

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

EDUCATION COMMITTEE

Thursday, September 15, 2016
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Donald Schaible, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Donald Schaible, Kyle R. Davison, Robert Erbele, Tim Flakoll, Joan Heckaman, Richard Marcellais, Erin Oban, Nicole Poolman; Representatives Bob Hunsakor, Mary C. Johnson, Jerry Kelsh, Lisa Meier, Mike Nathe, Karen M. Rohr, Mark Sanford, Cynthia Schreiber Beck, Denton Zubke

Members absent: Senators Howard C. Anderson, Jr., David S. Rust; Representatives Richard G. Holman, Alex Looyesen, David Monson, Kris Wallman

Others present: See [Appendix A](#)

It was moved by Representative Meier, seconded by Representative Rohr, and carried on a voice vote that the minutes of the July 22, 2016, meeting be approved as distributed.

COMMENTS BY THE CHAIRMAN

Chairman Schaible congratulated Senator Marcellais on his induction into the North Dakota Native American Hall of Honor.

EVERY STUDENT SUCCEEDS ACT

Chairman Schaible called on Ms. Kirsten Baesler, Superintendent of Public Instruction, for a presentation (Appendices [B](#) and [C](#)) regarding the reauthorization of the federal Every Student Succeeds Act and the North Dakota State Assessment Task Force.

In response to questions from Chairman Schaible, Ms. Baesler said there will be 3 years of trending data from 2015 through 2017 under the same assessment to compare. She said the test items and scores under a new assessment in 2018 will be analyzed. She said the old assessment and the new assessment will be calibrated, but will not be an exact mirror of one another. She said there will be a reset to some degree when the state switches to a new assessment. She said the task force recommended utilizing a hybrid assessment. She said the new assessment likely will be more expensive than the assessment the state currently is utilizing. She said she does not have an exact estimate of how expensive the new assessment will be because the bids in the request for proposals have not been received.

In response to questions from Senator Davison, Ms. Baesler said the assessments being developed will continue to be spring assessments. For the previous year, she said, if a school completed testing by the end of April, the results were received by the end of May. She said results were received by the end of June for assessments completed by the end of May. She said schools used the results to plan class schedules and professional development for this school year. She said there was very minimal discussion regarding moving the assessments to the fall, and any discussion that was held regarding fall assessments failed to gain traction. Before utilizing Smarter Balanced, she said, the state tested in October. She said some educators have indicated they prefer fall testing, but that is a minority view at this point. She said there was discussion regarding whether an ACT Aspire test would meet the federal requirements and could be used as a state assessment. She said the test must be aligned to the state standards, and not the other way around. She said ACT Aspire likely will place a bid to be considered for the state assessment. She said there are questions regarding whether an ACT Aspire assessment would be closely enough aligned to the state standards.

In response to a question from Representative Nathe, Ms. Baesler said the cost of the assessment is approximately \$27 per student. She said a new potential hybrid assessment is estimated to cost between \$37 and \$45 per student.

In response to a question from Senator Poolman, Ms. Baesler said ACT Aspire could submit its off-the-shelf assessment as part of the bid in the request for proposal, but because the assessment would not include input from state educators in the development of the test questions, the bid likely would not receive high scores under that factor.

In response to a question from Senator Oban, Ms. Baesler said more states are requiring students to take the ACT Aspire. She said she believes there are approximately 30 states that require ACT Aspire testing. She said she will provide the exact information to the Legislative Council staff to disseminate to the committee.

In response to a question from Representative Meier, Ms. Baesler said she did not know the exact current cost of the ACT Aspire assessment. She said she would provide the information to the Legislative Council staff.

In response to a question from Chairman Schaible, Ms. Baesler said the standards review committees met multiple times throughout the summer. She said the first draft of the committees' recommendations is out for public comment. She said the committees will meet in October to consider and potentially incorporate the comments in the next draft. She said the revised standards are likely to be completed in March 2017.

In response to a question from Representative Sanford, Ms. Baesler said it was easy to compare states when everyone was taking the same assessment. She said it will be more difficult to compare between the states in the future. She said more time will need to be taken to explain the differences between the standards and the tests with parents, members of the public, and the press.

In response to a question from Representative Kelsh, Ms. Baesler said she cannot predict how similar the new standards will be to the old standards. She said the new standards are being written in a manner to promote the best interests of the state and the students of the state. She said Smarter Balanced likely will submit a bid to provide the assessment under the newly written state standards. She said it is up to the bidders to determine how closely assessment questions will be to the new state standards.

In response to a question from Senator Davison, Ms. Baesler said the Smarter Balanced test is adaptive, but only within the grade level being tested. She said the questions can get harder or easier, but do not go up and down between grade levels depending on how the student is doing on the assessment.

In response to a question from Representative Nathe, Ms. Baesler said the assessment is a federal requirement funded through federal funds. She said the federal funds were allowable for standards and assessments. She said the more the state uses the federal funds for the administration of the assessment, the less federal funding is available for teacher professional development and for standards.

In response to questions from Representative Hunskor, Ms. Baesler said the plan for educating people regarding the new system will entail communication and transparency. She said the Department of Public Instruction will be relying in large part on legislators to inform their constituents regarding the new plan. She said she is asking school districts to inform teachers of the plan so that the teachers may inform the parents of students.

In response to a question from Senator Oban, Ms. Baesler said the Department of Public Instruction is making the public aware of the changes and the need for public comment through a variety of standard and social media outlets. She said a press release was issued to all media outlets in the state. She said the press release also is posted on the department's website. She said the department has posted the press release on its Facebook page, posted information on Twitter, and sent emails. She said the press release has been sent to all school districts, administrators, school boards, and principals.

In response to a question from Representative Sanford, Ms. Baesler said the Every Student Succeeds Act Planning Committee has had great meetings. She said there has been an effort for a long time to return control to the states. She said there is a feeling that goal has been achieved. She said the state has ownership over the new system and plan. She said the state has the authority to offer additional funding to underperforming school districts upon approval from a local school board.

In response to a question from Representative Hunskor, Ms. Baesler said there will be certain non-negotiable criteria in place under which all schools are measured equally. She said there will be a dashboard of additional factors that will measure schools in an attempt to foster continuous improvement. She said the state is attempting to recognize schools beyond just test results.

RESTRAINT AND SECLUSION

The Legislative Council staff presented bill drafts [17.0143.03000] and [17.0269.01000] regarding the adoption of restraint and seclusion policies by school districts and reporting requirements. He said one bill draft [17.0143.03000] has been before the committee twice before. He said the bill draft does not require school districts to adopt a policy on restraint and seclusion. He said if a district adopts a policy, the district must report to the Department of Public Instruction. He said there is one change in this version of the bill draft which adds a definition of "chemical restraint." He said the definitions in the bill draft are based on definitions used by the United States Department of Education Office of Civil Rights. However, he said, the United States Department of Education does not have a definition of "chemical restraint." He said he used the definition utilized in the North Dakota School Boards Association model policy on restraint and seclusion.

The Legislative Council staff said the second bill draft [17.0269.01000] was requested by a committee member at the last meeting for committee consideration. He said this bill draft also addresses restraint and seclusion, but it requires school districts to adopt a policy on restraint and seclusion. He said this bill draft requires incidents of restraint or seclusion to be reported to the parents of the restrained or secluded student and the school board.

Comments by Interested Persons

Senator Heckaman presented a report ([Appendix D](#)) regarding the findings and recommendations of the North Dakota Seclusion and Restraint Task Force.

Ms. Rose Stoller, Executive Director, North Dakota Consensus Council, said she has been facilitating the Seclusion and Restraint Task Force. She said the task force includes over 40 members. She said the task force has received presentations on the best practices regarding restraint and seclusion from representatives of the Crisis Prevention Institute, the North Dakota Youth Correctional Center, the North Dakota Boys and Girls Ranch, Bismarck Public Schools, and the state developmental disability sector. She said the task force worked hard to develop thoughtful and realistic recommendations that protect students and staff while ensuring policies are developed at the local level.

In response to a question from Chairman Schaible, Ms. Stoller said there is no definition of restraint or seclusion that is used statewide. She said there is a mandatory requirement that incidents are reported to the Office of Civil Rights at the national level. She said there is a standardized tool to ensure everyone across the country is reporting the same data.

Senator Heckaman said she would be interested in offering the recommendations of the task force as amendments to one of the bill drafts on restraint and seclusion. She said the recommendations will be important discussion items going into the legislative session. She said there is strong support in favor of the recommendations from the task force.

Ms. L. Anita Thomas, General Counsel, North Dakota School Boards Association, said the School Boards Association has concerns and suggestions regarding bill draft [17.0143.03000]. She said there is concern regarding overreach in the definitions section. She said the definition of a "mechanical restraint" would include everything that helps to keep an individual in a wheelchair. She said the definition of "seclusion" would include situations in which a student is sent to detention. She said the bill draft does not say what the Department of Public Instruction must do with the copies of the policies it receives if a school district reports. She said she is not sure what the purpose of reporting is under this bill draft. She said there is also no way for the Department of Public Instruction to identify whether a school district is in compliance and has reported all incidents of restraint and seclusion under its policy. She said the North Dakota School Boards Association appreciates the effort behind the bill draft; however, there are too many issues within the draft which remain unresolved.

In response to a question from Chairman Schaible, Ms. Thomas said there are a number of locations throughout the North Dakota Century Code that require entities to have policies. For example, she said, schools are required to have a policy on bullying.

In response to questions from Senator Oban, Ms. Thomas said although the School Boards Association was invited to be a participant on the task force, the association did not participate in the Seclusion and Restraint Task Force. She said the association does not have the resources to participate in everything to which it is invited. She said the association does not object to many of the recommendations given by the task force.

Dr. Lori Games, Associate Director of Development, North Dakota Center for Persons with Disabilities, said she was a member of the task force. She said the definition of "mechanical restraint" under the United States Department of Education Office of Civil Rights does not include devices meant to assist an individual in sitting correctly in a wheelchair. She said under those definitions, a teacher is allowed to touch a student lightly and guide

them without the action constituting a "restraint." She said restraint is meant to define a situation in which a person is held against the person's will. She said definitions are important and must be clear with exceptions included.

In response to a question from Representative Nathe, Dr. Garnes said on a schoolbus there needs to be an individual present who can correctly apply a restraint if it is needed. She said in certain situations the only individual would be the bus driver who would need to pull over to correctly apply a restraint and maintain the safety of all individuals involved.

Senator Heckaman said a schoolbus is part of school property. She said if a school adopted a policy, the policy would apply to situations on a schoolbus during regular hours.

Representative Johnson said she drives a schoolbus in Fargo. In her district, she said, the policy is that a schoolbus is an extension of school property and all policies apply. Because many schoolbus drivers are independent contractors, she said, she is not sure who would provide restraint and seclusion training to the drivers or who would pay for the training.

Mr. Elroy Burkle, Executive Director, North Dakota Small Organized Schools, said as a former superintendent he agrees data collection is important. He said many incidents regarding bullying or restraint and seclusion fail to be reported to the superintendent's office. He said there will be very subjective opinions regarding which incidents will meet the definition in any given scenario. He said the definitions must be clear and be reviewed by the school boards, administrators, and teachers. He said teachers, administrators, coaches, custodians, and all adults who interact with students must be trained in restraint and seclusion.

In response to a question from Senator Flakoll, Mr. Burkle said small schools unfortunately need to be reactionary to situations at times. He said school districts would welcome funding that could be used for in-service training on a variety of issues as necessary.

In response to a question from Senator Heckaman, Mr. Burkle said filling out a report to the Office of Civil Rights can be time intensive. He said the data does not always correlate to the formatting of the report and it takes time to make the data compatible with the report. He said schools are required to report at the national level.

In response to a question from Representative Nathe, Mr. Burkle said he is new to his position and he is not sure if his predecessor was invited to participate in the task force.

In response to a question from Senator Flakoll, Ms. Thomas said school boards are able to go into executive session to discuss issues related to educational records.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

Chairman Schaible said the committee has the opportunity to approve, amend, or reject either of the bill drafts. He said he is of the opinion that the information gleaned over the course of the interim is what is most important. He said regardless of whether a bill draft is recommended, informing the rest of the members of the Legislative Assembly regarding restraint and seclusion is important.

Representative Nathe said while he appreciates the efforts of the task force and of the committee regarding the bill drafts, he thinks the discussion on restraint and seclusion has raised more questions than it answered. He said it is a very important issue, but more effort needs to be put into obtaining information regarding the topic before presenting a bill draft to the Legislative Assembly. He said he is not comfortable recommending either bill draft and the committee should not recommend a bill draft on restraint and seclusion.

Representative Kelsh said he agrees there are more questions now regarding restraint and seclusion than there were at the beginning of the committee's work. He said he agrees the committee should not recommend a bill draft at this time.

Chairman Schaible said he thinks the suggestions brought by the task force and the committee regarding the bill drafts have been important. He said school boards should have policies on restraint and seclusion, but it is difficult to draft a bill that has consensus and addresses all the necessary situations and issues that may arise in school districts that are all unique.

Senator Heckaman said she hopes a bill is introduced during the 2017 session that addresses restraint and seclusion and incorporates the suggestions of the task force. She said the task force spent over 30 hours developing the recommendations and all the stakeholders were able to come to a consensus. She said consensus regarding this issue is possible. She said she is disappointed the committee was unable to come to a consensus and recommend a bill draft.

It was moved by Representative Nathe, seconded by Representative Johnson, and carried on a voice vote that the Chairman and the Legislative Council staff be requested to prepare a report and the bill draft recommended by the committee and to present the report and recommended bill draft to the Legislative Management.

It was moved by Representative Nathe, seconded by Senator Flakoll, and carried on a voice vote that the committee be adjourned sine die.

No further business appearing, Chairman Schaible adjourned the committee sine die at 12:30 p.m.

Dustin Assel
Counsel

ATTACH:4