



# North Dakota Legislative Council

Prepared for the Education Policy Committee  
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## INNOVATIVE EDUCATION AND COMPETENCY-BASED LEARNING STUDY - BACKGROUND MEMORANDUM

[Section 1 of House Bill No. 1111 \(2021\)](#) directs the Legislative Management to study competency-based learning and schools participating in innovative education programs, including a review of:

- The progress of schools and districts that have received waivers under North Dakota Century Code (NDCC) Section 15.1-06-08.1 to participate in innovative education programs under NDCC Section 15.1-06-08.2;
- Waivers to participate in innovative education programs that incorporate competency-based learning initiatives;
- The schools and districts participating in innovative education programs; and
- The schools and districts that have received waivers to participate in innovative education programs, the contents of the implemented innovative education programs, best practices, and whether the competency-based learning initiatives implemented under the innovative education programs can be duplicated and expanded for implementation statewide.

House Bill No. 1111 was supported by representatives of the Department of Public Instruction, "yes. every kid.," and Certification Central. There was no opposition to the study. The testimony indicated the 2017 Legislative Assembly provided authorization to the Superintendent of Public Instruction to waive certain statutory requirements for school districts and nonpublic schools if the school or nonpublic school submitted a proposal plan and was approved for participation in an innovative education program under NDCC Sections 15.1-06-08.1 and 15.1-06-08.2.

According to the testimony, a plan for participation in an innovative education program requires a multi-year approach and documented support from teachers, school staff, parents, and community members. The testimony further noted waivers are intended for districts and schools deliberately planning and implementing strategic plans for the delivery of education with better outcomes for North Dakota students, and waivers provide flexibility to implement programs and educational models to ensure a personalized approach to education. The testimony also indicated flexibility allows schools and districts to design and pursue alternate strategies and pathways to best educate and meet the needs of students.

### COMPETENCY-BASED LEARNING AND INNOVATIVE EDUCATION LAWS

The Century Code does not define the terms "innovative education" or "competency-based learning." However, the National Conference of State Legislatures (NCSL) published a legisbrief in August 2018 on competency-based education in K-12 schools which indicated "competency-based education" is synonymous with "proficiency-based" and "mastery-based" education, and the terms describe "[l]earning progressions based on the mastery of content rather than the passage of time." The National Conference of State Legislatures notes states are beginning to encourage the transition away from "seat time" education and toward competency-based learning in which students advance by demonstrating mastery of academic content. The National Conference of State Legislatures notes competency-based learning provides schools with flexibility to optimize personalized learning for students, and competency-based learning allows students to work at their appropriate level regardless of age or grade level.

The United States Department of Education's website on competency-based or personalized learning [www.ed.gov/oii-news/competency-based-learning-or-personalized-learning](http://www.ed.gov/oii-news/competency-based-learning-or-personalized-learning) provides:

Competency-based strategies provide flexibility in the way that credit can be earned or awarded, and provide students with personalized learning opportunities. These strategies include online and blended learning, dual enrollment and early college high schools, project-based and community-based learning, and

credit recovery, among others. This type of learning leads to better student engagement because the content is relevant to each student and tailored to their unique needs. It also leads to better student outcomes because the pace of learning is customized to each student ... competency-based systems also create multiple pathways to graduation, make better use of technology, support new staffing patterns that utilize teacher skills and interests differently, take advantage of learning opportunities outside of school hours and walls, and help identify opportunities to target interventions to meet the specific learning needs of students. Each of these presents an opportunity to achieve greater efficiency and increase productivity.

Competency-based learning refers to a variety of diverse practices that take different forms from state to state and school to school. There is no universal model that encompasses every iteration of educational model or instructional approach related to competency-based learning.

### **North Dakota Statutory Provisions**

North Dakota Century Code Section 15.1-06-08 provides for a school or school district to apply to the Superintendent of Public Instruction for a waiver of any rules governing accreditation if the waiver encourages innovation and has the potential to result in improved educational opportunities or enhanced academic opportunities for students.

Senate Bill No. 2166 (2001) amended NDCC Section 15.1-06-08 to allow schools or districts to apply for waivers of school accreditation rules if the waiver encouraged innovation and had the potential to result in improved educational opportunities or enhanced academic opportunities for students. The bill added restrictions that waivers were valid only for up to 1 year, and schools or districts could apply for a one-time extension of an additional year. The bill required the Superintendent of Public Instruction to file a report with Legislative Management regarding approved and denied waiver requests under the section, including the rule waived and the time period for the waiver.

The 2001 legislation also created NDCC Section 15.1-06-08.1 regarding the waiver of statutes. The section prohibited the Superintendent of Public Instruction from waiving any statute unless expressly authorized by the section. The section allowed a school or school district to apply for a waiver of NDCC Section 15.1-21-03 regarding high school unit instructional time if the waiver encouraged innovation and had the potential to result in improved educational opportunities or enhanced academic opportunities for students. The section allowed for an initial waiver of up to 1 year, and the ability to apply for 2-year extensions. The section also required the Superintendent of Public Instruction to file a report with the Legislative Management regarding approved and denied waiver requests under the section, including the reason the waiver was granted and the time period for the waiver. The section required the Superintendent of Public Instruction to adopt rules governing the submission and evaluation of applications and the monitoring of waivers under the section. The legislative history of the bill indicated the bill was intended to allow for the waiver of accreditation rules and high school instructional time only, not statutory provisions enacted by the Legislative Assembly.

North Dakota Century Code Section 15.1-06-08.1 was amended by Senate Bill No. 2186 (2017) to replace NDCC Section 15.1-21-03 regarding high school instructional time with multiple chapters of the Century Code, which could be waived by the Superintendent of Public Instruction. The amendment allowed waivers of the chapters relating to schools, including sections addressing calendar length and instructional time, teacher qualifications, school attendance, curriculum, postsecondary enrollment, special education, and English language learners. The amendment also added requirements to the waiver, and provided a waiver was authorized if the waiver improved the delivery of education, improved the administration of education, provided increased educational opportunities for students, or improved the academic success of students.

The 2017 legislation also created NDCC Section 15.1-06-08.2. The section required the Superintendent of Public Instruction to adopt rules and develop criteria for the submission, approval, and evaluations of proposals for participation in an innovative education program. The section required schools to obtain approval from the school board before submitting a proposal to the Superintendent of Public Instruction for participation in an innovative education program. Once approval is obtained, a proposal is required to include evaluation criteria and specify the innovations to be pursued and the manner in which the proposal will improve the delivery of education, improve the administration of education, provide increased educational opportunities for students, or improve the academic success of students. If approved, the school is required to develop a comprehensive implementation plan and work with the Superintendent of Public Instruction to ensure the long-term viability of the proposal during the 1<sup>st</sup> year of participation in the innovative education program. The section authorizes the Superintendent of Public Instruction to approve a comprehensive implementation plan for up to 5 years, and requires the Superintendent of Public Instruction to report annually to the Legislative Management regarding innovative education programs, including the status of implementation, a summary of waived statutes or rules, and a review

of evaluation data results. The legislative history of the bill indicates the bill was intended to give schools and districts more flexibility and freedom to identify student needs and implement programs, upon school board approval, to meet those needs. The history also indicates the intent of the bill was not to provide waivers of educational standards, only to allow waivers and innovative programs that provide flexibility in how the standards are met.

### **North Dakota Administrative Rules**

North Dakota Administrative Code (NDAC) Title 67 provides the administrative rules of the Superintendent of Public Instruction, and NDAC Article 67-19 provides the rules for school accreditation and includes the rules for innovative education programs in NDAC Chapter 67-19-03. North Dakota Administrative Code Section 67-19-03-03 provides the requirements and criteria that must be included in a planning proposal submitted by a school, school district, or nonpublic school to the Superintendent of Public Instruction for approval to participate in an innovative education program. The section requires proposals to include the justification for the implementation of an innovative education program, citing research, evidence-based information, or best practice information; describe how participation in the innovative education program will satisfy the criteria and requirements of NDCC Section 15.1-06-08.2; describe how the planning process for implementation of the innovative education program included education stakeholders; provide copies of signed minutes of a school board or governing body of a nonpublic school approving participation in the innovative education program; describe a professional development plan aligned to the innovative education process; and include an application. North Dakota Administrative Code Section 67-19-03-04 provides requirements and criteria for the submission of an implementation proposal following the approval of a planning proposal and evidence of at least 1 year of planning. The section includes requirements for continuous improvement, evaluation criteria for the implementation of the program, and a sustainability plan. North Dakota Administrative Code Section 67-19-03-05 allows the Superintendent of Public Instruction to grant waivers of statutory requirements pursuant to NDCC Section 15.1-06-08.1 when deemed appropriate and necessary to implement the innovative education program.

### **Programs in Other States**

Many other states permit some type of competency-based learning or innovative education programs as an alternative to traditional seat time education. The states vary in the requirements and criteria of their respective programs. Examples of states permitting different types of competency-based learning and innovative education programs are Utah, Michigan, and Colorado.

#### **Utah**

Utah Code Annotated Section 53F-5-502 allows personalized competency-based learning grants. The section creates a grant program to improve educational outcomes in public schools through personalized, competency-based learning, and incentivizes local education agencies to establish personalized competency-based learning through the use of personalized learning; blended learning; extended learning; educator professional learning in personalized, competency-based learning; or any other method that emphasizes personalized, competency-based learning. Local education agencies (LEA) may apply to the state board for a grant under the program, and to be eligible for a grant under the program, an LEA must submit a planning application to the state board which describes the program planned; provides evidence of the intent for schoolwide implementation; describes the partners that will help with the planning and implementation; and implements the core principles. An LEA that receives a grant under the program has 2 years to expend the funds. Section 53F-5-506 allows LEAs to apply to the state board for waivers of rules that hinder the LEA from accomplishing the goals described in the grant application.

#### **Michigan**

Michigan Compiled Laws Section 388.1701(101)(9) allows school districts to apply to the Michigan Department of Education for seat time waivers from the minimum number of hours and days required for pupil instruction "[f]or a department-approved alternative education program or another innovative program approved by the department ...." The Michigan House of Representatives provided a guidance document to clarify the law indicating seat time waivers could be granted for online learning or blended programs.

#### **Colorado**

Colorado Revised Statutes Article 22-32.5 encompass the "Innovative Schools Act," and provides schools and districts in the state with flexibility in meeting the educational needs of students by allowing schools to submit innovation plans to implement innovations in areas including school staffing, curriculum, assessments, class scheduling, and the use of financial resources. Colorado Revised Statutes Section 22-32.5-108 allows the state board to waive statutes or rules related to the innovations described in the submitted and approved innovation plans.

## **NORTH DAKOTA RECENT COMPETENCY-BASED LEARNING AND INNOVATIVE EDUCATION DATA**

The 2017-18 interim Education Policy Committee received a report required under Senate Bill No. 2186 (2017) from the Superintendent of Public Instruction regarding innovative education programs. The report indicated the Department of Public Instruction received one application, from Northern Cass Public School, to implement an innovative education program through a waiver under NDCC Sections 15.1-06-08.1 and 15.1-06-08.2. The report indicated Northern Cass intended to implement an academy for students in grades eight and nine to provide students with opportunity to explore passion areas by building customized schedules for students, allowing for flexible scheduling, and moving toward proficiency-based learning. The 2019-20 interim Education Policy Committee also received a report from the Superintendent of Public Instruction regarding innovative education programs and waivers under NDCC Sections 15.1-06-08.1 and 15.1-06-08.2 which indicated six districts were approved for innovative education programs and were involved in the planning and implementation stages of their respective programs.

### **RELATED 2021 LEGISLATION**

#### **Enacted**

While not specifically addressing competency-based learning or innovative education, House Bill No. 1478 (2021) allows the board of a school district or governing board of a nonpublic school to adopt a policy to allow students in grades 6 through 12 to earn course credits through educational opportunities with sponsoring entities outside the classroom if certain criteria are met and approval is received from the Kindergarten Through Grade Twelve Education Coordination Council and the Superintendent of Public Instruction.

House Bill No. 1388 (2021) allows school districts to provide virtual instruction if the instruction complies with the school calendar length requirements for a full day of instruction. The bill also requires the attendance of students participating in virtual instruction to be verified by monitoring of the student's progress on academic pacing guides developed by the school district to ensure the students are in attendance and receiving sufficient instruction. The bill allows school districts and nonpublic schools to adopt a policy to allow students to engage in virtual instruction that must comply with rules adopted by the Superintendent of Public Instruction.

House Bill No. 1232 (2021) allows school districts to satisfy school calendar length requirements by providing virtual instruction. The bill also allows school districts and nonpublic schools to adopt policies allowing for virtual instruction which comply with school calendar requirements and rules adopted by the Superintendent of Public Instruction.

Senate Bill No. 2196 (2021) requires the State Board of Public School Education to establish and certify a learning continuum to allow a district-approved mastery framework policy to award required instructional units for elementary, middle, and high school and to waive instructional time requirements upon the recommendation of the Kindergarten Through Grade Twelve Education Coordination Council. The bill requires the Kindergarten Through Grade Twelve Education Coordination Council to review the learning continuum established by the state board and to provide recommendations. The bill also requires the Superintendent of Public Instruction to facilitate the development and implementation of the learning continuum in collaboration with the Department of Career and Technical Education. The bill provides an exception whereby high school required units are not required to meet or exceed state content standards if the school or district adopts a mastery framework policy and awards units based on successful completion of the approved learning continuum. The bill requires adopted mastery framework policies to identify the portions of the learning continuum which must be mastered for a student to receive credit for the relevant units required for high school graduation. The bill provides an exception to high school unit instructional time for units attained from a district-approved mastery framework.

#### **Failed**

House Bill No. 1467 (2021) would have allowed parents to provide educational instruction through pod learning if the Governor declares a statewide state of disaster or emergency that affects the ability of schools to satisfy their curriculum and testing requirements. "Pod education" was defined to mean a program of instruction in which parents may collaborate on the creation of lessons and the delivery of instruction to students outside of the classroom during emergencies when in-person classroom instruction is not feasible. The bill would have required parents to file information with the student's school district, and would have required parents to meet certain educational standards to be eligible to supervise the pod instruction. The bill also would have required the instruction to include the subjects required by state law and consist of at least 4 hours of instruction for at least 175 days per year. The bill would have exempted the students participating in pod education from the compulsory attendance requirements of NDCC Chapter 15.1-20. The bill failed to pass the House.

## **PREVIOUS LEGISLATIVE MANAGEMENT STUDIES OF COMPETENCY-BASED LEARNING AND INNOVATIVE EDUCATION**

There have not been any recent Legislative Management studies of competency-based learning or innovative education. However, the 2017-18 interim Education Policy Committee studied entities that deliver kindergarten through grade 12 educational services and the feasibility and desirability of combining kindergarten through grade 12 educational services. The committee received reports from the Superintendent of Public Instruction regarding waivers granted and the innovative education program under NDCC Sections 15.1-06-08.1 and 15.1-06-08.2.

### **STUDY APPROACH**

In conducting this study, the committee may wish to receive testimony from representatives of:

- The Department of Public Instruction regarding:
  - How the department defines innovative education and competency-based learning for purposes of NDCC Sections 15.1-06-08.1 and 15.1-06-08.2;
  - The number of requests for waivers and proposal submissions for participation in innovative education programs under NDCC Sections 15.1-06-08.1 and 15.1-06-08.2;
  - The number of waivers and submissions granted for participation in innovative education programs;
  - The number of schools and districts currently in the planning, implementation, and evaluation stages of their respective innovative education programs;
  - The contents of approved innovative education programs;
  - Data on the outcomes of waivers and innovative education programs;
  - How many proposed or approved innovative education programs include aspects of competency-based learning;
  - Best practices; and
  - Whether competency-based learning initiatives can be duplicated and implemented statewide;
- Education stakeholders, including schools and districts, regarding innovative education programs proposed and implemented; whether the programs required waivers; whether the programs implemented competency-based learning; and the evaluation data and outcomes of the programs;
- North Dakota students participating in innovative education programs regarding whether those students find the programs enhance their knowledge of academic content; and
- Organizations such as the Education Commission of the States and the National Conference of State Legislatures regarding national trends regarding innovative education programs, competency-based learning, and best practices.