

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

NO CHILD LEFT BEHIND COMMITTEE

Thursday and Friday, September 9-10, 2004
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative RaeAnn G. Kelsch, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives RaeAnn G. Kelsch, Bob Hunsakor, Lisa Meier, David Monson, Margaret Sitte, Clark Williams; Senators Dwight Cook, Layton Freborg, Gary A. Lee, Ryan M. Taylor, Rich Wardner

Others present: See Appendix A

It was moved by Representative Meier, seconded by Senator Lee, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

Chairman Kelsch welcomed members of the Education Standards and Practices Board as well as Representative Rick Berg, House Majority Leader, and Representative Lois Delmore, Legislative Council member.

At the request of Chairman Kelsch, a panel consisting of Mr. Doug Johnson, Assistant Executive Director, North Dakota Council of Educational Leaders; Mr. Jon Martinson, Executive Director, North Dakota School Boards Association; Ms. Bev Nielson, Assistant to the Executive Director, North Dakota School Boards Association; Mr. Joseph A. Westby, Executive Director, North Dakota Education Association, and Ms. Gloria Lokken, President, North Dakota Education Association, presented testimony regarding the No Child Left Behind (NCLB) Act.

Mr. Johnson distributed a document entitled *North Dakota Education Coalition NCLB Accountability Plan Revision Requests*, attached as Appendix B.

Mr. Johnson said the North Dakota Education Coalition (coalition) has been meeting on a regular basis since December 2003. He said the coalition appreciates the committee's willingness to monitor the implementation of the NCLB Act and to listen to the concerns of the coalition. He said the coalition supports holding schools accountable for student achievement. He said members of the organization understand the importance of the NCLB Act in the learning process. He said public schools continue to demonstrate progress even when the rules of the game are difficult to understand and even when they are a moving target because midcourse changes are made. However, he said, the coalition's concerns with the NCLB Act's accountability system have not disappeared. He said the technical and complicated

scorekeeping system does not support the goals of universal high achievement. He said related concerns expressed by local leaders and educators are increasingly aligned with parents and the general public.

Mr. Johnson said the NCLB Act is a working blueprint. He said major problems must be corrected so that we can successfully move every child to high levels of achievement. He said we need fair and accurate systems that will help diagnose the reasons why students fall behind. He said the public wants more than labels and penalties for its schools. He said recent polling data shows that the public wants its schools to develop good citizens and provide its children with the tools that will be needed to succeed in life.

Mr. Johnson said research for the coalition's recommended changes to the state's accountability plan was conducted by the executive directors from each of the represented groups. He said this research included interviews with members from each organization and its board, reviews of other states' accountability plans, as well as discussions with national groups that represent the coalition's members. He said the coalition used as its guideline the recommendations that were made by the Western States Benchmarking Consortium's position paper entitled *"No Child Left Behind" Applying Tests of Common Sense*. He said the paper states that the NCLB Act's accountability strategy must be modified to create a much more appropriate and workable approach to accountability. He said the recommendations approve of adequate yearly progress as the core concept of accountability but significantly change the current provisions to be consistent with and supportive of continuous strategy versus the test snapshot provisions. He said it also requires cohort analysis and reporting as its core component for accountability. He said it focuses the highest priority of accountability on measuring continuous growth to facilitate personalized instruction, such as assessing learning needs, diagnosing, prescribing, intervening, verifying the progress, certifying the progress, and reassessing in a continuous cycle. He said it also provides support to provide teacher skills and ongoing use of the data for personalized instruction while still meeting the public's right to know through the public

recording of progress. He said it uses multiple measures to determine student growth in more valid ways and supports rather than punishes struggling schools by rewarding them for demonstrating continuous growth in cohort data and expands opportunities and resources to identify evidence-based best practices in improving learning for each student. He said it also uses this information to provide helpful peer support for struggling schools.

Mr. Johnson said the coalition's recommendations will begin to challenge some of the problems associated with the NCLB Act's accountability strategy.

Mr. Johnson said the coalition's research of other states' accountability plans shows that North Dakota has in many situations higher standards than many other areas. He said while the coalition is not against having higher standards, it does believe there needs to be a level playing field on which our schools' progress can be compared against other schools in this state and outside this state.

Mr. Johnson said the coalition asks only that the committee consider its suggestions and work with the coalition and the Department of Public Instruction (DPI) to see if a consensus can be reached on changes that need to be made to the state accountability plan.

PROPOSED ESTABLISHMENT OF AN ADMINISTRATIVE NO CHILD LEFT BEHIND COMMITTEE

With the permission of Chairman Kelsch, Ms. Nielson said the first of the coalition's recommendations is that an administrative NCLB committee be established. She said this committee would provide input to the Superintendent of Public Instruction and to appropriate legislative committees, monitor progress, and facilitate changes to the state's accountability plan. She said the makeup of the committee would be two representatives from the North Dakota Council of Educational Leaders, two representatives from the North Dakota Education Association, two representatives from the North Dakota School Boards Association, two representatives from DPI, six legislators, and a member of the Governor's office. She said the primary functions of this committee would be to review the state's accountability plan on an ongoing basis and assess how things are going, review what other states are doing, review what provisions they have had successfully waived, and make recommendations for legislation to DPI. She said DPI is the only entity that can present for consideration amendments to the state's accountability plan.

Ms. Nielson said it would be the preference of the coalition that the administrative NCLB committee be chaired by a legislator and that it be independent of DPI. She said DPI advisory committee consists of several advisory groups whose members are appointed by DPI and who work in DPI in certain

areas. She said these groups do their job and would be good resources when called upon by the coalition's proposed administrative NCLB committee. She said it is the coalition's preference that the administrative committee be made up primarily of the policymakers, the practitioners, the legislators, and a representative of the Governor.

In response to a question from Representative Kelsch, Ms. Nielson said the state's accountability plan could be amended to eliminate DPI advisory committee or that committee could meet if it wants. However, she said, the coalition believes that DPI advisory committee does not meet the legislators' needs. She said DPI advisory committee is too large, has too many people who are already on other advisory committees, and has too few legislators. She said DPI advisory committee consists of 18 members who are either DPI staff or DPI appointees and six other people. She said that type of committee would not reach the results that the coalition wants. She said it may be a helpful committee to somebody but not to the coalition. She said DPI advisory committee could either be amended out of the state's plan or it could be kept and run separately from the proposed smaller legislative policymaking group that would review the state's accountability plan on an ongoing basis independent of DPI. She said DPI would certainly sit on the coalition's administrative committee and be a resource, but that committee would not be one for which DPI appoints the members, sets the agenda, or serves as the chairman. She said DPI has plenty of committees already.

Ms. Nielson said there is some precedent for these types of committees. She said the state Advisory Commission on Intergovernmental Relations is an example of one such committee. She said it is chaired by a legislator. She said that commission can introduce legislative bills. She said that group is a commission rather than an interim committee. She said the Information Technology Committee has agency staff sitting on it. She said that committee meets year round. She said in the past there existed the Quality Schools Committee which had no authority. She said the Quality Schools Committee did come up with some great ideas that never went anywhere. She said that committee was chaired by the Governor's office and had legislators involved.

In response to a question from Senator Wardner, Ms. Nielson said the coalition would be amenable to choosing members by whatever system would work. She said the organizations represented on the coalition's administrative committee would represent their people and the Legislative Council would presumably select its representatives. She said the committee could be chaired by a legislator or by the Lieutenant Governor. She said the coalition is willing to work with either branch. She said the coalition believes that because the Legislative Assembly was left out of

the state's accountability plan development process, the Legislative Assembly should this time have some connection to the process.

SPECIAL EDUCATION AND ENGLISH LANGUAGE LEARNERS

Mr. Johnson said the second recommendation of the coalition is that the special education subgroups be redefined. He said we need to use the instructional level identified in a student's individualized education program (IEP) for assessments of those students who are mentally handicapped, severely mentally handicapped, trainable mentally handicapped, and for those students who have other health impairments identified by the IEP team. He said the coalition recommends using a student's IEP for the assessment process rather than using an assessment for significantly impaired students in the listed categories.

Mr. Johnson said the coalition believes that the IEP team should be allowed to identify other special education categories for exemption on a case-by-case basis. He said there are going to be other significant disabilities such as autism that could fall into that category.

Mr. Johnson said the state's accountability plan uses the 1 percent rule for alternative assessments. He said he believes that the rule should be changed to 5 percent. He said that would give this state a better parameter for meeting the needs of students who do not fall into the category or who go over the 1 percent that is currently in law. He said Texas has asked the United States Department of Education for permission to go to 7 percent. He said he does not know if the request was granted.

In response to a question from Representative Delmore, Mr. Johnson said counterparts with whom he has visited indicate that they are looking at ways to modify their state accountability plans. He said he does not know if any states other than Texas have considered a percentage change for special education students.

In response to a question from Representative Kelsch, Mr. Johnson said he is not certain whether the Texas request included special education and English language learner (ELL) students.

In response to a question from Representative Sitte, Mr. Johnson said usually 9 to 10 percent of students are on IEPs.

Representative Sitte said in some communities more than 5 percent of a student body might be ELL students.

Mr. Johnson said he does not believe that ELL students are qualified for special education services unless they have specific handicapping conditions.

BINOMIAL DISTRIBUTION FORMULA

Mr. Johnson said the coalition would like to drop the binomial distribution formula which is being used by DPI to determine the adequate yearly progress of schools that have small student populations. He said the state's accountability plan should instead raise the required "n" on subgroups to be comparable to other states in our area. He said Nebraska requires at least 30 students for regular education and 45 students for special education at each grade level for purposes of adequate yearly progress assessments. He said all of the states surrounding us have significantly higher "n"s than North Dakota does. He said the coalition does not believe that we are equitably comparing our students in small rural districts to those in other states. He said our formula might indicate that we have a lot of small schools that are not making adequate yearly progress compared to other states with different formulas.

In response to a question from Representative Kelsch, Mr. Johnson said he guesses that there are about 150 schools that would likely be affected by this proposal. He said if you set the "n" level at 45 students for special education, you would impact virtually every school in the state except the largest schools that have populations of more than 500 to 600.

SUBGROUP IDENTIFICATION

Mr. Johnson said the coalition proposes that ELL and special education students be eliminated as subgroups. He said the inherent language and cognitive barriers found with such students create unique problems in assessing academic growth. He said, therefore, both groups should be eliminated as adequate yearly progress subgroups. He said the measurements of students in both of these groups should be made using the students' IEPs and should be based on the students' growth over time. He said the subgroups are required by the NCLB Act. However, he said, the coalition believes that a plan should be submitted which challenges that provision because those students' ability levels are not being accurately tested. He said the coalition also believes that if the state reduced the "n," it would reduce the number of students who would be in that field for making adequate yearly progress. He said if a school or school district would get to the point of determining whether their special education subgroup made adequate yearly progress, there just would not be enough students in the group to determine adequate yearly progress and so the school or school district would be automatically exempt from meeting that requirement.

Representative Delmore said North Dakota is not the only state struggling with this issue. She said there are many urban schools in particular that are having this problem. She said this is a unique idea

and she sees the value of it, but she still wonders if others are looking at it.

In response to a question from Representative Delmore, Mr. Johnson said he believes that other states have raised their "n" rather than specifically challenging the inclusion of subgroups. He said it never hurts to ask. He said he does not expect that this request will be granted.

Ms. Nielson said some states have asked for things and they have not yet gotten answers. She said states are beginning to look at what will and will not work. She said if more and more states make the same type of requests, the United States Department of Education and Congress will be more amenable to considering the changes in the future.

Representative Delmore said almost every school that has been reported as failing has had that designation because of problems with their subgroups. She said she certainly does not feel that other states have to request something first.

Mr. Johnson said there were flexibility rules offered by the United States Department of Education and DPI asked for an extension so that those students who were ELL would not have to be assessed or have their tests counted until two years after completing the program. He said the problem is that these students are still going to perform poorly on the tests, particularly in the areas of English language and reading. He said they will not score well and will as a result bring down a school's or a school district's adequate yearly progress score. He said a later recommendation indicates that such students should be measured based on cohort and individual growth to show that they are learning but should not be included in adequate yearly progress determinations.

In response to a question from Representative Kelsch, Mr. Johnson said no student would be exempt from any assessment but the student's growth would be measured longitudinally, i.e., over time. He said a student's growth would be compared against that student. He said some of those students cannot attain some of the benchmarks that have been set for making adequate yearly progress and never will attain those.

USE OF TITLE I DOLLARS FOR ENGLISH LANGUAGE LEARNER PROGRAMS

Mr. Johnson said the coalition needs some clarification regarding how Title I dollars can be used for ELL programs. He said that clarification might already have been provided. He said DPI is under the impression that Title I dollars cannot be spent on ELL programs. He said that is what school district administrators told him in May 2004. He said the clarification might already have been made. He said several school districts in the state have been permitted to use Title I dollars for ELL programs. He said all schools should be allowed to use Title I dollars for ELL programs. He said schools find their

hands are tied in delivering services to ELL students because of limited funds. He said they cannot access dollars available under the NCLB Act until the school is determined not to be making adequate yearly progress.

Mr. Johnson said the second request is that clarification be given for Title I assistance to ELL, native American, and socioeconomically deprived students. He said the coalition believes that money should be made available for use as soon as a subgroup is identified as not making adequate yearly progress, rather than waiting until the school is identified as not making adequate yearly progress. He said money should go to these subgroups as soon as possible. He said this issue needs to be addressed within the NCLB Act itself.

ASSESSMENT SELECTION AND MEASUREMENT

Mr. Johnson said growth or cohort longitudinal data which can measure an individual student's academic growth during the grade levels for which they will be tested needs to be used to determine progress toward adequate yearly progress instead of a status grade level measurement that compares groups of students as they pass through a grade level. He said the status measurement could still be used to assist in finding curricular gaps and to look for instructional strategies that appear to work for all students regardless of group differences. He said one needs to measure a group's growth as it moves through time. He said this request needs to be made to the United States Department of Education. He said we can still retain the status model but use it only for curricular issues. He said the students, the districts, and the community would benefit by looking at how much students grow from year to year and showing that each group individually grows as they go from grade to grade. He said that is a more important and sound research methodology for showing that learning is taking place.

In response to a question from Representative Kelsch, Mr. Johnson said other states are doing the status tests in conjunction with cohort testing. He said Florida had both the cohort and the status model in place. He said he believes that Nebraska is using this model has well. He said Nebraska's model is however a little bit different. He said in Nebraska there is a state test that measures only writing skills. He said the school districts and individual schools can then set up the assessments that they wish to use to determine adequate yearly progress. He said the assessment tools selected by individual schools and school districts must meet all the reliability and validity standards required of the norm-referenced tests that the state uses. He said that is run through the Buros Institute for certification.

In response to a question from Representative Kelsch, Mr. Johnson said both testing methods could

and should be used. He said one needs to have knowledge of curricular gaps. He said the coalition does not believe that the status model should be the one used to measure adequate yearly progress.

Mr. Johnson said the coalition proposes that school districts be allowed to develop and select their own assessments based on local standards, provided the assessments are at least as rigorous as those at the state level. He said the coalition is not advocating that the state assessment be removed. He said there should be a state assessment so that districts and schools throughout the state can be compared.

In response to a question from Representative Sitte, Dr. Johnson said he does not know whether there is widespread dissatisfaction with the Terra Nova. He said the concern seems to be more with how the cut points are determined for the Terra Nova. He said we are still using norm-referenced tests to determine what should be used as a criterion reference. He said one sets particular criteria or curriculum-referenced questions that the students should meet, but one does not norm them. He said if one norms them, 50 percent will score above the norm and 50 percent will score below the norm. He said if the benchmark is set higher than 50 percent and one uses a norm-referenced test to get that calculation, the students that are falling below the 50 percent will never make adequate yearly progress.

Mr. Johnson said the Terra Nova uses curriculum-referenced, i.e., criterion-referenced, questions in that process. He said a lot of times testing companies will use the questions they have used in developing their norm-referenced tests and just use them again in that process. He said the Terra Nova is an adequate and good assessment. He said the coalition would like to provide school districts with some additional options in determining whether or not they make adequate yearly progress.

In response to a question from Representative Sitte, Mr. Johnson said the Iowa Test of Basic Skills was a norm-referenced test. He said it was not criterion-referenced. He said there was a percentile given for a particular ability and that percentile was set up to break down a group into a normal bell distribution.

SUPPLEMENTAL SERVICES AND TRANSFERS

Ms. Nielson said North Dakota should allow its school districts to have control over supplemental service dollars. She said dollars allocated to service providers should be available to school districts to develop internal supplemental services within their district or consortium. She said under current NCLB rules, school districts have to pay premium prices and high transportation costs to reach the six service providers available in the state.

Ms. Nielson said a school district or a joint powers agreement (JPA) should be able to become the

supplemental service provider by making licensed teachers available. She said some have said that this would work as long as we were not using the teacher from the third grade classroom that did not meet adequate yearly progress. She said the reason that the Sylvan Learning Center is able to boast that it does better than the classroom teacher is that it has one to two students per teacher. She said that could also be done in tutorial services. She said a classroom teacher who is fully qualified and who spends extra time with a particular student, like the Sylvan Learning Center staff does, can end up with the same results. She said there is no reason we should be throwing huge amounts of money toward transportation costs and buying educational services from outside providers when we have perfectly qualified teachers in our schools. She said this should be set up to allow any qualified teacher to provide the tutoring services. She said if the services are provided through a school district, a consortium, or a JPA, one is not sending state and local dollars out to private sources so they can get rich providing services one on one. She said in order to have really successful interventions, supplemental services and tutoring need to happen in real time. She said a student needs to have access that day to what is being worked on in the classroom. She said the closer the students are to their supplemental services, the better the results will be.

Ms. Nielson said current law may already allow school districts to set up their own supplemental service centers. She said the coalition has not been able to figure out whether that is the case. She said if this is the case, then districts need to be encouraged to do that. She said districts would need to be told that they do not have to send their students 150 or 200 miles down the road to the nearest Sylvan Learning Center. Under current law, she said, if a school does not make adequate yearly progress, all of the students in the school are given the opportunity to be transferred at the school district's expense. She said the coalition believes that only individual students who do not meet the adequate yearly progress proficiency requirements should be eligible to transfer to another school or to receive supplemental services. She said the coalition does not believe that a school district should be required to pay for transportation and for supplemental services to students who are meeting adequate yearly progress. She said those students who did not meet adequate yearly progress and who believe that that is the fault of the school should be the only ones entitled to receive supplemental services or to be transferred.

In response to a question from Representative Delmore, Ms. Nielson said the coalition is limiting its recommendation to those students who are eligible for supplemental services or transfers under the NCLB Act. She said if more parents begin to take

advantage of open enrollment procedures, that would send a message to the schools as well.

HIGH SCHOOL GRADUATION RATES

Ms. Nielson said schools are currently penalized for keeping students in school if those students have attended high school for more than four years. She said the coalition therefore believes that 21 should be established as the appropriate age for special education students in meeting the 95 percent graduation rate requirement. She said DPI has requested that change. She said under the Individuals With Disabilities Education Act (IDEA), school districts must provide education to special education students until they are 21. She said she believes the federal government will allow that request.

Ms. Nielson said graduation rates should however be based on a six-year cycle rather than a four-year cycle for regular education students. She said if the goal is to have students graduate with a high school diploma, then students should be able to stay in school until they are able to do that. She said the coalition picked six years because by then students are around 21 and they are not likely to stay around much longer. She said the coalition believes that schools should not be penalized just because a student takes one or two additional years to obtain a diploma. She said the coalition also believes that the completion of the general educational development (GED) requirements and alternative high school programs should be recognized in graduation rates. She said they are recognized as high school completion equivalencies. She said students go to alternative schools for any number of reasons.

HIGHLY QUALIFIED TEACHERS

Ms. Lokken said the highly qualified teachers and core areas have huge impacts on schools in this state, especially the rural schools. She said the coalition's recommendations are not meant to diminish the excellent work that the Education Standards and Practices Board has done to meet the requirements of the NCLB Act.

Ms. Lokken said the coalition's first recommendation in this area is that teachers licensed as of July 1, 2003, should be recognized as being highly qualified for purposes of the NCLB Act. She said that simple step would allow those teachers to continue to serve their students and their school districts with the skills that have resulted in excellent student achievement. She said that would mean that they could teach in their minors.

Ms. Lokken said we know that South Dakota's plan permits an individual to teach in a minor area and still be considered highly qualified. She said South Dakota's plan has been submitted but it has not yet been approved. She said it is the wish of the coalition that individuals who hold pre-2005 North Dakota teaching licenses with science or social studies

composite majors be considered highly qualified for purposes of the NCLB Act. She said this means that teachers would need fewer credits than the Education Standards and Practices Board currently requires. She said after July 1, 2006, high school teachers who have a major in a content area should be recognized as being highly qualified in a second area if they have 24 semester hours in that second content area. She said this would not apply to individuals having science or social studies composites. She said the Education Standards and Practices Board requirement will be 32 hours.

Mr. Westby said if a teacher has a major, but also has at least 24 hours in another content area, that individual would be recognized as being highly qualified in that second content area. He said this recommendation is based on discussions with Mr. Eugene W. Hickok, Deputy Secretary of Education. He said Mr. Hickok said he was aware that some colleges grant majors upon the completion of 24 semester hours. He said this would be the equivalent of what we have had in the area of college minors. He said this proposal would allow teachers to teach in their minors. He said this request would have to be put in at the federal level. He said it would require some effort on the part of the North Dakota Congressional Delegation.

Ms. Lokken said individuals teaching in grades 6 through 8 with a teaching license issued after July 1, 2006, and having a minimum of 16 semester hours in the content area they are teaching should be considered highly qualified for purposes of the NCLB Act.

Ms. Lokken distributed a document entitled *Teacher Quality Provision*, attached as Appendix C. She distributed another document entitled *North Dakota's Definitions of Highly Qualified*, attached as Appendix D. She said the former document contains the teacher standards from DPI and the latter contains the teacher standards from the Education Standards and Practices Board.

Representative Delmore said in a school district the size of Grand Forks there are a number of individuals who have been teaching and now have to be recertified. She said that will be a cost to somebody--either to the individual or to the school district. She said it is her understanding that every teacher in North Dakota will have to be recertified.

In response to a question from Representative Delmore, Mr. Westby said the coalition discussed the issue of recertification expense but did not address it. He said it is important that each school board be allowed to decide how that should be handled. He said some will help the teachers in whole or in part.

Representative Delmore said the coalition has not addressed the number of teachers who have lifetime certificates. She said a lifetime certificate did not have anything in the fine print stating that the lifetime certificate was valid only until the rules are changed.

She said that was done to North Dakota by the federal government.

In response to a question from Representative Delmore, Ms. Lokken said individuals with lifetime certificates would be covered under the first recommendation governing teachers licensed prior to July 1, 2003. She said if an individual was highly qualified when the NCLB Act was passed, that individual would continue to be highly qualified.

In response to a question from Senator Wardner, Ms. Lokken said if an individual is teaching grades 7 through 8 in a kindergarten through grade 8 school and that individual is licensed, then that individual is deemed highly qualified. She said it is the wish of the coalition that this law not force schools to go to that method of serving their student populations in grades 6 through 8. She said that is why the coalition is seeking the changes. She said when there is difficulty getting individuals to teach at the middle school level in the first place, we cannot keep raising the standards. She said schools will respond by going to a 1 through 8 and 9 through 12 delivery system.

In response to a question from Representative Delmore, Ms. Lokken said North Dakota is more stringent than surrounding states in many areas.

In response to a question from Representative Delmore, Ms. Lokken said the coalition would never want to diminish the quality of teachers. She said North Dakota can be a beacon for what is good in classrooms across the state. She said that was achieved with the teachers who were qualified on July 7, 2002.

In response to a question from Representative Sitte, Ms. Lokken said she did not read the Education Commission of the States report that predicted no state would meet the highly qualified provision by 2006. She said she would not be surprised to find that is true. She said all of the states across the nation are having a tough time meeting the standards.

Ms. Lokken said we should recognize North Dakota licensed special education teachers as being highly qualified for teaching identified "core subjects" for high school graduation. She said such positions are very hard to fill. She said the IDEA is still being considered at the federal level. She said a determination has not been made on whether individuals having special education degrees need to be certified in every core area. She said the federal government is looking at that as something they want to do. She said the National Education Association has worked very hard to promote the concept that our teachers in special education are highly qualified in core areas without having to have a separate degree in each core area. She said it would have a huge impact on North Dakota if that requirement had to be met. She said those positions are already very hard to fill.

Ms. Lokken said the Nebraska plan provides that special education teachers who teach special education students in core areas are considered to be

highly qualified when they teach the subjects in collaboration with a classroom teacher who is highly qualified. She said teachers who are doing a good job in the classroom need to be allowed to continue to do that.

Representative Delmore said she wondered if anyone on the coalition was aware of the things that have been asked for by DPI. She said a number of avenues have been opened up to rural schools and she wondered if DPI has asked for any flexibility provisions.

Ms. Lokken said DPI has asked for flexibility. She said the coalition is concerned that DPI ask for all the flexibility that is available.

CORE AREAS

Ms. Lokken said the coalition wants to define the core areas as those that the states are required to test under the NCLB Act. She said therefore the core areas would be English language arts, mathematics, and science. She said the NCLB Act has identified core areas as English, reading or language arts, mathematics, science, foreign languages, civics, government, economics, arts, history, and geography. She said the NCLB Act provides that the core areas are defined at the state level. She said there is difficulty recruiting and retaining educators and this would reduce problems that school districts are having in meeting highly qualified staff requirements currently identified in the NCLB Act. She said North Dakota must carefully consider the future ramifications to its teacher quality provisions. She said North Dakota must consider highly qualified requirements that can easily mesh with other states. She said North Dakota is near or at the bottom for teacher compensation and at the top for stringent requirements. She said that combination makes it very difficult to recruit and retain the highly qualified people we want in our classrooms. She said the requirement of a highly qualified teacher is not reduced by these recommendations. She said North Dakota teachers have proven their ability to deliver quality education and continue to engage students every day. She said quality education is best accomplished with a live teacher in every classroom, small class size, up-to-date classroom resources, and a support system. She said rural schools do not have the luxury of hiring a teacher for every core area.

FUNDING

Ms. Nielson said the coalition's position on funding for the NCLB Act does not require an amendment to the state's accountability plan. She said it would be good for North Dakota to calculate the full cost of implementing the NCLB Act, taking into account other cuts that have been made in the Elementary and Secondary Education Act (ESEA). She said North Dakota should forward a message to Secretary Paige, to Congress, and to the President, stating that the

failure of the federal government to fund such programs should trigger a moratorium on the state's compliance with the NCLB Act.

Ms. Nielson said the coalition supports the full funding of the ESEA. She said Title I allocations are not sufficient to cover the cost of providing needed services designed to bring low-performing students to proficient levels. She said Title I money for implementing districtwide programs that have been effective in getting Title I schools off program improvement is not available. She said this is an added expense that school districts must bear in their quest to meet adequate yearly progress.

Ms. Nielson said IDEA has been grossly underfunded since its inception and consequently its costs must also be borne by the states and school districts. She said the state's appropriation for special education contracts was underfunded by approximately 60 percent this past biennium.

In response to a question from Representative Kelsch, Ms. Nielson said the coalition has not at this point made a calculation of what the true costs are for the NCLB Act. She said she does not know if DPI has made a concerted effort to find out the cost of implementation. She said she does not know if local superintendents have made that calculation either. She said what is known is that between special education and the NCLB Act, the resources needed to meet the goals are not available.

Mr. Johnson said he believes that Wisconsin estimated that approximately \$2,600 is needed to bring each student who is not making adequate yearly progress up to the expected level. He said there are other states that have researched the costs of the NCLB Act, but their situations are very different from what we have in this state and consequently cannot be fairly applied. He said there is a need for an honest and fair look at what the NCLB Act will cost.

CONCLUSION OF COALITION'S PROPOSAL

Ms. Nielson said the proposals of the coalition will be met with phrases such as "the feds will not allow it" and "we cannot do it." She said the coalition urges the interim committee to agree that the requests should be put forward. She said an attempt should be made to try to make the NCLB Act workable for North Dakota students and teachers.

Mr. Johnson said some of the issues in the NCLB Act need to be challenged. He said the NCLB Act is a big issue in Congress and that is why right now no action is being taken on it. He said he believes that some changes might be seen. He said the NCLB Act is not going to go away. He said the groups represented by the coalition need to recognize that.

Mr. Johnson said in October 2003 the coalition could find only six supplemental providers in the state. He said this is an important issue. He said the funding for this needs to be changed.

In response to a question from Representative Kelsch, Mr. Johnson said the only service provider is Sylvan Learning Centers. He said the centers are located in Fargo, Grand Forks, Bismarck, and Minot.

Representative Kelsch said the provision of supplemental services is a major issue because of the transportation that is involved. She said the other challenge is ensuring the quality of the services and the consistency of the services across the state.

In response to a question from Representative Kelsch, Mr. Johnson said qualified supplemental service providers are needed as are standards to ensure such. He said the teacher licensing procedure should be used to create qualified supplemental service providers. He said the organizations that he represents want to hire licensed teachers who are specialists in particular areas to serve as supplemental providers. He said there would always have to be training sessions. He said most remediations are after the fact and usually involve repetition of a grade or enrolling in summer schools. He said the student who gives up halfway through the school year is not being helped. He said it is important that school districts be able to hire supplemental service providers as part of their district membership.

Mr. Johnson said some of the issues that the coalition raised do press the edge of what is allowable under the NCLB Act. He said there are many states and state legislators looking at similar things but not exactly the same things. He said some of the issues can be addressed with minor modifications because we already know they are being done in other states. He said other things, such as opportunities for schools to choose their own assessments, should be options available if the schools elect to pursue such.

Ms. Lokken said the coalition wants to continue to have the kind of quality education that was provided in the state in the past. She said the NDEA members and the people who work in the public schools of the state are not afraid of full assessments. She said they are not afraid of stringent requirements. She said the law requires one to fail in order to get the resources that research shows makes a difference in student learning. She said that needs to be turned around. She said there is an alternative certification that individuals can go through. She said if they have a content area, they can take a test and become a teacher. She said that flies in the face of raising the standards for the practicing teachers that are already in the field. She said there is no reference to pedagogy and pedagogy is what makes a teacher successful in the classroom.

Representative Hunsakor said it is important to listen to the educational community and in particular the superintendents, the school boards, and the teachers. He said they know if the students in their schools can compete at Harvard and Yale and Wahpeton. He said they know if their teachers are

highly qualified. He said we are going to have to integrate some of their feelings and thoughts.

Representative Kelsch said Nebraska's accountability plan is held in very high regard. She said a lot of states are looking at what Nebraska has done.

IMPLEMENTATION OF THE NO CHILD LEFT BEHIND ACT IN SCHOOLS

At the request of Chairman Kelsch, Mr. Bernie Burly presented testimony regarding the NCLB Act. He said he works for a grant program called Dakota Learning Systems. He said he conducts professional development for North Dakota teachers on a state-wide basis. He said in any given year he will work with up to 150 kindergarten through grade 12 teachers and especially those teaching mathematics and science. He said he does not work for DPI or any school district. He said his fiscal agent is the North Valley Career and Technology Center. He said he began his teaching career in 1974 in Rugby.

Mr. Burly said the NCLB Act is filled with a lot of challenge and often generates anger. He said he wants to talk about what he has seen from teachers. He said for the first time teachers from kindergarten through grade 12 are sitting side by side, talking about what students need to know and should be able to do at the various grade levels. He said this is accomplished by first looking at the state content standards.

Mr. Burly distributed a document entitled *K-10 Mathematics Standards*, attached as Appendix E. He said North Dakota documents have not gotten high reviews by institutions like the Fordham Foundation. He said they are considered weak documents. Therefore, he said, they also look at other states' standards that have been given high praise. He said North Dakota teachers are asked to compare and contrast and eventually make decisions about what the expectations for students should be. He said they have discovered things such as the fact that data analysis--probability and statistics--is not being taught in many North Dakota kindergarten through grade 8 systems. He said North Dakota does assess, not normatively, but on a criterion-referenced basis. He said students are not compared to students in North Dakota anymore. He said students are compared to a standard. He said they also discovered that North Dakota government is not covered in some high schools. He said in some schools North Dakota government is addressed somewhere between the fourth and sixth grades. He said that is not developmentally appropriate. He said in science education things like inquiry have been completely overlooked.

Mr. Burly said they also discovered that they always teach the parts of speech beginning in the fourth grade and going right through senior high. He said the teachers discovered that the reason students do not learn this is because we have taught them that they do not have to. He said the next teacher in the

next classroom in the next year will teach the parts of speech again.

Mr. Burly said for the first time teachers are looking seriously at North Dakota state assessments. He said they are looking at the scores and asking where they are missing the point and where their school district is missing the point. He said teachers are looking at algebra scores and if they determine that their students did not score as well as hoped, they go back into the classroom and look at how the curriculum can be improved.

Mr. Burly said he is disturbed when people talk about students not making adequate yearly progress. He said that is not what the NCLB Act requires. He said students may not meet the standards but it is the districts that either meet or do not meet adequate yearly progress.

Mr. Burly said teachers in music, art, and even career and technology education are realizing that we must all teach writing and mathematics. He said we are doing this because we want the students to do well. He said music programs can be full of math. He said art programs can be full of science.

Mr. Burly said we are finally seeing subgroups taken seriously. He said ELL students and students with disabilities are being taken far more seriously than they ever were before. He said teachers are starting to work with best practices because we know those students count. He said we cannot just average them in with all of our gifted and talented students and say that we are doing just fine.

Mr. Burly said he is seeing more special education teachers participating in continuing education regarding standards. He said he believes this is happening because special education teachers want to know what the standards are. He said they are looking at the standards and indicating that they can do this too. He said maybe they will not do it the same way as regular education students but they want to know what the expectation is for them and their students.

Mr. Burly said he is seeing teachers who want to be graded for their continuing education efforts, not just given a pass/fail. He said in the past teachers would show up for approximately 15 hours, receive their nod, and go home. He said now teachers want to be graded so that they can put the grades in their portfolios and prove that they are highly qualified.

Mr. Burly said he is also seeing the growth of after-school programs such as the 21st century community learning centers. He said there are 14 in North Dakota and they need to be supported. He said that is a program that must be standards-driven. He said that is a place where children and especially those who are target populations can go after school and work on the skills they are falling behind on in class.

Mr. Burly said North Dakota needs to obtain a clearer vision, especially with respect to definitions. He said he is tired of having to define for North

Dakota teachers what a standard is and why it is important. He said there needs to be a clear delineation between the old way of doing things and the new way. He said even listening to the comments earlier in this meeting about norm-referencing and criterion-referencing demonstrates that there is still a lot of misinformation. He said North Dakota is a criterion-referenced state and has been for years. He said it is time for standards in every content area, including arts and music and career and technology education. He said everyone needs to focus on what young people should know and be able to do. He said greater staff development is needed in standards use. He said afterschool programming needs to be promoted as a way to help students and especially those who are struggling.

Representative Delmore said she is happy that Mr. Burly noted the importance of pedagogy. She said that is one thing that does not exist anywhere in the NCLB Act, much to her chagrin. She is also concerned about where funds will come from if we promote afterschool programs and standards-setting in all areas.

In response to a question from Representative Delmore, Mr. Burly said with respect to pedagogy, the NCLB Act is clearer than thought. He said there are three kinds of standards. He said content standards tell us what students should know and be able to do. He said they are essential and the base work for all other efforts. He said another type of standard is the achievement standard. He said achievement standards tell us how good is good enough. He said they tell us when a student has reached proficiency. He said the third piece is often overlooked in the law. He said it is the curriculum standard--the best practices of the district. He said this area has the biggest teeth in it. He said the curriculum standards require the defining of the best practices of teachers and the school district to get more students to reach the content standards, as measured by the achievement standards. He said North Dakota tends to overlook that piece. He said he cannot understand how Title II professional development funds can ever get returned to Bismarck, especially when there are so many staff development needs and especially when teachers are trying to understand the three types of standards and how the standards work together.

Mr. Burly said one is going to find differing research on what are the best practices. He said he believes one can identify a standard and get multiple students to that standard, but not in the same way. He said people can differ on what are the best practices but without exception all of the best practices are standards-driven. He said teachers need to learn the art of crafting units of instruction. He said one can quote the standard, the topics of that standard, and the grade level expectations of the students. He said the second part is knowing when the child reaches that goal. He said we need to measure that success.

He said the third component is determining the best teaching practice to get the students to the desired point. He said that is a major change from the way we used to teach.

Representative Delmore said she taught for 30 years and has seen a lot of things come and go. She said we also need to have quality teacher inservice. She said some of these expectations need to be tempered by teaching style. She said not all of the same pedagogy works equally well for all teachers or for all students. She said there will be a price for meeting such an ambitious schedule. She said all students learn but not at the same rate and not in the same way. She said we need to look at the subgroups and at our expectations that those students will reach the goals as quickly as other students.

Mr. Burly said teachers approaching the same content do not have to teach in the same way. He said some teachers do very well by the drill-practice-lecture method. He said if they have discipline in the classroom, the respect of the students, and the achievement data, we should not argue with success. He said standards-based education does not turn teachers into robots. However, he said, if there is a district that is not making adequate yearly progress, and one is seeing that a certain teaching style is just not working, then it is time for the district to come forth and say it must make better use of Title II resources.

Mr. Burly said 21st century community programs are expensive. He said they cannot be daycare programs for our communities. He said they are designed to be programs rich in standards-based education but taught in a different way. He said it is hard to take a seventh grader who has been sitting in straight rows all day and suggest that that individual do more of the same. He said that is why there is a lot more flexibility in afterschool programs. He said there may be a cooking club to learn math skills or a newspaper to learn writing skills. He said even though the programs are a lot more activity-based, they must still be built around content standards. He said if a school district is willing to keep students in the building, it needs to have an increase in foundation aid, because the staff is working longer and targeting students longer. He said earlier in the day a reference was made about transporting students from New Town to Bismarck for supplemental services. He said perhaps the afterschool program at New Town needs to be closely examined and perhaps it needs to be funded at a higher level.

In response to a question from Representative Sitte, Mr. Burly said he is not familiar with the What Works Clearinghouse.

Representative Delmore said we are asking students to be in school longer and longer each day. She said she is wondering about parental involvement in a child's education. She said parental involvement is supposedly an integral part of the NCLB Act. She

said much of what she hears leaves out parental involvement.

In response to a question from Representative Delmore, Mr. Burly said the afterschool programs with which he is involved do require that parents participate to the greatest extent possible. However, he said, there are some realistic issues. He said if a student is having difficulty meeting a standard, we want that student to stay after school, regardless of what the parent is doing. He said sometimes school staff find themselves convincing a parent that the parent should allow the student to stay after school for help. He said there is also a real problem with two-career families. He said if one parent stays home or goes home early to wait for children after school, there are economic consequences to the families. He said our current economy is not very family-friendly. He said in many 21st century community programs, there are waiting lists and families who have a parent waiting at home are not a priority.

At the request of Chairman Kelsch, Ms. Linda Paluck, Curriculum/School Improvement Director, Williston Public Schools, presented testimony regarding the NCLB Act. She said this is her second year in that position. She said for many years the Williston Public School District did not have a curriculum director or coordinator or even a school improvement director.

Ms. Paluck said she began her teaching career at Dorothy Moses Elementary School in Bismarck. She said it is an exciting time to be in education. She said there is a network of involvement that has developed in this state. She said she is first and foremost a classroom teacher. She said she began her current job by exploring data. She said when she was a classroom teacher she did not look at state results. She said she was mainly concerned with what her students were doing in the classroom, where they were at the beginning of the school year, how they were progressing through the year, and where they were at the end. She said there was no followthrough. She said now we are becoming a data-driven society. She said she is now sharing data with teachers and staff. She said some of the teachers and staff knew that the Williston scores were bleak. She said some of them did not. She said when the scores came out, those who did not expect the poor results felt like they had been kicked.

Ms. Paluck said she knew that the Williston scores were the lowest in mathematics. She said she asked if she could establish grade-level meetings, starting from kindergarten and working up through grade 12. She said the middle school and the high school have mathematics departments and English departments and they would meet periodically. She said they were not strangers to each other. She said that was not the case at the elementary level. She said Williston has four elementary schools. She said when she brought all of the fourth grade teachers together, it

was really the first time they had sat down and talked about pedagogy, best practices, what the scores mean to the students, and what changes needed to be made.

Ms. Paluck said she has found that historically teachers did not share what they were teaching in their classrooms. She said when they first began meeting, she asked the teachers to bring along their curriculum maps. She said she wanted to find out what they were teaching. She said she did this with all of the grade levels and compiled a great deal of material. She said the teachers had no awareness of what was happening in other grade levels.

Ms. Paluck said she meets with her teachers every two months. She said they have looked at all of the state standards and benchmarks and compared them against what was actually being taught at each grade level. She said they identified gaps and better defined what the benchmarks meant. She said gradually teachers began to feel more comfortable sharing what they were doing in their classrooms. She said many schools are a collection of one-room schoolhouses all situated in one building. She said the teachers just do not have the discussions about pedagogy and learning styles.

In response to a question from Senator Cook, Ms. Paluck said 30 years ago our world was huge. She said if we went to another county, that was a major trip. She said we can now get information and research from Japan in a matter of seconds. She said when she went to college, she did not have the kind of mathematics background that students need today. She said what teachers have been doing all these years was not wrong, but it needs to be expanded upon. She said some of our teachers want to do too much in the classroom.

In response to a question from Senator Cook, Ms. Paluck said she is amazed at what our prospective teachers are bringing to the classroom. She said she sat in on several interviews and all but one candidate had a standards-based portfolio. She said one even had it on a CD. She said it is encouraging to see how well-prepared our new teachers are.

Mr. Burly said when he was first hired, he was told that he was the ninth grade English teacher. He said he should have asked what they wanted their children to know and be able to do at the end of the ninth grade. He said we did not go in the wrong direction, we simply had no direction.

At the request of Chairman Kelsch, Ms. Ellen Knudson presented testimony regarding the NCLB Act. She said she has been teaching for about 30 years and has a background in elementary education. She said she is now involved in providing staff development in mathematics.

Ms. Knudson said there is such a fragile element to mathematics instruction in our education system. She said she is talking about mathematics instruction because curriculum, instruction, and assessments is

what the NCLB Act is all about. She distributed a document entitled *Mathematical Learning Communities*, attached as Appendix F.

Ms. Knudson said we have standards. She said the standards are designed to help teachers help students make progress. She said we have national, state, and local standards. She said teachers' shelves are lined with standards. She said they read them and interpret them in vastly different ways. She said we assume that teachers can make sense of the documents when in fact the sensemaking comes from their backgrounds and experiences and the meanings that they bring to the words.

Ms. Knudson said our teachers were often skilled at teaching procedures and computations. She said the need for students to understand the underlying concepts was often neglected because the teachers themselves did not understand such. She said they were just doing the best job they could with what they had. She said today those teachers are still skilled at teaching rote procedures and basic facts but to bring depth and meaning to those is a whole new area.

Ms. Knudson said in today's standards-based mathematics classes, we are asking that students be able to use the information to reason. She said we want our students to pass the tests and prove that they can go on to higher levels, but we also want them to be mathematically literate--to be able to make sense of the information.

Ms. Knudson said what the tests are asking for today is far different than what they asked 30 years ago. She said today we are expecting the application of principles. She said teachers often have difficulty with it themselves, yet we expect them to teach the material in deep and powerful ways. She said we need to deliver professional development in a way that helps teachers teach students to become powerful mathematical thinkers. She said we cannot just put this expectation on a teacher's shoulders. She said we also need to ask how an administrator can evaluate and observe and support a teacher who is teaching in this way. She said we also need to think about how parents can help when a child comes home with a mathematical problem.

Ms. Knudson said teachers often see this as overwhelming. She said we cannot reach the goal of the NCLB Act if we cannot work collaboratively with the various education stakeholders.

Ms. Knudson said in the past mathematics class has been strictly computation. She said today it is reasoning, application, and understanding in deep and flexible ways. She said mathematics must also have some connection to solving problems in real life. She said in order to support student understanding, we need parents, educators, and the community working in collaboration.

Ms. Knudson said in the Bismarck school district not only do they involve teachers, they also involve the kindergarten through grade 12 administrators so

that they can understand why mathematics class is changing, what it has to offer, why they should support it, and how they can be articulate in front of parents.

Ms. Knudson said she is glad that we have the NCLB Act. She said we also have to ensure that everyone in our community is supporting the advancements and not going off in different directions. She said it is our aim in the Bismarck School District to build a partnership that jointly increases mathematics achievement levels for all students and narrows the differences between diverse student populations. She said this is a lofty goal but with the right instruction and the right support, it can happen.

Ms. Knudson said that assessments, however, are an important part of the overall goal. She said teachers are overwhelmed with data and test scores. She said the problem is that teachers receive the test scores at the end of a month, at the end of a unit, at the end of a semester, or at the end of a year. She said teachers have a lot of concepts to teach. She said at that point they cannot go back and reteach a concept. She said they just tend to move on at that point.

Ms. Knudson said we need to have a system that allows teachers to utilize the information on a timely basis and not merely receive it after they have already completed the area. She said we are starting to talk about assessment-centered teaching. She said this involves knowing one's goals on a daily basis and being able to assess progress toward the goals on a daily basis. She said we need to tailor our instruction to meet the needs of the students.

Ms. Knudson said we also need to balance the need for assessments and reporting with the time for instruction.

In response to a question from Representative Sitte, Ms. Knudson said the successful completion of 40 problems might not always show that there is a deep understanding of a concept. She said one well-constructed problem that takes the whole class period can show far more understanding than 40 problems. She said with respect to homework one can send things home but if the support system is not there or if the parents literally tell their children what to do instead of helping them think their way through the problems, then very little is being gained.

In response to a question from Representative Delmore, Mr. Burly said teachers must get students to think critically because they do not know what will be on the test. He said teachers cannot memorize the assessments. Therefore, he said, the best outcome on assessments can be achieved by getting students to think.

In response to a question from Representative Kelsch, Ms. Knudson said people who are very resistant to change take up a lot of time and do not go very far. She said data helps a lot. She said if we have

data comparing fourth grade classrooms and we see that one classroom is doing consistently better year after year, we look at the factors. Often it is just because the teacher has been involved in a lot of staff development. She said sometimes the data will help influence doubters. She said at other times they use exercises and videos of others to show how things can be different. She said often it helps some realize that their thinking has been quite suppressed. She said once they start seeing shifts in student attitudes, they begin to think that maybe there is something to this.

Representative Delmore said she is somewhat cynical because she has seen lots of things move in and out. She said she does not believe that this is the godsend it is meant to be. She said it has us asking good questions and going in a better direction than we have been, but there is almost an intimation that there is only one teaching model and if we could get teachers to use this and motivate students in a particular way, they would always be successful. She said each classroom and each student is different. She said if we had that ideal teaching model, we would not need all the other things we are doing.

In response to a question from Representative Delmore, Ms. Knudson said there is not "one" way to teach. She said there are principles of learning--principles of how people learn--that are core to whatever content area one is addressing. She said those should not differ. She said when administrators evaluate teachers, there are certain key things for which they should look. She said it is not procedural proscriptions but rather generic things that research has proven have a profound impact on learning.

Ms. Knudson said she too has seen a lot of things come and go. She said many of those things were very good. She said unfortunately they were not maintained because they were not sustained through teacher development. She said often in education we have attention deficits. She said we focus on one thing one day and when something else pops up we focus on it, rather than taking something sound and sticking with it. She said we need a system that constantly evaluates the success of programs and the needs of teachers and students.

Ms. Paluck said professional development is a huge need. She said we need to spend time helping, training, supporting, and listening to our teachers.

Representative Delmore said it is one thing if teachers are asked to sustain one area like mathematics. However, she said, that is not what is being asked, particularly at the elementary level. She said when we call on teachers to do standards and benchmarks in every single area, it is no wonder that teachers are frustrated and burned out. She said she likes the idea of mastering one area before we move on. Unfortunately, she said, that has not been provided for in the NCLB Act.

Mr. Burly said sometimes teachers tend to overdo what we expect of them. He said having a dialogue about standards clarifies what we expect teachers to do and often that is not as much as they have been doing. He said such discussions setting forth responsibility help to free up classroom and teacher time.

Representative Kelsch said she wanted to look at potential changes to the NCLB Act. Therefore, she said, she wants each of the teachers to suggest what changes they would like to see in the NCLB Act.

Ms. Paluck said students with limited cognitive disabilities cannot be expected to meet the expectations of the NCLB Act. She said we need to be honest about what levels of achievement we can realistically expect of such students, especially as cut scores keep rising. She said students on IEPs have tall goals to achieve over a certain period of time. She said we might see remarkable growth in a student over a year, but not in relation to a cut score.

Mr. Burly said he would like the state to consider all of its available resources, including Title I, Title II, ELL, Even Start, and Head Start, and determine whether it is making the best use of the limited resources and ensure that there is a common focus. He said he is more concerned with people who are angry about the challenges of the NCLB Act and who are trying to scuttle the system. He said the system is good for children. He said he is very concerned about suggestions that subgroups ought to be thrown out. He said he does know of mathematics and science teachers who are not highly qualified for purposes of the NCLB Act, but when they teach, there is no doubt that they are highly qualified. He said he is not certain that this state should be compared to New York. He said on the other hand, there are teachers who are very surprised that after working with the Education Standards and Practices Board, they were able to show that they are highly qualified.

Ms. Knudson said at this time the focus for highly qualified status is on grades six and above and in the content areas. She said in her capacity as a kindergarten through grade 5 specialist, her job is to help build content knowledge in teachers who have at most taken one or two mathematics courses at the college level. She said that is not enough background for them to prepare students to function at the sixth or seventh grade level. She said there are resources available to help districts provide professional development to teachers so that a core knowledge base can be provided to kindergarten through grade 5 teachers. She said we have to work together. She said students have to be taught content from the beginning, not just from the sixth grade forward.

TESTIMONY FROM OTHER INTERESTED PARTIES

With the permission of Chairman Kelsch, Dr. Don Piper presented testimony regarding the NCLB Act.

His testimony is attached as Appendix G. He said he is representing the Walsh-Pembina administrators.

Dr. Piper said the committee should not confuse the good things it heard from the panel of teachers with the NCLB Act. He said the coalition put in hours of work and research to bring a unified statement before the committee. He said this needed to have happened in the winter of 2002, before the state plan was filed in January 2003.

Dr. Piper said what generally happens at the interim committee meetings is that DPI comes down for endless periods of time and presents a lot of information that the legislators do not understand regarding what DPI has already done with the NCLB Act's requirements. He said then the legislators engage in questioning and sometimes even heated discussions. He said unfortunately it has already been done and what the legislators say has no impact.

Dr. Piper said the coalition's presentation was only the first step. He said the committee should take a more proactive rather than a reactive stance. He said the committee should not ask or even allow DPI to come and talk about all of the things that they have done and why. Instead, he said, the committee should get involved in things before they happen and if necessary recommend or demand changes.

Dr. Piper said in the summer of 2002, DPI in conjunction with the consultants, to whom millions of dollars are being paid, set up a system to establish cut scores for the tests that we were to use. He said they brought together a number of teachers in the summer and went through a process where they asked the teachers to put down bookmarks for what would be advanced, what would be proficient, what would be partially proficient, and what would be novice. He said that was done by judgment. He said they would take a test like the fourth grade mathematics test and the consultants would line up the questions from the easiest to the hardest questions. Then, he said, the teachers would be asked to put down the bookmarks based on what the students should know, i.e., how many questions they needed to get right to be proficient, etc. He said while it sounds like a reasonable process, it was a judgment process, not a scientific process.

Dr. Piper said he was told that some groups of teachers were not able to get it right the first time and so there had to be a second round and some had to go through a third round to get it right. He said that implies that there was a right answer they had to reach.

Dr. Piper said that was the process by which cut scores were set. He said those scores resulted in 66 percent of North Dakota's 12th graders being declared nonproficient in mathematics. He said norm-referenced tests at the time placed those same students at the top in the nation.

Dr. Piper said this committee should ask DPI some very pointed questions about the setting of cut scores. He said in March 2005, DPI will bring teachers together again to set the cut scores for the new tests to be given in grades 3 through 8 and grade 11. He said the committee ought to ask how the exercise in 2005 will differ from the exercise in 2002. He said the committee ought to ask how and by whom the teachers will be chosen for participation in this exercise. He said the committee ought to ask what the teachers will be told about the consequences of applying these cut scores. He said some teachers indicated that they had asked what the effect of applying the cut scores to the test would be. He said at least one teacher was told not to be concerned about that. He said the committee ought to ask what are the arguments that support the chosen process as the one to be used for setting the cut scores.

Dr. Piper said these questions need to be asked before the process is set up. He said the Legislative Assembly has to be brought back into the policy-making role regarding education in North Dakota and how the NCLB Act is played out in this state. He said presently the people who have run the NCLB Act are the United States Department of Education and DPI. He said the Legislative Assembly has not had much to do with the Act. He said he would like to keep teaching that the Legislative Assembly has plenary power in education and the local school boards are to run their schools. He said unless his suggestions are followed, he will have to say that the plenary power of education lies with the United States Department of Education and DPI. He said he will be very disappointed if that happens.

Representative Sitte said at a meeting last fall, the committee was given test scores and was told that 18 percent of our 12th graders are reading at the advanced level. She said we found out this past spring that that means they are reading at the grade 7 through 9 levels. She said as a parent, she wants to know the level at which her children are reading. She said Dr. Paige has said repeatedly that the parent of every fourth grader has the right to know that his or her child is reading at a fourth grade level. She said since these tests are criterion-referenced, they can be linked to a specific level and she wonders how difficult it would be to convert the currently used designations of proficient, partially proficient, etc., to grade levels.

In response to a question from Representative Sitte, Dr. Piper said grade levels are arbitrary configurations. He said we have invented grade levels. He said they did not exist years ago. He said we decided what is the third grade level and the fifth grade level. He said we did that by the normative measurement of students. He said in a criterion-based approach, grade levels are not very significant. He said we set the standards and then measure the students to see how close they come to reaching the standards. He said a parent must ask what should his or her child

learn in the fourth grade and how much of that has the child learned. He said in a criterion-referenced approach, grade levels are not that important. However, he said, they are very important to the parents.

Representative Sitte said there is a definite criterion in reading. She said she is an English teacher and she uses the Frye readability test. She said we can go back and look at what fourth graders were reading in the 1910s and 1920s. She said whenever she begins a teaching assignment, she gives her students three 3-minute tests. She said these give her a 95 percent accuracy as to what their reading levels are. She said this summer she found that the average reading grade in the class was seventh grade plus six months. She said when she distributed a *Tale of Two Cities* she knew that the students were incapable of reading and comprehending it because that book was written for the 12th grade level. She said she knew the students were being set up for failure and yet that was the curriculum she was told to teach. She said there are criteria out there. She said one can even go to the core knowledge system. She said when her children were in the first grade, she wanted them to be able to add and subtract to 10 quickly. She said by the end of the second grade, she wanted them to be able to add and subtract to 20 quickly. She said by the third grade they were to be multiplying. She said there are certain things we grew up with which were standards in every age. She said DPI has thrown out the window and put into place its standards, which are modeled on the national standards. She said we need to determine what is really important at each grade level and how we can have a criterion-based test at each grade level.

Dr. Piper said the system about which Representative Sitte spoke is the system he grew up with and the system he taught for years. He said we have turned the corner. He said we have become criterion-referenced in North Dakota. He said there are standards for all of these areas. He said those standards were developed long before the NCLB Act was passed. He said it is a decision that has been made in North Dakota. He said many would say that it is a good decision and that it is educationally sound. He said we are now supposed to be measuring our students against the standards. He said he does not know whether it would be possible to convert the accomplishment of the standards in a criterion-referenced test to what Representative Sitte suggested with respect to reading ability. He said he believes it has been done in reading but not in the other subject areas. He said he does not believe such a thing exists in science. He said while it would have been a good thing, it would have been too expensive to offer both criterion-referenced tests and norm-referenced tests at the various grade levels. He said that would have given us a basis for comparison. He said parents would love to know that their child

has accomplished the fourth grade level. He said he does not believe that there is an easy way to do that.

In response to a question from Representative Kelsch, Dr. Piper said the key will be how the teachers who will select the cut scores will themselves be selected. He said the coalition recommended the creation of an administrative committee made up of teachers, administrators, and legislators. He said this is not the 25-member committee that DPI has proposed. He said the interim committee should follow the advice of the coalition and form that committee quickly. He said that administrative committee should take as one of its first tasks the spelling out of who will determine the cut scores for the next round of tests. He said teachers have to be included in setting the cut scores. He said there should also be some parents and legislators on that committee, as well as several administrators. He said what has happened is that teachers have been chosen for the cut score setting committee by some method he does not understand. He said the teachers are largely subject area teachers. He said although his background is in elementary education, he also served as an administrator and he said as an administrator he very quickly found that the subject area teachers, who are generally at the high school level, tend to think that their subject area is not only the most important in the curriculum, it is the only one in the curriculum. He said those individuals have overblown beliefs about what students should learn in mathematics and English language arts. He said that needs to be tempered with some elementary teachers and some legislators, so that we just do not call together a group of mathematics teachers and direct them to set the cut scores.

Dr. Piper said it is very important for people to have content knowledge but, in the long run, it is not really content knowledge that makes a difference. He said what makes a difference is the ability to understand and teach students. He said the coalition's administrative committee could set some parameters for how the cut scores could be selected. He said he does not have it all well-thought out.

With the permission of Chairman Kelsch, Mr. Gaylynn Becker, Counselor, New Salem and Hebron Public School Districts, presented testimony regarding the NCLB Act. His testimony is attached as Appendix H. He said we need a state accountability plan that will work for North Dakota. He said professional development is a key element that has been absent. He said every teacher at every school needs access to high-quality professional development.

With the permission of Chairman Kelsch, Dr. Charles DeRemer, Assistant Superintendent of Schools, Fargo Public School District, presented testimony regarding the NCLB Act. He said he would like to see three legislative changes. He said two would require federal-level changes and one would require state-level changes.

Dr. DeRemer said he would like the schools to have the flexibility to spend federal dollars where needed. He said this is particularly true of Title I funds. He said the Fargo Public School District has to give some money back to the state. He said Title I funds are designed for a very good reason, i.e., to help needy students who are not proficient in reading and mathematics. He said he has no problem with the policy behind the law. He said the problem is that Fargo has 23 schools in its district. He said only nine are designated as Title I schools. He said he has needy students at all 23 schools and he cannot serve them with the money. He said Fargo is presently spending about \$200,000. He said the district has Title I specialists for mathematics and reading at each of the Title I schools. He said the irony is that all of the district's Title I schools made adequate yearly progress. He said four non-Title I schools did not make adequate yearly progress and the district is not permitted to use one penny of Title I funds to help the students in those four other schools.

Dr. DeRemer said we also need to change the definition of subgroups. He said Fargo has a high ELL population. He said we have an obligation to serve them. However, he said, any time a group is set aside for identification, they become labeled. He said a person is ELL because the person cannot speak English. He said what used to happen is that as soon as the student was determined to be able to speak English, that student was no longer deemed to be an ELL. He said a student who cannot speak English is not going to make adequate yearly progress. He said the federal government allowed some flexibility by providing that an ELL student who has learned to speak English will be allowed to remain in the ELL category for three additional years. He said last week the district received 15 new students. He said they are black, they are ELL, and they are low socio-economic students. He said they range from ages 11 through 18 and they have never seen a school. He said the federal government gives the district one year before the school has to count the students for purposes of adequate yearly progress. He said the federal government should grant the school district at least three years within which to work with the students. He said those are the changes that could happen at the federal level.

Dr. DeRemer said the state needs to get serious about professional development for its teachers. He said we have left it up to the local school districts. He said we need to make changes in our current law so that district can provide professional development to teachers. He said he has suggestions that will actually save districts money, not cost money. He said he is not asking for money for professional development. He said what he needs is time. He said right now he pays \$100 per teacher per day to hire a substitute so that he can provide professional development to a teacher. He said it is a double whammy. He said not

only does it cost the district money, but the teacher is away from the students. He said a school district should not be taking teachers away from the students. However, he said, right now there is no alternative. He said the district is tied into the teachers' contracts.

Dr. DeRemer said we need to find additional staff development days within the contracts and we need to give school districts the latitude to find time in their current schedules to do that, without being detrimental to the students. He said professional development has long been criticized as being lousy. He said it has gotten a lot better. He said the Fargo Public School District surveys its teachers when they have professional development days and between 85 and 90 percent of the teachers indicate that the professional development days are worthwhile. He said the major frustration expressed by teachers is that they do not have the time to follow through. He said as a district, he does not mind being held accountable for how that time is used.

In response to a question from Representative Delmore, Dr. DeRemer said he would envision this as a multistep process. He said a district needs to develop with its teachers a plan for professional development and that plan should be developed a year in advance. He said districts need some extra days at the beginning of the year. He said there is a real concern with the new teachers coming into the system. He said we keep implementing new curriculum and then we get new teachers and there is absolutely no process for training these people before they start the first day of school. He said we need to have those new teachers a week in advance of the school year. He said that is especially true of the teachers at the elementary and middle school levels. He said they also need time during the year and those occasions need to involve early release. He said afterschool sessions do not work well for people. He said there is no research indicating that afterschool sessions are effective. He said there is a lot of research indicating that afterschool sessions are not effective. He said he is concerned about imposing the amount of instructional time that schools should provide. He said he believes that the 173 days and the 5.5- to 6-hour requirements should be strictly imposed for classroom instruction and nothing else such as pep rallies, etc. He said he also believes that the use of a schoolday is a local decision and that the Legislative Assembly should not be dictating how a day should be used. He said the Legislative Assembly should limit itself to setting the number of statutory days.

Representative Sitte said her daughter just received an offer to teach in Phoenix and if she had taken the position, she would have had to be there on July 28. She said first-year teachers are given a whole week of professional development. She said no extra pay was involved. She said it was just expected that the new teachers show up. She said

she wonders what would prevent a district in North Dakota from requiring the same.

Dr. DeRemer said that is what is happening now. He said we are asking a lot, especially of new teachers. He said they are just getting out of college and we are asking them to give up their summer job income to come into the school system and spend that amount of time. He said we should have some allocation for the individual to do that. He said Fargo is starting to do that with their own district funds. He said it should be part of the overall expectation and not based just on individual districts.

With the permission of Chairman Kelsch, Mr. Keith Jacobson, Principal, New Salem High School, presented testimony regarding the NCLB Act. He said what he has heard today is what he truly believes. He said this is how we should be able to write a state plan for the NCLB Act. He said we should be able to tell the federal government what will and will not work in North Dakota. He said we should negotiate with the federal government. He said he has not been a proponent of opting out of the NCLB Act because of the money that the state receives for Title I. However, he said, if we have to get tough, then we have to get tough. He said this is how we solve the problem. He said we need to provide input to DPI so they can put things in place and offer the plan where it is at.

TESTIMONY BY DEPARTMENT OF PUBLIC INSTRUCTION STAFF

At the request of Chairman Kelsch, Mr. Greg Gallagher, Director of Standards and Achievement, Department of Public Instruction, presented testimony regarding the NCLB Act, attached as Appendix I. He said his written testimony lays out various types of evidence as to what constitutes a valid and reliable accountability system. He said that system must be based on standards and on assessments that look at how well students do against the standards. He said that system must also make certain that the assessments themselves are valid and reliable and must then produce reports based on fair, valid, reliable rules governing how well schools do, how well school districts do, and how well the state as a whole does in terms of meeting those standards. He said throughout the text there are references to core data points addressing the number of students who took the assessments this year and how they did. He said his testimony also references the fundamental elements of the NCLB Act which set forth those things a state is responsible for providing in terms of the quality assurances. He said throughout the text, there are references to web sites that direct one to the original documents. He said the testimony also includes a summary of what DPI sees happening in North Dakota. He said on page 7 of his testimony, there is a chart that summarizes the status of school identification and their adequate yearly progress this

year, as compared to their adequate yearly progress during 2002-03. He said this year 406 schools met adequate yearly progress, 45 schools did not meet adequate yearly progress, and 35 schools had insufficient data with which DPI could make a determination. He said his testimony also includes the rules governing how the adequate yearly progress determination is made. He said DPI has prepared an instructional guide governing the interpretation of adequate yearly progress reports.

Mr. Gallagher said his testimony also sets forth the protections that are built into the plan to ensure that no school is identified unless DPI can say with greater than a 99 percent assurance that the school did not meet adequate yearly progress. He said if DPI cannot say with more than a 99 percent assurance that the school did not make adequate yearly progress for the current year, DPI then rolls up two years' worth of data. He said if after doing a review, DPI still cannot say with a 99 percent assurance that the school did not make adequate yearly progress, DPI rolls up three years' data. He said if DPI still cannot say with a 99 percent assurance that the school did not make adequate yearly progress, DPI uses Safe Harbor. He said that allows for a reduction of the subproficient students. He said if after DPI still cannot say with a 99 percent assurance that the school did not make adequate yearly progress, DPI employs a special rule available to Title I schools. He said in some instances, schools will go through five levels of review prior to an identification occurring.

Mr. Gallagher said the remainder of the testimony addresses the future. He said included in that will be a study effort and the 25-member DPI accountability committee that will look at every aspect of the state's accountability system.

Mr. Gallagher said on page 12 of his testimony there is a compilation of the student performance data for the last three years. He said it compares the first-year scores with last year's scores and this year's scores. He said we are seeing a steady reduction in the number of our lowest-performing students. He said that is good. He said we are likewise seeing a general upward movement of student performance. He said that too is good.

Mr. Gallagher said pages A2 and A3 of the testimony take the performance data and break it out so that one can see the composite scores and the scores of the subgroups. He said the data shows an increase almost across the board in the areas of reading and math. He said that steady improvement in student performance scores is exactly what they want to see. He said the special education students have shown a remarkable increase in performance this past year. He said we are seeing improved assessment practices for students with IEPs. He said we are also seeing greater use of accommodations and a higher use of the alternate assessments.

Mr. Gallagher said on page 17 of his testimony there is a listing of the public schools and their adequate yearly progress status this year. He said the DPI web site contains the specific adequate yearly progress report of any school in the state.

In response to a question from Representative Sitte, Mr. Gallagher said he has no recollection of receiving a release of information from the operators of the *www.schoolresults.org* web site. He said DPI does release all of its information to the United States Department of Education.

Representative Sitte says the web site claims to be the official web site for NCLB statistics and it is sponsored by the Education Commission of the States.

Representative Kelsch said it is possible that not all of the data is yet incorporated.

In response to a question from Representative Delmore, Mr. Gallagher said insufficient data means that the school is so small that we cannot report on how well it is doing. He said even in the larger school districts, sometimes not all subgroups can be reported. He said not too long ago the board of a small district was asking to see its numbers. He said DPI could not release the data and neither could the administrator because under the Family Educational Rights and Privacy Act that would have been a release of information that could have led to the identification of a student. He said that particular district might by next year be able to roll up enough data to be able to have it available. He said when there is a limit, which for us is 10, the data cannot be released--not to parents, not to school board members, not to the public.

In response to a question from Representative Delmore, Mr. Gallagher said his testimony indicates that there has been a net reduction of one district that did not meet adequate yearly progress. He said of those that have been identified for two or more years, there has been a drop of three in the number of schools in program improvement. He said the total number is 20 at this point.

Mr. Gallagher said Appendix C of his testimony identifies what is happening in our schools. He said when DPI does its annual adequate yearly progress review, it uses 41 indicators per school. He said if a school misses any one indicator, it is identified as not making adequate yearly progress. He said the law does not reference "failing" adequate yearly progress. He said the law uses the phrase "did not meet adequate yearly progress." He said we have less than 500 schools. He said we are therefore looking at 20,000 indicators. He said the report in Appendix C of his testimony identifies reading and mathematics overall within each of the subgroups. He said the first column indicates the number of schools that reached the level needed to meet adequate yearly progress. He said we have 368 schools that reached or exceeded the objective and therefore met adequate yearly progress. He said the next column indicates

that there were 59 schools below the objective but they were protected because of the state's reliability test--the binomial distribution. He said DPI could not say with 99 percent assurance that those schools did not meet adequate yearly progress and, therefore, they are considered to have met adequate yearly progress.

Mr. Gallagher said the next column indicates that there were three schools which were below the 99 percent confidence level and so multiple years of data were rolled up for them. He said based on that, all three schools made adequate yearly progress. He said the following column indicates the number of schools that were protected because of Safe Harbor provisions. He said these schools showed significant improvement over the previous year and even though the schools were below the objective, they were still able to show a net reduction of 10 percent in the group of subproficient students. He said this shows that a school can be below the objective, show improvement, and still be deemed to have met adequate yearly progress.

Mr. Gallagher said for Title I targeted assistance schools, there is an additional review. He said in that, DPI looks only at the Title I students. He said if those students met or showed the expected improvement, the school is deemed to have met adequate yearly progress. He said the next column addresses the schools that did not meet adequate yearly progress when one looks at the composite score in reading. He said the next two columns include those schools with insufficient information. He said even though such data cannot be reported, of those schools that were insufficient, 24 of them were above the objective. He said five would have been below the objective but because their numbers are too small, DPI cannot report such. He said 18 cannot be reported out because of Family Educational Rights and Privacy Act. He said that covers our 486 schools.

Mr. Gallagher said the NCLB Act requires schools to have 95 percent of their students participating in the assessments.

Mr. Gallagher said the information presented is based on approximately 23,300 students. He said about 2,100 students are not included in the calculations. He said the noninclusion could be for a variety of issues and DPI is currently ensuring that these students are accounted for properly. He said DPI wants to ensure that a school's adequate yearly report status is based on as comprehensive a list of students as possible. He said he can report that this far DPI has found no reason to be concerned about the 2,100 students.

Mr. Gallagher said Appendix E in his testimony is a working agenda that DPI has put together to address the long-term accountability study and the use of the accountability advisory committee, which DPI first referenced in testimony during the March 2004 meeting of the interim No Child Left Behind

Committee. He said the agenda will give people a sense of the scope and the areas in which such an advisory committee must engage itself. He said the accountability system for the state is bigger than the adequate yearly progress plan. He said it is a network of important components that constitute an education system. He said the first is the clarity and quality of our content standards. He said the second is the clarity and accuracy of our achievement standards. He said the third is the manner, the quality, the reliability, and the validity of our assessments and of the assessment system in general for both regular assessments and alternate assessments. He said we also need to be concerned about how all those get tied together within meaningful and fair rules about how schools are evaluated to determine whether or not they have met adequate yearly progress, as defined in the law and in its regulations. He said the committee will also have to focus on how we continue the ongoing improvement of the plan.

Mr. Gallagher said the plan that we have is that on which we must build. He said the future is unlimited with respect to which direction we go. However, he said, it will require everyone to take a thorough look at every element of law and regulation, of best practices, and most importantly, data. He said when we make changes, those changes must include an understanding of the impact on all of those areas. He said the goal is to make the best policy decisions for the future.

Mr. Gallagher said the proposed agency for DPI's advisory committee makes liberal use of outside specialists. He said some are available to DPI because of their contracts with CTB/McGraw Hill. He said included in that group are researchers, developers, technicians, and the people who deal with the reporting aspects. He said it includes technical assistance from McRel in Denver. He said it involves people from the National Center for Improvements in Education Assessments in Dover, New Hampshire. He said they have spent a great deal of time studying what has been going on with accountability systems across the country and were instrumental in putting together a sound and fair approach to determining reliability. He said it also involves people from the National Center for Education Outcomes in Minneapolis. He said these are people who look at the special education laws and specifically at the impact of how we address the special education subgroup. He said how we go about putting forth a good balance of policy has a lot to do with the value we place on every individual student and about how we see our accountability system.

Mr. Gallagher said DPI's efforts to date have been focused on meeting the requirements of the law and of the regulations and to build a mechanism through use of an advisory committee that will make the system good, sound, and sustainable. He said that is a long-term commitment that will require everybody's

involvement. He said the rationale for putting together a 25-member advisory committee is to build on the expertise of the education community. He said DPI has been blessed to have the insight and contributions of educators from across the state for years. He said hundreds of educators have participated. He said DPI wanted to build on the existing advisory communities because of their expertise. He said DPI then wanted to incorporate other stakeholder groups who could come in, talk, and make considered recommendations regarding where we go.

Mr. Gallagher said this morning there was discussion about the state setting aside, cloaking, or removing subgroups. He said that is an important and value-laden question. He said that needs to be approached as wisely as possible. He said that policy says everything about what we are as an education community or as a community concerned about its citizens. He said the law requires that subgroups be included. He said that requirement is specifically addressed in the law and validated in the regulations. He said thus far the reporting of subgroups has been nonnegotiable. He said one of the premises behind the NCLB Act is that we look at the improvement of all of our students and at whether or not we give equitable service to all of our students. He said that is why the ESEA was crafted in 1965 and that is why there has been a complete review every five to seven years after that. He said the principle that this advisory group will have to address is if we recommend that we no longer consider subgroups, is it effectively removing them from discussions. He said we then need to ask what an adequate yearly progress designation means. He said this is part of what the advisory committee will have to address.

Mr. Gallagher said the adequate yearly progress determination has nothing to do with failure. He said the determination is a straightforward descriptive statement of whether a school did not meet one of 41 indicators governing adequate yearly progress. He said we cannot overlay a burden of failure. He said the law does not state it in terms of failure. He said what we are trying to accomplish with adequate yearly progress has everything to do with people's perception of accountability and the role of the state in making the results known. He said there is nothing in the law that cannot be altered. However, he said, our proposed alterations must govern how we value the activity that we are undergoing. He said the rules are set in place for a particular reason. He said a request was made governing the end values that are set for students. He said that should be studied. He said we should look at whether an end value of 30 should be used and we should look at what protection that offers our schools. He said there are certain things that should be considered. He said when DPI did the rollup last year, it found that the binomial distribution using the reliability test in fact protected more schools than did an end value. He said we would have had a

higher rate of identification with an end value of 30 than we did with the binomial distribution.

Mr. Gallagher said conversely there would probably be a higher rate of protection if an end value was set at 30 for the subgroups. He said the binomial distribution would still consider smaller subgroups. He said we absolutely have to take a look at the impact of 25, 30, 35, 40, etc. He said we need to determine how that line will be drawn.

Mr. Gallagher said DPI can put anything into a proposal. He said a March 31 letter to the United States Department of Education was an attempt to put together all of the movement they saw in this last year on the regulations that the United States Department of Education made.

Mr. Gallagher said a recommendation was made that we go to 5 percent for special education students. He said the fact is that this year, for the first time, we just assessed a total of 1 percent of our population. He said we have not gone above the 1 percent in terms of the number of students actually administered the alternate assessment. He said the regulations are written not by the total number assessed but by the total number whose proficiency is acceptable.

Mr. Gallagher said when an advisory committee takes a look at an issue such as an end value, it has to deal with a very critical fairness issue. He said if an end value is set at 30 and your school district has 29, you will not be reported out. He said that district has no accountability with respect to what adequate yearly progress implies. He said if the neighboring district 10 miles down the road has 31 students, and that district does get identified, we need to ask ourselves what constitutes fairness. He said what is fair has baffled people for years. He said the reason that DPI uses a binomial distribution is because a confidence interval applies a statistical rule that introduces the effect of accountability across the board. He said everybody has exposure. He said it is applied equally, while offering protection in certain circumstances. He said we had one school this year that had no student proficient out of 13 and yet the school met adequate yearly progress. He said statistically DPI could not make the call that the school did not meet adequate yearly progress. He said that was the proper call because it was based on statistics.

Mr. Gallagher said by the year 2014, the expectation is that all schools will meet adequate yearly progress. He said if you institute an end value, you would have those that are accountable and those that are not. He said that is a tough call. He said you really have to sift through the data and think it through. He said that is why the advisory committee is set up as it is--so they can have the very best data and sift through it--and then make the recommendations they believe are necessary. He said DPI has a responsibility to administer the law and the regulations. He said his actions are governed by fairness,

justice, and what he believes is aligned to the law and the regulations.

Representative Delmore said some of us who understand adequate yearly progress also understand that it does not mean failure. To the public, however, she said not meeting adequate yearly progress means failure. She said if schools or school districts do not meet adequate yearly progress, there are ramifications in the NCLB Act that people associate with failure.

Representative Delmore said DPI still needs input from people. She said as a classroom teacher she asks her students at the end of the year and sometimes in the middle of the year what she did well. She said she has taught for a long time. She says she knows a lot about education but she does not know everything. She said she wants to know what can be done by legislators, teachers, and school board members to provide input regarding what they think about the Act. She said she wonders how they can give DPI input that will make a difference in the things that they as the people in the trenches see every day.

Mr. Gallagher said we have to be consistently clear with language and about what this law requires. He said we also have to confront the press when it misclassifies and mischaracterizes the law and especially when it uses inaccurate terms such as the failure of a school. He said school improvement under the school accreditation system has been around for years. He said school improvement has never been termed a failure. He said it has been called a challenge. He said the NCLB Act sets a common standard for how we view program improvement.

Mr. Gallagher said by 2014 everyone is expected to meet adequate yearly progress. He said we have seen gains. He said we have some schools that are close to the 100 percent goal right now. He said we have seen some schools make very nice, even huge improvements. He said even if we are still falling short, we need to ask what we as educators feel about ourselves. He said we are about improving and learning. He said there is no shame by unveiling the fact that we have work to do with any particular subgroup of students. He said people have referred to "halls of shame." He said that phrase is grotesquely wrong. He said this is all about identifying where we need to improve.

Mr. Gallagher said the law increased funding by about 25 percent. He said in order to accommodate additional levels of program improvement, we made a commitment to put additional funds into the programs. He said whether or not we have sufficient funds is a mixed discussion. He said we have some schools that do not use their full funds. He said some schools would like to be able to use their funds differently. He said as long as we have students who have not reached proficiency, we need to keep working. He said we need to be professional about it and

understand it that way. He said this is about reporting and committing and getting better.

Mr. Gallagher said sometimes it takes an accountability system to bring the awareness to ourselves. He said as a profession we need to look at the data and look at ourselves and be professional enough to say maybe we can do better. He said so many people have referenced finally seeing the gaps in their curriculum. He said it takes a real dedication to broaden our own skills and to broaden how we communicate to the variety of students that we have. He said differentiated learning is the theme of the future. He said we have to accommodate everyone's unique method of learning and unique method of teaching or administration.

Representative Sitte said she was reflecting on the adequacy lawsuit. She said North Dakota, like about two-thirds of the states, is facing an adequacy lawsuit. She said Kansas spent \$2.6 billion on kindergarten through grade 12 education and after losing its lawsuit, Kansas will have to come up with another \$1 billion to fix its system. She said New York spent \$14.4 billion on kindergarten through grade 12. She said Governor Pataki proposed an increase of \$4.5 billion and now that the state has lost the lawsuit, its education system is in the hands of three judges who will be determining a huge tax increase that the legislature will have to fund. She said in an article about Alaska it was stated that the standards movement brought adequacy back to the forefront and created the judicially manageable standards upon which these cases could be determined. She said we have trusted Mr. Gallagher and DPI to develop the standards for us. She said our standards pretty much mimic the national standards. She said we have put these standards in place. She said the article goes on to state that for the last 15 years, adequacy lawsuits have returned and have been successful in about two-thirds of the cases. She said the article also states that as we continue to embrace standards-based reforms, we can expect to see more lawsuits on adequacy grounds. She said the article provides that it takes additional funding in the range of 15 to 40 percent to meet the mandated education standards. She said North Dakota is facing a lawsuit. She said the Legislative Assembly had very little input into the standards that DPI put into place. She said DPI has maintained that the standards were put into place with broad input from teachers, but who really knows. She said it is almost as if we have been set up for this enormous lawsuit.

In response to a question from Representative Sitte, Mr. Gallagher said he is not an expert on adequacy lawsuits. He said he expects that for years to come people may make reference to the standards and look at variance between schools that have sufficient resources versus those that have insufficient resources and ask if there is a sufficient correlation in the ability of students to reach the state standards.

He said DPI has not set up anybody in terms of standards. He said our standards represent the considered reflection of associations from across the country, the teachers of our state, those who prepared all the drafts from the first to the final ones, and those who reacted to the documents, as well as those who have used the standards over the years and offered their suggestions for the improvement of the standards. He said drafts will come and drafts will get better. He said that is our job.

Mr. Gallagher said we meet our goal of preventing illiteracy by building literacy. He said you do that by defining a common core, a common definition, and a common set of skills and knowledge for students to have. He said whatever any one group does to advance a lawsuit is within their right. He said that does not mean that the state should step back from what it needs to do, i.e., to set a clear course for what academic achievement means. He said regardless of where people stand on the NCLB Act and on adequate yearly progress, the articulation of standards that has occurred has been because of the people who have taken to heart what education is all about. He said the standards we have today are more specific and better than what we had a decade ago. He said in five years they will be better yet.

At the request of Chairman Kelsch, Dr. Sanstead distributed a copy of a letter dated March 31, 2004, from DPI to the United States Department of Education and an August 2004 reply from the United States Department of Education. The letters are attached as Appendix J. Dr. Sanstead said DPI requested six items. He said the United States Department of Education granted flexibility on four items. He said one of the items was excepted but DPI was told that if it moved in a more deliberate fashion to address the concerns of the Department of Education, it would probably be considered and allowed in the future. He said with respect to the sixth item, a letter was just received and the United States Department of Education indicated that the proposal would not be accepted based on the advice of legal counsel. He said it involves a technicality in the definition of "rural."

Chairman Kelsch recessed the meeting until 8:00 a.m., Friday, September 10, 2004.

At the request of Chairman Kelsch, Mr. Gallagher presented testimony regarding the NCLB Act. He said it is the role and function of the DPI accountability advisory committee to study the state accountability system's efficacy, to review all findings, to study the impact of each provision of the state accountability plan, and to recommend any changes to the Superintendent of Public Instruction. He said this process ensures a thorough and considered review of all elements of the state's accountability plan.

Mr. Gallagher said over the course of the last year and a half, DPI staff have presented their best understanding of the law and regulations. He said DPI stands behind all of its testimony.

Mr. Gallagher said yesterday there again arose an issue regarding cohort testing. He said cohort testing is recognized as an acceptable secondary indicator but not as a replacement for status testing. He said Florida uses cohort testing as a secondary indicator. He said the status approach, i.e., the same approach that is used in this state, is also used in Florida. He said during this upcoming legislative session, DPI will ask for \$1.2 million to provide an additional year of testing beyond what we already have in place. He said this will in and of itself advance cohort testing. He said cohort testing has a proper place. However, he said, it is not the appropriate model for determining adequate yearly progress under the regulations. He said advancing a cohort testing model will require additional dollars.

Mr. Gallagher said there was a request to raise the 1 percent special education cap to 5 percent. He said raising the cap has been requested by other states and to date the United States Department of Education has been reticent to move away from the 1 percent cap. He said this is an area in which there needs to be evidence in order to make the case that a raise should be considered. He said we also need to understand that if we agree that we should have a 5 percent cap, we are in effect stating that half of our special education students are incapable of being tested.

Mr. Gallagher said since February 2004, DPI has had a committee of special education teachers and directors from across the state looking at this issue. He said they recommended that we not change the cap at this time, but rather continue to consider the future data. He said we are far below the 1 percent currently permissible.

Mr. Gallagher said whether we should use an end value or binomial distribution should likewise be studied. He said in this last year 17 additional states have sought the cover of a system like the binomial distribution that North Dakota uses. He said North Dakota is also the only state that was granted the opportunity to put protections in their attendance and graduation rates.

Mr. Gallagher said Safe Harbor is a growth model. He said a number of schools in this state were not identified as not meeting adequate yearly progress under the Safe Harbor provisions. He said they might have made sufficient gains, even though they did not meet the proficiency levels.

Mr. Gallagher said a school is a cohort. He said it is a growth model itself. He said adequate yearly progress can be based on a student, a class, or a school. He said ultimately and ideally it would be nice to accommodate all three levels.

Mr. Gallagher said exploration of the Nebraska state plan is the kind of issue that needs to be put before the state accountability advisory committee. He said the system is much more than just the 70 pages of the Nebraska state plan.

Mr. Gallagher said testimony was given suggesting that schools should be given more than four years within which to graduate students. He said that is not permitted under the rules. He said DPI argued that such should be included in a student's IEP. He said our ELL students ideally but not universally have study plans that address this. He said this issue is part of an intricate process of negotiation with the United States Department of Education.

Mr. Gallagher said with respect to the funding of the NCLB Act, the Government Accounting Office study is still to be completed. He said DPI believes that if there is to be a study of the impact and cost of the NCLB Act, it must actively and intimately connect schools in the collection of the data. He said it will require more than DPI can ever provide in part because the decisionmaking process at the local level is not something to which DPI is privy.

Mr. Gallagher said yesterday it was insinuated that DPI tinkered with or toyed with the process by which cut scores for the state assessments were determined. He said in the July 8, 2003, testimony of Dr. Gary Gronberg, there was specific focus on how standards were set and how cut scores were determined. He said the standards-setting report was put into evidence. He said the model that was used was developed by CTB/McGraw Hill. He said it is a reputable model for determining how to set a cut score. He said the model brought together 130 teachers to review the test item by item and then it utilized a three-phase discussion and voting process. He said there was debate, interaction, and voting. He said everybody in that room saw the same data and understood the process. He said the whole goal was to build consensus.

Mr. Gallagher said each teacher who comes into that role brings along his or her own expectations and experiences regarding what is practical in the real world. He said nobody sat there and required an idealistic score. He said when they drew the line, they drew the line.

Mr. Gallagher said when specifically asked, 80 percent of the participants said that they could support the scores that were reached as being neither too high nor too low. He said it has been stated in testimony that DPI was disingenuous in how the format was presented. He said it was also indicated that the teachers did not know what they were doing.

Mr. Gallagher distributed a copy of the notes that the teachers had been given. He said these notes show that DPI walked through the building blocks of its accountability system. He said they walked through how adequate yearly progress is determined and how the school districts would be identified. He said the point was made that DPI somehow held them back until they got the "right" results. He said making such a statement shows a lack of understanding regarding the standards-setting process. He said DPI

clearly identified what was going to happen after the setting of cut scores.

Mr. Gallagher said no one in DPI saw any of the proposals put forth by the coalition until they were presented to the interim committee yesterday.

Mr. Gallagher said yesterday he put forward in his testimony 10 principles and 10 substantial areas in which study must occur. He said there are a wide variety of areas in which both the law and the rules are very clear. He said in the future we need to review each element of the state accountability plan and determine if changes are needed. He said how a committee to perform this function is formed gets to the heart of the issue today. He said the coalition recommended a committee consisting of two individuals from each of the three interest groups, six legislators, and a member of the Governor's staff. He said DPI has proposed bringing in people who have true expertise and who have worked very closely with the standards and assessment development system. He said the DPI advisory committee includes members from three separate and already existing committees such as IDEA, the Title I Practitioner's Committee, and the Standards, Assessments, Learning, and Teaching (SALT) team. He said DPI has also included a member of the Indian Affairs Commission. He said parents and business people are included as well.

Mr. Gallagher said what is being talked about is not advice. He said it is governance and control. He said the decision as to what is submitted to the United States Department of Education within the state's accountability plan is that of the Superintendent of Public Instruction. He said state law specifically says that the Superintendent is responsible for the assessment of students. He said furthermore it is the Superintendent who signs off on all such matters, including the assessment system. He said a governance committee is different from an advisory committee. He said in an advisory committee any recommendation flows to the Superintendent of Public Instruction for his consideration. He said any request for increased participation on the advisory committee by the interest groups needs to be directed to the Superintendent.

Mr. Gallagher said DPI has always had a preference for large advisory committees. He said the intent is that this one would be a lively committee. He said there is a lot of work that this committee will be expected to do, not the least of which is a complete and thorough study of each element of the state's accountability plan.

Mr. Gallagher said the issue before this interim committee is not who should be on an advisory committee, it is with whom does the responsibility rest. He said we need to find the proper balance between the branches of government. He said the DPI advisory committee already has two members of the Legislative Assembly appointed by the Legislative

Council. He said that allows for proper communication without creating a concern regarding the interplay of the executive and legislative branches.

In response to a question from Senator Cook, Mr. Gallagher said it is clearly understood within the rules of the ESEA that any provisions of a state are the defining factor. He said state law is state law. He said if the Legislative Assembly would pass a law, it is his understanding that the law states the policy and that the policy would stand. He said it is always the prerogative of the Legislative Assembly to make such determinations. However, he said, it would be better to ask if the Legislative Assembly is the best vehicle to do so or is there a better vehicle to study a fairly complicated matter and conduct a concerted review based on data. He said we need to ask what is the best governance approach. He said it is DPI's perspective that there already exists an advisory committee that can work through these issues and reach an understanding. He said this method will ensure that the state's policy will be well served and the outcome will be good.

Senator Cook said while he appreciates Mr. Gallagher's answer, he said we need to be able to ask Dr. Sanstead whether in his capacity as the Superintendent of Public Instruction he believes that the Legislative Assembly sets the policy regarding the NCLB Act. Senator Cook said he believes that constitutionally the Legislative Assembly is in charge of policies that affect the children of this state. He said we need to ensure that we are all on the same page.

Mr. Gallagher said the Legislative Assembly sets the education policy for the state. He said we also have a governance structure that leaves to the Superintendent of Public Instruction many of the administrative responsibilities associated with enforcement of the federal law. He said that is a clear understanding. He said despite all that has been said about the NCLB Act, nothing has changed. He said the state still determines its own destiny. He said the difference is that the NCLB Act has a large amount of money attached to it. He said, as with any grant, a person need not feel the obligation to seek that funding. However, along with the funding there are stipulated conditions or provisions. He said it is always the prerogative of the state to determine that we want no part of it and to reject the grants. He said the state always has its sovereignty. He said if, however, we accept the funds, we also accept their conditions. He said there is nothing that he believes cannot be worked through with a good healthy dose of considered review.

In response to a question from Representative Delmore, Mr. Gallagher said in the July 2003 meeting of this committee, he put into testimony the selection process and the actual nomination forms for the selection of those teachers who were involved in the setting of the cut scores. He said two models were being followed. He said the first model allowed DPI to

access the many teachers who had participated in the drafting of the content and achievement standards. He said these people had an intimate understanding of the standards and knew the nuanced issues that would inevitably come about. He said DPI also asked administrators to nominate their best teachers for this role. He said for something as important as the setting of the cut scores, the number of nominations from administrators was quite low. He said he believes that the importance of setting the cut scores was not fully understood or appreciated. He said that has changed and there will be a keen interest in the process this time. He said DPI produces all of these documents with the teachers of this state. He said while there is discussion about the quality of the documents, it is the belief of DPI that having the involvement of the state's teachers will always lead to good results.

Mr. Gallagher said there is preparatory work to this and it does belong to some degree to the advisory committee. He said it always will involve the group of technical advisors. He said North Dakota has contracted with a number of quality individuals from around the country to serve in this capacity. He said these include Dr. Thomas Fisher who presented testimony at the last meeting of this committee; Dr. James Impara and Dr. Barbara S. Plake from the Buros Institute for Assessment, Consultation, and Outreach in Lincoln, Nebraska; Professor William A. Mehrens, a nationally recognized assessment expert from Michigan; and Dr. William J. Erpenbach from Wisconsin who at one point headed the accountability office in that state. He said Dr. Erpenbach is also one of the team members that evaluated the state accountability system in March 2003. He said there are others with whom DPI has also contracted in case the need for their services arises.

Mr. Gallagher said the role of these individuals is to offer dispassionate technical advice regarding assurance of the best quality and best process. He said DPI listens to these individuals very carefully and then balances that with what fits well for North Dakota.

Representative Sitte said she started to think about the enormity of what teachers face. She said we need to imagine being a first-year elementary teacher hired two weeks before the start of the school year. She said we need to imagine what it takes in that short period of time to organize the classroom, learn the curriculum, and get the children on task. In addition, she said, North Dakota hands out to each of these teachers North Dakota standards and benchmarks--content standards in dance, drama, music, visual arts, English language arts, mathematics, library technology literacy, foreign language, physical education, science, and social studies. She said once a teacher gets through all of the content standards, the teacher must take a look at the performance standards in each of those areas. She

said then the teacher must move on to the achievement standards in each of those areas. She said then we wonder why our teachers are having such a difficult time grasping what is expected of them. She said Mr. Burly indicated that when he graduated from college in 1974 he was not really told what to teach. She said she graduated in 1973 and still has her course of study from Superintendent M. F. Peterson. She said it contains sample lesson plans. She said our system does not have to be as complex as DPI and Mr. Gallagher have made it.

Representative Sitte said Virginia, under then Governor George Allen, decided to dump their standards that were drafted by McRel. She said our standards were drafted by McRel. She said McRel is the Mid-continent Regional Education Laboratory and was developed by the United States Department of Education. She said the standards are all outcome-based education developed under Goals 2000. She said it has not changed since the Clinton administration. She said Governor Allen and the Virginia legislature decided to develop content-based standards.

Representative Sitte said she compared the mathematics standards of Virginia to North Dakota. She said the Virginia standards state that children should add and subtract to 10 in the first grade and to 18 in the second grade. She said children should know how to add and subtract two-digit numbers up to 99 in the third grade. She said the Virginia standards are very content-oriented. She said there are distinct differences in philosophies of education. She said Mr. Gallagher and the people we heard from yesterday would propose to place children in an invigorating learning environment with exciting things around them and assume they will naturally pick it all up. She said there is another philosophy of education that says we are nothing more than trained dogs and if a lesson is put out there and the students are rewarded or zapped, they will learn. She said she discards both philosophies because she is a classicist. She said she believes in a strong liberal arts education. She said she wants every child in this state to be able to understand and use algebra in his or her daily life. She said she wants every child in this state to be able to read at grade level, so that child will not have an enormous leap between graduating from high school and enrolling in college. She said she believes in scientific-based inquiry when it comes to some subjects such as science. She said she does believe that a good teacher will use an inductive method of reasoning as opposed to all drill and practice. She said she also knows that if one does not have automaticity and certain skills, students will be sorely lacking when they get to the high school level. She said when DPI is throwing its philosophy of education at legislators, as though it is the only philosophy, she becomes upset. She said legislators have given DPI free rein and DPI has taken us down

the wrong path. She said we then wonder why North Dakota students do not score well and why we need supplemental services. She said the reason is that we have not been following the classical approach to education that other states have chosen to provide. She said if North Dakota would join in the classic approach to education, it would save us all a lot of money and trouble.

Mr. Gallagher said the classic approach to education is to be valued. He said many of the values that Representative Sitte holds are shared by him.

Representative Kelsch said this committee has been hearing the same concerns from the same special interest groups time after time after time. She said she saw in the *Bismarck Tribune* a quote by Dr. Sanstead to the effect that he was just "taking a bullet for Bush." She said she was irate. She said legislators are taking the bullet for Dr. Sanstead. She said this is not a political football. She said this is about the children of North Dakota. She said she is bothered by the fact that legislators have heard from these interest groups for two years. She said she wants to know what DPI has done about their concerns.

Representative Kelsch said not every request or suggestion that was made yesterday is out of the realm of being doable. She said the coalition had some very good proposals. She said perhaps some of their suggestions could be incorporated. She said some of the suggestions might not have been quite right. She said she wondered if the coalition could not sit down with DPI and find a compromise that could be offered to the United States Department of Education. She said we all need to make this work because we all want the best for our kids. She said we sometimes lose that vision. She said the number one complaint about the NCLB Act is that the legislatures in the country did not get involved soon enough. She said legislatures were sold a bad bill of goods. She said those states that are now in the best position are those in which the legislature, the state department of education, and the interest groups all worked together to form the best plan they could for their state. She said none of the issues that were brought up yesterday were new. She said they have all been heard before.

Mr. Gallagher said there have been various issues of concern during the past two years. He said yesterday he was given the first tangible proposal by the interest groups. He said that was his first exposure to the proposal that there be an end value of 30. He said that is a good legitimate proposal and is worthy of study. He said this is the first time that a straightforward proposal has been offered. He said there have been statements of discontent and discomfort and frustration but no tangible proposals to address the matters.

Representative Kelsch said the reason the group came with a tangible proposal is because she asked

them to sit down together and work it out together. She said in hindsight she should have directed that DPI be involved too. She said prior to that they had been using piecemeal approaches and they were not getting anywhere. She said when groups sit down, formulate proposals, and bring those to the Legislative Assembly, there is a far greater chance that something will be accomplished.

Mr. Gallagher said that is the role they see for the advisory committee. He said that group will go through all the ideas and all the various elements and sort through what constitutes the best process. He said the rollout of events happened as they occurred. He said the growing insight as to people's positions have likewise developed over time. He said we need to build on a common vehicle which we believe is a good well-structured advisory team to have the fine detailed discussions of how these elements fit together.

At the request of Chairman Kelsch, Ms. Laurie Matzke, Title I Director, Department of Public Instruction, presented testimony regarding the NCLB Act. She said she was surprised by some of the comments that were made yesterday and some of the specific recommendations that were offered. She said she was also surprised by the misinformation that still exists. She said she has made presentations to the North Dakota Council of Educational Leaders, the North Dakota School Boards Association, and the North Dakota Education Association. She said she sends out a monthly Title I newsletter in which she addresses all of the issues that have been raised during the past couple of days. She said she is not sure of what more she can do. She said all of DPI Title I policies, practices, and procedures focus on the best interests of the schools and are designed to achieve the maximum flexibility for school districts. She said Title I funds can be used for ELL students. She said that has always been the case. She said she does not understand why individuals are saying that schools cannot do so. She said in May 2004 DPI held two Title I workshops at each end of the state. She said using Title I funds for ELL programs was one of the featured presentations. She said DPI developed guidelines for schools that elect to do this.

Ms. Matzke distributed a document entitled *Title I Fast Fact Series*, attached as Appendix L. She said there are rules that have to be followed. She said the districts of Jamestown, Grafton, and Fargo are the three districts that are using their Title I funds for ELL programs.

Ms. Matzke said similarly she does not know what more she can do to get the word out about supplemental services. She said school districts, JPAs, and individual teachers are qualified to apply for designation as a supplemental service provider. She said that has always been the case. She said all they need to do is to complete the application. She said

the only limit that the federal government places on this is that school districts in program improvement cannot apply to be supplemental service providers. However, she said, individual teachers within those districts may apply. She said in order for instruction to be effective, it does need to be related to what goes on in a student's classroom. She said individual teachers in a student's school will be much better able to align their afterschool tutoring with the services that the student is receiving in the classroom than will an outside entity. She said the law requires that DPI go through a dissemination process once each year and issue an request for proposal. She said to date DPI has had seven individuals seeking to become supplemental service providers. She said DPI discusses this option at every presentation it makes. She said she does not know why various teachers and school districts are not applying to be supplemental service providers. She said to date there are no school districts on the DPI's supplemental service provider list. She said there are a number of Internet-based organizations, including Sylvan and a university. She said no schools and no teachers have applied to be supplemental providers. She said supplemental providers do not have to meet the teacher quality provisions. She said they do not have to be certified teachers. She said they can be aides. She said the law is very flexible regarding who can work with whom in an afterschool program.

Ms. Matzke said another issue that had been raised was the request to access funding a little bit earlier. She said there are actually two pots of money and she was not certain which one was being referenced. She said the state is required to set aside some additional funds for schools in program improvement. She said approximately \$1.2 million is segregated for this purpose. She said schools that have not been identified for improvement will not be allowed to access funds by the United States Department of Education. She said there would not be enough funds to go around. She said the whole purpose is to help those schools that have been identified as needing improvement. She said the United States Department of Education will not even allow school districts to access those funds. She said that is being challenged at this time by states.

Ms. Matzke said the second pot of funds requires a district identified for program improvement to set aside 10 percent of their own funds. She said the United States Department of Education will now allow school districts to use this pot of funds across their district, even in non-Title I schools.

Ms. Matzke said with respect to the issue of school choice, we keep forgetting that the law measures schools not students. She said many people might disagree with that and would prefer to have cohort measurement. However, she said, the law measures schools and that is why when a school is identified for

program improvement, it is the right of every student in that school to request a transfer.

Ms. Matzke said concerns about funding under the NCLB Act seem to deal more with how the funds are distributed or accessed, rather than with the amount actually available. She said the NCLB Act has provided this state with a significant amount of federal funds. She said the United States Department of Education bases the funding for school districts on census data. She said a state like North Dakota, which is losing population, does not fare well when census data alone is used. Consequently, she said, North Dakota is one of seven states that has asked the United States Department of Education for a waiver permitting the use of free and reduced lunch counts along with the census data to determine funding. She said even at that, there are a number of small districts that do not receive enough of an allocation to fund a full-time Title I teacher. She said large districts have to deal with the targeting process. She said under this, the districts have to go through an allocation process which determines exactly which buildings can be served and how much can be expended in each building.

At the request of Chairman Kelsch, Ms. Janet Welk, Executive Director, Education Standards and Practices Board, presented testimony regarding highly qualified teachers. Her testimony is attached as Appendix M. She said the Education Standards and Practices Board, together with the Governor's office, received a teacher quality grant. She said part of that grant was used to fund standards alignment. She said the Education Standards and Practices Board has aligned its standards and licensure process to DPI's accreditation process. She said transcript reviews occurred this summer with a view to letting teachers know whether or not they met the standards for being highly qualified.

Ms. Welk said we have heard a lot about this state's high teaching standards and we have been told that our standards are much higher than those of other states. She said she selected 10 teachers from a group of 300 applicants and using the computer lab at Horizon Middle School they proceeded to review the requirements of all 50 states. She distributed a document entitled *ESPB - Teacher Certification Requirements & NCLB 50 State Report*, which is on file in the Legislative Council office.

At the request of Chairman Kelsch, Mr. Kurt Hayes, Principal, Munich/Border Central, presented testimony regarding the teacher quality report. He said the report addresses licensure types and requirements, testing for initial licensure, major/minor credits, comprehensive degrees, middle school teaching requirements, student teaching requirements, definitions of highly qualified for purposes of the NCLB Act, major equivalencies, national board certification, and teacher support systems.

Representative Hunskor said the teachers in the field are beginning to understand that the Education Standards and Practices Board is trying to do everything it can to help the teachers become highly qualified. He said he knows of two Title I teachers, one in Bottineau and one in Glenburn. He said they have master's degrees and they work with kindergarten through grade 12 students who are learning-disabled. He said they have bachelor's degrees in elementary education, bachelor's degrees in mental retardation kindergarten through grade 12 with mathematics and reading certificates. He said these two teachers, after July 1, 2006, will not be able to work with Title I in grades 9 through 12, unless they have 32 semester hours in one of the core subjects. He said after July 1, 2006, they will also not be able to work with students in grades 7 and 8, unless they obtain a middle school endorsement. He said these two teachers have master's degrees in communicating with learning-disabled students. He said these are not mainstream teachers. He said they are helping the teacher. However, he said, they are being told that they cannot help in science or in mathematics because they lack a certain number of semester hours. He said that is just not right.

In response to a question from Representative Hunskor, Ms. Matzke said she does not anticipate additional flexibility from the United States Department of Education governing the issues addressed by Representative Hunskor. She said the state will be monitored on its Title I implementation during the first or second week of May 2005. She said that was just scheduled. She said last year that effort included the teacher quality provision. She said that was problematic because teacher quality is run out of a different division at the United States Department of Education, not out of the Title I office. She said the bottom line is that the NCLB Act separates out elementary, middle level, and high school teachers. She said the law firmly states that elementary teachers must have elementary certification and that they cannot teach kindergarten through grade 12. She said high school teachers need high school certification and middle school teachers need something in addition to their elementary or secondary preparation. She said the Education Standards and Practices Board has tried to put something together which would follow the law. She said Representative Hunskor commented that the two teachers about whom he spoke are not even regular classroom teachers--they are supplementary teachers. In fact, she said, Title I teachers are held to a much higher standard than even regular education teachers because it is a Title I law. She said if a Title I teacher is going to teach at the high school level, that individual will need a major in every subject to be taught.

Representative Hunskor said he understands what the law requires. However, he said, if these two teachers decide to leave, the students will be hurting

because there will not be any way they can get services.

Ms. Matzke said most Title I programs are still elementary programs. She said all of our elementary programs have Title I teachers. She said about a third of our programs go to the middle school level and about a fourth go to the high school level. She said within the last month flexibility has been increased for the middle school Title I programs. She said teachers will be given two years to work toward a middle level endorsement. Consequently, she said, any teacher who has an elementary education degree and wants to teach grades 7 and 8 may submit a plan of study through the Education Standards and Practices Board. She said the teacher will be given two years within which to complete the 10 hours of study needed for the middle level endorsement. She said the universities are doing a great job of offering online classes to get those teachers through the process quickly.

Ms. Matzke said it is almost impossible for an elementary education major to go back and obtain a secondary degree and especially in every subject area they would hope to teach. She said if one is a secondary teacher, one can get a secondary generalist credential by having a major in English, science, or in social studies, along with some reading coursework. She said those individuals can teach Title I in any subject.

In response to a question from Representative Hunskor, Ms. Matzke said to address this issue one would not deal with the Title I office but rather with the division that handles teacher quality issues.

With the permission of Chairman Kelsch, Mr. Dean U. Koppelman, Superintendent, Dickinson Public Schools and Chairman of the Education Standards and Practices Board, presented testimony regarding the NCLB Act. He said as Ms. Welk indicated, the Education Standards and Practices Board has worked hard to craft a plan for this state that will meet the requirements of the NCLB Act but will still have some common sense to the approach that we use. He said if we had taken the literal view of the law, we would have had a very different situation in this state. He said the portfolio system and the testing options, as well as provisions that credit those who have experience in the field, appear to have worked well. He said there might be some tweaking that may still have to be done. He said they tried not to go above the federal requirements, but they also tried not to lower the requirements. He said the Education Standards and Practices Board has not discussed lowering the number of credits that is required for a major. He said that should be a discussion between the Education Standards and Practices Board and the State Board of Higher Education. He said there are not very many majors that are awarded for only 24 semester hours. He said that particular coalition

recommendation would have been a reduction in what is already in place.

Mr. Koppelman said every time the Education Standards and Practices Board addressed composite degrees, they did so with a rationale that they believed could be defensible if questioned about the decision. He said much of the Education Standards and Practices Board work was done with the knowledge that there would be another legislative session between its decisions and the ultimate implementation date. He said adjustment can be made in the 2005 session. He said the Education Standards and Practices Board moved quickly to let teachers know what would be expected of them to become highly qualified by the June 30, 2006, deadline. He said staffing and programs need to be looked at long before the required deadline. He said teachers who need to do a lot of work have only one more summer left.

Mr. Koppelman said questions still exist as to how the highly qualified requirements will be monitored and enforced. He said in the past if a teacher was not qualified, points were taken off during an accreditation review. He said he believes that DPI has the authority to monitor compliance with the Act through the approval process. He said there will be teachers out there who will be teaching in an area in which they are not highly qualified. He said we need to determine how schools will be impacted. He said if foundation aid is going to be a factor, we need to determine whether it will be reduced for all students in the school or just for those being taught by the individual who does not meet the highly qualified requirements.

In response to a question from Senator Cook, Mr. Koppelman said the biggest concern for administrators is where they are going to find highly qualified teachers beginning in September 2006. He said last year two schools in the Dickinson School District did not make adequate yearly progress. He said this year those schools did make adequate yearly progress. He said the district put out the notices as required by law. He said there was not one telephone call from one parent regarding the status of either school.

In response to a question from Representative Williams, Mr. Koppelman said as a superintendent he feels really good about where they are with the standards. He said there is more concern about the ability of administrators and school boards to staff the smaller schools. He said the highly qualified status has not been much of an issue.

At the request of Chairman Kelsch, Senator Dwight Cook presented a bill draft [50082.0100] relating to the compulsory school attendance law. Senator Cook said he asked that this bill be drafted because of the NCLB Act. He said the Act holds schools and teachers accountable for the education of students. He said it does not place a responsibility for education on parents nor on students themselves.

Senator Cook said if parents do not get their children to school, the parents have committed a felony. He said at this level the behavior does not get prosecuted. He said he is proposing that the first time a parent fails to get the child to school, the parent would be guilty of an infraction. He said the second offense would be a Class B misdemeanor.

Senator Cook said in 1887 students were required to go to school until they reached the age of 14 and that they had to be in school for at least six consecutive weeks.

In response to a question from Representative Williams, Senator Cook said we need to look at what an appropriate cutoff age is for mandatory school attendance.

In response to a question from Representative Hunsaker, Senator Cook said he attended a session on truancy at a National Conference of State Legislatures Spring Forum. He said when he returned he visited with both the superintendent of the Mandan Public School District and with the Mandan Police Chief. He said they discussed truancy and their concern about how the law is enforced.

Chairman Kelsch said Senator Cook's bill draft presupposes that a finding of truancy applies only to a student who is absent without having been excused. She said a truant child is not one who has been excused by the school. She said if a student has a medical appointment and the school is notified, that student is excused and therefore not considered to be truant. She said page 2, line 2, of the bill draft requires that for a finding of truancy, the student must not have been excused. She said students may be excused for a variety of reasons.

Representative Sitte said dropping the felony penalty makes sense because it is not being enforced. She said we know that school is not the answer for every student. She said she hopes that this bill draft is not being too heavy-handed and cutting students off from their dreams.

Senator Cook said we are probably going to have to address the need for more alternative education forums.

With the permission of Chairman Kelsch, Dr. Kent Hjelmstad, Superintendent, Mandan Public School District, presented testimony regarding the bill draft relating to compulsory school attendance. His testimony is attached as Appendix N. He said the idea of putting teeth into a truancy law is welcome.

In response to a question from Representative Kelsch, Dr. Hjelmstad said there is a difference between truancy and being away from school for a legitimate reason.

Representative Williams said flexibility will not be a problem. He said every school district has a handbook that includes policies regarding excused and unexcused absences.

Representative Delmore said the strength of this bill draft is that it allows for school and school district

policies regarding absences. She said in her district the difference between an excused and an unexcused absence is well-known.

It was moved by Senator Cook, seconded by Senator Freborg, and carried on a roll call vote that the bill draft relating to compulsory school attendance be approved and recommended to the Legislative Council. Representatives Kelsch, Hunsakor, Meier, Sitte, and Williams and Senators Cook, Freborg, Lee, Taylor, and Wardner voted "aye." No negative votes were cast.

Senator Cook said there are two things missing from how we are trying to implement the NCLB Act. He said one is trust and the other is ownership. He said all of the players have to be at the table and especially so when a new bill is being implemented.

It was moved by Senator Cook that the Legislative Council staff be asked to prepare a bill draft creating an advisory commission to the Department of Public Instruction.

Senator Cook said DPI could have formed this committee a long time ago. He said DPI could even form this committee now.

Representative Sitte said she views this interim committee as playing that essential role. She said this interim committee has finally allowed legislative oversight over the NCLB Act. She said an advisory group has a role but it should not replace this interim committee. She said the interim committee has to continue. She said there are three groups represented by the coalition. However, she said, the coalition does not include other impacted groups such as

parents and teachers who are not members of the North Dakota Education Association.

Senator Cook said he does not disagree. He said the players that have to live and breathe and work with the NCLB Act are the ones who need to be at the table.

Representative Delmore said the coalition represents the stakeholders in this game and there is value in having them together.

Senator Taylor said that the Indian Affairs Commission should also be represented on the coalition's advisory committee.

Senator Cook said the bill draft should be patterned after the Advisory Commission on Intergovernmental Relations.

The motion to request a bill draft creating an advisory committee was carried on a voice vote.

Chairman Kelsch said she and the coalition will work with the Legislative Council staff to determine which of their other recommendations can be put into a bill draft for the committee's consideration at its next meeting. She said the goal is to determine what will be best for the students of North Dakota.

No further business appearing, Chairman Kelsch adjourned the meeting at 12:00 noon.

L. Anita Thomas
Committee Counsel

ATTACH:14