

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

EDUCATION COMMITTEE

Friday, July 22, 2016
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Donald Schaible, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Donald Schaible, Howard C. Anderson, Jr., Robert Erbele, Tim Flakoll, Richard Marcellais, Erin Oban, Nicole Poolman, David S. Rust; Representatives Richard G. Holman, Jerry Kelsh, Lisa Meier, David Monson, Mike Nathe, Karen M. Rohr, Mark Sanford

Members absent: Senators Kyle R. Davison, Joan Heckaman; Representatives Bob Hunskor, Mary C. Johnson, Alex Looyesen, Cynthia Schreiber Beck, Kris Wallman, Denton Zubke

Others present: See [Appendix A](#) for additional persons present.

It was moved by Senator Erbele, seconded by Senator Anderson, and carried on voice vote that the minutes of May 19, 2016, meeting be approved as distributed.

EVERY STUDENT SUCCEEDS ACT

Chairman Schaible called on Ms. Lee Posey, Federal Affairs Counsel, National Conference of State Legislatures, for a presentation ([Appendix B](#)) regarding the reauthorization of the federal Every Student Succeeds Act. She said the passage of the Every Student Succeeds Act unquestionably pushed the direction of federal education policy back from where it had been under the federal No Child Left Behind Act. She said this Act moves the pendulum back toward state and local flexibility. As part of the rulemaking process, she said, the United States Department of Education must write regulations that govern the implementation of the Act. She said full implementation will not occur until the 2017-18 school year and the 2016-17 school year is a transitional year.

Ms. Posey said the new Act will still require teacher equity plans. She said teacher equity plans are plans to ensure the most disadvantaged students are not being taught by the least experienced or improperly credentialed teachers. She said states will be required to be very knowledgeable regarding teacher's backgrounds, qualifications, and performance. She said the new Act eliminates the federal requirement that states evaluate teachers based on student growth.

Ms. Posey said the Act contains state accountability systems with federally required indicators. She said the indicators are floors, not ceilings. She said a state may add requirements to the indicators of school and student performance as the state sees fit. She said the accountability systems will identify any school in which a subgroup of students is consistently underperforming.

In response to a question from Representative Nathe, Ms. Posey said by not removing children who opt out of assessments from the participation calculation, the federal government is ensuring a true account of how many students are opting out and the true overall participation rate.

In response to a question from Representative Monson, Ms. Posey said adequate yearly progress was based on a single assessment. She said the accountability system in place under the new Act incorporates the same indicators, but includes many additional measures of progress as well.

In response to a question from Senator Rust, Ms. Posey said the consequence for a school falling below the 95 percent participation rate would not likely be immediate. She said the United States Department of Education expects states to have a plan in place to address failures to meet the participation rate. She said there could be consequences associated with Title I funding if a school continually fails to meet the participation rate standard. She said the loss of Title I funding has never happened.

In response to a question from Representative Sanford, Ms. Posey said what changed from the previous law regarding interventions is there is an increase in the amount of Title I funding that can be set aside for school

improvement from 4 to 7 percent. She said the main way in which the federal government attempted to address interventions was to give more flexibility in using federal funds for school improvement.

In response to a question from Representative Nathe, Ms. Posey said there is not a specific provision under the new Act to allow for a recourse for small rural schools that fall below the 95 percent participation threshold.

In response to a question from Senator Poolman, Ms. Posey said the policy did not weight the English Language Learner proficiency indicator based on the population of students falling into the subgroup. She said schools with a large population of English language learners could be at a disadvantage.

In response to a question from Representative Kelsh, Ms. Posey said the Act does not include an opt-out provision if schools do not wish to adhere to the 95 percent participation rate in assessments.

TEACHER OF THE YEAR

Chairman Schaible called on Ms. Amy Neal, North Dakota Teacher of the Year, for a presentation regarding the Teacher of the Year award. She said she is a kindergarten teacher from Minot. She said the North Dakota Teacher of the Year program allowed for her to have duties and obligations as the representative from the state this year. She said she was able to go to San Antonio, Texas, and meet the teachers of the year from the other 49 states. She said the greatest thing about attending the national conference was learning what other states are doing and how they are accomplishing their goals regarding education. She said she was also able to attend the national policy conference in Washington, D.C., this year as well. She said she will also be attending a conference in New Jersey for Educational Testing Services.

Representative Sanford thanked Ms. Neal for her service as the president of the North Dakota Kindergarten Association in organizing presenters to testify regarding the all-day kindergarten bill that was passed during a previous legislative session.

In response to a question from Representative Sanford, Ms. Neal said she agrees that new teachers coming into the classroom need to have a strong grasp on the content they will be required to teach.

In response to a question from Representative Nathe, Ms. Neal said teachers coming out of college have a range of competencies. She said some are better than others as in any job setting. As a state, she said, we could be assisting the overall competency of teachers coming out of college by giving student teachers more time in an actual classroom. She said they need to understand the rigors of teaching before graduation to fully understand what is going to be expected of them.

In response to a question from Senator Rust, Ms. Neal said she was given the option of accepting her award at the Capitol or in her school. She said she chose to receive the award at her school because it was important for her to be able to accept the award before the teachers with whom she teaches and the students she teaches.

In response to a question from Representative Holman, Ms. Neal said teachers who teach anywhere from kindergarten through 8th grade have the same content background.

In response to a question from Senator Oban, Ms. Neal said in her 20 years of teaching she has noticed more responsibilities being placed on teachers. She said teaching can be overwhelming at times. To retain good teachers, she said, the state should consider continued funding for support staff and mentorships for teachers. While it may not be feasible, she said, it would be great to see year-long student teaching positions put in place. She said such a program would benefit the student teachers and well as the tenured teachers they are assisting.

In response to a question from Representative Nathe, Ms. Neal said she attributes her success in attaining teacher of the year status to being vocal when she perceives an issue. She said she likes to speak in support of what is best for schools and students when the Legislative Assembly is considering new education legislation because she believes she can be a useful voice and perspective. She said she loves to learn from her peers.

In response to a question from Senator Poolman, Ms. Neal said in 2009 the kindergarten birth date was moved from September 1 to August 1. She said she is a proponent of students waiting to start kindergarten and attending preschool. She said they do not have to be 6 years old when the student starts, but students who are more mature tend to be more successful in the classroom setting.

In response to a question from Representative Monson, Ms. Neal said getting teachers together by grade level or expertise is the best form of professional development.

DEPARTMENT OF PUBLIC INSTRUCTION - ACADEMIC CONTENT STANDARDS

Chairman Schaible called on Ms. Kirsten Baesler, Superintendent, Department of Public Instruction, for a presentation (Appendices [C](#), [D](#), and [E](#)) regarding the plan to rewrite the academic content standards for the state. She said [Appendix D](#) is an example of academic content standards used in the state.

In response to a question from Chairman Schaible, Ms. Baesler said the state requires a request for proposal process to select a company to develop the tests to be administered to students in the state. She said there was an assessment task force that met numerous times over the course of a year to discuss the requirements and considerations that go into developing a standardized test. She said the task force developed a list of recommendations they would like to see in the request for proposal on the next assessment. She said the recommendations are being debated and processed, but it was determined the assessment should be computer-based while allowing for a paper alternative option. She said there was a concern assessments take too much time away from learning, especially at the early grade levels. She said the concerns are being reviewed.

In response to a question from Senator Rust, Ms. Baesler said the development of the standards is a highly technical process. She said it was important to have teachers with experience teaching the standards in the past 3 to 6 years on the development committee. She said members of the general public, including parents and businesses, will be included on the review committee. She said there will also be a period of open public comment following each draft of the standards.

In response to a question from Senator Poolman, Ms. Baesler said there were not a high number of applicants for positions on the standards development committee for English language arts at grade 9 through 12.

In response to a question from Senator Anderson, Ms. Baesler said the standards do not specifically dictate what a teacher should do if a new student at a grade level is not proficient in the content required at the previous grade level. She said in those cases teachers should work with the specialists in the school to determine the exact areas the student is lacking in proficiency and how to get the student up to speed.

In response to a question from Representative Sanford, Ms. Baesler said the National Center for Education Statistics recently looked at interventions being used in various states to address poor-performing schools. She said they determined North Dakota has one of the six permissive interventions provided by law to be used by states to assist poor-performing schools. She said North Dakota is allowed by law to provide additional funding to school districts that chronically perform poorly. She said she would provide a link to the report to the Legislative Council staff to distribute to the committee.

In response to questions from Senator Flakoll, Ms. Baesler said the process has changed since the last time the content standards were written. She said the review committee has been added to the process. She said no committee member was solicited to join the committee and committee members were selected through a blind process in which applications were scored and ranked without any identifying information being included. She said there has not been an opportunity for public comment because the first draft of the new standards will not be complete until the end of July or early August. She said there will be a period of public comment following the press release of the first draft.

In response to questions from Representative Holman, Ms. Baesler said it is important for school administrators to be involved in the standards process as well. She said administrators need to be knowledgeable regarding what is in the standards and to make sure the teachers have the support and resources necessary to teach the standards. She said chronically poor-performing schools typically have issues that go beyond academics.

In response to a question from Representative Nathe, Ms. Baesler said the underlying message was that people wanted North Dakota teachers in control of writing the academic content standards for our state. She said the process put in place will address that concern.

In response to a question from Representative Monson, Ms. Baesler said if a school is chronically performing poorly, the school can accept a 3-year grant with a possible extension of 2 years. She said the grant gives money on a per-student basis. She said the grant has specific requirements on what the school must do to receive the money.

In response to a question from Senator Oban, Ms. Baesler said members of the public can comment online on the drafts of the standards rewrite. She said members of both the writing and review committees will be compensated with a stipend and travel expenses.

Ms. Baesler said regarding the Every Student Succeeds Act, North Dakota has already begun the process of using federal assessment funds to audit the assessments. She said the 95 percent participation standard is in place, but it is

up to the state to determine the consequences for schools falling below the requirement. She said the Act is over 1,000 pages long. She said there is a lot of gray area included in the Act regarding implementation, which will need to be clarified through the rulemaking process. She said the first set of rules has been released and educators in the state should be reading the rules and providing feedback to the United States Department of Education.

In response to a question from Representative Nathe, Ms. Baesler said although there will be a new administration in Washington, D.C., the Every Student Succeeds Act is the law in effect for at least the next 5 years. She said North Dakota is moving forward in the implementation of the law.

Senator Rust said there is a good opportunity to let members of the public know the standards are being rewritten by North Dakota teachers. He said there are ample opportunities for people to comment and respond during the process.

Chairman Schaible said the committee has achieved the directive to study content standards and assessments. He said the committee will continue to receive reports and updates, but no further action needs to be taken at this time.

Representative Nathe said he agrees the committee has accomplished the goal set out in the directive.

Senator Oban said members of the committee should take the responsibility to inform other members of the Legislative Assembly of the information received during the course of the interim committee study.

NORTH DAKOTA CENTER FOR DISTANCE EDUCATION

Chairman Schaible called on Dr. Alan J. Peterson, State Director, North Dakota Center for Distance Education, for a presentation (Appendices [E](#) and [G](#)) regarding the capabilities of the North Dakota Center for Distance Education. He said the last slide in his presentation is a representation of how the Center for Distance Education delivers courses throughout the state. He said the majority of distance education students take two distance education classes per year. He said a student has 20 weeks to complete a course. He said the center has 14.5 full-time employee teachers. He said the center has an additional 24 adjunct or part-time teachers. He said on slide 8 of his presentation "LMS" stands for Learning Management System and "SIS" stands for Student Information System.

In response to a question from Chairman Schaible, Dr. Peterson said the model for the program requires the center become a subcontracted teacher for the school district or school in which the enrolled student resides. He said the center reports a status of completion and the grade achieved to the school district once the student finishes a course. He said transcripts are created for students who are not associated with a school district or individual school.

In response to a question from Representative Rohr, Dr. Peterson said the blended learning option commits information to long-term memory because it helps the student more actively engage with the subject matter rather than a lecture.

In response to a question from Senator Oban, Dr. Peterson said diploma students are full-time students enrolled with the center and are not associated with a school district or individual school.

In response to a question from Representative Holman, Dr. Peterson said the center did dual-credit courses for 2 years, but stopped because it did not work from a fiscal perspective. He said the center was not able to sell the courses at a price students could afford while still covering expenses. He said other schools and learning institutions were able to offer the courses at a cheaper rate.

In response to a question from Representative Nathe, Dr. Peterson said Bismarck has a low enrollment with the center because larger schools typically have people in place to offer many of the same services as the center.

In response to a question from Representative Rohr, Dr. Peterson said every school that allows students to take courses with the center coordinates with the center through the school administrator. He said any student interested in the program can find out more information by speaking with the student's school administrator.

Comments by Interested Persons

Mr. Lyle Krueger, Executive Director, Missouri River Educational Cooperative, said there are other programs involved in the growth and need for career and technical education courses. He said his organization partners with Bismarck Public Schools to form the Missouri River Area Career and Technical Education Center. He said the center assists in filling the need for career and technical education courses.

Mr. Elroy Burkle, Executive Director, Ex Officio, North Dakota Small Organized Schools, said the Center for Distance Education offers commendable options for small schools. He said he is a former superintendent of a small school and regrets not taking advantage of those opportunities more when he had the chance.

NORTH DAKOTA UNITED

The Legislative Council staff presented a bill draft [17.0043.02000] regarding North Dakota United. At the last committee meeting, he said, he was directed to request a copy of the North Dakota United bylaws. He said Mr. Nick Archuleta, President, North Dakota United, said the bylaws were silent regarding the appointment process of North Dakota United members to boards. He said Mr. Archuleta respectfully declined to provide a copy of the bylaws to the committee. He said Mr. Archuleta said there are 6,790 active K-12 educator members of North Dakota United. He said Mr. Archuleta also informed the Legislative Council staff that he did not have the number of retired or inactive members readily available, but he could provide the information in the future.

The Legislative Council staff said all references to a successor organization were removed from the bill draft per the committee's request. He said language regarding a primary or secondary educator member was added to the bill draft. He said Mr. Archuleta did not have any additional suggested language changes to offer. He said the Securities Department was supportive of the language included in the bill draft.

Chairman Schaible said Section 4 of the bill draft was left unchanged until the committee had an opportunity to discuss the section in more detail. If the section remains unchanged, he said, it will have to be removed from the bill draft as it will not be amended. He said he likes the idea of removing the language on page 2, line 5 through line 6, which reads ". . . from a list of three nominees submitted to the governor by the North Dakota education association. . ." He said the Governor could appoint two teachers and solicit information regarding who those teachers should be and from what source, as opposed to receiving a list from the North Dakota Education Association.

Senator Flakoll said additional subdivisions within Section 4 of the bill draft allow the Governor to appoint members to boards based upon lists received from singular entities. He said the relevant subdivision in the bill draft is not unique in allowing an entity to provide the Governor with a list from which to appoint members to boards.

Senator Oban said she thought the point of this bill draft was technical corrections to inaccurate references in North Dakota Century Code. She said striking language completely from the bill draft would go beyond the scope of what the committee is supposed to be accomplishing. She said Section 4 could be amended like the other sections of the bill draft without striking language from the section.

Chairman Schaible said Senator Oban is correct regarding the scope of the committee's responsibilities. However, he said, the North Dakota Education Association did not only change its name and become North Dakota United, the membership of the organization changed as well.

Representative Nathe said overstriking the language in Section 4 would allow the Governor to choose teachers from a larger pool of candidates, because not all teachers belong to North Dakota United.

In response to a question from Representative Nathe, Ms. L. Anita Thomas, General Counsel, North Dakota School Boards Association, said there are only two or three school boards in the state that are not members of the association.

In response to a question from Senator Flakoll, Ms. Thomas said she believes membership in the association is a school district expenditure.

It was moved by Representative Nathe, seconded by Senator Anderson, and carried on a roll call vote that the bill draft [17.0043.02000] be amended on page 2, line 5 through line 6, to remove the language starting with the word "from" through the word "association" and adding on page 2, line 7, after the word employed "as teachers." Representatives Nathe, Rohr, and Sanford and Senators Anderson, Erbele, Poolman, Rust, and Schaible voted "aye." Representatives Holman, Kelsh, and Monson and Senators Flakoll, Marcellais, and Oban voted "nay."

It was moved by Representative Nathe, seconded by Senator Anderson, and carried on a roll call vote that the bill draft [17.0043.02000], as amended, relating to North Dakota United be approved and recommended to the Legislative Management. Representatives Nathe, Holman, Kelsh, Monson, Rohr, and Sanford and Senators Anderson, Erbele, Flakoll, Marcellais, Oban, Poolman, Rust, and Schaible voted "aye." No negative votes were cast.

RESTRAINT AND SECLUSION

The Legislative Council staff presented a bill draft [17.0143.02000] regarding reporting to the Department of Public Instruction by school districts that adopt a policy on restraint and seclusion. He said the only significant change to the bill draft is the addition of a definitions subsection. He said a cross reference change needs to be made in subsection 4 of the bill draft. He said references to subsections 1 and 2 need to be amended to subsections 2 and 3. He said the definitions included in subsection 1 were developed from definitions utilized by the United States Department of Education Office of Civil Rights.

In response to a question from Senator Anderson, the Legislative Council staff said the bill draft does not require school districts to have a policy on restraint and seclusion. He said the bill draft requires the school district to report certain data if the district has adopted a policy.

Senator Poolman said it is troubling to her that school districts that have a policy are required to report while school districts that do not have a policy are not obligated to do anything. She said she would like to see a requirement that any school district that uses restraint or seclusion be required to report incidents regardless of whether the district has adopted a formal policy.

In response to a question from Representative Nathe, Ms. Valerie Bakken, Education Regional Coordinator II, Special Education, Department of Public Instruction, said a chemical restraint could mean doctor-ordered medications. She said it may be useful to include a definition of chemical restraint in the bill draft as well.

Representative Holman said other state agencies have reporting requirements. He said the committee could look to other agencies for model language on reporting requirements.

Senator Rust said he is not sure what actions would or would not be considered physical restraint under the definition included in the bill draft.

Comments by Interested Persons

Ms. Rose Stoller, Executive Director, North Dakota Consensus Council, provided written testimony ([Appendix H](#)).

In response to a question from Chairman Schaible, Ms. Stoller said the North Dakota Consensus Council started with a list of approximately 20 terms, which has been narrowed.

Ms. Thomas said interpretation of definitions is one of the reasons reporting incidents of restraint and seclusion is so difficult. She said sometimes restraints can be good things. She said when asking for data, it needs to be clear when a restraint is a good or bad thing.

In response to a question from Representative Kelsh, Ms. Thomas said policies are designed to give school districts and school personnel a format in which to work. She said a school district is never going to be in a worse situation by having a policy in place.

In response to a question from Senator Flakoll, Ms. Thomas said most of the policies she has seen reference reporting incidents to the parents. She said it would be logical to report incidents of restraint and seclusion to the parents and possibly the school boards as well.

In response to a question from Chairman Schaible, Ms. Thomas said the committee has a copy of the model policy on restraint and seclusion used by the North Dakota School Boards Association. She said the policy was written several years ago. She said some of the definitions may need to be revisited.

In response to a question from Senator Poolman, Ms. Thomas said the Superintendent of Public Instruction could strongly suggest school districts have a policy on restraint and seclusion. She said the Superintendent could not require school districts to have a policy.

STAFF DIRECTIVES

In response to a request from Representative Nathe, Chairman Schaible requested the Legislative Council staff add a definition of chemical restraint to the bill draft on restraint and seclusion.

In response to a request from Senator Flakoll, Chairman Schaible requested the Legislative Council staff work with Senator Flakoll on an additional bill draft regarding restraint and seclusion for committee consideration at the next meeting which would require school districts to adopt a policy on restraint and seclusion and report incidents to parents.

No further business appearing, Chairman Schaible adjourned the meeting at 3:15 p.m.

Dustin Assel
Counsel

ATTACH:8