the public schools of North Dakota. So for wanting for money, I don't think they are. There is plenty of money in the BIA schools.

Rep. Jerry Kelsh: Rep. Schatz is absolutely correct. There is a school in one of Rep. Boucher's districts that they have both schools in the same building, and they get along fine.

There isn't a difference but there is. They are federally funded folks for a reason, and you know what that reason is. Another thing is if the people want to send their children to a private

school, either they can afford it or find some way to do it and I don't think that necessarily is the case or the ability to do that on our reservation. The thing we have to think about is we have 1,000 that for whatever reason are not getting state dollars to help support their education. If it is because the adults don't use common sense, that is not those children's fault.

Rep. Corey Mock: When the law changed fifty some years ago, tribal schools were removed from the ability to contract with public schools regarding the transfer of funds. What 1552 does does not mean that the funding will transfer. It allows for tribal schools to contract. We as a committee were very concerned over this language when the hearing was going around. Many times it was mentioned that we would be more comfortable with the study because of the complexities. I moved the amendment.

Rep. Jerry Kelsh seconded the motion.

There was a voice vote. The chair was in doubt. A roll call vote was taken on the proposed amendment for 1552. **6 Yeas, 8 Nays. The amendment did not pass.**

Vice Chair Lisa Meier moved a **Do Not Pass on HB 1552.** **Rep. Mike Schatz** seconded the motion.

DO NOT PASS. 9 YEAS, 5 NAYS. Vice Chair Lisa Meier is the carrier of the bill.

90867.0101
Title.

Prepared by the Legislative Council staff for
Representative Mock
February 10, 2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1552

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to require a study of educational delivery to Indian students.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. EDUCATIONAL DELIVERY TO INDIAN STUDENTS. During the 2009-10 interim, the legislative council shall study educational delivery to Indian students. The study shall review the similarities and differences between schools operated within a school district structure, schools operated by the bureau of Indian affairs, and schools operated by tribes under contracts or grants. The study shall address issues of curriculum, teacher availability and qualifications, data collection, accountability, transportation, and special education, as well as challenges stemming from high poverty rates, isolation, limited English proficiency, and inadequate facilities. The study also shall address student counts and spending per student and shall examine possible contractual options for state-supported educational delivery to Indian students. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

Date: 2-11-09
 Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1552

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number 90867.0101

Action Taken Do Pass Do Not Pass Amended

Motion Made By Rep Mock Seconded By Rep Kelsh

Representatives	Yes	No	Representatives	Yes	No
Chairman RaeAnn Kelsch		✓	Rep. Lyle Hanson	✓	
Vice Chairman Lisa Meier		✓	Rep. Bob Hunsakor	✓	
Rep. Brenda Heller		✓	Rep. Jerry Kelsh	✓	
Rep. Dennis Johnson		✓	Rep. Corey Mock	✓	
Rep. Karen Karls		✓	Rep. Phillip Mueller	✓	
Rep. Mike Schatz		✓	Rep. Lee Myxter	✓	
Rep. John D. Wall		✓			
Rep. David Rust		✓			
			Amendment defeated		

Total (Yes) 6 No 8

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Proposed amendment did not pass

Chair ~~in~~ in doubt on voice vote

Date: 2-11-09
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1552

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Rep Meier Seconded By Rep Schatz

Representatives	Yes	No	Representatives	Yes	No
Chairman RaeAnn Kelsch	✓		Rep. Lyle Hanson		✓
Vice Chairman Lisa Meier	✓		Rep. Bob Hunsakor		✓
Rep. Brenda Heller	✓		Rep. Jerry Kelsh		✓
Rep. Dennis Johnson	✓		Rep. Corey Mock		✓
Rep. Karen Karis	✓		Rep. Phillip Mueller	✓	1
Rep. Mike Schatz	✓		Rep. Lee Myxter		✓
Rep. John D. Wall	✓				
Rep. David Rust	✓				

Total (Yes) 9 No 5

Absent 0

Floor Assignment Rep Meier

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)

February 11, 2009 2:33 p.m.

Module No: HR-27-2424

Carrier: L. Meler
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1552: Education Committee (Rep. R. Kelsch, Chairman) recommends DO NOT PASS
(9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1552 was placed on the
Eleventh order on the calendar.

2009 TESTIMONY

HB 1552

Item 3

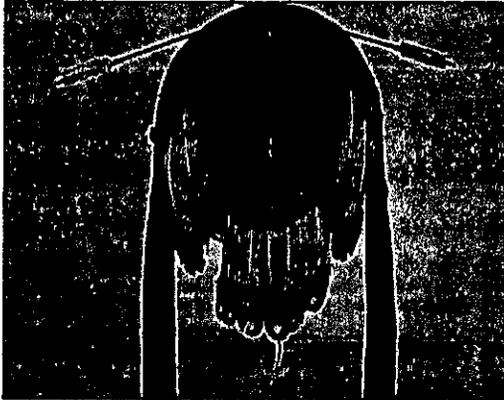
North Dakota State Funding that Standing Rock Community School is not getting per year

Program	Students	Formula	Amount
Pupil Payment	638	$638 \times \$3,250.00$	\$2,073,500.00
Special Ed.	163	$163 \times \$ 479.48$	\$78,155.24
Title I	638	$638 \times \$ 2,183.02$	\$1,392,766.70
School Improvement Building Additional Funds	638	$638 \times \$ 305.91$	\$195,170.58
School Improvement System Additional Funds	638	$638 \times \$ 117.92$	\$75,232.96
Title III	638	$638 \times \$ 145.57$	\$92,873.66
Transportation	9 Rural Routes	$182,412.0 \times 0.735$	\$134,072.82
	6 In-City Routes	$51,940.8 \times 0.515$	\$26,749.51
Grand Total			\$3,907,699.14

Approximate loss of revenue to the Standing Rock Community School over the past twenty-nine (29) years:

$$29 \times \$ 3,600,000.00 = \$ 104,400,000.00$$

Attachment 2



EMERY LAW FIRM

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McLaughlin, SD 57642-0757
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HIB
1552

ATTORNEY WORK PRODUCT
PRIVILEGED AND CONFIDENTIAL

MEMORANDUM

To: Standing Rock Community School Board of Directors
From: Steven C. Emery, School Attorney
Re: Potential to Receive ND Education Foundation Funding Through Amendments to the North Dakota Century Code
Date: 1/12/2007; revised 7/28/08

The purpose of this memorandum is to discuss the possibility of the SRCS School receiving ND Education Foundation Funding through legislative amendments to the North Dakota Century Code.

ISSUE PRESENTED:

Can the North Dakota Century Code be amended such that the SRCS School can receive ND Education Foundation Funding through legislative amendments to the North Dakota Century Code?

ANSWER IN BRIEF:

Yes, it appears the North Dakota Century Code be amended such that the SRCS School can receive ND Education Foundation Funding through legislative amendment to § 15.1-29-10 of the North Dakota Century Code. See discussion, *infra*.

ANALYSIS:

On December 6, 2006 Governor Hoeven made his Budget Address for the 2007-2009 Biennium. In discussing his administration's proposed education budget, in the section of his speech entitled "Building Our Future on Education," Governor Hoeven declared:

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Education - both K-12 and higher education - is the bedrock on which we build our economy. For that reason, over the past three bienniums, we have increased funding for K-12 education by more than \$120.0 million.

We have also fostered new partnerships, like regional Joint Powers Agreements, and worked to increase teacher compensation.

A few weeks ago, after months of hard work, the Governor's Commission on Education Improvement released new recommendations to improve the way we fund education.

The Commission worked to develop a new education funding formula to achieve greater school funding equity, and recommended a baseline increase of \$60.0 million to support it.

They also made optional recommendations for another \$12.0 million, which includes additional funding for special education and all-day kindergarten for children at risk.

In our budget, we fully fund both their base and optional recommendations - in fact, we go further.

We recommend an increase of \$76.0 million in general fund monies. This \$76.0 million, together with a \$4.6 million increase from the common schools trust fund, will provide more than \$80.0 million in new funding for K-12 education.

This \$80.0 million, together with the Commission's sound recommendations, is a big step forward.

Adopting the work of the commission establishes a process that will not only dismiss the school funding lawsuit and truly reform funding equity and adequacy, but will also help to reduce the local share of the current cost of education.

That process will continue, focusing more closely on adequacy, throughout the new biennium in preparation for the 2009 legislative session.

Further, our financial reserves will make it possible for us to continue to do a good job for K-12 education funding going forward.

I want to thank and acknowledge Lt. Gov. Jack Dalrymple, Rep. RaeAnn Kelsch, Sen. Tim Flakoll, Sen. Dave O'Connell, Rep. Dave Monson, Superintendent Wayne Sanstead, the school officials, and the entire commission for the hard work and thoughtful recommendations you've put forward.

Thanks to your hard work, this \$80.0 million we have provided in response to the Commission's recommendations, combined with the \$116.7 million we've

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committed for property tax relief, represents a commitment of nearly \$200.0 million to improve education funding, increase teacher pay, provide greater education equity, and at the same time, enable us to reduce the burden of property taxes on our citizens.

Reforming and improving the way we fund K-12 education is a very big task, and it is critically important, but we can do it.

Id. Surely, the governor recognizes that our children should be included the reform and improvement of how North Dakota funds K-12 education.

The XIVth Amendment of the United States Constitution, § 1, mandates that:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Emphasis added. Article VIII, § 1 of the North Dakota Constitution provides in relevant part that:

the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.

Emphasis added. This part of the North Dakota Constitution read together with the XIVth Amendment of the U.S. Constitution makes clear that all citizens of the United States who reside in North Dakota are citizens of the state. Moreover, the state constitution mandates that “public schools [] shall be open to all children of the state of North Dakota.” Thus, reservation boundaries and the responsibility of the United States notwithstanding, the State of North Dakota has a moral and legal responsibility to all children within her borders to provide them with a free, non-sectarian public education designed to assist the children to “develop a high degree of intelligence, patriotism, integrity and morality on the part of every [potential] voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people.” ND. Constitution, Art. VIII, § 1.

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Unhappily, the state's moral and legal responsibilities to provide such an education to children residing within the boundaries of Indian reservations within North Dakota have remained largely unmet from April 5, 1889, the date of North Dakota's entry into the union, to date.

Under 25 U.S.C.A. § 2501, the Congressional Declaration of Policy provides:

(a) RECOGNITION.--Congress recognizes that the Indian Self-Determination and Education Assistance Act, which was a product of the legitimate aspirations and a recognition of the inherent authority of Indian nations, was and is a crucial positive step toward tribal and community control and that the United States has an obligation to assure maximum Indian participation in the direction of educational services so as to render the persons administering such services and the services themselves more responsive to the needs and desires of Indian communities.

(b) COMMITMENT.--Congress declares its commitment to the maintenance of the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children through the establishment of a meaningful Indian self-determination policy for education that will deter further perpetuation of Federal bureaucratic domination of programs.

(c) NATIONAL GOAL.--Congress declares that a national goal of the United States is to provide the resources, processes, and structure that will enable tribes and local communities to obtain the quantity and quality of educational services and opportunities that will permit Indian children--

- (1) to compete and excel in areas of their choice; and
- (2) to achieve the measure of self-determination essential to their social and economic well-being.

(d) EDUCATIONAL NEEDS.--Congress affirms--

- (1) true self-determination in any society of people is dependent upon an educational process that will ensure the development of qualified people to fulfill meaningful leadership roles;
- (2) that Indian people have special and unique educational needs, including the need for programs to meet the linguistic and cultural aspirations of Indian tribes and communities; and
- (3) that those needs may best be met through a grant process.

(e) FEDERAL RELATIONS.--**Congress declares a commitment to the policies described in this section and support, to the full extent of congressional responsibility, for Federal relations with the Indian nations.**

Emphasis added.

In 25 U.S.C.A. § 2502, entitled Grants Authorized, after defining how grants will be made to

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eligible Indian tribes¹, Congress mandates that the Secretary of Interior provide grants to Indian tribes, and tribal organizations that operate contract schools under title XI of the Education Amendments of 1978 and notify the Secretary of their election to operate the schools with assistance under this part rather than continuing the schools as contract schools [under P.L. 93-638]. More importantly, 25 U.S.C.A. § 2502 (3)(d)(2)(e) entitled “No Effect On Federal Responsibility,” commands that grants under the Tribally Controlled Schools Act (P.L. 100-297 as amended by P.L. 107-110) “shall not terminate, modify, suspend, or reduce the responsibility of the Federal Government to provide a program.” Thus, federal responsibility for the schools is ongoing² notwithstanding the operation of such schools by a federally recognized Indian tribe or its political subdivision. Indeed, under 25 U.S.C.A. § 2025 (12), there are important federal functions that cannot be contracted that are called:

¹ §§ (3)(i) school operations, academic, educational, residential, guidance and counseling, and administrative purposes; and (ii) support services for the school, including transportation

² 25 C.F.R. § 36.51, subpart F entitled: Evaluation of Educational Standards mandates the Office of Indian Education Programs and Agency monitoring and evaluation responsibilities.

(a) The Office of Indian Education Programs shall monitor and evaluate the conformance of each Agency or Area, as appropriate, and its schools with the requirements of this part. In addition, it shall annually conduct onsite monitoring at one-third of the Agencies and Areas, thereby monitoring onsite each Agency and/or Area at least once every three (3) years. Within 45 days of the onsite visit, the Director shall issue to each Agency Superintendent for Education or Area Education Programs Administrator, as appropriate, a written report summarizing the monitoring findings and ordering, as necessary, required actions to correct noted deficiencies.

(b) Each Agency or Area, as appropriate, in conjunction with its school board shall monitor and evaluate the conformance of its school with the requirements of this part through an annual onsite evaluation involving one-third of the schools annually, thereby monitoring onsite each school at least once every three (3) years. Within 30 days of the onsite visit, the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate, shall issue to the local school supervisor and local school board a written report summarizing the findings and ordering, as necessary, required actions to correct noted deficiencies.

(c) Schools, Agencies, and Areas shall keep such records and submit to the responsible official or designee accurate reports at such times, in such form, and containing such information as determined by that official to be necessary to ascertain conformance with the requirements of this part.

(d) Schools, Agencies, and Areas shall permit access for examination purposes by the responsible official, or any duly authorized designee, to any school records and other sources of information which are related or pertinent to the requirements of this part.

(e) The Office of Indian Education Programs, Agency Superintendent for Education, or Area Education Programs Administrator, as appropriate, shall annually conduct a summative evaluation to assess the degree to which each Bureau educational policy and administrative procedure assists or hinders schools in complying with the requirements of this part. This will include, but not be limited to, the following actions:

- (1) Evaluate current policies and practices not related to this part and the effects thereof on the amount of time and resources required which otherwise would be available for these standards;
- (2) Modify any policies and practices which interfere with or compromise a school's capability to achieve and maintain these standards;
- (3) Invite non-Federal agencies to evaluate the effects current policies and procedures have had on complying with the requirements of this part; and
- (4) Submit annually to the Director a copy of the summative evaluation.

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Inherently Federal Functions.--The term 'inherently Federal functions' means functions and responsibilities which, under section 1126(c) [of the 1978 Indian Education Act Amendments], are noncontractable, including--

- (A) the allocation and obligation of Federal funds and determinations as to the amounts of expenditures;
- (B) the administration of Federal personnel laws for Federal employees;
- (C) the administration of Federal contracting and grant laws, including the monitoring and auditing of contracts and grants in order to maintain the continuing trust, programmatic, and fiscal responsibilities of the Secretary;
- (D) the conducting of administrative hearings and deciding of administrative appeals;
- (E) the determination of the Secretary's views and recommendations concerning administrative appeals or litigation and the representation of the Secretary in administrative appeals and litigation;
- (F) the issuance of Federal regulations and policies as well as any documents published in the Federal Register;

- (G) reporting to Congress and the President;
- (H) the formulation of the Secretary's and the President's policies and their budgetary and legislative recommendations and views; and
- (I) the nondelegable statutory duties of the Secretary relating to trust resources.

The foregoing statute, an amendment contained in the No Child Left Behind Act, P.L. 107-110, together with the regulation set forth in footnote 2, above, 25 C.F.R. § 36.51, subpart F, make clear that although Congress has seen fit to include Indian tribes who wish to participate in the operation of their federally funded schools, the ongoing oversight of those institutions is clearly committed by statute and regulation to the federal government.

The federal government continues to include Tribal Grant Schools within the coverage of the Federal Tort Claims Act. This act is essentially the United States' insurance statute. In *Mentz v. U.S.A.*, 359 F.Supp.2d 856, 859 (D. ND 2003), the District Court noted that Mentz's claim arose under the Federal Tort Claims Act ("FTCA"). 28 U.S.C. §§ 1346(b), 2671-2680. Under the FTCA, the United States has waived its sovereign immunity to the following extent:

for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. § 1346(b)(1). At the time of the incident, Gustavson was employed by the Standing

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Rock Community Grant School which is operated by Standing Rock Community School Board, through an agreement entered into between the Bureau of Indian Affairs and the Standing Rock Sioux Tribe under the Tribally Controlled Schools Act of 1988 ("TCSA"), Public Law 100-297, codified at 25 U.S.C. § 2501-2511. The term "tribally controlled school" is defined by 25 U.S.C. § 2511 as follows:

The term "tribally controlled school" means a school that--

- (A) is operated by an Indian tribe or a tribal organization, enrolling students in kindergarten through grade 12, including a preschool;
- (B) is not a local educational agency; and
- (C) is not directly administered by the Bureau of Indian Affairs.

As noted, Congress has extended the United States' liability under the FTCA, by way of Public Law 101-512, which "imposes liability upon the United States for the acts of tribal organizations and their employees administering a grant agreement pursuant to the TSCA." *Big Owl v. United States*, 961 F.Supp. 1304, 1307 (D.S.D.1997); see P.L. 101-512, Title II, § 314, Nov. 5, 1990, 104 Stat.1959, as amended by P.L. No. 103-138, Tit. III § 308, Nov. 11, 1993, 107 Stat. 1416 (codified at 25 U.S.C. § 450f, Historical and Statutory Notes). Specifically, Public Law 101-512 provides:

With respect to claims resulting from the performance of functions ... under a contract, grant agreement or cooperative agreement authorized by the ... [TCSA] ... an Indian tribe, tribal organization or Indian contractor is deemed hereafter to be part of the Bureau of Indian Affairs in the Department of the Interior ... while carrying out any such agreement and its employees are deemed part of the Bureau ... while acting in the scope of their employment in carrying out the contract or agreement: Provided, That ... any civil action or proceeding involving such claim brought hereafter against any tribe, tribal organization, Indian contractor or tribal employee covered by this provision shall be deemed to be an action against the United States and will be defended by the Attorney General and afforded the full protection and coverage of the [FTCA].

Mentz, *supra*, 359 F.Supp.2d 859-860. In short, Grant School employees, such as Gustavson, are considered employees of the BIA and can be sued under the FTCA subject to the protections and immunities afforded government employees under the Act. Indian Self-Determination and Education Assistance Act of 1975, § 314, 25 U.S.C.A. § 450f note; Tribally Controlled Schools Act of 1988, §§ 5202- 5212, 25 U.S.C.A. §§ 2501-2511; 28 U.S.C.A. § 1346(b)(1).

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It is clear that the under the Federal Tort Claims Act, the United States recognizes that by contracting with the Standing Rock Sioux Tribe under P.L. 100-297, 25 U.S.C. § 2501, et seq., the Tribal School merely stepped into the shoes of the United States Bureau of Indian Affairs. *Given the level of federal oversight, supervision, policymaking and insuring that the United States does for the school pursuant to federal statute and regulation, it is clear that the Standing Rock Community School should be included in the North Dakota Century Code § 15.1-29-10 which authorizes tuition contracts with federal officials.*

CONCLUSION:

Legislation should be introduced to amend NDCC § 15.1-29-10 by adding the words “and tribal” after the first occurrence of the word “federal” and adding the words “or tribal” after the second occurrence of the word “federal.” The amended statute would read:

15.1-29-10. Tuition contracts - Agreement with federal officials. A school board may contract with federal *and tribal* officials for the education of students in a federal *or tribal* school.

Id.

In the event the foregoing amendments are made to NDCC § 15.1-29-10, it seems clear that ongoing statutory authorization would exist for contracting with local school boards to fund the tuition of students at the SRCS and Tate Topa Tribal Schools from North Dakota Foundation Aid. The foregoing amendments are consistent with the moral and legal obligations of the State of North Dakota under the XIVth Amendment of the United States Constitution, § 1 and Article VIII, § 1 of the North Dakota Constitution.

SRCS and Tate Topa Schools would likely be required to meet or exceed the other relevant criteria set forth in Title 15.1 of the North Dakota Century Code governing Elementary and Secondary Education in order to obtain the said funding.

Morally and legally the provision of state funding to Tribal schools is the duty of the State of North Dakota. Our children are the future of North Dakota. North Dakota recognizes this when it counts our children in determining the number of school age children in the state. It is ironic that many areas of rural North Dakota would be moribund absent the high birth rate among Tribal members.

The dollars required to fund the education of Native American children living on the reservation are already allocated. In terms of the effect that parity in educational funding by

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North Dakota for reservation resident Tribal member children will have on the future, it is clear that the better educated our children are, the better North Dakota will do in the future. This is because we teach our children throughout their lives that they must return home – to our ancestral homelands – and help their relatives by utilizing their talents, skills and educations. In short, the legislative amendment we seek here is exactly what North Dakota should have done long ago. Unfortunately, non-Indians do not understand, as we do, that our duty to make appropriate decisions and protection of Tribal resources extends for the next seven generations. Counting from our children's generation, that is our great-great grandchildren's great grandchildren. Mad Bear, Sitting Bull and the long line of Wico-Hunkake before them would instruct us to help our children help themselves so that they may later help each other and all of us!

* * * * *

In the event that you have questions, comment or concerns regarding this memorandum, please contact me at your earliest convenience.

SCE/sce
cc: File

**TESTIMONY ON HB 1552
HOUSE EDUCATION COMMITTEE
February 9, 2008
By: Bob Marthaller, Director
School Organization and Special Projects
701-328-2267
Department of Public Instruction**

Madam Chairman and Members of the Committee:

My name is Bob Marthaller and I am the Director of School Organization and Special Projects for the Department of Public Instruction. I am here to speak in opposition to HB 1552 as it appears before you today.

The language of the bill is succinctly written and to the point and seemingly without issue. However, the Department believes that the language may have a far reaching impact with results that are largely unknown. The Department is not so much in opposition to the bill but rather, the Department believes there are many questions that are unanswered and issues which need to be addressed and studied before this bill is moved forward.

Simply stated, how will this bill work and what are the parameters?

It is unclear and unspecified as to what these contracts will look like and what kinds of education services will be provided?

The Department questions how this bill relates to the larger picture of governance. Tribal treaties and tribal governance and how that relates and interacts with state and federal government should be explored and studied.

What are the responsibilities of the public school district and the tribal school in carrying out the terms of the contract? How will these responsibilities be determined? Who will be held accountable for the terms of the contract and what agency, if any, will have oversight responsibilities?

What is the potential fiscal impact of this legislation? There are approximately 1,500 students enrolled in Bureau of Indian Affairs schools.

Our focus should be on providing quality education to all North Dakota students. With so many variables – tribal government, treaties, state laws, federal government and the North Dakota Constitution, it is difficult to get a clear picture of how all of the pieces of the puzzle fit together. What is the design and where is the roadmap to follow in order to deliver quality education opportunity for all students – Indian, white or other minorities?

The Department follows many bills during the session including those related in some way to Indian education. The Department is tracking bills that are related to providing financial assistance to tribal colleges (HB 1058), providing Indian bilingual education grants (HB 1399), studying interplay between universities and tribally controlled community colleges (HB 1566), and a bill providing for a report to the

62nd Legislative Assembly during the organizational session about issues facing Native Americans (SB 2343). There is a house concurrent resolution to study Indian education issues (HCR 3022). The Department has requested an appropriation to form an Indian Advisory Committee which would advise the Superintendent regarding Indian education issues. Many other bills may either directly or indirectly impact Indian students and education.

It becomes clear that there is concern and there are issues. It is also clear that a focus needs to be developed. What are the issues and what are the barriers? How do we move forward as a state to remove the barriers and address the issues?

We must place the focus on providing quality education to all North Dakota students.

The Department opposes HB 1552 because the bill leaves too many questions unanswered.

The Department respectfully suggests that this bill be amended to a study resolution and that it be included in a broader study of all concerns related to Indian education and other Native American issues.

That concludes my comments and I will attempt to answer any questions that the committee may have.

North Dakota School Demographic Data
Data for all schools by type
2005-2006

- 105,381 all students
- 10, 392 American Indian students.
- 7,756 American Indians enrolled in Public Schools.
- 428 American Indians enrolled in Non-Public Parochial or other Schools.
- 1,540 American Indian students enrolled in Bureau of Indian Affairs or Tribal Grant Schools.
- 9.9% of North Dakota's k-12 school population is American Indian; whereas 4.9% of North Dakota's total population is American Indian.
- 71% (seventy-one percent) or 7,307 of North Dakota's American Indian students are enrolled in schools located on or near Indian reservations;
- 24% or 2,427 are enrolled in "urban" or rural North Dakota schools; and
- 5% are enrolled in non-public and or parochial schools.

Enrollment of American Indian students in North Dakota's MSAs:

Bismarck Public Schools	628
Grand Forks Public Schools	436
Fargo and West Fargo Public Schools	428
Mandan Public Schools	231
Minot Public Schools	418
Dickinson Public Schools	<u>56</u>
Subtotal	2,197

2005-2006 Schools with enrollments of 10 or more American Indian students

PUBLIC SCHOOLS:

Minnewaukan Public School	130	
Oberon Elem School	44	
Warwick Public School	189	
Four Winds Comm High School (9-12)	158	PSD
Bottineau Jr-Sr High School	23	
Bottineau Elem School	14	
Bismarck High School	117	
Centennial Elem School	17	
Century High School	15	
Dorothy Moses Elem School	19	
Grimsrud Elem School	12	
Horizon Middle School	21	
Jeannette Myhre Elem School	60	

Robert Place Miller School	27	
Northridge Elem School	22	
Pioneer Elem School	12	
Riverside Elem School	50	
Roosevelt Elem School	11	
Saxvik Elem School	37	
Simle Middle School	59	
Solheim Elem School	18	
South Central Alt High School	29	
Wachter Middle School	72	
Will Moore Elem School	13	
Agassiz Middle School	11	
Ben Franklin Middle School	21	
Discovery Jr High School	31	
South High School	21	
Jefferson Elem School	19	
Eagles Kindergarten	14	
Lincoln Elem School	19	
Madison Elem School	15	
McKinley Elem School	20	
North High School	18	
Roosevelt Elem School	15	
Eastwood Elem School	17	
L E Berger Elem School	19	
Cheney Middle School	33	
South Elem School	17	
West Fargo High School	47	
Westside Elem School	15	
Killdeer Public School	33	
Halliday Public School	12	
Twin Buttes Elem School (k-8)	36	CPSD
New Rockford Public School	12	
Sheyenne Public School	57	
Beach High School	24	
Phoenix Elem School	16	
Century Elem School	29	
Community Alt High School	14	
Central High School	71	
J Nelson Kelly Elem School	11	
Lake Agassiz Elem School	76	
Red River High School	26	
Schroeder Middle School	17	
South Middle School	17	
Valley Middle School	46	
Viking Elem School	14	
West Elem School	22	
Wilder Elem School	10	
Winship Elem School	10	
Larimore Elem School	13	
Roosevelt Elem School	13	
Watford City High School	25	
Watford City Elem School	10	

Mandaree Public School (K-12)	202	CPSD
Underwood Public School	10	
Bob Callies Elem School	15	
Garrison High School	17	
White Shield Public School (K-12)	119	CPSD
Beulah High School	12	
Beulah Middle School	16	
Beulah Elem School	15	
Ft Lincoln Elem School	37	
Lewis and Clark Elem School	21	
Mandan High School	52	
Mandan Jr High School	32	
Mary Stark Elem School	25	
New Salem High School	10	
Prairie View Elem School	16	
Flasher Public School	20	
Edwin Loe Elem School (K-6)	285	PSD
New Town High School (7-12)	371	PSD
Parshall Elem School (K-6)	117	PSD
Parshall High School (7-12)	68	PSD
Walhalla Public School	36	
Devils Lake High School	125	
Central Middle School	169	
Minne H Elem School	39	
Prairie View Elem School	86	
Sweetwater Elem School	59	
Sherwood Public School	13	
Glenburn Public School	14	
Hankinson Public School	16	
Central Elem School	18	
Wahpeton Middle School	17	
Wahpeton High School	22	
Zimmerman Elem School	10	
Dunseith High School	181	
Dunseith Elem School	198	
St John Public School	266	
Mt Pleasant Public School	102	
Turtle Mt Comm Elem School (K-6)	607	BIA
Turtle Mt Comm Middle School (7-8)	351	BIA
Turtle Mt Comm High School (9-12)	581	CPSD
Rolette Public School	40	
Cannon Ball Elem School (K-6)	96	PSD
Solen Public School (7-12)	74	PSD
Ft Yates Middle School (K-8)	219	JPA
Selfridge Public School	39	
A L Hagen Jr High School	10	
Dickinson High School	13	
Jamestown High School	11	
Jamestown Middle School	19	
Cando Public School	15	
Hatton Public School	10	
Erik Ramstad Middle School	28	

Jim Hill Middle School	39	
Lincoln Elem School	18	
Longfellow Elem School	11	
McKinley Elem School	11	
North Plains Elem School	10	
Central Campus School	46	
Magic City Campus High School	10	
Lewis and Clark Elem School	24	
Roosevelt Elem School	15	
Souris River Campus Alt High School	67	
Sunnyside Elem School	58	
Washington Elem School	16	
Nedrose Elem School	15	
Burlington-Des Lacs Elem School	10	
North Shore High	11	
Lewis and Clark Elem School	26	
Rickard Elem School	24	
Wilkinson Elem School	27	
Williston High School	74	
Williston Middle School	34	
Ray Public School	11	
Eight Mile Public School (K-12)	120	CPSD
138 schools:	7756	

NON- PUBLIC SCHOOLS:

Prairie Learning Education Center	21	
Ojibwa Indian School (K-8)	272	Tribal
St Ann's Catholic School (K-6)	28	Parochial
St Bernard Mission School (K-6)	81	Parochial
Dakota Memorial High School	16	
St Josephs Elem School	10	
	428	

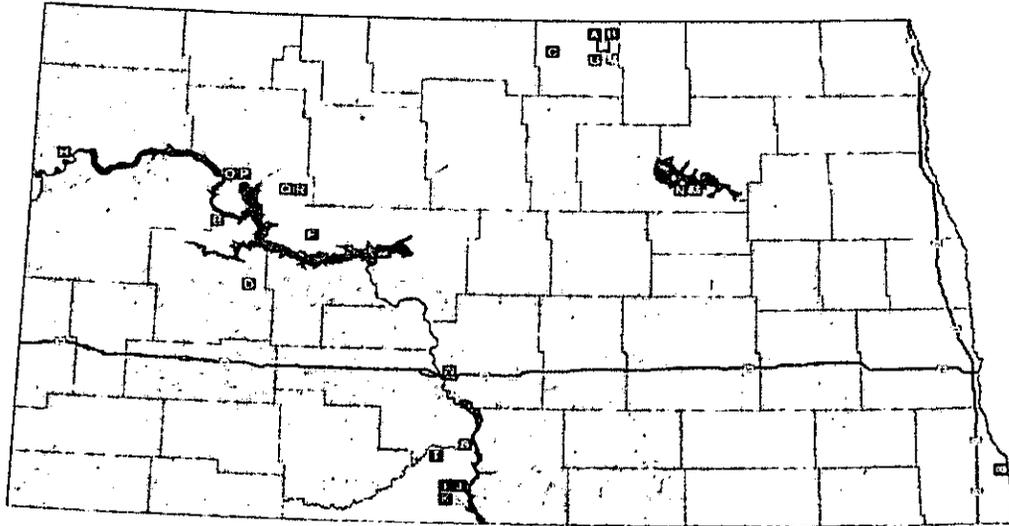
BIA SCHOOLS:

Tate Topa Tribal School (K-8)	392	Tribal
Theodore Jamerson Elem School (K-8)	169	Tribal
Circle of Nations School (K-8)	210	Tribal
Dunseith Day Elem School (K-8)	163	BIA
Standing Rock Comm Elem School (K-6)	360	JPA
Standing Rock Comm High (9-12)	246	JPA
	1540	

NORTH DAKOTA

SCHOOLS THAT SERVE AMERICAN INDIAN STUDENTS

Unlike other states, American Indian children in North Dakota are dispersed in school districts throughout the state. Of the 53 school districts in the state, American Indian children are present in all but one (1) school district. Of the 433 school plants (buildings) American Indian children are present in 336 schools or 78% of the school buildings.



- | | |
|---|---|
| <ul style="list-style-type: none"> W Four Winds Community High School (9-12) V Edwin Loe Elementary School (K-6) U New Town High School (7-12) T Parshall Elementary School (K-6) S Parshall High School (7-12) R Cannon Ball Elementary School (K-6) Q Solen Public School (7-12) P Ft Yates Middle School (K-8) O Standing Rock Community Elementary School (K-6) N Standing Rock Community High School (9-12) M St Ann's Catholic School (K-6) L St Bernard Mission School (K-6) | <ul style="list-style-type: none"> D Twin Buttes Elementary School (K-8) C Mandaree Public Schools (K-12) B White Shield Public School (K-12) A Turtle Mountain Community High School (9-12) Z Eight Mile Public School (K-12) Y Turtle Mountain Community Elementary School (K-6) X Turtle Mountain Community Middle School (7-8) W Dunseith Day Elementary School (K-8) V Ojibwa Indian School (K-8) U Tate Topa Tribal School (K-8) T Theodore Jamerson Elementary School (K-8) S Circle of Nations School (K-8) |
| <ul style="list-style-type: none"> ■ Public School Districts on Reservations (PSD) ■ Consortia of Schools (JPA) □ Non-Public Schools | <ul style="list-style-type: none"> ■ Cooperative School Districts (CPSD) ■ Bureau of Indian Affairs Schools (BIA) □ Tribal Schools |

Contact information for each school system noted above are available on the North Dakota Department of Public Instructions' Web site at <http://www.dpi.state.nd.us/>. Click on school district profile in the middle of the page.

LEGEND:

Education of American Indian children in the North Dakota System of schools is complex both in governance and financing.

- Cooperative School Districts (Labeled for the purposes of this report only - CSPD). Schools which are governed by public school district boards and jointly financed under Public Law 100-297- Bureau of Indian Education, formerly BIA- OIEP and state foundation aid.
- Non-Public Schools: privately financed schools or schools operated by religious groups.
- Public School Districts on Reservations
- Tribal Schools: funded under Public Law 93-638 –Grants to tribal governments.

AMERICAN INDIANS IN NORTH DAKOTA

American Indian peoples in North Dakota today are the Mandan, Hidatsa, Arikara, the Yanktonai, Sisseton, Wahpeton, Hunkpapa and other Dakotah/Lakota (commonly known as the Sioux) tribes, along with the Pembina Chippewa, Cree and Métis.

Though the individual tribes have distinct and different origins, histories and languages, there are core beliefs and values that emanate from respect for the earth, kinship, and an understanding of humankind’s relationship with the sacred in all living things.

NORTH DAKOTA TRIBAL NATIONS

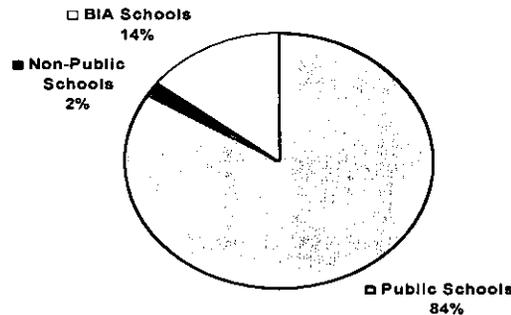
Five tribes operate within North Dakota. Each tribal government elects its own chairperson and council members. Each tribal government along with each tribal headquarters are as follows:

- Mandan, Hidatsa and Arikara Nation, New Town, North Dakota
- Turtle Mountain Band of Chippewa, Belcourt, North Dakota
- Spirit Lake Tribe, Fort Totten, North Dakota
- Standing Rock Sioux Tribe, Fort Yates, North Dakota.
- Sisseton-Wahpeton Sioux Tribe, Agency Village, South Dakota.

AMERICAN INDIANS IN NORTH DAKOTA EDUCATIONAL SYSTEMS

In the 2006-2007 school year, 10, 251 American Indian students were enrolled in schools in North Dakota and comprise 9.88 % of the enrolled student population of the state. By type of school, enrollments range as follows:

- Public Schools – 8,214 or 8.59%.
- BIA/Tribal schools – 1,497 or 99.60%
- Non-public schools - 507 or 7.79%
- State Institutions – 33 or 35.48%
- All schools 10,251 or 9.88%



Attachment 5
1552

90293.0100

Sixty-first

Legislative Assembly

SENATE BILL NO.

of North Dakota

Introduced by

Senator O'Connell

1 A BILL for an Act to create and enact a new section to chapter 15.1-29 of the North Dakota
2 Century Code, relating to educational contracts with tribal officials.

3 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

4 SECTION 1. A new section to chapter 15.1-29 of the North Dakota Century Code is
5 created and enacted as follows:

6 Tuition contracts· Agreement with tribal officials. A school board may contract with
7 tribal officials for the education of students in a tribal school.

8 SECTION 2. The tribal officials are authorized to obtain a bond in the amount of the
9 contract subrogated to the school board to ensure that the contract funds received are
10 expended and accounted for as provided in the contract between the school board and the
11 tribal officials for the education of students in a tribal school.