

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**EDUCATION COMMITTEE**

Thursday, February 18, 2016  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Donald Schaible, Chairman, called the meeting to order at 8:30 a.m.

**Members present:** Senators Donald Schaible, Howard C. Anderson, Jr., Kyle R. Davison, Robert Erbele, Tim Flakoll, Joan Heckaman, Richard Marcellais, Erin Oban, Nicole Poolman, David S. Rust; Representatives Bob Hunskor, Jerry Kelsh, David Monson, Mike Nathe, Karen M. Rohr, Mark Sanford, Cynthia Schreiber Beck, Denton Zubke

**Members absent:** Representatives Richard G. Holman, Mary C. Johnson, Alex Looyen, Lisa Meier, Kris Wallman

**Others present:** John Walstad, Legal Division Director, Legislative Council  
See [Appendix A](#) for additional persons present.

Chairman Schaible invited the committee's consideration of the November 24, 2015, meeting minutes. The Legislative Council staff said there was a request from Bismarck Public Schools Superintendent Ms. Tamara Uselman to revise the description of her testimony in the previous meeting minutes. She requested that in the third paragraph, on page 8, the content "...no medications are used on students in restraint and seclusion situations. She said Bismarck School District would not use medications even if it could," be replaced with "...no mechanical or chemical, meaning psychotropic medication, restraints are used on students. She said Bismarck School District would not use such restraints, even if it could." A copy of Ms. Uselman's email request is on file in the Legislative Council office.

**It was moved by Senator Flakoll, seconded by Representative Nathe, and carried on a voice vote that the minutes of the November 24, 2015, meeting, as amended with the requested changes, be approved.**

**REMEDICATION RATES**

The Legislative Council staff presented information regarding North Dakota University System remediation rates ([Appendix B](#)). He said the remediation rates were provided by Ms. Lisa Johnson, Director of Systemwide Student Entry, Transfer, and Retention, North Dakota University System, as the result of an inquiry at the previous meeting of the interim Education Committee.

**NORTH DAKOTA UNITED**

The Legislative Council staff presented a bill draft [[17.0043.01000](#)] regarding North Dakota United. He said this bill draft was requested at the previous committee meeting. He said the bill draft replaces references within North Dakota Century Code to the "North Dakota Education Association," with "North Dakota United, or its successor organization." He said while the bill draft amends sections of Century Code, there still exists a reference to the North Dakota Education Association in Article VII, Section 6, of the North Dakota Constitution. He said the state constitution cannot be amended by a legislative bill.

Chairman Schaible said there are additional references to the North Dakota Education Association regarding selection processes in certain situations and other roles the organization plays. He said making these amendments to references to the name of the organization in Century Code might also alter certain appointment processes and cause some undesired consequences.

In response to a question from Senator Rust, Chairman Schaible said it is more than just a name change of an organization. He said there has also been a change to the makeup of the membership of the organization. He said the North Dakota Education Association had certain authority and requirements given to them. He said he is unsure if the desired intent is still achieved with the change in membership requirements and the name.

Chairman Schaible requested the Legislative Council staff research what effect the technical corrections bill draft would have on the additional roles, appointments, and positions of the North Dakota Education Association.

In response to a question from Senator Flakoll, Chairman Schaible said the committee will consider options for amending the state constitution to reflect the organizational name change at the next committee meeting.

### **CRISIS PREVENTION INSTITUTE**

Chairman Schaible called on Mr. Daniel Gugala, Vice President and General Counsel, Crisis Prevention Institute, for testimony (Appendices [C](#), [D](#), and [E](#)) regarding nationwide trends relating to restraint and seclusion policies.

Mr. Gugala said the Crisis Prevention Institute is the worldwide leader in crisis prevention and intervention training. He said it is a global organization. He said the Crisis Prevention Institute has been in business for over 35 years providing training on restraint and seclusion best practices and de-escalation skills to schools, hospitals, mental health centers, long-term care facilities, juvenile correction centers, and group homes in over 17 different countries. He said one of the key goals of the organization is to reduce the use of restraints being used.

Mr. Gugala said the United States Department of Education asked schools to report on the number of incidents of restraint and seclusion being used in both 2009 and 2011. He said the data shows that in 2009 there were 519 reported cases of restraint and seclusion being used in North Dakota schools. He said the number of reported cases rose to 730 in 2011. He said that is a 40 percent jump over a 2-year period.

Mr. Gugala said restraint and seclusion really started becoming a topic of conversation among state legislatures in 1998 with the publishing of the article "*Deadly Restraint*" by the Hartford Courant. He said the article looked at the number of people who died as a result of restraint and seclusion being used in a number of hospitals over a 1-year period of time. He said in 1999, the Centers for Medicare & Medicaid Services passed federal legislation for health care, requiring that appropriate practice be put in place regarding restraint and seclusion. He said in 2004, Virginia became the first state to pass legislation regarding the appropriate use of restraint and seclusion in school settings. He said the graph on slide 6 of his PowerPoint presentation represents the number of states that have enacted restraint and seclusion legislation or regulations by year. He said six states have pending legislation or regulations regarding restraint and seclusion for 2016.

Mr. Gugala said there are now 35 states that have legislation or regulations in place regarding restraint and seclusion use in education and school settings. He said North Dakota does not currently have legislation in place addressing the use of restraint and seclusion in education settings. Additionally, he said, there is currently no federal legislation in place which addresses restraint and seclusion use in schools. He said the "Keeping All Students Safe Act" has been proposed for the past 5 years. He said federal legislation, if passed, would include significant language regarding the use of restraint and seclusion by all schools.

In response to a question from Representative Sanford, Mr. Gugala said the preference between the use of a law or a regulation regarding restraint and seclusion varies significantly from state to state. He said Wisconsin initially enacted a regulation regarding the use of restraint and seclusion in 2005. First, he said, the Department of Public Instruction released a guideline regarding the use of restraint and seclusion in schools, which was not mandated. He said the regulation became a mandate in approximately 2010. He said legislation in Wisconsin was finally passed in approximately 2014. He said in some states agencies will add restraint and seclusion requirements to licensing agreements. He said regardless of what a state decides, the goal is to have a good practice in use by every state regarding restraint and seclusion.

In response to questions from Representative Nathe, Mr. Gugala said he does not have data regarding the use of restraint and seclusion by schools in North Dakota past 2011 at this point. He said the key to having a good piece of legislation regarding restraint and seclusion is to have good definitions in the statute. He said typically "physical restraint" indicates a situation where hands are placed on an individual regardless of length of time. He said "seclusion" indicates isolation away from other individuals in a closed or locked room made available for the purpose of seclusion. He said he assumes the number of incidents of restraint or seclusion in North Dakota were reported through the use of incident reports to the principal of each school.

In response to a question from Chairman Schaible, Mr. Gugala said the information was used from the Department of Education to compile the data regarding the number of incidents of restraint and seclusion used in North Dakota in 2009 and 2011 breaks down the information to show how many of the children were on individual education plans as well. He provided a [link](#) to the data following the conclusion of the committee meeting.

In response to questions from Senator Flakoll, Mr. Gugala said the evolution of the reporting of restraint and seclusion use began in the late 1990s in the health care industry. He said legislation and regulation of restraint and seclusion use in education really began in Virginia in 2004. He said restraint and seclusion has started to become more of a mainstream issue at the state and federal level within the last 10 years. He said he is unaware of any data that breaks down the number of restraint and seclusion instances by the age or grade level of the student.

In response to a question from Senator Rust, Mr. Gugala said the goal of restraint and seclusion policies in schools is to reduce the number of incidents that occur and escalate to the level of requiring the intervention of law enforcement, child protection agencies, and litigation. He said he does not have specific data that shows how many incidents rose to the level of requiring outside intervention or litigation.

Representative Hunsakor said physical restraint can sometimes lead to litigation against school personnel. He said he believes states who enact legislation or policies regarding the use of restraint and seclusion need to be as specific as possible in order to protect school personnel from personal liability. Mr. Gugala said some of the key factors states have considered when developing their policies and legislation on restraint and seclusion are laid out on slide 9 of his presentation.

Mr. Gugala said one of the benefits to having a policy in place is the ability to require reporting for the purpose of gathering data on the use of restraint and seclusion. He said 25 of the 35 states that have passed legislation on restraint and seclusion have reporting requirements in place. He said de-escalation considerations are important because the point of the legislation and policies is to de-escalate the situation prior to developing the need to restrain or seclude a student. He said some states lay out specifics regarding the types and dimensions of the rooms used in seclusion situations in their legislation. He said physical restraint should only be used as a matter of last resort.

In response to a question from Senator Davison, Mr. Gugala said the process by which each state collects data regarding the use of restraint and seclusion varies greatly from state to state. He said the Crisis Prevention Institute is attempting to develop data collection software to create uniformity among the states regarding the type and amount of data they are reporting.

Mr. Gugala said when developing restraint and seclusion legislation, it is important to consider a number of factors. He said a good policy always starts with clear and concise definitions. He said it is a good idea to address the limiting of high-risk positions in restraint and seclusion situations. He said using objects or body weight to restrain another individual can be challenging and potentially dangerous in many situations. He said when training staff, a good policy needs to address both restraint and de-escalation training. Training staff on both methods allows them to develop the skills necessary to spot a potential restraint situation early and prevent it from happening through de-escalation techniques, while still being able to restrain in situations where it is absolutely necessary after de-escalation attempts have failed.

In response to a question from Representative Monson, Mr. Gugala said the purpose of a restraint is to keep students from harming themselves or others. He said restraint and seclusion should not be used for disciplinary reasons. He said a student who is having an epileptic seizure could potentially be a danger to oneself or others. He said those types of situations may warrant the use of restraint or seclusion methods. He said those situations can be addressed in legislation or state policy regarding restraint and seclusion.

In response to a question from Representative Rohr, Mr. Gugala said some states have decided to retrain staff in situations when it is determined there was an inappropriate use of restraints in a debriefing following an incident. He said other states revisit the policy or legislation to determine if revision is necessary. He said the best policies address what principles are in place to determine whether restraint and seclusion is appropriate and should be used in a situation.

In response to a question from Representative Nathe, Mr. Gugala said states that have passed legislation regarding restraint and seclusion have seen a reduction in the number of incidents reported.

In response to a question from Mr. Walstad, Mr. Gugala said most states that have policies do not address whether there is a consequence for schools or districts that fail to report on incidents of restraint and seclusion.

In response to a question from Senator Marcellais, Mr. Gugala said most organizations who provide training on restraint and seclusion have requirements on the number of hours of training required. He said there are no states that mandate a certain number of training hours for educational restraint and seclusion. He said only a couple of states specifically mandate a certain number of training hours in their legislation for health care and group homes. He said legislation in most states addresses who is required to receive training and what are the components of the training, but not how much training is required in terms of time.

In response to questions from Senator Heckaman, Mr. Gugala said the Crisis Prevention Institute has worked on training staff in restraint and seclusion techniques in 31 school districts within the state of North Dakota so far. He said the Crisis Prevention Institute has also trained staff in health care and related facilities within the state.

In response to a question from Senator Flakoll, Mr. Gugala said the individual school typically pays for the restraint and seclusion training of its staff.

In response to questions from Representative Nathe, Ms. Valerie Bakken, Special Education Regional Coordinator, Department of Public Instruction, said the Department of Public Instruction does not keep records of the number of incidents of restraint and seclusion in North Dakota schools. She said the state does not have definitions of restraint or seclusion. She said the North Dakota School Boards Association has recommended guidelines and policies regarding restraint and seclusion that some schools have adopted, which were provided to the committee at the last meeting.

Senator Heckaman said she will send a copy of information being used by South Dakota in the development of restraint and seclusion policies and legislation to the Legislative Council staff for distribution to the rest of the committee members for review.

### **PUBLIC COMMENTS ON RESTRAINT AND SECLUSION**

Ms. Carlotta McCleary, Executive Director, North Dakota Federation of Families for Children's Mental Health, presented written testimony ([Appendix F](#)).

In response to a question from Senator Flakoll, Ms. McCleary said she was not sure if the 20 child death cases due to restraint and seclusion cited in her written testimony all occurred in an educational setting.

In response to questions from Representative Nathe, Ms. McCleary said she was not aware of any restraint-and seclusion-related deaths that occurred in North Dakota. She said state statutes and regulations regarding restraint and seclusion would help provide hard data and reporting on the number of incidents that occur. She said currently there are no requirements for data collection.

Ms. McCleary also presented written testimony on behalf of Mr. Brady Burkes ([Appendix G](#)).

Senator Heckaman said she does not think it is a good idea to wait until after collecting data on restraint and seclusion to draft legislation. She said issues with restraint and seclusion in schools is becoming more prevalent everyday. She said she thinks the issue needs to be addressed immediately.

In response to a question from Representative Kelsh, Ms. McCleary said there are appropriate times to use restraint and seclusion methods in emergencies to protect the safety of those involved. She said her position is not that they need to be removed. She said she is asking that the methods only be used in emergency situations and not for disciplinary purposes.

In response to questions from Senator Rust, Ms. McCleary said she would defer to the Protection and Advocacy Project for specific definitions on restraint and seclusion. She said her opinion is an in-school suspension would not qualify as a seclusion situation.

In response to a question from Representative Hunskor, Ms. McCleary said if de-escalation methods are ineffective, the question should be whether there is an emergency safety situation that exists. She said only if there is an emergency would it be appropriate to use restraint and seclusion techniques. She said if it is not an emergency, it may be appropriate to bring in other experts and school administrators to conduct evaluations to determine additional methods of resolving the situation with the child.

In response to a question from Senator Rust, Ms. McCleary said she agrees the safety of everyone involved should be a priority. However, she said, untrained personnel using restraints and seclusion can compound an unsafe situation. She said providing training and additional resources to teachers and school administrators is critical to resolving situations efficiently and effectively.

Senator Heckaman said she has received the training provided by the Crisis Prevention Institute. She said training addresses protection and procedures for staff and other students. She said a good restraint and seclusion policy will address every concern being raised at this meeting.

In response to questions from Senator Flakoll, Ms. Anita Thomas, General Counsel, North Dakota School Boards Association, said a document entitled "*Policy Ponderings*" was included in the materials at the first meeting of the interim Education Committee. She said there is also a model restraint and seclusion policy developed by the School Boards Association included in those materials. She said the policies were based on federal suggestions for how restraint and seclusion ought to be handled in schools. She said over one-half of the school districts in the state have already adopted the policies.

Ms. Thomas said the North Dakota School Boards Association does not have an indication regarding what the plan of the remaining half of school districts entails. She said there are approximately 30 special education units in the state. She said some school districts rely on those units for developing procedures on restraint and seclusion. She said some districts have not seen the need to develop and implement policies at the school district level. She said it is important to remember that there are 13- to 15-year old students who are over six feet tall and weigh more than 200 pounds. She said there has been information reported regarding incidents where those students have thrown rocks or desks, which is a very different situation than a 5 year old student who is having a difficult day.

Ms. Christine Hogan, Staff Attorney, Protection and Advocacy Project, presented written testimony ([Appendix H](#)). She said in response to a previous question from Representative Nathe, the lack of data and reporting on restraint and seclusion is the problem. She said the state needs a mechanism in place to collect the required data. She said there clearly exists a problem with restraint and seclusion and the state needs to get a handle on it.

Ms. Deborah Gendreau, concerned parent, said parents' voices need to be heard in this matter. She said her son has exhibited anxiety since the age of 10. She said he struggled with separation from family. She said his anxiety would escalate when it was time to go to school. She said a decision was made to use a case aid to help get him to school every morning. She said sometimes it worked and sometimes it did not. Ultimately, she said, she decided to pull her son from the public school system. She said her son was enrolled in an independent learning center. She said her son did much better in a setting with smaller classes, less homework, and more individual attention to help him focus. She said the learning center was closed while her son had one more year of school left. She said they tried to enroll him back in the public school system, but the state would not accept the credits he had earned from the learning center. She said the center was accredited in Minnesota, but not North Dakota. She said her son became a high school dropout as a result. She said her son eventually received his general educational development certificate, but has had trouble holding down a job. She said he now has a job working a night shift in the service industry. She said his anxiety prevents him from obtaining a driver's license and he is required to walk to work. She said it is important to protect developing children from the negative consequences of physical and psychological trauma. She said training and data collection protocols regarding restraint and seclusion and de-escalation techniques need to be implemented in the school system.

### **SMARTER BALANCED ASSESSMENT CONSORTIUM**

Chairman Schaible called on Mr. Anthony Alpert, Executive Director, Smarter Balanced Assessment Consortium, for testimony ([Appendix I](#)) regarding assessment models, testing protocols, and the assessment development process of the Smarter Balanced Assessment Consortium (SBAC).

Mr. Alpert said the SBAC is attempting to create a better test for today's students. He said the old statewide assessments failed to meet the needs of both teachers and students alike. He said the assessments were designed to be similar to what will be expected of students in their college lives and careers following high school. He said SBAC created the most comprehensive set of tools, supports, and resources incorporated into an online assessment.

Mr. Alpert said the assessment is adaptive and adjusts its difficulty as students proceed through the test to ensure that equal information is given to every student. He said an adaptive test ensures that every student is challenged by the assessment regardless of their individual ability.

Mr. Alpert said SBAC supports 10 different languages on mathematics assessments, including live American sign language videos. He said SBAC includes over 15 states. He said as a result, SBAC covers over 90 percent of the primary languages that students speak.

Mr. Alpert said SBAC has been endorsed by higher education. He said SBAC is a consortium of states that all maintain their own sovereignty. He said SBAC maintains consistency among the states by allowing the states to direct policy through an executive committee elected by the states. He said a representative from North Dakota is

currently the chair of the executive committee. He said there is also a governing board of states that directs higher-level policies. He said states vote based on consensus. He said every state is required to agree before SBAC adopts a new policy. He said SBAC is a public agency which is serving to help states improve teaching and learning methods.

Mr. Alpert said SBAC is not just a single test administered at the end of the year, but a system. Mr. Alpert said the most critical piece is the teachers. He said the only fundamental way to improve teaching and learning is to give teachers the resources they need to help their students learn more efficiently. He said SBAC achieves this in three ways. First, he said, SBAC has a digital library that supports professional learning by helping the teacher think about how to measure the assessment and standards in a different way. Second, he said, there is a system of interim assessments that are flexible, open, and used for actionable feedback. Finally, he said, there is a summative year-end assessment. He said no single assessment can solve the complex needs of school districts, but a variety of assessments that are each designed for the specific purpose for which they are needed can accomplish those goals.

Mr. Alpert said he has included brief examples of the manner in which SBAC measures the critical thinking skills of students versus the old standard assessments. He said the example in his presentation shows that the students must show their reasoning skills and explain how they arrived at their decision.

Mr. Alpert said the National Network of State Teachers evaluated SBAC and determined that the assessments do measure critical thinking skills, and not just test-taking ability. He said SBAC also participated in an evaluation of the quality of the assessment through a completely external evaluator. He said the Human Resources Research Organization and the Fordham Institute evaluated SBAC, the Partnership for Assessment of Readiness for College and Careers, the Massachusetts Comprehensive Assessment System, and ACT Aspire for the content standards and depth of English language arts and mathematics in grades five, eight, and high school. He said the SBAC high school tests were the highest rated high school tests in the study.

Mr. Alpert said SBAC supports open source technology. He said this is the best method to ensure that states will be able to obtain the highest quality software for the lowest price point in the future. He said SBAC has an \$8 million budget this year for the development of open source technology. He said the technology currently has the ability to support 35,000 concurrent users, which they hope increases to 50,000 concurrent users later this year.

In response to questions from Chairman Schaible, Mr. Alpert said states have flexibility to change the content of their assessments in many ways. He said they can add or take away from the content standards or emphasize certain areas over others while still using the same blueprint for their assessments. He said he was not sure that there can ever be assurances that teachers are teaching the content, and not just teaching to the test. He said that decision is made on a teacher-by-teacher basis. He said the SBAC assessments are very hard tests to teach to. He said to ensure students do well on the test, the best thing teachers can do is teach the content and standards. He said SBAC does this by making as many resources available to the teachers as possible.

In response to a question from Senator Davison, Mr. Alpert said the individual states have a lot of discretion in determining how they would like to score their assessments. He said one of the methods utilized is machine-scorable tests in which a computer scores the results as soon as the test is completed. He said there are also hand-scored tests in situations such as essays. He said those assessments take longer to score due to human involvement. He said SBAC determines the level of reliability and quality that must be achieved, but states are free to implement those standards how they see fit and decide who scores the tests. He said states that chose to have teachers score the tests may have to wait longer for the data as teachers may have busy schedules that prevent them from scoring assessments as quickly as they may like.

He said North Dakota ran into logistical issues last year during test delivery. He said in the past vendors knew in advance which questions they would be scoring. However, he said, under the new SBAC system that incorporates an adaptive test, the vendors were unaware of which questions were going to be scored. As a result, he said, scoring and results were delayed last year. He said those issues should be resolved and results should appear much quicker this year.

In response to a question from Representative Sanford, Mr. Alpert said the North Dakota University System is on its way toward describing how SBAC will fit into the placement process. He said there is a growing body of evidence showing the SBAC assessment is aligned to the Common Core Standards.

In response to a question from Senator Heckaman, Mr. Alpert said there are a variety of assessment results that states can choose to release. He said SBAC recommends to the states in general that they release the total score of a student in English and mathematics to the student. He said states can also release subsets of information

regarding the mathematics scores to the students. He said the subsets include information regarding the student's knowledge of concepts and procedures, data analysis and problem solving, and communicating and reasoning skills. He said states can also release additional information regarding student performance in English in the areas of reading, writing, listening, and research. He said this allows parents to see how their children are performing in a number of different areas. He said each of the scores is associated with achievement levels set by teachers nationwide. He said over 2,000 teachers participated online in helping to determine what the achievement levels should be.

Mr. Alpert said there is also disseminated data that the school and the school district send to SBAC to determine if they are meeting contractual goals at the district and state level. He said SBAC uses the assessment result information to create percentiles and technical reports that are made available to states. He said the information is also used to create scale scores showing the range of a student's performance that is associated with an achievement level.

In response to questions from Representative Nathe, Mr. Alpert said the rollout of the assessments last year was very disappointing for many people. He said he spent the better portion of 5 years of his life deploying the system. He said SBAC worked with the state of North Dakota on a strategy to ensure that the test will be deployed more effectively this year. He said they have developed a proprietary version of the same software used in the field test 2 years ago that was tested on 3.2 million students. He said SBAC will demonstrate the capacity of the open-source testing system to allow North Dakota to decide if it would like to come back to using it in the future. He said SBAC procured an independent software company to enhance and evaluate the software. He said the testing of the enhanced software with students will occur in May. He said North Dakota will not be using the open-source software during this year's formal assessments. He said North Dakota will be using the proprietary software for this year's assessment.

In response to questions from Senator Poolman, Mr. Alpert said there was a Partnership for Assessment of Readiness for College and Careers study that indicated students who take the English language arts assessment on a computer tended to score worse than those who took it using paper and pencil. He said the SBAC field test was conducted entirely online. He said the achievement levels were set based on how students are expected to do on the online test. He said students who take the online test are not at a disadvantage; rather, they are engaging in the assessment in a manner consistent with how the achievement levels were set. He said SBAC does recommend students test the form and format in advance of the assessment to become familiar with the system. He said the adaptive nature of the test does not necessarily make the assessment longer, but gifted and talented students may become competitive, take longer to complete a question, and therefore prolong the assessment length when compared with their peers. He said, in general, SBAC assessments have the same number of questions as other previous state assessments. However, he said, it can take longer to read complex questions and write complex answers to the SBAC assessments which are adaptive in nature. He said states have the discretion to omit certain portions of the classroom activities that precede the assessments. He said states that chose to omit these activities can save an hour of testing time. He said the assessment is very broad by design and the breadth ensures the correct content is being covered in the adaptive assessment. He said the breadth of the exam is one of the reasons the assessment received such high ratings. He said SBAC is just receiving the operational data from states for last year's assessment. He said questions that a large portion of high-performing students get incorrect are flagged. He said SBAC evaluates those questions to determine if they need to be removed or revised from the assessment. He said SBAC field tested 11,000 new questions last year that are being added to the bank of assessment questions being used on this year's assessment. He said the new 11,000 questions are being added to the 11,000 questions already in place.

In response to questions from Representative Hunskor, Mr. Alpert said SBAC has no authority over states. He said states are free to augment the assessments as long as they do not violate the security of the items or the impact they have on other states. He said states are accountable to their stakeholders and the federal government if they are using the assessments for federal accountability. He said any moderate deviation by a state could potentially change the validity and reliability of the test. He said the state would have to collect evidence to be presented in a technical manner as part of a peer review. He said modifying the assessment and collecting evidence can be an expensive undertaking, but is at the discretion of the state.

In response to questions from Senator Flakoll, Mr. Alpert said SBAC attempts to create alignment between K-12 and higher education. He said SBAC is trying to encourage higher education institutions that exist outside of member states to consider acknowledging SBAC as part of its placement process. He said doing so would allow the data and standards to be portable across state lines for students who chose to go to a higher education institution in a non-SBAC state. He said there is only so much an assessment vendor can do to prepare teachers to teach the standards and content. He said the majority of the responsibility falls on the department and higher education to maximize teacher preparation. He said SBAC attempts to help with teacher preparation by making the assessment system transparent.

In response to a question from Senator Heckaman, Mr. Alpert said the Human Resources Research Organization and the Fordham Institute study is the most comprehensive external alignment study. He said the study results provide evidence SBAC is aligned to state and Common Core Standards in English language arts and mathematics.

In response to a question from Senator Oban, Mr. Alpert said he did not know off hand how many North Dakota teachers were involved in the writing of the SBAC assessment questions or in the setting of the proficiency levels. He said the Department of Public Instruction may have some of that information. He said Mr. Greg Gallagher, Assessment Director, Department of Public Instruction, is the Chairman of the executive committee for SBAC. He said because Mr. Gallagher is in an influential position, he has some authority in creating the agenda of the governing states of SBAC. He said, additionally, that North Dakota has an equal vote on important issues such as adopting achievement levels. He said North Dakota also has the authority to augment their assessment as long as they do not violate the security of the items.

In response to questions from Representative Sanford, Mr. Alpert said in any test that has similar content and questions there will be some degree of overlap and correlation. He said while the scores may be similar, the Motivational Appraisal of Personal Potential test is entirely multiple choice while SBAC assessments are not. He said the Motivational Appraisal of Personal Potential test also does not supply their test in any additional languages or provide an online interactive glossary like SBAC. He said there are many content differences between the two assessments. He said SBAC deploys content to directly match the standards that teachers are teaching and derive the evidence that students are expected to have to demonstrate college and career readiness. He said even if there is a correlation between the scores of the two assessments, the individual differences within the correlation are meaningful.

Mr. Alpert said there are interim assessments available through SBAC. He said one is a comprehensive interim assessment that looks much like the summative assessment. He said the other types are called "blocks." He said blocks are smaller granular assessments of the content.

In response to questions from Senator Davison, Mr. Alpert said ultimately it is up to the state of North Dakota to determine what "college and career readiness" means to the state and how SBAC fits in that definition. He said North Dakota does not have to adopt a singular definition of the terminology. He said personally, he believes it to mean students have the option to make the decision for themselves. He said not every student needs to be successful in Algebra, but every student should have the option to make that decision. He said operationally SBAC defines it as meaning every student should be able to achieve a level of proficiency such that they can successfully engage in entry-level credit bearing college courses without needing to be remediated. He said each state contributed to the process of agreeing on a common set of proficiency levels. He said some states have administered both the ACT and the SBAC assessment to their students. He said he currently does not have data showing whether there is a correlation between the ACT and the SBAC assessment. He said SBAC is working with colleges while they develop their plan for how they are going to correlate the available evidence used to demonstrate the degree which SBAC predicts the success rate of students in college.

In response to questions from Senator Rust, Mr. Alpert said the vast majority of students were able to complete their test. He said an additional 10 percent of students were able to complete most of their test. He said to get a precise score, SBAC has more questions on the test than needed. He said to get the coverage of the standards for validity purposes, there are additional questions on the test. He said even students who were not able to complete the entire test will have scores that are precise enough to accurately show their demonstrated level of skill.

### **ACT ASPIRE**

Chairman Schaible called on Ms. Darice Keating, President, ACT Aspire and Ms. Donna Matovinovic, Vice President, Testing Development, ACT Aspire, for testimony (Appendices [J](#), [K](#), [L](#), [M](#), [N](#), and [O](#)) regarding assessment models, testing protocols, and the assessment development process of ACT Aspire.

Ms. Keating said the ACT Aspire assessment system tests students in grades 3 through 10 which is benchmarked to track progress toward achievement of college and career readiness. She said the earlier we can provide information to students about their progress toward college and career readiness, the more likely it is students will achieve their goals. She said eighth grade is a pivotal year to know whether students are ready for college and their career. She said the eighth grade achievement level of a student is highly predictive of whether the student will graduate high school college and career ready.

Ms. Keating said ACT joined forces with Pearson to create ACT Aspire to create longitudinal college and career readiness assessments with scores linked to student performance. She said the assessments were designed to allow educators to intervene early to impact college and career readiness. She said learning gaps occur early and become harder to remediate the older a student becomes. She said ACT Aspire begins testing in grade 3 to identify learning gaps and help students get back on track.

Ms. Keating said ACT Aspire has five achievement tests that assess the same areas as the ACT college entrance test. She said those areas are English, mathematics, reading, science, and writing. She said each subject area on the tests indicates whether students are on track for readiness and advancement at each grade level. She said ACT Aspire also provides information on career readiness.

Ms. Keating said ACT Aspire has been fully operational since 2014. She said since 2014, students have taken approximately 12 million assessments. She said iPads have been used for interim assessments, but are new in the spring of 2016 for the summative assessments. She said classroom and interim assessments are periodic in nature. She said assessments are provided entirely online and teachers can have results within 15 minutes.

Ms. Keating said in addition to the assessments, ACT Aspire also offers support for the educators and their schools. She said the ACT Aspire program management team provides access to training in the form of webinars, live on-site training, access to manuals and assessment prep materials, videos, and call-center support. She said some schools prefer to receive the information and manage the process on their own. She said other schools prefer having a training person walk them through each step. She said ACT Aspire can provide support on either method to ensure each student has a positive experience.

Ms. Matovinovic said she leads the team at ACT Aspire that develops and designs all the products they use. She said the core of what ACT Aspire does for all of their products is to base the design of the products on empirical evidence. She said ACT Aspire tracks students from when they take the ACT all the way through their second year of college. She said the students use the information to determine how they did in their college courses compared to their ACT score. She said ACT Aspire also administers a curriculum survey every 3 years to all of their K-12 educators, college educators, and career stakeholders to help determine what is currently important for college and career readiness. She said all of the information is used to inform the design of the products. She said the reporting categories are currently aligned and represent what is also in the Common Core Standards.

Ms. Matovinovic said one advantage of ACT Aspire is they provide optimal and highly reliable valid information within a short-testing window. She said ACT Aspire recognizes the importance of maximizing instructional time and limiting testing time. She said the products are designed to optimize instructional and testing time.

Ms. Matovinovic said ACT Aspire received a very high rating from the Fordham Institute study for the accessible nature of the assessment both online and in paper. She said ACT Aspire also has a Spanish version of its assessment. She said the ACT Aspire is a rigorous test.

Ms. Matovinovic said one difference of ACT Aspire is the English language arts component of the test is separate from the reading component. She said the scores are combined with the writing score to obtain an overall score, but the items are tested separately. She said the test components are separated out to ensure an accurate measure of a student's ability to write and read separate from one another. She said testing text complexity is key in determining the ability of a student to navigate true text.

Ms. Matovinovic said ACT Aspire tests writing on a four-domain rubric. She said the information in the domains is important to educators to help determine what are the strong and weak areas of a student's writing proficiency.

Ms. Matovinovic said ACT Aspire tests for coherence in mathematics. She said mathematics is like a sport in the sense that once skills are developed, they need to be practiced in order to be maintained as a student progresses toward college.

Ms. Matovinovic said ACT Aspire includes science in their assessments because it is a critical area. She said due to the fact that science can be highly variable from grade to grade and state to state, ACT Aspire focuses their science assessments more on the scientific process.

In response to a question from Senator Davison, Ms. Matovinovic said she thinks the organization and committee that was put together to create the Common Core Standards came to ACT Aspire first because ACT Aspire understands what is important for college and career readiness. She said ACT Aspire tracks college and career readiness across every administration in ACT Aspire. She said ACT Aspire creates the design of the test based on the results. She said the test adapts because the items that are important today for college and career readiness are not necessarily the same as what was important 20 years ago.

In response to a question from Senator Flakoll, Ms. Matovinovic said she did not have the statistics off hand on ACT Aspire scores as they relate to the predictability of grade point average scores in college. She said ACT Aspire should have that information. She said she would check with her colleagues and forward the information to the committee.

In response to a question from Senator Schaible, Ms. Matovinovic said ACT Aspire tracks student progress through their first 2 years of college if the student opts to allow ACT Aspire to do so. She said she did not have exact statistics, but a very high percentage of students opt to allow ACT Aspire to track their progress in college.

In response to questions from Senator Heckaman, Ms. Matovinovic said ACT Aspire is conducting a performance level descriptor workshop in March in which educators from across the country are invited to participate and determine the performance level descriptors. She said educators are involved in the process of ACT Aspire developing their content. She said ACT Aspire, at the request of a state, will generate a report documenting their alignment with state and Common Core Standards. She said every single item within the ACT Aspire assessment can be mapped to the college and career readiness standard. She said to the degree that the Common Core Standards measure college and career readiness, ACT Aspire is 100 percent aligned. She said ACT Aspire is helping states assemble the necessary evidence for the peer review process.

Ms. Keating said the last few slides in the presentation show sample reports generated following an ACT Aspire assessment.

In response to a question from Representative Nathe, Ms. Keating said there are two prices per test the state of North Dakota could pay if ACT Aspire is chosen. She said the price for the online assessment is \$20 to \$23 per student depending on the level of augmenting the state requested. She said the paper assessment would be \$7 more than the price of the online assessment depending on augmentation.

In response to a question from Senator Poolman, Ms. Keating said ACT Aspire was built to be modular. She said she cannot speak to whether the science assessments in ACT Aspire would fulfill the federal testing requirements for fourth and eighth grade assessments, but a state could take the science content in the ACT Aspire assessments to create a test at the fourth and eighth grade levels.

Following the conclusion of the meeting, Ms. Keating sent a copy of a research paper ([Appendix P](#)) on college readiness indicators and predictors of college success.

## DEPARTMENT OF PUBLIC INSTRUCTION

Chairman Schaible called on Ms. Kirsten Baesler, Superintendent, Department of Public Instruction, for written testimony ([Appendix Q](#)) regarding future assessment options for North Dakota.

In response to questions from Senator Davison, Ms. Baesler said North Dakota is eagerly awaiting the results of Alabama's peer review process. She said the results will determine whether the ACT Aspire assessment will meet the federal requirements for grades 3 through 8 testing. She said ACT Aspire tests grades 3 through 10, and the ACT Aspire college entrance exam tests high school students preparing for college. She said states are allowed to use a college entrance exam as their required high school assessment. She said the state of North Dakota does not have an officially adopted definition of college and career readiness. She said the law does not require the state to make students college and career ready. She said the law says the assessments must be aligned to the state standards. She said the purpose of a state assessment is to align to the standards and expectations.

In response to questions from Representative Nathe, Ms. Baesler said SBAC charges on average \$24 to \$27 per student per assessment. She said between 50,000 and 55,000 students take the assessment in a typical year. She said if the decision is to change assessment vendors, the process needs to be started by this summer at the latest. She said a new testing system requires a large amount of training for administrators and educators. She said approximately 250 North Dakota teachers contributed to the writing of the current test questions under SBAC.

## PUBLIC COMMENTS REGARDING ASSESSMENTS

Ms. Sandy Weisz, Senior Vice President, Data Recognition Corporation, said they are a testing company based out of Minneapolis, Minnesota. She said the company recently acquired McGraw-Hill. She said in addition to SBAC and ACT Aspire, there are an additional six to eight major vendors in the third through eighth grade testing market. She asked the committee review all possible options before deciding on an assessment vendor.

## ADDITIONAL INFORMATION ON RESTRAINT AND SECLUSION

Chairman Schaible introduced a document ([Appendix R](#)) from the Education Commission of the States regarding nationwide trends on restraint and seclusion.

## LEGACY HIGH SCHOOL TOUR

Chairman Schaible recessed the meeting to reconvene for a tour at Legacy High School in Bismarck. The tour was hosted by Mr. Tom Schmidt, Principal, Legacy High School, who provided printed information (Appendices [S](#) and [I](#)) to the committee.

In response to a question from Representative Kelsh, Mr. Schmidt said Simile Middle School is the feeder system school into Legacy High School. He said Legacy High School has open enrollment and students from outside the feeder system can transfer to Legacy.

In response to questions from Senator Erbele, Mr. Schmidt said there is less faculty under the model used by Legacy High School and the model can operate within any size classroom.

In response to a question from Representative Nathe, Mr. Schmidt said Legacy High School is still accumulating data, but so far there has been no indication of grade deterioration in students coming into the Legacy High School system from middle school.

Following the tour and no further business appearing, Chairman Schaible adjourned the meeting at 3:00 p.m.

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Dustin Assel  
Counsel

ATTACH:20