

**2015 HOUSE EDUCATION**

**HB 1283**

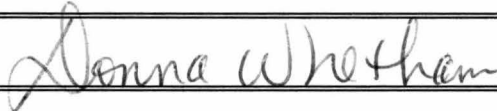
# 2015 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Pioneer Room, State Capitol

HB 1283  
1/28/2015  
22698

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to parental directives regarding statutorily mandated assessments; and to declare an emergency.

Attachment # 1-5.

## Minutes:

**Chairman Nathe:** opened the hearing on HB 1283.

**Rep Ben Koppelman:** Introduce HB 1283. (1:60- 5:28) (See Attachment #1, 2).

**Rep. Hunsakor:** I have not heard of any parent mention anything like this where live, have you heard is it a local thing?

**Rep Ben Koppelman:** I did hear of circumstances in Dickinson and have a letter from a parent in our area, it is not an epidemic, I followed up with the Superintendent from the Department of Public Instruction.

**Rep Zubke:** What are some of the reasons they give for wanting to opt out?

**Rep Ben Koppelman:** There is various things cited. One thing is anxiety over testing. In my view they are so busy and some children don't like to test and they have so many tests. This bill frames the ability for parents to opt out.

**Rep. Meier:** What form would you want to have parents notified by written or e-mail?

**Rep. Ben Koppelman:** This bill does not specify, and the district could choose how to notify them as long as the parents are aware of the law.

**Rep. Meier:** You are saying leave it up to the district or local control?

**Rep. Koppelman:** Absolutely.

**Chairman Nathe:** In the bill on page 1 line 18 line 'the superintendent shall provide to the parents', so is the superintendent going to have to send out this letter?

**Rep Ben Koppelman:** I had looked at the language and I had read that the superintendent would provide the mechanism I did not intend the superintendent would have to actively seek out the parent and I would be open to amendment to the language on that line, and we can certainly amend it.

**Chairman Nathe:** Yes on line 19 it states 'provides the parents with notification of the proposed test, the rest of the bill talks about the districts notifying, so we might want to amend that language.

**Rep. Mock:** The State Scholarship program for high school graduates, requires the students to take the assessment in order to qualify. Is your intent that if the student would opt out they would not qualify for these scholarships?

**Rep. Ben Koppelman:** My understanding of that it is asks for accumulative GPA and also may require the ACT and if the parent wants the child to try for the scholarship then the requirements must be met.

**Chairman Nathe:** So if they don't meet the requirements they would not qualify for the scholarship.

**Rep. Hunskor:** So when this letter goes home could this make a way for children to talk parents into letting them opt out of testing?

**Rep. Ben Koppelman:** That was not the intent that a letter is sent home, it could be just an e-mail this is an opt out not an opt in.

**Rep. Olson:** Would you be open to the amendment to the bill to remove the language about that notification to clarify?

**Rep. Ben Koppelman:** I think this language came from another bill that was copied and not written as I intended so yes, I would be open to that. 15:50

**Sentator Larsen:** District 3 In support of HB 1283. Example of taking tests. (16:00-19:49) After 16 years of proctoring these tests, I do not believe these assessment tests give accurate results. If we are going to have a test there has to be a reason the student cares about so they have skin in the game.

**Vice Chairman Schatz:** Is there any motivation to do well on the test?

**Senator Larsen:** There is the pump up we handed out treats and juice and talking it up. The students are not happy to go out of the class and take a test for two days and they had no interest,

**Chairman Nathe:** How many students opted out of the test?

**Senator Larsen:** When I was teaching there was no opt out option.

**Chairman Nathe:** Did you have parents approach you to opt out of the test?

**Senator Larsen:** Yes there is a lot of parents that have asked but our hands are tied the district says we have to take the test.

**Chairman Nathe:** A lot of these tests are driven by the legislature, how do we measure how well we are doing in education or how do we justify putting more money in education?

**Senator Larsen:** Before the North Dakota testing came around there were other ways. People were graduating. I don't know how accurate that test is, if the student has a bad day or is not interested the results will not be accurate.

**Chairman Nathe:** I am talking about data, how would we measure the success of what is going on? What would be the solution?

**Senator Larsen:** I don't know what would be the solution.

**Renae Ahlberg:** A parent. In support of HB 1283. (24:00 - 25:01) (See Attachment #3)

**Rep. Meier:** I wanted to know about the bullying was it with your children?

**Renae Ahlberg:** Yes, my son was not able to opt out of the test three years ago and other parents are told that you have two options, you can pick your child up from school or the child can go to the principal's office. In my opinion that makes an example of the child.

**Steve Cates:** in support of HB 1283. (27:28- :00) The assessments we are putting forth are significantly different than the past. What is the scope of this bill, I would submit to you we will not control the test, we have minimal control of the test. What is actually being tested here should be fully revealed to the parents. We should make it clear to the parents that they would have the ability to opt out. We signed up with Smarter Balance to do assessments and we should be telling the parents what is in the testing. If you want good numbers and you want to really measure you should have one standardized test. I support the bill because all education should be put in the hands of the parents.

**Chairman Nathe:** Any support of HB 1283. Seeing None. Any opposition?

**Aimee Copas:** Executive Director for the North Dakota Council of Educational Leaders, In opposition to HB 1283. (38:50-43:55 ) (See Attachment # 4).

**Rep. Schreiber Beck:** You talked about the incomplete data sets and accurate information, what if the student doesn't test well or is not interested in the test?



**Aimee Copas:** We try our best to get the best performance of our children when the testing is done. We are moving toward formative testing, means checks along the way to see how our kids are doing. If we provide for parents to opt out, we need to help them to understand some things have to be done. We stand together as professionals to that this testing is not punishment this is too help them.

**Chairman Nathe:** How prevalent is this among your schools?

**Aimee Copas:** I attended a study council in September, a group of 20 superintendents, there was only 12 opt out requests this past year. When they visit with the parent 99 % of the time the parents decide to not opt out. (48:26)

**Rep Ben Koppelman:** When you list the fact, you say requiring them to attend or to opt out, we do know unofficially they can opt out, because they call it refusing, what do you think if the informed parent doesn't trust the logic to take the test, are you saying the schools know best and not the parents?

**Aimee Copas:** I do agree parents do know best, but there are a number of things that we do have to assess when we agree to send our children to school. We want to deliver data to show how the children are doing. If you want to opt out of public school they can do that too.

**Rep Ben Koppelman:** Many parents cannot opt out of school because of financial reasons or may not be able to home school.

**Aimee Copas:** I did intend is that we have a constitution, we have free education in the United States for each student, but with the expenditure of dollars we do need data to see how well we are doing. We are sharing with you and with the parents the research of why we do what we do.

**Chairman Nathe:** We have 100, 000 students roughly and only 12 opted out of the test, if we would change the word shall to may would your organization have an issue with that?

**Aimee Copas:** I would have to go back and ask.

**Rep. Kelsh:** Out of the 12 in the top school districts, how was it handled, did they force the kids to take the test?

**Aimee Copas:** We want to serve our parents. We indicated to the parents why we do what we do and and we don't condon an opt out form. We informed them if they wanted to refuse the test simply keep the child home that day but we don't necessarily approve of that practice. We don't want to upset the parents but we have obligations to uphold.

**Rep. Schreiber Beck:** This bill clarifies what the parent's rights are, are you against clarifying the rights or are you against they should opt out?

**Aimee Copas:** What we walk into is a slippery slope, if we put this into law and clarify parents rights there is a chance a greater number of parents will opened the children out. Data shows us that that can hinder their educational pursuit. We accomadate students that struggle.

**Rep Schreiber Beck:** I think what I heard is you are not for clarifying parent's rights?

**Aimee Copas:** I think we are asking for two different things here. Clarifying parents rights and the obligation to the school districts are different. If we are no longer held to a percentage of assessment by the state we would be happy to be able to not do the testing.

**Vice Chairman Schatz:** The kids say the test is a waste of time, what is the incentive to do well on this test?

**Aimee Copas:** That is why we are working on better state assessments. There are bills to add the assessment to the requirement for state scholarship. If we can show them a way the assessments are important to them.

**Vice Chairman Schatz:** The civics exam, the motive there is you don't graduate if you don't pass, but these other tests there is no penalty? You mentioned the majority party supported this overwhelmingly, did the minority party support this as well?

**Aimee Copas:** I am not sure.

**Rep. Kelsh:** Does the private school handle this the same as public if they are approved?

**Aimee Copas:** Not that I know of. Private schools do take an assessment.

**Chairman Nathe:** Any opposition of HB 1283?

**Kristen Baesler:** Superintendent of Department of Public Instruction: in opposition to HB 1283

**Chairman Nathe:** What would be the effects on a school district if a lot of students opted out?

**Kristen Baesler:** Each year the state does require a report of how many students take the test. We want to make sure all schools are giving the tests to all students. Last year 39 students out of 53552 students did not participate due to parent's request. This is 0.07%. We already have the opt out option in place, as a teacher we always honor parents request and handle them respectfully. School districts must meet a certain level of assessments to reach the requirements you have for us. Handout of assessments required by North Dakota Code and/ or federal law. (106:02)-(1:07:24) These assessments provide an accurate accounting of what we are doing with your dollars. . (See Attachment#5)

**Chairman Nathe:** We are looking at 39 students out of 53,000 students, is that big enough to skew these numbers of the test?

**Kristen Baesler:** We try to get all our students to take the test, so we can get a measurement and ensure that we are doing our jobs.

**Chairman Nathe:** Do the home schooling students have to take the test?

**Kristen Baesler:** If the parent only has a high school diploma they must check in with the state at 4<sup>th</sup> grade and 8th grade and once in High School. If they have a bachelor's degree there are other requirements. These are your laws, these are your expectations of what we do in public education. We have many laws of expectation.

**Chairman Nathe:** How about private schools or non- public opting out?

**Kristen Baesler:** Private schools are not required to take these assessments.

**Rep Rohr:** Are you aware that the parents are not treated with respect?

**Kristen Baesler:** We provided library time for the students that opted out. I would hope the parents that are not treated with respect should go to the school board and report that. We do take time to talk to parents and to accommodate them.

**Rep. Meier:** Did the 39 students opt out of all testing?

**Kristen Baesler:** This report is for the state assessment.

**Rep. Meier:** Currently that is grade 3-8 and grade 11, what was the grade level that opted out?

**Kristen Baesler:** I can get that information for you.

**Rep. Meier:** Are you receiving requests from parents this year?

**Kristen Baesler:** We are receiving them. But I have never known a superintendent to pull a child from their home to take the test. That is the parents right to not have the child take the test. State requirements mandate evidence for certain services.

**Rep. Hunskor:** I heard earlier if you don't take the test you go to the principal. That would not be good if that did happen. I don't know if more of that goes on.

**Kristen Baesler:** I hope that is not happening. Going to the principal's office may be because that was the only available space.

**Rep. Hunskor:** I just hope that is an isolated case because there should be good discussions about the opt out with the parents.

**Kristen Baesler:** I do agree with you.

**Chairman Nathe:** Can the child keep them home and not take the test and is there a room provided if they come to school?

**Kristen Baesler:** Yes, and that is the most common remedy for the situation that I am aware of.

**Rep. Zubke:** If this 39 who opted out ballooned to 390 or 3900 does that translate in to that final assessment ?

**Kristen Baesler:** Yes, we publish the test scores and the participation rate and each of those scores are affecting those reports.

**Rep Ben Koppelman:** When I think of putting my child on the bus, I still have the right to drive them, nominal cost between the two. in the case of public education there is not choice, there is not a good solution here, just to change or quit school and home school. Do you agree there is a difference here?

**Kristen Baesler:** I believe when you use public dollars I am following the requirements you set forth to follow reporting that is legislated. The choice is that if you attend public school you will have public accountability.

**Rep Ben Koppelman:** I am more making the point of the parents being able to choose, not DPI.

**Kristen Baesler:** We have some of the most choice in the state. We have open enrollment and have a lot of parental choice.

**Rep. Olson:** The North Dakota State assessment, if we have parents that don't understand this assessment, is there a way to open up some of the mystery of this test, who administers this test and what it contains. Could DPI put together a comprehensive presentation of what this test looks like?

**Kristen Baesler:** That is a good idea. There are several places where information is available. There are sample tests the teachers use to give to students. We will have an exact copy of the test when it will be given and parents can come in to see the test.

**Chairman Nathe:** Do schools hand out to parents a sheet of the assessments the child will be taking in the year, and explain what each one does?

**Kristen Baesler:** I'm not sure that all schools do. We send out a calendar of exams.

**Rep. Olson:** We need to get the parents some information of what these adaptive tests are. I feel there is a lot of tension surrounding this and we need to take care of that.

**Kristen Baesler:** I agree. The high accountability is not there for most students. The adaptive nature, it is a test given at your direction. Adaptive testing is nothing new it is

just been refined to the degree of it can be used to raise to the higher stake of standardized accomplishment.

**Rep. Kelsh:** The problem out in the local district is the fact they have the option already to opt out, but it is not well known. There is a disconnect somewhere?

**Kristen Baesler:** The State legislature required the schools to test the students. School districts are having to deal with this for a couple decades but now the districts are asked for more reports and they are worrying about complying to the law on one hand and serving their parents and communities on the other.

**Vice Chairman Schatz:** Can we look at the old standardized test that we have been giving?

**Kristen Baesler:** That would be in violation of industry standards, there is practice tests are available. No two students receive the same exact test.

**Rep Rohr:** On your handout for North Dakota test assessments in the spring it is math reading and arts, however in the bill on line 8-9, it talks about testing reading and mathematics? So are we violating the law by giving language and arts tests?

**Kristen Baesler:** Public law 107-110 of our Elementary Secondary Education Act that was passed in 2002 requires language and arts.

**Rep Rohr:** Regarding parental rights to opt their child out we talk about how it affects data but nothing on how it affects the student? We all know kids learn differently, if assessment is not testing that child because of their way of learning what are the options?

**Kristen Baesler:** That is why appreciate the adaptive nature of the NWEA test instead of our other assessment. The adaptability is very important to assess where the students need help. It is a work in progress, and this is one measure of the big picture.

**Rep Rohr:** Each child is so different they take tests differently.

**Kristen Baesler:** I agree that is why the adaptability is so important.

**Rep Hunsakor:** How does this opting out process work?

**Kristen Baesler:** There may be different interpretations of the law but I have not seen a superintendent take a student and make him take the test. If this law is passed as a must I ask that we remove the reporting requirement.

**Rep Dennis Johnson:** Are the special needs child given the same test ? (1:40:30)

**Kristen Baesler:** There are alternative tests for special needs which is 1% of our students. 99% of our students must take the test.

**Rep Olson:** The reason we are having this bill is because the parents have been complaining, if we decide to not pass this bill would you be willing to inform the superintendents that parents do have that right and need to be treated with respect?

**Kristen Baesler:** Of course, but I would ask for help to communicate to our school districts that there won't be such punitive sanctions when they don't meet the requirements and expectations.

**Rep Rohr:** Couldn't you have a statement at the bottom of your form that states this is the percentage of students that opted out of this test, if you are so concerned about data skewing?

**Kristen Baesler:** The results are usually published but they only see that one district knocked it out of the park with their scores but another district holds even but they don't look at how many opted out.

**Chairman Nathe:** closed the hearing on HB 1283.

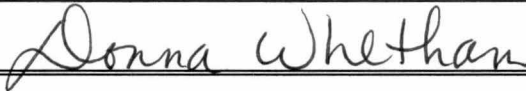
# 2015 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Pioneer Room, State Capitol

HB 1283  
2/16/2015  
23911

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to parental directives regarding statutorily mandated assessments; and to declare an emergency.

Attachment #1, 2.

## Minutes:

**Chairman Nathe:** reopened the hearing on HB 1283. This bill regards parental directives and statutorily mandated assessments. Representative Koppelman has some amendments.

**Rep. B. Koppelman:** (3:00-6:55) Explained the proposed amendments to HB 1283. (See Attachment # 1& 2).

**Rep. Hunsakor:** Does this encourage kids to not take the test, I can go home for the day why should I take the test?

**Rep. B. Koppelman:** If the parents have the option to opt out, they are not usually doing that at the request of the student. That is not my intent to encourage the student not to take the test.

**Rep. Mock:** How would you envision the notifications on the website being worded?

**Rep. Koppelman:** I asked the school district what they did when the parents want to opt out? They had created a form letter. I assume the schools would have a standardized way to word this and that it would explain their rights and that it wouldn't be counted as an unexcused absence. So it is a way school districts could nudge them toward that option.

**Rep. Mock:** My concern in this a little bit is for example if I get this letter and then my child doesn't want to take the test, but what I don't know is when they don't take the test they might be ineligible for North Dakota scholarships. Is that information conveyed in the letter that some scholarships are based on your child's taking that test?

**Rep. B. Koppelman:** Yes. This was duplicated from a newsletter to the teachers in the district. Here is our response to: they used it almost like a form letter at that time. The only time a letter would be required would be if someone had a question that wasn't addressed on the website. It will be on the website. The districts will take the route of explaining what the assessments are for and why they are beneficial for the kids. They would be talking the parents and children into taking the test. They would post what assessments they have and why we have them and on the bottom they could put the opt out with a parental request. It would avoid having the letter sent out.

**Chairman Nathe:** On amendment 2001, the district can post it as the school board sees fit. They can also post the ramifications of opting out. It falls upon the district to make that notification.

**Rep. B. Koppelman:** That is correct. As long as it is available for the parents to see.

**Chairman Nathe:** To let them know they can opt out but just so you know the pitfalls if your child does.

**Rep. B. Koppelman:** It would be very appropriate for the district to give them the pros and cons.

**Rep. Hunsakor:** Is the law not clear on opting out?

**Rep. B. Koppelman:** The law is silent on opting out. Traditionally parents have been able to make their views on certain subjects. Nowhere in law does it say that parents can opt out of certain subjects. It is more of a presumption of the law that parents can refuse to have their children take the assessment or class.

**Rep. Hunsakor:** So the current practice varies from school to school?

**Rep. B. Koppelman:** I would only be able to speak to the 10 examples that I researched in this bill. Number one there those that talk to the Superintendent of Public Instruction and use her direction. The second option is where parents refuse and opt out. The third was the district became a little hostile and almost forcing the child to take the test.

**Chairman Nathe:** We have a representative from DPI. Would you speak to that question.

Greg Gallagher: the Director of Assessments from Department of Public Instruction. The law is silent and it leaves for every district to find whatever manner they wish to communicate the opportunity for parents to participate in the assessments. The department does keep record for all participation. There is an option if the parent elects to participate or not. The total number was 39 students statewide. This would apply to the state assessment but we have one exception and that is the civics test which is required for graduation. It has been clear that parents can have the students not participate. It has been left up to the local school districts.

**Chairman Nathe:** This bill would give them a little direction.



**Greg Gallagher:** It would clearly indicate that there is an opportunity but as far as the direction it would be up to the local school districts to find themselves.

**Rep. Kelsh:** Why is the civics test law different from other testing?

**Greg Gallagher:** The reason it is different because the legislature has defined it as such.

**Rep. Hunskor:** Where would our schools be at if the amendments passed?

**Greg Gallagher:** It would make clear not participating would be an option, and it would show the consequences. We have no other statement in law for curricular participation. This would be a clear variant. So it is a communication it does introduce a little disparity in terms of how we approach our understanding of curriculum itself. That is the biggest issue we have is the uniformity of the structure across the state.

**Vice Chairman Schatz:** I was under the assumption everyone had to take the ACT when you are juniors or seniors?

**Greg Gallagher:** There is a requirement in law for it to be provided but not an absolute requirement for the student to take it.

**Vice Chairman Schatz:** I know other states do not require it of everyone and just the students that want to go to college take it. Then there scores are higher than ours. We don't use those results of the ACT for any measurment?

**Greg Gallagher:** We receive aggregate results we do not receive the individual results, they go to the school.

**Rep. Mock:** I found in Century Code it says students in grade 11 shall take the ACT, including the writing test or three work keys assessments recommended by the Career Technical Education and approved by the Superintendent of Public Instruction. The language puts more emphasis on the shall take and not shall provide.

**Greg Gallagher:** We also have comparable language under the state assessment is that it be provided to all students. Not all students participate in that. The law is silent in practice itself.

**Rep. Hunskor:** This bill doesn't really change the options but just that the parents are more informed.

**Greg Gallagher:** It tries to seek clarity where silence is currently in place.

**Chairman Nathe:** It notifies them of the pro's and con's and that they can opt out. It is just more information.

**Rep. Kelsh:** Some districts send out a newsletter. Would they have to have a notification with every letter?

**Chairman Nathe:** It is directed by the school district. It has flexibility so they would have the ultimate decision.

**Rep. B. Koppelman:** I move to adopt amendment 15. 0749.02001 on HB 1283.

**Rep. Rohr:** Seconded.

**A Roll Call Vote was taken. Yes: 12 No: 0 Absent: 1. Motion carried.**

**Vice Chairman Schatz:** I move to adopt amendment 15.0749.02002 on HB 1283.

**Rep. Rohr:** seconded.

**Rep. Kelsh:** Subsection two I may have a problem with that. I can understand a child going home and the school, will they get paid for that? Is that a violation?

**Chairman Nathe:** Mr Gallagher is that a violation to anything you are familiar with? It doesn't seem to me that it would be.

**Greg Gallagher:** I am not aware of anything. I would have to research that further.

**Chairman Nathe:** I would assume most of the children would be at the school.

**Greg Gallagher:** The only thing might be related to that would be any sort of incentive for nonparticipation for time removed from a classroom setting. That would be aside from that but that becomes a factor in this.

**Chairman Nathe:** Again it is a parental decision.

**Rep. Koppelman:** This is similar to other things, if you are excused from the last period of the day to go play in a football game, you are not considered absent.

**Rep. D. Johnson:** If this were to pass I would be interested in seeing how many would opt out. Is this going to encourage the student to opt out?

**Chairman Nathe:** It might but again the parents would have to sign off it is not the child's choice on his own.

**Rep. Mock:** Are we setting a precedent where you can go home if it is for testing? The schools should have another activity because you are removing the student from education activities. I have some concern. It is just testing today but at what point are we saying we can opt out and go home but have an excused absence. We want to make sure we provide an excellent education.

**Rep. Hunsakor:** I have some concerns with the amendment and I understand where Rep. Mock comes from and I have some of his same concerns.

**Rep. Koppleman:** We have heard that the state has standards and assessments and the districts have curriculum. Nothing in this amendment would keep the school districts from having the student do alternative study. The districts still could provide another activity but some districts don't want that. It makes sure we don't have some of those unintended consequences. It is a win, win for both sides.

**Rep. Olson:** Would the amendment .02002 be more to your liking if we added in line 4 subsection one to say "period of time within which normal or alternative classroom activities are not occurring" It would then be acceptable if there wasn't other classroom activities provided.

**Rep. Mock:** I am not sure that would answer all of my concerns. I also think there are study halls, library and projects. I would support that amendment to this amendment but I am not sure I would support the amendment though.

**Rep. Hunsakor:** Was there schools that asked for this whole thing?

**Rep. Koppleman:** The amendment was what the schools have been talking about. Some of the small schools were having some problem with what to do with the kids.

**Chairman Nathe:** Any other discussion? Seeing none the clerk will take the roll on a do pass on the amendments.

**A Roll Call Vote was taken. Yes: 10 No: 2 Absent: 1**

**Rep. Rohr: Do Pass as Amended on HB 1283.**

**Vice Chairman Schatz: seconded.**

**Rep. Mock:** In law we just passed in order to graduate you must pass the Civics test. That test cannot be opted out of. We tend to not want to put curriculum in code. We do have in Code that before a student is able to graduate they have to read the Declaration of Independence, The United States Constitution and the Bill of Rights. So that is the only other mandatory component of graduation that we spell out in code. We do have requirements. Are you concerned with the inconsistency of allowing parents to opt out of testing when other required testing still exists that a parent would not have a right to opt out of?

**Rep. B. Koppelman:** I think the civics test is a different type of test. The civics test prepares the student for life, the right to vote, understanding the system that governs them, making sure they are equipped to participate in life after school and isn't directly tied to the K-12 curriculum. These assessments are about measuring college readiness.

**Rep. Kelsh:** How long do these tests take?

**Chairman Nathe:** They take most of the day.

**Rep. B. Koppelman:** The amendment says you can keep the child home for the period of time within which normal classroom activities are not occurring. So if the test is one period it would only be one period they would be excused.

**Rep. Mock:** I should point out a student has to complete what we require by law. We are not teaching to that test we are hoping that the test demonstrates that they have learned what they need to be a good American citizen. I am reluctant to oppose the bill. I am a little worried this part may be a bridge too far. If the website explained and let them know there are consequences to opting out. I will resist at this point.

**Rep. Hunskor:** It seems the passage of this bill would clear up a lot of problems. If that can get cleared up that is a plus. The negative side is setting up a precedent and if that happens we could revisit this in two years and take that out of there again.

**A Roll Call Vote was taken. Yes: 11 No: 1 Absent: 1. Motion carried.**

**Rep. Zubke: will carry the bill.**

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1283

Page 1, line 18, remove "superintendent shall"

Page 1, line 19, remove "provide to the"

Page 1, line 19, replace "notification" with "must be informed"

Page 1, line 20, after the underscored period insert "This information must be conveyed by means of a notice posted on the school district's website or by any other method determined to be appropriate by the board of the school district."

Page 2, line 5, remove "school"

Page 2, line 6, replace "district superintendent shall provide to students' parents notification" with "parents of students must be informed"

Page 2, line 8, after the underscored period insert "This information must be conveyed by means of a notice posted on the school district's website or by any other method determined to be appropriate by the board of the school district."

Page 2, line 18, replace "school district superintendent shall provide to the students' parents notification" with "parents of students must be informed"

Page 2, line 20, after the underscored period insert "This information must be conveyed by means of a notice posted on the school district's website or by any other method determined to be appropriate by the board of the school district."

Page 3, line 10, remove "school district superintendent shall provide to"

Page 3, line 11, replace "notification" with "must be informed"

Page 3, line 12, after the underscored period insert "This information must be conveyed by means of a notice posted on the school district's website or by any other method determined to be appropriate by the board of the school district."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1283

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Page 1, after line 4 insert:

"**SECTION 1.** A new section to chapter 15.1-20 of the North Dakota Century Code is created and enacted as follows:

**Administration of test or assessment - Student attendance.**

1. If a parent directs that a test or an assessment not be administered to a child, as permitted under sections 15.1-21-08, 15.1-21-17, 15.1-21-18, and 15.1-21-19, the parent may withhold the child from school during the period of time within which normal classroom activities are not occurring because of the test or assessment administration.
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Renumber accordingly



February 16, 2015

8/2/16/15  
112

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210

Renumber accordingly



Date: 2/16/15  
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1283

House Education Committee

☐ Subcommittee

Amendment LC# or Description: 15.0749.02001

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. Koppelman Seconded By Rep. Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe	✓		Rep. Hunskor	✓	
Vice Chairman Schatz	✓		Rep. Kelsh	✓	
Rep. Dennis Johnson	✓		Rep. Mock	✓	
Rep. B. Koppelman	✓				
Rep. Looyzen	✓				
Rep. Meier	A				
Rep. Olson	✓				
Rep. Rohr	✓				
Rep. Schreiber Beck	✓				
Rep. Zubke	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*amended.*

Date: 2/16/15  
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1283

House Education Committee

☐ Subcommittee

Amendment LC# or Description: 15.0749.02002

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. Schatz Seconded By Rep. Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe	✓		Rep. Hunskor	✓	
Vice Chairman Schatz	✓		Rep. Kelsh		✓
Rep. Dennis Johnson	✓		Rep. Mock		✓
Rep. B. Koppelman	✓				
Rep. Looyen	✓				
Rep. Meier	A				
Rep. Olson	✓				
Rep. Rohr	✓				
Rep. Schreiber Beck	✓				
Rep. Zubke	✓				

Total (Yes) 10 No 2

Absent 1

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*amended.*

Date: 2/16/15  
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1283

House Education Committee

☐ Subcommittee

Amendment LC# or Description: 15.0749.02002 & 15.0749.02001

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. Rohr Seconded By Rep. Schatz

Representatives	Yes	No	Representatives	Yes	No
Chairman Nathe	✓		Rep. Hunskor	✓	
Vice Chairman Schatz	✓		Rep. Kelsh	✓	
Rep. Dennis Johnson	✓		Rep. Mock		✓
Rep. B. Koppelman	✓				
Rep. Looyen	✓				
Rep. Meier	A				
Rep. Olson	✓				
Rep. Rohr	✓				
Rep. Schreiber Beck	✓				
Rep. Zubke	✓				

Total (Yes) 11 No 1

Absent 1

Floor Assignment Rep. Zubke

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**HB 1283: Education Committee (Rep. Nathe, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1283 was placed on the Sixth order on the calendar.

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**2015 SENATE EDUCATION**

**HB 1283**

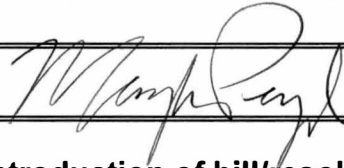
# 2015 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Missouri River Room, State Capitol

HB 1283  
3/10/2015  
Job # 24547 (1:22:32)

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

### INITIAL HEARING

relating to parental directives regarding statutorily mandated assessments; and to declare an emergency

## Minutes:

5 Attachments

**Chairman Flakoll** called the committee to order at 9:05am with all committee members present.

--SUPPORT--

**Ben Koppleman**, District 16 Representative (*see attachment #1*)

**Representative B. Koppleman:** In the House we amended the bill to add in a provision that would allow school district to encourage kids to stay home if they were opting out. Some of the smaller school districts said they didn't have the ability to have study halls or library access at the same time as when they were giving the exams at a certain grade level. The way we found to incentivize that, if the school district wanted to encourage that, is to not have it count against truancy if they were gone for that period of time. We also made an amendment that the notification process was simply a posting to the website.

(7) **Senator Davison:** Why was the career interest inventory included in the bill?

**Representative B. Koppleman:** The areas in this bill were simply any of the current state assessment mandates that are required to be administered by the state be allowed to be opted out because that has been the wide practice and accepted process in the House. Superintendent Baesler suggested that it is currently a parents' right to do that, and this is staying consistent to that.

**Senator Davison:** As a former school board member, do you think it is important for kids to understand their career interest inventory and be able to align their classes with their career interests so they're not changing their mind and exhausting unnecessary resources during that time? What about DIBELS or NWEA assessments?

**Representative B. Koppleman:** These are only the assessments that are mandated that every child have administered to them by the state. I believe the four primary areas are the state assessment such as smarter balanced, the ACT/work keys, the NWEA MAP or equivalent type test and the career inventory. DIBELS is a school level test and that would not directly be governed by this bill.

**Senator Davison:** Do you think parents could keep their children home now and not be part of the test?

**Representative B. Koppleman:** I believe they can. I also believe they can direct the school to not administer to their child, but not all school districts seem to want to adhere to those rules. That was the reason for this bill. To follow up on the previous question, I do think it is important that students have the opportunity to be exposed to many different things to figure out what they want to do, but I don't believe the public school is the only way for students to be exposed to those experiences. I know you can still take the ACT at the college at a later date than when we do in high school. The parents would have to pay and take that upon themselves. I probably wouldn't opt my own kid out of those, but that isn't for me to say it isn't a parent's right.

(11) **Senator Flakoll:** How does your bill improve education?

**Representative B. Koppleman:** I'm not sure my bill claims to improve education. This clarifies what rights parents have and makes sure that those are consistently exorcised across the state from district to district and to make sure that all districts are able to get the same advice from the Department of Public Instruction or their legal counsel as to what the law requires.

**Chairman Flakoll:** What does the child do when the others are being tested?

**Representative B. Koppleman:** The school district and the parent have several options. Under current practice, they can keep the student home. However that can count against their number of truancy days. Under the bill they can keep the child home and they wouldn't be penalized by truancy. As to what would happen if they were in school, different schools have different approaches and none of them are prescribed under this bill. Bigger districts have an option of putting them in study halls or a commons area whereas some simply instruct them to bring a book and don't disrupt the class.

**Chairman Flakoll:** Why wouldn't every child try talking their parent into letting them opt out with this potential leisure time?

**Representative B. Koppleman:** I can't guarantee you that students would not attempt to talk their parents into this; however they can attempt to talk to their parents about it now. The parents who have exorcised this in the past and continue to be concerned are very engaged and have the best intentions for what is best for their kid. This bill deals with items that are directly grade bearing. These are assessments that we as legislators use to gauge various things, which are important at times. I don't know if a school district can say that they have more interest in their students' education than what the parents have. I don't think this will be taken lightly and parents will make the choices for the right reasons.

**Chairman Flakoll:** If we start getting incomplete data, we will be asked about our investment for the additional dollars. Right now we only have 39 students who have opted out, but if that is increased to the thousands, what would happen?

**Representative B. Koppleman:** Let's remember that based on the Department of Public Instruction's testimony and my understanding, we could go to thousands with or without the

bill if all of the school districts adhered. Out of the students we have in the state, maybe 90,000 students, if we had 3,000 who don't take it, I'm not sure if that is incomplete data. It still represents the vast majority and of the parents I've met, that does not represent one class of people in terms of income, race, gender or any other measurements that we would want to make sure that we are not pigeon-holing out of the equation. We get a broad look across the different demographics regardless.

**Chairman Flakoll:** How will we know that? Will we be gathering data to know who is opting out?

**Representative B. Koppleman:** The districts now have data sets on each of their students without the state assessment for example. When the state assessment is taken, they can look back and make the comparison of the different demographic sets. There is no suggestion that this type of opting out, whether codified in law or not, skews that data set. The only concern I have heard in terms of skewed data sets, is if a school district were encourage a certain demographic to not show up to get better scores. That had happened in other states years ago. This bill would not allow school districts to solicit parents any more than it currently does.

(18) **Chairman Flakoll:** We have thousands of single parent households. Who takes precedence if one wants to opt out and the other doesn't?

**Representative B. Koppleman:** I can't answer that. In any shared parent arrangement that the court has set up, there are many decisions that have to be made on a child's behalf during their educational career other than this. There has to be a way to resolve that and that same resolution would apply here.

**Chairman Flakoll:** What about special education students? We have a constitutional obligation to provide education at a proper level for them. If we don't identify their unique needs by testing, how will we be able to provide those additional supports for them? Are we guilty of neglect or education malpractice? If we don't prove that they need those supports then they won't get them.

**Representative B. Koppleman:** When we first introduced this bill, there were some who perceived it to be saying that all assessments could be opted out by the parent. That is not the case. This just has these 4 areas which are not specific to special educational needs. When you talk about students that you are evaluating to figure out if they need an IEP or other special education, this bill is silent on that. Districts would still be able to use various things that are both curricular and non-curricular in nature that measure those needs. There is another bill that talks about data sharing that had more overlap and those issues were worked out. This bill does not affect those assessments determining things like if they need someone to read to them when they take a test or a one-on-one paraprofessional to aid them. None of those things would be here because none of these assessments are measuring those.

**Chairman Flakoll:** Would the same be true for ELL students then?

**Representative B. Koppleman:** I believe it would.

(21:30) **Vice Chairman Rust:** If thousands refuse to take a test, wouldn't that tell us something about the public's view on testing? Two to three generations ago, very few state-wide tests were given. We now give so many tests that not only have children become



disenchanted with them, but parents as well. Sometimes I think the test results are used for things other than what we think they are going to be used for. We measure schools by them. If one of those subgroups fails, the whole school is a failure. We give too many tests. If we have a large number of parents refusing to have their child take this test, wouldn't that give us a message about the value of testing and how they actually see it benefiting their child?

**Representative B. Koppleman:** I think it is bad business to have the federal government in education, bad for the educational institution. Between state and local balance, we can do what needs to be done without federal involvement. Some tests we take even though they are loosely required and that is tied back to the federal government. It is for the federal government's benefit that they get these statistics. With the state assessment, it has been based on the state standards. However the state standards become the guideline that districts build their curriculum off of and then they have their own testing metrics to decide whether or not the student is proficient in a certain class and what grade they receive and what stats they have when they graduate high school such as their GPA and credits attained. We do have some loose requirements at the state level as well, but the school district is ultimately making the judgment call with their testing. We do state assessments a lot for us as legislators or the state and federal benefit to show a barometer of how students are doing; however the benefit to individual kids is debatable. We have gotten very test-heavy. The schools already do their own testing to figure out whether or not the student is proficient. These assessments really benefit other people other than the kids. I don't see harm to the child if they don't take the state assessment.

(26:30) **Senator Davison:** Why didn't you put in a bill eliminating the assessments instead of having the option of opting out?

**Representative B. Koppleman:** That would be an approach. I took the ACT before it was offered from the state. These are beneficial for their respective purposes and have merit to some people. The ACT is probably not important for the student's career in high school but a more so tool to enter college. It's same thing for Work Keys if you are going into a hands-on trade. It can be substituted and taken instead of the ACT and if you do the 5 Work Keys, it may be a nice statistic for the legislature and helpful for college entry but doesn't necessarily reflect their high school career. I don't think these are bad tools, I just don't think the government should supersede parents in making those decisions that are not directly bearing on K12 education.

**Chairman Flakoll:** Did you vote for the civics bill, HB 1087?

**Representative B. Koppleman:** Yes I did.

**Chairman Flakoll:** can they opt out of this test?

**Representative B. Koppleman:** They should be able to opt out of the civics test. Although it is now a requirement for graduation, I view it more like the requirement to have so many math or science credits. What you are doing in requiring that test, you are making that the final test for a civics class or a bunch of classes that build up to that knowledge. Just like you'd have a final math exam, it is sort of like the final test for your combined knowledge in civics and shows that you could be a responsible citizen. I don't see that as being the same as these tests. Under current practice, perhaps the Department of Public Instruction would say you could opt out if parents object. Most of these assessments claim that they must administer it to the students, so some of the students could write their name and chose

random answers. The passage has no bearing on the grade whereas they can't graduate without getting a certain score on the Civics test.

**Chairman Flakoll:** You think the civics test is more important than the ACT?

**Representative B. Koppleman:** For the sake of high school graduation, yes.

**Chairman Flakoll:** How about the sake of their future? If they get a 12 on the ACT, their chances of going to college are pretty limited.

**Representative B. Koppleman:** I don't disagree with you. If they did get 12 on their ACT, they are going to struggle. However there should have been markers in all of the different testing throughout previous grades. It's unfortunate that they hypothetically got a 12, but is knowing this going to change them before they leave high school? I don't believe that is going to help. In contrast with the Civics test, schools know students have to pass it and are focused on state standards and curriculum and number of credits to graduate.

(32) **Chairman Flakoll:** if they opt out, is it for one specific test, the year, or that point on?

**Representative B. Koppleman:** The bill is silent on that. The school district would have latitude on that. I would assume the schools would do it at a per year or a per grade level. As to each individual, it depends on how much paper that the district want to manage. Some parents, just to voice their opinion, have used an opt out form that someone else has printed rather than creating their own. Some school districts rejected that and refused a stock opt out form, but this is just a tool for the parent to exorcise their right. They are just using a canned form versus writing their own. Under this, this will give the school districts an option with policy.

**Chairman Flakoll:** Is that in the bill?

**Representative B. Koppleman:** No it is silent.

**Chairman Flakoll:** In similar situations schools allow parents to simply call in which is bad practice for verification reasons. Would you recommend that they keep opt out forms on file through the term of the student?

**Representative B. Koppleman:** I don't recall if the bill specifically says if they need to opt out in writing. If it doesn't say that, perhaps it should be amended. I would think the school district would be responsible to have that on file at least for the duration of the effectiveness of that opt out form.

**Chairman Flakoll:** As an example with the ACT tests, you need to complete it in order to be qualified for certain scholarships. Schools would want to cover themselves if parents retaliate from this after the fact. If fewer than 95% of the students take the test, what happens?

**Representative B. Koppleman:** I can't predict that. Under the current practice there are two schools of thought with the 95%. Every student that is enrolled either on the day the test is given or enrolled the year of is counted towards the 95%. You have to weigh that out. The other thought looks at those who are eligible. Those who opt out are not eligible. I would use that school of thought and I think the Department of Public Instruction can speak to what they currently do and whether or not that alternative would be there. I don't think the federal requirement supersedes what we've always understood as being the parents' right.

**Chairman Flakoll:** In the Fargo school district, they have 900-1000 students that flow in and out during a given year. These are opt outs by district and they would have to opt out in their second district if they move, correct?

**Representative B. Koppleman:** I believe that to be correct. It would be unreasonable to expect the second district to be aware of that opt out if they had never received it. I am

assuming the districts would want to make notice of this at the beginning of the year and put a standard form in place and accept those as they come in.

**Senator Oban:** If a child is withheld from school but essentially marked as being in attendance, is the school responsible for anything that might accidentally happen that day?

**Representative B. Koppleman:** No. If you have an excused absence, you are marked "not present". This bill is saying that you are not marked absence for truancy purposes but they would still have record that you weren't physically there along with the opt out form to prove it further.

(39:25) **Karmen Siirtola** (*see attachment #2*)

**Siirtola:** I am here on behalf of someone else (*Lori Hinz*) who has written testimony to be presented but is sick this morning.

(52:25) **Chairman Flakoll:** This committee easily has an excess of 100 years of education experience either as school board members, teachers or administrators. There is expertise at the table.

**Siirtola:** I think she was referring more on a national level based on the other entities. This bill is a bill about parental rights. It's not about the testing and its value, reliability or usefulness of it. It all goes back to the rights of parents and as a parent who has been involved in this issue, whether you want to talk about SBAC or Common Core, we want more parent involvement. Parents care, but this is a monstrosity and they don't know where to start. They care but they don't know what they can do.

**Senator Oban:** Before this bill, Ms. Hinz was able to opt out her children?

**Siirtola:** Correct. Some of us have had more issues with being able to do that than others.

(55:20) **Leah Peterson**, Fargo mother

**Peterson:** Last year I opted my step daughter out of just the state assessment and was met with much resistance. It spiraled into several heated conversations with the principal over parent's rights and if we have a right to direct our child's education or not. At the instruction of the principal, the teacher pulled her aside and instructed her to take the assessment anyway. A month later we found out even though we specifically told her not to take the test and told the principal not to administer it. This year because of our experience last year, we decided to opt her out of all non-teacher generated tests. After doing research, my husband and I decided that we do far more standardized testing in our schools than we would like to see. This year even though we've opted her out of the state assessments, much of her time has been spent prepping for it anyways, it's just intertwined into their daily instruction much more than it had been in the past. When she opted her out this year, the principal at this new school (she transitioned from Elementary to Junior High) called my husband and again had a very heated discussion.

I would rather say refuse because at this point you don't have an option to opt out, you have an option to refuse. The next day Bob Gross called and we had a very cordial conversation with him. He agreed that we have the right to refuse the state assessment and that the principal was misinformed. So two years in a row with two different schools and two different principals, we've been met with a lot of resistance when choosing to

participate in our child's education. We are parents who are actively involved and we always have been. It is not a reflection on the teachers or schools, it really has to do with parental rights and being able to be involved without being threatened truancy. I know some parents have had good experiences, but others like myself have had a negative experience. Please support this bill. It clears a lot of muddy water for school districts, the Department of Public Instruction and for parents. I have no problem complying with what is easiest for the school districts in terms of notifying parents and going through the opt out process. Parents should have healthy, working relationships with their student's teachers, principals and administration. In any way that I can encourage that, I would do so.

**Chairman Flakoll:** When your child wasn't taking the tests, what did she do?

**Peterson:** This year they have allowed her to read or work on her homework. Once we got past the hurdle of resistance, our school was willing to work with us on what she should be doing during that time. When it is given in blocks, we have no problem keeping her home if it is too much of a burden on the school district. Since it is my decision, I understand it isn't the school's responsibility to be a daycare or find alternative activities for them and I will follow through with my responsibility as a parent.

(1:02:20) **Vanessa Weber**, Cando mother

**Weber:** I have a Kindergartner and a first grader. My husband and I have opted our children out. Our school has seen a lot of concerned parents and I believe we have 21 children who have opted out. Our school has sent them to the principal's office and we were not given the option. Our children's teachers were supportive of our decision and stated that they would either keep them in the classroom with them or send them with a book somewhere. My kindergarten came home and claimed that he was sent to the principal's office. In our school it is being seen as a punishment, so I would urge a DO PASS because it sets the precedent for the school districts to be on the same page.

(1:04:05) **Stacy Castleman**, mother (see attachment #3)

**Castleman:** My 11 year old son was going to be here today because he thought this was important. I encouraged him to go to school instead. I am a parent who has opted out my 3 children. At this point I don't have any problems because I made it clear that I wasn't asking for permission, that it was my right.

--OPPOSITION--

(1:06:10) **Dr. Aimee Copas**, NDCEL (see attachment #4)

(1:13:05) **Vice Chairman Rust:** You list a number of reasons why you are opposed to the bill. All of those reasons appear to be for the wrong reasons. It seems like tests should be given to help students, yet it seems like we're giving tests in order to conform to certain guidelines that I'm not sure have to do with the education of the child. Do you believe that the reasons of testing are skewed?

**Copas:** I agree with you, but I don't think side-stepping the issue with a bill answers the question. Standardized testing may not get the information we are looking for. We have

hopes that our new smarter balance assessment is going to provide quicker, more integrated details that can inform instruction, but frankly we will not know that until we have the ability to apply. This bill encourages civil disobedience to the extent that we are attempted to change something through a separate activity. If what we don't like is the current approach to state assessments, let's make the appropriate bill that drives education down the path we desire. This particular bill does it in a fashion that sets up a subset of people, meaning our school administrators, teachers and school districts as a whole, to be the people that will be blamed for side-stepping the law ultimately. It is the law that we must follow at this point in time until we enact new law to do something different. It sets them up for failure. We can get to the types of assessments we want rather than trying to encourage and push schools out of compliance and into a forced scenario where we are in a bit of trouble as a school district to try to enforce change. It makes more sense that we lock arms to get us to where we want to be together. The school districts have wanted to do this for quite some time; we just don't agree that this is the appropriate approach. There are a lot of parent to do anything to make their child's life a little less uncomfortable, even if that means that they just opt them out of an assessment. This approach does not solve the problem. Rather it creates a new subset of problems that will take us into future legislative sessions to continue to address this same problem. We encourage a different approach.

**Senator Schaible:** Parents have the right to opt out now. Do you disagree with that?

**Copas:** No certainly not. They can certainly have that opportunity. 36 parents did last year under the Department of Public Instruction reporting.

**Senator Schaible:** If the school designates an opt out form, would that affect the 95% requirement?

**Copas:** It would not take us out of the 95% reporting requirement. It would push us out compliance. We test our kids a lot, but this is the wrong way to combat the issue. Let's arrive at a solution that more of us can agree upon rather than the opt out solution.

**Senator Davison:** Where are in developing a consistent state-wide opt out form?

**Copas:** Superintendent Baesler has been in contact with the AG office to approach this. We need to come up with a universal form for the state. However, ESCA reauthorization that could take place shortly could change this entire conversation.

**Senator Davison:** The form isn't the communication problem. It is the communication of the parents' right that principals and superintendents across the state need to understand.

**Copas:** Parents have the right. What we struggle with is the numerous amounts of forms coming from various political websites that provide various types of forms. We need to simplify it. In conversations with parents, many didn't understand the repercussions of the students from opting out. We have an obligation to get this information to parents.

**Chairman Flakoll** closed the hearing

\*Assessment Opt-Out Policies informational reference (*see attachment #5*)

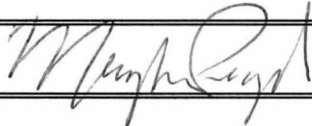
# 2015 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Missouri River Room, State Capitol

HB 1283  
3/11/2015  
Job # 24678 (15:28)

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



**Explanation or reason for introduction of bill/resolution:**

COMMITTEE WORK

**Minutes:**

No attachments

**Senator Schaible:** I like the premise that the parents can opt out of it, but I have issues with this bill. I think we should look at amendments. The Department of Public Instruction or the School Boards Association should have model policy drafted so that whatever vehicle they are going to use to opt out would be available. It should be some kind of sheet that you can sign off of because I don't think a phone call or email would be prudent. We can look at a standardized sign off sheet. As far as how that is posed and the way they handle those vehicles should be up to local control by their policy.

**Chairman Flakoll:** Should it last for one year?

**Senator Schaible:** It needs to be time specific whatever we come up with

**Chairman Flakoll:** Those forms should be retained as part of their permanent student record.

(3) **Senator Oban:** On page 4 lines 12-13 it says if a student is enrolled in a non-public school and they are exempted from any of the requirements in the section, that there has to be some form of documentation to the superintendent including the reason for the exemption. I would suggest that perhaps that would be a decent addition to public school kids as well.

**Chairman Flakoll:** Would their reasoning be 250 words or less?

**Senator Oban:** Yes.

**Vice Chairman Rust:** I like the idea of a form. I don't know if a parent should have to give a reason. If they want their kid to be exempt from a test, we shouldn't force them into saying why. It's their decision.

**Chairman Flakoll:** Would it be valuable information to know to modify the system?

**Vice Chairman Rust:** It is intrusive to the parent who is in charge of the child. We don't ask them why they want their child to take it.

**Chairman Flakoll:** I think they should have to stay in school. Sending them home would incentivize them.

**Vice Chairman Rust:** I have a tendency to place a great deal of faith in parents doing the right thing. Most parents make good decisions for their kids, and if they chose not to have their child take a test, I don't think it is the state's business to know why.

**Chairman Flakoll:** In many cases, there are certain assumptions that when we have them come to school for free, it comes with certain caveats.

**Senator Oban:** If we do this to non-public schools when they are exempted from something, having the same requirement makes sense. I don't jump to conclusions that people abuse systems nor do I think parents are doing something for the wrong reasons. Whether I agree with it doesn't really matter, they still have the right to do it and I respect that right.

**Chairman Flakoll:** They have a right to an extent. The most egregious example is the parent who had the 13 year old 21 pound kid. We have other levels of neglect that can happen. The parents who were in here to testify are not the ones we have to worry about. It is the ones who are not as fully engaged in their child's education. I don't think we should send students home for an hour long MAPS test, which I think is a useful teaching tool. I tend to think that all students should take the ACT because that is valuable information for our state.

(10:45) **Senator Davison:** Is it our job to figure out what the form should look like and how the school should administer it or is that the responsibility of others?

**Chairman Flakoll:** You're right; this is something they can already do.

**Senator Davison:** What is the goal of what we are trying to do?

**Chairman Flakoll:** The argument is whether we should have a more uniform system of notification, what they can opt out of, what the form looks like and how long that should be preserved.

**Senator Schaible:** We agree that the parents have the right to opt out. However we're seeing that some school administrators are resisting this notion. We need to protect the school districts by giving enough guidance. We don't need to write the form, but we need to have a minimum standard of what should be on there. This legislation protects both ends.

**Chairman Flakoll:** The bill has some holes that need to be fixed. I still wonder about single parent households.

**Senator Schaible:** I will work on amendments.

**Chairman Flakoll** closes the discussion on engrossed HB 1283.

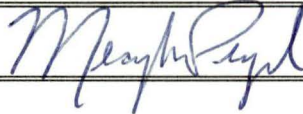
# 2015 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Missouri River Room, State Capitol

HB 1283  
3/18/2015  
Job #25065 (12:05)

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



**Explanation or reason for introduction of bill/resolution:**

ACTION

**Minutes:**

4 Attachments

**Chairman Flakoll** requested a news article to be included in minutes (*see attachment #1*)

(*see attachment #2*)

**Senator Schaible:** With the amendments, I didn't want anything that would affect their grades. I thought the ACT and the WorkKeys was appropriate to keep in. Most of the discussion was against the Smarter Balance and other assessments that don't affect the education factor. The list is what they cannot exempt from.

We also talked about how we need some kind of sign off sheet or form for the parents, time sensitive of the school year and only good for the remaining of that year. It says that the Department of Public Instruction would create this form.

Then we talked about the reporting requirements, that this opt out is available and would be on the school websites. It can always come back the next legislative session, but this will go for the rest of this session and next.

**Senator Schaible moves to adopt the 3002 amendment.**

**Vice Chairman Rust seconds the motion.**

**Chairman Flakoll:** The liability portion is appropriate for those seeking special education services. Some cannot receive these services unless they are tested for it. Also my legislative intent would be that the form that will be created would be a buffet of options in which they could pick off individual ones rather than being obligated to opt all in or all out.

**Vice Chairman Rust:** I like the idea of it being prepared by the Superintendent of Public Instruction. Have you talked to the Department of Public Instruction?

**Senator Schaible:** Yes I did discuss this with Superintendent Baesler. I don't want two forms. You could have the local form and the Department of Public Instruction form, but that is complicated and I think we need to have one form. The school board can have policy



to make it more. These were the minimum requirements and the Department of Public Instruction could include more.

**Vice Chairman Rust:** I do like the form prepared by the Superintendent of Public Instruction for uniformity sake and it lessens confusion. We have a segment of our population who are so fearful of smarter balance and some of those other assessments, that if we don't allow them to opt out, those individuals will feel they need to educate their student through another means than the public schools.

**Chairman Flakoll:** Does your amendment have any provision regarding what the opted out students do during the assessments?

**Senator Schaible:** My amendment is silent on that. I think they should stay in school.

**Chairman Flakoll:** We may need to talk about that in conference committee.

**Senator Marcellais:** What if the schools don't have a website to post the form?

**Senator Schaible:** You're right, but I would say that the form would be available in hardcopy. This just says that it should be known and available. I would imagine it would be in the handouts and any other avenue that they have.

**Vice Chairman Rust:** This is a hog house amendment? What does that do to the other parts of the bill?

**Senator Schaible:** Yes, this would essentially be the bill now. It now says they have the right to opt out of assessments except those listed and you have to follow those parameters to do it. Unless you feel there are other parts of the original bill that need to be included, this is now the bill.

**Chairman Flakoll:** I appreciate that you identified that it is the custodial parent in those situations.

**Senator Marcellais:** I believe that is what the sponsor wanted, a hog house amendment.

**A vote was taken: 6 yays, 0 nays, 0 absent**

**The motion carries.**

**Senator Schaible motions for a DO PASS as amended on engrossed HB 1283.**

**Vice Chairman Rust seconds.**

**Senator Oban:** It was very clear in testimony that they can already do this, so we are responding to people's unsubstantiated fears in my opinion.

**Senator Schaible:** I agree except that this amendment is for protection and information on all sides. If they can already do this and then there are questions of these things that are addressed, then who is responsible? That answers those questions.

**Senator Oban:** I agree. The amendments are exceptional compared to what we were dealing with before.

**A vote was taken: 6 yays, 0 nays, 0 absent**

**The motion carries.**

**Senator Schaible will carry the bill.**

**Chairman Flakoll** requests additional information added to minutes (*see attachment #3-4*)

March 17, 2015

970  
3/18/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1283

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15.1-21 of the North Dakota Century Code, relating to parental directives; and to provide an expiration date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Parental directive - Administration of tests and assessments.**

1. A student's parent may direct that the school district in which the student is enrolled not administer a specific test or assessment to the student, provided that a parental directive does not apply to:
  - a. Any test or assessment required by the student's school district of enrollment or this state for the completion of any grade from kindergarten through twelve;
  - b. Any test or assessment required by the student's school district of enrollment or this state for high school graduation;
  - c. The ACT; or
  - d. WorkKeys assessments.
2.
  - a. A parental directive is valid only if it is presented to the school district using a standardized form, prepared by the superintendent of public instruction, and signed by the student's custodial parent.
  - b. A parental directive is valid only until the conclusion of the school year in which it is received by the school district.
  - c. A parental directive submitted to a school district in accordance with this section must be retained as part of the student's educational record.
3. A school district is not liable for any consequences incurred by a student as a result of a parental directive submitted in accordance with this section.
4. Each school district must post the parental directive form on its website and make the form available to a parent, upon request.

**SECTION 2. EXPIRATION DATE.** This Act is effective through June 30, 2017, and after that date is ineffective."

Renumber accordingly

**2015 SENATE EDUCATION COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1283**

Senate Education Committee

☐ Subcommittee

Amendment LC# or Description: 15.0749.03002

Recommendation: ☒ Adopt Amendment  
☐ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider    ☐ \_\_\_\_\_

Motion Made By Senator Schaible Seconded By Vice Chairman Rust

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll	X		Senator Marcellais	X	
Vice Chairman Rust	X		Senator Oban	X	
Senator Davison	X				
Senator Schaible	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**Added language for parental directives; and to provide an expiration date**

**2015 SENATE EDUCATION COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1283**

Senate Education Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Senator Schaible Seconded By Vice Chairman Rust

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll	X		Senator Marcellais	X	
Vice Chairman Rust	X		Senator Oban	X	
Senator Davison	X				
Senator Schaible	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Schaible

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**HB 1283, as engrossed: Education Committee (Sen. Flakoll, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1283 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15.1-21 of the North Dakota Century Code, relating to parental directives; and to provide an expiration date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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  - b. Any test or assessment required by the student's school district of enrollment or this state for high school graduation;
  - c. The ACT; or
  - d. WorkKeys assessments.
2.
  - a. A parental directive is valid only if it is presented to the school district using a standardized form, prepared by the superintendent of public instruction, and signed by the student's custodial parent.
  - b. A parental directive is valid only until the conclusion of the school year in which it is received by the school district.
  - c. A parental directive submitted to a school district in accordance with this section must be retained as part of the student's educational record.
3. A school district is not liable for any consequences incurred by a student as a result of a parental directive submitted in accordance with this section.
4. Each school district must post the parental directive form on its website and make the form available to a parent, upon request.

**SECTION 2. EXPIRATION DATE.** This Act is effective through June 30, 2017, and after that date is ineffective."

Renumber accordingly

**2015 CONFERENCE COMMITTEE**

**HB 1283**

# 2015 HOUSE STANDING COMMITTEE MINUTES

Education Committee  
Pioneer Room, State Capitol

HB 1283  
4/2/2015  
25772

☐ Subcommittee  
☒ Conference Committee

Committee Clerk Signature

*Donna Whitham*

## Explanation or reason for introduction of bill/resolution:

Relating to parental directives; and to provide an expiration date.

## Minutes:

**Rep D. Johnson:** opened Conference Committee hearing on HB 1283. This bill has been amended by the Senate and would someone from the Senate like to explain the amendments.

**Senator Flakoll:** We essentially are down to two sections which one of them is the main text of the bill. Under Section 1 Subsection 1 of HB 1283, one of the provisions that the Senate was looking for was the intent that they would have choices so that it would not be all or one, they talk about a specific tests. Under A through D inclusive, they start talking about the ones that it does not apply too under B "that anything required for High School graduations", an example would be the Civics test which was voted on earlier in this session and came out with all six members of this Conference Committee voting in support of. C. and D on line 14 and 15 page 1 of HB 1283 would be current law and we retained that with respect to the Work Keys and ACT assessments. In Subsection 2 with we felt would be a standardized form that would be developed rather than hand notes or phone calls which we didn't think would be appropriate. That it would be developed with uniformity by the Superintendent of DPI and made available to the school districts with the choices and they would sign off. We know that there is a great number of students that have parents from divorced settings and so rather than realizing that there could be time where one parent wants different things to happen then the other, we thought we could help provide some guidance by listing it as the custodial parent is the one who can sign off on those because that seems to keep somewhat in essence with what the courts have ruled as far as the person who may have a little more relevance with the best intent with the child in mind. The lines 19 and 20 on page 1, we had some discussion on how long should this last? For a year, or the academic career of the child, what happens when they transfer from one place to another. The inclination there was if they transfer they would have to fill out a new form at the second district. Under lines 19 and 20 of HB 1283 we put the

provision in that this would carry through for the academic year. We know that the numbers are relatively modest. In the Fargo school district there were 6 opt out this past year. We have heard numbers between 35 and 39 statewide. We wanted some consistency and clarity. Under lines 21 and 22, we felt that it should be part of their permanent record much like the grade information and in the event that they choose to not take a test it is in the best interest particularly the school that they have those protections if they choose to not take a test they can show the parent, remember back here you asked that your child not be tested for this. That ties with our next point that schools are not liable for the consequences on page 2 line 2 for the result of the parents directive in accordance with this section. As an example it was talked about Special Education and if a parent says why aren't my children getting any Special Education services, well if they didn't allow them to participate in some of these tests and if we can't identify them in some cases we can't place them with an IEP or otherwise. In Section 1 Lines 3 or 4 we felt that those should be available so people can see the parental directive form, post it on the website and make it available upon parents request. Section 2 is the expiration date sunsetted after two years so we could come back and look at that again in the 2017- 2019 That is the reason for the sunset so it will force us to have that discussion again.

**Rep D. Johnson:** Any questions or additions to the explanation?

**Senator Schaible:** The intent was not to infringe on parental rights which we think they have and should continue to have. The intent was to make sure what we had was fair equitable, easy and protective of all the parties involved including parents, students and schools. Listing everything you can or not opt out of there are always gray lines but we want to make this simple so you can go on a website and pull up a form it is pretty precise of what you are trying to do. Here's your options check what you want signed by the parental guardian and it is good for the school year. This is what we want, simple, that parents can operate and is not burdensome to the school as far as records and not confusing. We want it to be specific so parents and school districts and later when someone else looks at it, probably a lawyer that they are able to understand it. We want to make sure we agree parents have the right to opt out of some of these things that they think are invasive or intrusive. I agree with that. That is where we came up with the criteria for grades and graduation. Work Keys is probably subjective but it is really the only thing where we monitor our kids on a continuous level. If we don't test them all it skews their results. I agree you should be able to opt out of ACT but what else can you assess your kids by. I am a school board person and we have to learn to trust them and let school boards have the right to tighten this up if they want to. I have got to the point we have to start trusting our school board because that is where your local people and really where your concerns should be directed. If they don't like the way the policies are set in the school there are options for that. That was the intent was not to make this intrusive but to make it clear and precise but still have it available to do what we are trying to do.

**Rep D. Johnson:** We have heard your explanations and we will meet again on Monday so we have a chance to think about your thoughts here. We will make our decisions on Monday.



**Rep Kelsh:** Where there is dual custody, does that leave that open a little bit where we say it would be decided by the custodial parent. Is there a way of solving that problem? They might have different ideas of what should be tested or not.

**Senator Schaible:** There is other aspects where we have dilemmas with divided parents and who is in charge. We are trying to make it consistent throughout the school district that whatever is required for everything else would be the same that's required for here. That is the intent. The parents know which one is responsible and the school knows which one is responsible to sign or do any of these things and I thought that is what we did.

**Rep D. Johnson:** Closed the hearing on HB 1283.

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Pioneer Room, State Capitol

HB 1283  
4/6/2015  
25813

☐ Subcommittee  
☒ Conference Committee

Committee Clerk Signature

*Donna J. Heithaus*

## Explanation or reason for introduction of bill/resolution:

Relating to parental directives; and to provide an expiration date.

Handout #1-4.

## Minutes:

**Rep D. Johnson:** opened Conference Committee hearing on HB 1283. This bill has been amended by the Senate. Everyone has had a chance to look over the bill and amendments. Are there any questions?

**Rep Kelsh:** I looked over the bill and some of the other information we got and I think the bill looks pretty good, it may not be 100% perfect and we can come back in two years and look at again. **I make a motion to accede to Senate Amendments 15.0749.03002 on HB 1283.**

**Senator Flakoll: seconded.** This bill does sunset in two years and we will have ample opportunity to see this again, but it does provide protections for those parents who choose to opt out of certain tests. It allows the legislature to weigh in on it and provides some consistency and uniformity. It helps protect the parents and the child when we have consistent language about requiring it in writing, not just a phone call where someone could misplace a note somewhere and that becomes a part of the permanent record of that student. I have some information to handout. (See Handout #1-4). It clears up confusion and uncertainty that has existed with this. In my home school district out of approximately 11,000 students we had 6 students who chose to opt out in the most recent recorded year. This will continue to allow the parents to opt out as they see if appropriate for their circumstances. This is a way we can keep a watchful eye on the school districts, that they are doing a good job and it allows parents who move in or out of a district, to help to decide which neighborhood is the best fit for them. In the Fargo school district we have between 900 and 1,000 students that move in and out in a given year. The quality of school and the quality offerings are important to the realtors and parents that are moving in there. This is part of the decisions that they make, not just what is the best house for them but what is the best academic environment for them. Parents want to put their children in an academic

environment where they can really to thrive in. We all want that and we have taken some of the uncertainty about divided families, divorced parents and in some cases we carried over current law. I think this bill helps strengthen and clarifies the intent.

**Rep Kelsh:** DPI allowed this but I don't think the message was necessarily clear to every school district on how it would be implemented. This will really help that and at least the parents know that there is a provision in state law that they can opt out. If something is wrong with this in two years we look at it and we can straighten it out. We don't know all the problems out there. It is not a very large number of students that are opting out. I think it is a very good start on where we want to go.

**Rep D. Johnson:** The clerk will take a roll call vote on the Accede to Senate Amendments on HB 1283.

**A Roll Call Vote was taken. Yes: 6 No: 0 Absent: 0. Motion carried.**

**Senator Schaible:** will carry the bill in the Senate and Rep D. Johnson will carry the bill in the House.

**Rep D. Johnson:** Closed the hearing on HB 1283.

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Pioneer Room, State Capitol

HB 1283  
4/8/2015  
25921

☐ Subcommittee  
☒ Conference Committee

Committee Clerk Signature

*Donna Whelan*

## Explanation or reason for introduction of bill/resolution:

Relating to parental directives; and to provide an expiration date.

Handouts # 1-3.

## Minutes:

**Rep D. Johnson** reopened Conference Committee hearing on HB 1283. The House rejected the Senate version of the bill so we are back in Conference again. I believe there are amendments coming. Does anyone else have anything else to contribute to the meeting?

**Senator Flakoll:** There often seems to be confusion. I wasn't able to listen to all of the floor debate and there have been some emails with respect to the ACT. So I will present that to the committee and I have extra samples of that which shows where we have that in Code the requirement for the ACT or the Work Keys. The Section in Code is 15.1-21-19. I also will provide for the clerk the genesis of that which was HB 1400 in the 2009 session, which passed the Senate 46-0 and the House 86-6. Also I had a letter from the United States Department of Education, Deborah S. Delisle who is the Assistant Secretary with respect to some of the issues we have been talking about. (See Handout 1, 2&3).

**Rep D. Johnson:** Thank you for that information and I used it in my floor speech yesterday. Concerning HB 1400 in 2009 there were some people that felt that it wasn't in statute, but we appreciate your evidence here. Are there any other comments before we recess? We will schedule tomorrow if the amendments are ready or when they are.

**Senator Flakoll:** Was there any discussion in the House about some of the provisions that they could opt out of, because this is technically an opt out bill? I was thinking we put in a number of things over the years including the requirement, because one of the speakers spoke about some of the opt out. We put in the requirement for the Declaration of Independence, the Constitution be read, concept of personal finance, were those talked about on the floor yesterday or those who had concerns about the bill. Was that brought up in the House in discussion?

**Rep D. Johnson:** I didn't pick up on that myself and my colleagues that are here don't remember hearing that so it was obviously wasn't brought up.

**Senator Flakoll:** We may need to check with the Legislative Council on this.

**Rep D. Johnson:** Certainly. Any other comments? Seeing none. We will watch for rescheduling of the Conference when we get the amendments and when we can meet again and move forward on this bill. Closed the hearing on HB 1283.

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Pioneer Room, State Capitol

HB 1283  
4/9/2015  
25967

☐ Subcommittee  
☒ Conference Committee

Committee Clerk Signature

*Donna Whetham*

## Explanation or reason for introduction of bill/resolution:

Relating to parental directives and to provide an expiration date.

Attachment # 1.

## Minutes:

**Rep D. Johnson** reopened Conference Committee hearing on HB 1283.

**Senator Flakoll:** For purposes of discussion I move the amendments titled 15.0749.03005 to engrossed HB 1283. (See Attachment #1).

**Rep Schreiber Beck: Seconded.**

**Senator Flakoll:** Essentially there is one section to the bill, it is a hog house amendment. Section 1 Subsection 1 reaffirms that they would not be required to take the state assessments, they would not be required to take the Smarter Balance. (1:48 - 2:02) (See Attachment #1)

**Rep D. Johnson:** Are you referring to Line 1?

**Senator Flakoll:** I am referring to Subsection 1. Line 2, 3 & 4 would be essentially the same and Subsection 5, the portion that indicates that, most oftentimes for longer periods of time, the parents will be required to have their children not in school at those times. This indicates that the school district doesn't have to provide alternative instruction for them if their classmates are taking a test for an hour as an example. Section 7 is gathering of some of information because we know we have the sunset clause in here and it allows us to be thoughtful in our approach in evaluating any changes that we may look at for the next biennium.

**Rep D. Johnson:** Any other comments on HB 1283?

**Rep Schreiber Beck:** I spoke with the bill sponsor and to clarify, in item 5 under Section 4 just to explain the activities. There was some concern as to what that meant and you explained no instruction provided, but activities, just to clarify that. Also is there any opportunity to remove the expiration date?

**Senator Flakoll:** I don't know that I speak for the entire group but that was something that put on unanimously in the Senate. We feel comfortable with that, we think that this is a topic of interest and we don't necessarily think that the conversation if this were to pass would end with this bill. It would allow us to take it up again next session.

**Senator Schaible:** I had discussions with the bill sponsor also about the sunset and we can look at a bill anytime but when we put a sunset on there, it forces us to look at this again otherwise the bill disappears. I think this bill needs to be looked at again. Otherwise you bring back something and you say what is wrong with it. Sunset in my opinion forces us to look at again and I think that is necessary. I will support the sunset.

**Rep Kelsh:** I think we have a study on the amount of testing and on the reports that are going to be required and I hope it gets picked. If we didn't have the sunset the study might not be used properly, or maybe would too but. I think we need to find out the information we find out from that study before we make this law forever to see what is felt by a study. I think the expiration date is fine.

**Senator Flakoll:** The other thing is that Congress is in the process of looking to reauthorize ESEA (Elementary and Secondary Education Act) and in that context there could be some moving parts that we need to appropriately adjust to. This would give us that forced opportunity to do that in a thoughtful manner. We know that there is a 600 page bill that is sitting in Congress right now as a result of that and again I think the Senate's position is that we feel this is an opportunity for the Legislature, if we choose to, to help clarify and strengthen. It still allows parents to choose not to have their child participate in something. The other option is to let the Department of Public Instruction to rule on how best to handle this.

**Rep D. Johnson:** Any other comments on HB 1283?

**Rep Schreiber Beck:** In the selection we all had the Sections of Code that the sponsor had submitted for consideration to put in Section 1 Line 1 that did contain further Sections of Code and I believe he is agreeable to that and it was determined to be acceptable.

**Senator Flakoll:** To Rep Schreiber Beck's point that was a concession that the Senate made in helping to give more comfort to those that had concerns that the language wasn't specific enough with the respect to their ability regardless to opt out of Smarter Balance if they so choose or its successor. It may be something different next year so you don't put Smarter Balance in Code.

**Rep D. Johnson:** Any other comments? Seeing none the clerk will take the roll on the motion to amend HB 1283 with 15.0749.03005.

**A Roll Call Vote was taken. Yes: 6 No: 0 Absent: 0. Motion Carried.**

**Senator Flakoll: I move that the Senate recede from the Senate amendments and that we further amend Engrossed HB 1283.**

**Senator Schaible: Seconded.**

**Rep D. Johnson: Any further discussion? Seeing none the clerk will take the roll.**

**A Roll Call Vote was taken. Yes: 6 No: 0 Absent: 0. Motion carried.**

**Rep D. Johnson: Closed the hearing on HB 1283.**



April 8, 2015

4/8  
4.9.15  
1082

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1283

That the Senate recede from its amendments as printed on pages 1106 and 1107 of the House Journal and page 848 of the Senate Journal and that Engrossed House Bill No. 1283 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15.1-21 of the North Dakota Century Code, relating to parental directives; and to provide an expiration date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Parental directive - Administration of tests and assessments - Report.**

1. A student's parent may direct that the school district in which the student is enrolled not administer to the student any state test or state assessment required in accordance with section 15.1-21-08.
2. In addition to the authority granted under subsection 1, a student's parent may direct that the school district in which the student is enrolled not administer any other specific test or assessment to the student, provided that a parental directive under this subsection does not apply to:
  - a. Any test or assessment required by the student's school district of enrollment or this state for the completion of any grade from kindergarten through twelve;
  - b. Any test or assessment required by the student's school district of enrollment or this state for high school graduation;
  - c. The ACT; or
  - d. WorkKeys assessments.
3. a. A parental directive is valid only if it is presented to the school district using a standardized form, prepared by the superintendent of public instruction, and signed by the student's custodial parent.
  - b. A parental directive is valid only until the conclusion of the school year in which it is received by the school district.
  - c. A parental directive submitted to a school district in accordance with this section must be retained as part of the student's educational record.
4. A school district is not liable for any consequences incurred by a student as a result of a parental directive submitted in accordance with this section.

- 222
5. A school district is not required to provide instruction or activities for a student during the administration of any test or assessment referenced in the parental directive submitted by the student's parent.
  6. Each school district shall post the parental directive form on its website and make the form available to a parent, upon request.
  7. At the time and in the manner directed by the superintendent of public instruction, each school district shall provide a report regarding:
    - a. The number of parental directives received;
    - b. The number of parental directives applicable to students who are economically disadvantaged, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency; and
    - c. Any loss of funding stemming from the parental directives.

**SECTION 2. EXPIRATION DATE.** This Act is effective through June 30, 2017, and after that date is ineffective."

Renumber accordingly

Date: 4/6/15  
Roll Call Vote #: 1

2015 HOUSE CONFERENCE COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 1283 as (re) engrossed

House Education Committee

- Action Taken ☒ HOUSE accede to Senate Amendments  
☐ HOUSE accede to Senate Amendments and further amend  
☐ SENATE recede from Senate amendments  
☐ SENATE recede from Senate amendments and amend as follows  
  
☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Kelsh Seconded by: Senator Flakoll

Representatives	4/2	4/6		Yes	No		Senators	4/2	4/6		Yes	No
Rep D. Johnson	✓	✓		✓			Senator Flakoll	✓	✓		✓	
Rep Schreiber Beck	✓	✓		✓			Senator Schaible	✓	✓		✓	
Rep Kelsh	✓	✓		✓			Senator Marcellais	✓	✓		✓	
Total Rep. Vote							Total Senate Vote					

Vote Count Yes: 6 No: \_\_\_\_\_ Absent: \_\_\_\_\_

House Carrier Rep. Johnson Senate Carrier Senator Schaible

LC Number 15.0749 . 03002 of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Date: 4/9/2015  
Roll Call Vote #: 1

2015 HOUSE CONFERENCE COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 1283 as (re) engrossed

House Education Committee

- Action Taken ☐ HOUSE accede to Senate Amendments  
☐ HOUSE accede to Senate Amendments and further amend  
☐ SENATE recede from Senate amendments  
☐ SENATE recede from Senate amendments and amend as follows
- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator Flakoll Seconded by: Rep. Schreiber Beck

Representatives	4/8/15	4/9		Yes	No		Senators	4/8/15	4/9		Yes	No
Rep D. Johnson	✓	✓		✓			Senator Flakoll	✓	✓		✓	
Rep Schreiber Beck	✓	✓		✓			Senator Schaible	✓	✓		✓	
Rep Kelsh	✓	✓		✓			Senator Marcellais	✓	✓		✓	
Total Rep. Vote							Total Senate Vote					

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number 15.0749 . 03005 of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

vote on amendment 15.0749.03005

Date: 4/9/2015  
Roll Call Vote #: 2

2015 HOUSE CONFERENCE COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 1283 as (re) engrossed

House Education Committee

- Action Taken ☐ HOUSE accede to Senate Amendments  
☐ HOUSE accede to Senate Amendments and further amend  
☐ SENATE recede from Senate amendments  
☒ SENATE recede from Senate amendments and amend as follows  
  
☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Sen. Flakoll Seconded by: Sen. Schaible

Representatives				Yes	No		Senators				Yes	No
Rep D. Johnson				✓			Senator Flakoll				✓	
Rep Schreiber Beck				✓			Senator Schaible				✓	
Rep Kelsh				✓			Senator Marcellais				✓	
Total Rep. Vote							Total Senate Vote					

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier no carrier Senate Carrier no carrier

LC Number 15.0749 . 03005 of amendment

LC Number                      . 05000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**REPORT OF CONFERENCE COMMITTEE**

**HB 1283, as engrossed:** Your conference committee (Sens. Flakoll, Schaible, Marcellais and Reps. D. Johnson, Schreiber Beck, Kelsh) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ pages 1106-1107 and place HB 1283 on the Seventh order.

Engrossed HB 1283 was placed on the Seventh order of business on the calendar.



**REPORT OF CONFERENCE COMMITTEE**

**HB 1283, as engrossed:** Your conference committee (Sens. Flakoll, Schaible, Marcellais and Reps. D. Johnson, Schreiber Beck, Kelsh) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1106-1107, adopt amendments as follows, and place HB 1283 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1106 and 1107 of the House Journal and page 848 of the Senate Journal and that Engrossed House Bill No. 1283 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15.1-21 of the North Dakota Century Code, relating to parental directives; and to provide an expiration date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Parental directive - Administration of tests and assessments - Report.**

1. A student's parent may direct that the school district in which the student is enrolled not administer to the student any state test or state assessment required in accordance with section 15.1-21-08.
2. In addition to the authority granted under subsection 1, a student's parent may direct that the school district in which the student is enrolled not administer any other specific test or assessment to the student, provided that a parental directive under this subsection does not apply to:
  - a. Any test or assessment required by the student's school district of enrollment or this state for the completion of any grade from kindergarten through twelve;
  - b. Any test or assessment required by the student's school district of enrollment or this state for high school graduation;
  - c. The ACT; or
  - d. WorkKeys assessments.
3. a. A parental directive is valid only if it is presented to the school district using a standardized form, prepared by the superintendent of public instruction, and signed by the student's custodial parent.
  - b. A parental directive is valid only until the conclusion of the school year in which it is received by the school district.
  - c. A parental directive submitted to a school district in accordance with this section must be retained as part of the student's educational record.
4. A school district is not liable for any consequences incurred by a student as a result of a parental directive submitted in accordance with this section.
5. A school district is not required to provide instruction or activities for a student during the administration of any test or assessment referenced in the parental directive submitted by the student's parent.

Insert LC: 15.0749.03005

6. Each school district shall post the parental directive form on its website and make the form available to a parent, upon request.
7. At the time and in the manner directed by the superintendent of public instruction, each school district shall provide a report regarding:
  - a. The number of parental directives received;
  - b. The number of parental directives applicable to students who are economically disadvantaged, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency; and
  - c. Any loss of funding stemming from the parental directives.

**SECTION 2. EXPIRATION DATE.** This Act is effective through June 30, 2017, and after that date is ineffective."

Renumber accordingly

Engrossed HB 1283 was placed on the Seventh order of business on the calendar.



**2015 TESTIMONY**

**HB 1283**

1.28.2014

### Testimony on HB 1283

Mr. Chairman and members of the House Education Committee, I am Rep. Ben Koppelman from District 16 in West Fargo, ND, and am here to testify in favor of HB1283.

The Purpose of HB1283 is to codify into law the rights of parents to choose to opt their children out of taking the state assessments and ACT/ Work keys if they decide it is what is best for their children.

Currently, it is recognized by the Department of Public Instruction, through policy or practice, that parents have this right, however, DPI refers to it as parents "refusing" these tests while at the same time citing to districts that law does not allow parents to "opt-out". This parsing of words brings us to the crux of the problem. This has resulted in school districts giving a variety of responses to requests to opt-out. These responses range from districts saying a parent can't opt-out without consequences, allowing an opt-out but not provide alternative activities such as study time or library time, or flat out saying to parents

that it is unlawful for them to opt-out. Although I don't necessarily blame DPI or school districts for the mixed messages or the variety of responses to opt-out request, I do think that it demonstrates the need to make it clear in law that parents have the right to opt their children out of assessments that they do not approve of and that do not have direct bearing on the students grades.

You will likely hear testimony in opposition to this bill that if law states a parent's right to opt their children out, it will lead to more parents opting out. I'm not sure this would be the case, but if it is, it will be because we have made them aware of their rights, and I never consider informing someone of their rights to be a bad thing. In education circles, we always hear a longing for the days when a majority of parents were engaged in their student's education and wished more were interested now. I submit to you, the parents who are concerned enough to opt their children out of these assessments are engaged. I have spoke with several of these parents, and they are some of the most interested and concerned parents regarding their child's education that I have met. School administrators may not always agree with the parent's choice, but they should respect it.

You may also hear testimony that suggests that we should not allow these choices because it harms student's opportunities at scholarships or college entry. Lets keep in mind that parents, especially those that are this engaged, only want what is best for their children. I have no problem with districts promoting the advantages of taking assessments such as the ACT or Work Keys, and how they may improve the prospects for a student getting scholarships or gaining entry into college, but once the case has been made and parents are informed, the decision should and does lie with the parent.

It has long been my belief that schools serve at the will of parents and taxpayers. North Dakota public schools have been more successful than public schools in many other areas because of the governance structure that we have. Part of that structure is recognizing that the schools are not the parents, and therefore should not presume to possess the role of getting to decide what is best for that child if the parent disagrees.

Mr. Chairman and members of the committee, I urge a do-pass recommendation of HB1283. This concludes my testimony and I would be happy to answer any questions.

Committee,

This is an email that I received from a concerned parent from Dickinson. This was her experience. Per the parents request so that there is no retribution toward her student. I have removed her name.

- Ben Koppelman

> My experience with opting out has not been a good one. My son goes to  
> Elementary school in Dickinson. I have known the principle for over  
> 30 years so I felt he would listen and respect my decision to opt out  
> my son. Well that was not the case. By the end of the phone call I  
> was in tears and felt defeated. I had turned in one opt out form to  
> the secretary when school started. And I also sent one sent one  
> certified mail, I would say about a week later. It was NWEA testing  
> time and I had sent an email to my sons teacher (whom I had sign opt  
> out form night of open house) reminding him that my son was opting out  
> of testing. Well I received a phone call from my sons principle.  
> He was upset with me that I sent a certified opt out form and that I  
> was not letting my son take NWEA test. He said he spoke with our  
> superintendent and that they decided they were not going to put opt  
> out forms in my sons file because they did not recognize the forms as  
> legitimate and legal. He asked me why I felt the need to send a  
> certified copy? I told him I sent the certified copy because I wanted  
> a paper trail. As far as not letting my son take the NWEA test he said  
> my son needed to. If I did not want my son to take testing that I  
> should look into sending my son to a different school or to home  
> school him. I could not believe he said that to me. By the end of  
> the conversation I was so upset and caved. So I let my son take the  
> NWEA.  
> -Dickinson Parent  
>  
>  
>  
>

# North Dakota Family Alliance Action

*A Trusted Voice Impacting Our Legacy*

Tom D. Freier, EXECUTIVE DIRECTOR

House Education Committee  
January 28, 2015  
HB 1283

Mr. Chairman and members of the House Education Committee, the North Dakota Family Alliance wishes to go on record in support of HB 1283 as introduced.

NDFA supports the ability of parents to have the greatest influence on their children. Our involvement will reflect our commitment to standing with families as parents continue to exercise the primary responsibility in the education of their children.

HB 1283 is a BILL for an Act to amend and reenact sections 15.1-21-08, 15.1-21-17, 15.1-21-18, and 15.1-21-19 of the North Dakota Century Code, relating to parental directives regarding statutorily mandated assessments; and to declare an emergency.

As NDFA views all legislative bills dealing with education, we ask a number of questions:

- Does House Bill 1283 strengthen or weaken the right of parents to make decisions regarding what is best for their children and their education?
- Does House Bill 1283 strengthen or weaken parental control of our children's education?
- Does House Bill 1283 strengthen or weaken a parent's involvement in their child's education?
- Does House Bill 1283 impose ideals that strengthen or weaken conservative values or undermine Christian heritage or legacy?
- Does House Bill 1283 strengthen or weaken its collection of data and tracking of our children or individual family units?

As we look at HB 1283 we approve of the ability for parents to maintain or strengthen their involvement regarding the education of their child(ren).

We believe that parents should have the ability to be actively involved with the education process of their child(ren). Parental notification and the ability to "opt out" of testing is an essential means to direct the education of their child. Growing numbers of parents want to exercise their right to direct that the test not be administered to their child(ren).

As introduced, NDFA supports HB 1283, reserving the ability of parents to make decisions regarding the education of their children and their right to direct that the tests noted be administered to their child(ren).

The North Dakota Family Alliance respectfully requests a Do Pass on HB 1283.

This testimony provided by Tom Freier and Shelle Aberle, North Dakota Family Alliance

*Dedicated To Strengthening Families*

3220 18th St South Ste 8 · Fargo, ND 58104 · Phone: 701-364-0676  
www.ndfa.org · admin@ndfa.org

# West Fargo Public Schools

*Educating today's learners for tomorrow's world.*  
District Office – 207 West Main Ave. – West Fargo ND 58078

#2 HB 1283  
1/28/15

Patti Stedman ..... Board President  
Jeff Shirley ..... Board Vice President  
Jon Erickson ..... Board Director  
Kara Gravley-Stack ..... Board Director  
Dave Olson ..... Board Director  
Allan Skramstad ..... Board Director  
Shauna Vistad ..... Board Director

10/15/2015

[REDACTED]

West Fargo, ND 58078

[REDACTED]

Dr. David Flowers ..... Superintendent  
Dr. Allen Burgad ..... Assistant Superintendent, Secondary  
Beth Slette ..... Assistant Superintendent, Elementary  
Marian Bell ..... Special Education Director  
Pete Diemert ..... Building & Grounds Director  
Robin Hill ..... Human Resources Director  
Mark Lemer ..... Business Manager  
Ed Mitchell ..... Technology Director  
Brad Redmond ..... Transportation Director  
Jan Sliper ..... Food Service Director

You have submitted a form requesting that your student not participate in the North Dakota State Assessment, and any forms of formative or summative assessment. Please be informed that the West Fargo Public Schools cannot agree to an opt-out form.

In 2001 the North State Legislature enacted North Dakota law (NDCC 15.1-21-08) which mandates all school districts administer a summative test each year aligned to state content and achievement standards to all students in grades 3-8 and 11 in reading and mathematics, and in grades 4, 8, and 11 in science. State law specifically requires the state assessment be given to all public school students in those grades. The West Fargo Public Schools cannot approve an opt-out form, since any such option provided by the district is incompatible with state law.

The state further requires that all districts administer a formative assessment. Most districts administer the MAP (Measure of Academic Progress). Our district is transitioning from the MAP to the STAR which is a less time-consuming assessment than the MAP. If you are objecting to other types of assessment, please know that good instruction includes formative assessment by the teacher almost daily, as well as locally adopted assessments and the state-required formative assessment. These help to determine if students are ready to move on or whether they need additional instruction, help or practice. These assessments also help the teacher, school and district assess our performance.

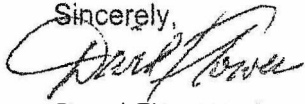
As a publically funded school district, we are required to comply with state law. However, as a district we will not take any adverse action against a student whose family makes the decision to refuse to complete the state assessment. We do not intend to arrange alternative assignments, activities or classes, since our staff will be engaged in helping administer the legally required assessments.

If you are objecting to or wish to have your child "opt out" of the ND State Standards as drivers of the curriculum, please understand that West Fargo Public Schools does not recognize nor respond to a form that places conditions or expectations upon our school system beyond what is required through the law and local school board policy. Our curriculum is aligned with the state standards. Thus, if your objection is not only to the assessments used to measure attainment of the curriculum, but to the curriculum and standards themselves, it may be impossible for your concerns to be satisfied through any avenue other than home schooling.

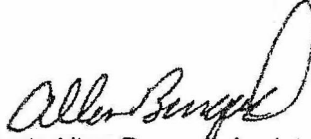


Participation in assessment is an important component of a student's instruction. It is our hope that your child will participate in the administration of the North Dakota State Assessment. It will offer meaningful benefits for his/her longer term educational program.

Sincerely,



David Flowers, Superintendent; Allen Burgas, Assistant Superintendent; Beth Slette Assistant Superintendent



Cc:

Patti Stedman, Board of Education President

Don Lennon, Cheney Middle School

#3 HB 1283  
1/28/15

Chairman Nathe and Committee Members,

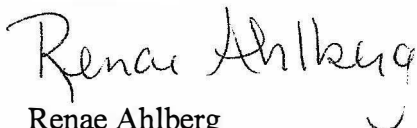
My name is Renae Ahlberg. I am here to support this bill HB1283. I represent a number of parents who could not be here today who have in some way or another been affected by choosing to refuse the assessments either this year or in previous years. This bill removes the politics from the discussion and allows the parents to make the final decision on the assessments their minor children are taking without repercussion or bullying that we have seen recently.

Our children are unique individuals with very different learning styles and abilities. We as parents see this first hand and are able to make decisions in the best interest of our children and should be given the right to do so. No parent should have to worry about being bullied by administration when opting out of the state assessment if they feel it is not in the best interest of their child.

I urge you to support this bill and our right and responsibility as parents to direct our children's education.

I'll leave you with a quote, "Sometimes, the most brilliant and intelligent minds do not shine in standardized tests because they do not have standardized minds." Diane Ravitch

Thank you,

  
Renae Ahlberg  
District 15

**Testimony**  
**HB 1283 – Relating to Parental Directives regarding**  
**statutorily mandated assessments; and to declare an**  
**emergency**  
**1/28/2015**

For the record, my name is Aimee Copas and I serve as the Executive Director for the ND Council of Educational Leaders. I'm here today to help with the understanding of the importance of assessments and for the participation of public school children to equally participate in them.

Effective use of education data to improve student achievement requires that data are safe and secure. Parents should be able to understand what data are collected about their child, how those data are used and shared, and how the data are protected. Parents and privacy advocates have expressed concern about the amount of data collected in schools today, in many cases because they do not trust that the data collected will be valuable or useful to students or that the data will be kept safe.

High-quality education data can empower parents to better understand their child's academic progress and play a greater role in their child's education. Current law requires that parents have access to the data in their child's education record. Some have advocated for policies that allow parents to have more choice, specifically the ability to "opt out," when it comes to what data are collected, used, and shared about their child. Yet including more consent allowances could make it more difficult for parents to receive information about their child's progress and could disrupt other core school and district activities. This disruption could create significant teaching and administrative burdens or lead to unintended consequences for schools and families.

To the extent feasible, parental choice policies should be structured according to the use of the data in question. Schools use data for different purposes, which have different degrees of impact on a student's educational experience: administrative, instructional, assessment and measurement, and optional/non-educational. Parents should have more choice for activities in which opting out will not have a negative impact on their child's education, like data collection for non-educational purposes such as marketing for yearbooks or class rings. **It is not feasible, however, to allow parents to limit the data schools collect about their child for administrative, instructional, or assessment and measurement purposes** because it would hinder or minimize the impact of data's use to improve student achievement and would strain everyday school functions.

Policy leaders need to understand the potential implications of enacting such policies and be prepared to help parents understand this issue.

#### The Facts:

Requiring parental consent before any party can collect, access, or use student data for instructional, administrative, or assessment and measurement purposes could weaken the quality of the student learning experience, reduce efficiency, and increase workload for teachers and administrators. For example, **requiring parental consent or allowing them the opportunity to officially opt out of testing** could have the following effects:

- **Limit parents' ability to get information** on student progress throughout the school year, such as through online data dashboards.
- **Diminish the quality of personalized instruction.**
- **Reduce valuable classroom instructional time** by increasing teacher and administrator workload for basic tasks.
- **Weaken the security of data management tools or email systems used in schools.**
- **Severely limit state and local officials' ability to evaluate educational programs** by taking into account student performance, due to incomplete datasets, and thus limit the public's ability to access information on the quality of educational programs that receive public funding.

If this bill passes, however, the bill should also include and amendment to include the Civics Exam which was met with resounding support from our majority party and has momentum to move into law.

Additionally, there schools are bound by testing requirements and their percentage of participation is monitored and they are held to a standard. If we legislate the opening for parents to opt out, the schools should ultimately be held harmless for any results our % tested as the data sample could be substantially altered.

We as states provide free public education. Just like with a free public transit system, we may not like all the mandated stops along the way, but if we want to participate in the free opportunity, that is part of the price we pay as citizens. That analogy could be applied to education as well.

We recommend a DO NOT PASS for HB 1283.



# Student Data and Consent Policies

## Avoiding Unintended Consequences

### Issue Overview

Effective use of education data to improve student achievement requires that data are safe and secure. Parents should be able to understand what data are collected about their child, how those data are used and shared, and how the data are protected. Parents and privacy advocates have expressed concern about the amount of data collected in schools today, in many cases because they do not trust that the data collected will be valuable or useful to students or that the data will be kept safe.

High-quality education data can empower parents to better understand their child's academic progress and play a greater role in their child's education. Current law requires that parents have access to the data in their child's education record. Some have advocated for policies that allow parents to have more choice, specifically the ability to "opt out," when it comes to what data are collected, used, and shared about their child. Yet including more consent allowances could make it more difficult for parents to receive information about their child's progress and could disrupt other core school and district activities. This disruption could create

significant teaching and administrative burdens or lead to unintended consequences for schools and families.

To the extent feasible, parental choice policies should be structured according to the use of the data in question. Schools use data for different purposes, which have different degrees of impact on a student's educational experience: administrative, instructional, assessment and measurement, and optional/noneducational. Parents should have more choice for activities in which opting out will not have a negative impact on their child's education, like data collection for noneducational purposes such as marketing for yearbooks or class rings. **It is not feasible, however, to allow parents to limit the data schools collect about their child for administrative, instructional, or assessment and measurement purposes** because it would hinder or minimize the impact of data's use to improve student achievement and would strain everyday school functions.

Policy leaders need to understand the potential implications of enacting such policies and be prepared to help parents understand this issue.

The effective, meaningful use of education data to improve student achievement requires proper safeguards to ensure the safety and security of these data. Over the past year student data privacy has emerged as a prominent theme in policy, media, and political conversations. This attention has revealed a need for additional knowledge and clear information about the laws, policies, and procedures that govern student information practices. The Data Quality Campaign's *Safeguarding Data Briefs for Policymakers* provide key facts and recommendations that address high-priority issues that have characterized these conversations.

In *Student Data: Trust, Transparency, and the Role of Consent*, the Future of Privacy Forum finds that increasing allowances for parental consent, namely a parent's right to "opt out," in education information practices should depend on the use of the data in question. Opt-out policies, when applied to all instances in which data are collected in schools, could interrupt activities that are central to a student's education. The authors conclude that "rules around notice and choice must balance individuals' right to privacy with organizations' need to collect, use, and share personal information for normal business purposes. ... **Only when student data can be used for non-educational purposes should choice be mandated.**"




A group of education and privacy experts came together to discuss the implications of this paper's findings for the education field. They developed the enclosed recommendations for policymakers. (See last page for contributors.)



Type of Use	Example	Is Choice Required?	Should Additional Notice and Transparency Be Provided to Parents?
Administrative	Course scheduling, school busing	No	No
Instructional	Online homework, learning apps	No	Yes
Assessment and Measurement	Standardized tests, course assessments	No	Yes
Optional/Noneducational	School yearbooks, PTA fundraising	Yes	Yes

Source: Future of Privacy Forum, *Student Data: Trust, Transparency, and the Role of Consent*

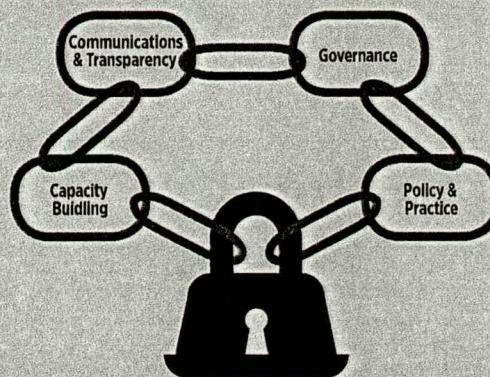
### The Facts

-  Requiring parental consent before any party can collect, access, or use student data for instructional, administrative, or assessment and measurement purposes could weaken the quality of the student learning experience, reduce efficiency, and increase workload for teachers and administrators. For example, **requiring parental consent** could have the following effects:
  - **Limit parents' ability to get information** on student progress throughout the school year, such as through online data dashboards.
  - **Diminish the quality of personalized instruction** for students with exempted data. Teachers may have to divide classrooms by students who are permitted to use certain educational tools and those who are not. Teachers may also have to store information, such as student assessment results, in a separate, manually maintained information system. Using a separate system could make the data less secure and more difficult to use for intervention strategies.
  - **Reduce valuable classroom instructional time** by increasing teacher and administrator workload for basic tasks. School administrators and teachers may have to conduct administrative tasks by hand and/or manage multiple systems to provide basic services, which would create software design challenges.
  - **Weaken the security of data management tools or email systems used in schools.** Schools may be forced to build their own data management tools or run their own email systems, which may be less secure than those services provided by outside parties with greater technical expertise and capacity.
- **Severely limit state and local officials' ability to evaluate educational programs** by taking into account student performance, due to incomplete datasets, and thus **limit the public's ability to access information on the quality of educational programs that receive public funding.**
-  Parents have the right to review their child's information. The Family Educational Rights and Privacy Act gives parents the right to access and challenge incorrect school records about their child.
- The law requires written consent to disclose student data contained in an educational record, with exceptions for certain situations and enumerated entities, including those who are designated as school officials or those who are conducting audits or evaluation of educational programs.
- Schools can share directory information without parental consent, but they must inform parents as to what information is considered to be "directory" and provide parents with the option to opt out of this sharing.
-  Requiring parental consent in more cases could increase achievement gaps between students of different socioeconomic backgrounds. The Future of Privacy Forum argues that allowing parents to opt out of—or requiring them to opt in to—technology-driven learning activities could prevent low-income students from being able to access the same tools as their peers attending affluent public or private schools with significantly more available resources.



### Recommendations for Policymakers

One of the most important uses of data is to empower parents with information to ensure that their child is getting what he or she needs. To address parents' concerns about data collection, sharing, and use, while allowing for the effective use of education data to improve student achievement, the Data Quality Campaign and its partners recommend that state and federal policymakers take action in the four following areas:



## I. PRIORITIZE COMMUNICATIONS AND TRANSPARENCY

- 1. **Create ways for parents and the public to learn why data are collected and shared and why these activities are good for students**, including why it is necessary for a student's data to be collected and used for administrative, instructional, and assessment and measurement purposes.
- 2. **Clearly communicate to parents that they have a right to view the data being collected and instances when they have the ability to opt out of data**

**collection in school.** Ensure that parents are aware of their rights and choices under current federal and state law by making this information easily accessible and easy to understand.

- 3. **Create a public list of the types of third-party service providers** with whom data are shared within the state. Encourage districts to provide a list of each of the service providers they contract with and what function they serve.

## II. ESTABLISH GOVERNANCE

- 1. **Create and update data governance policies** to ensure that they cover the following issues:
  - Define clear roles and responsibilities for all who manage education data.
  - Articulate who can access what data and under what conditions.

- Establish accountability mechanisms.
- Recognize the shared data stewardship of the state, districts, educators, information technology managers, and other entities.
- Require strong data security standards.

## III. REVIEW AND UPDATE PRIVACY AND SECURITY POLICIES AND PRACTICES

- 1. **Review current parental consent policies**, and determine under what conditions the opportunity to opt out of the collection of student data should be provided and when it should not.
- 2. **Specify noneducational activities in which allowing parents to opt out of data collection is appropriate.** Encourage districts and schools to give parents the ability to choose in circumstances in which student data could be used for noneducational purposes and to include these opt-out options in contracts with third parties.
- 3. **Distinguish between different uses of student data, and ensure that privacy and security policies properly reflect these differences.** When creating policy make clear the distinction between data collected by educational institutions and those collected by online learning tools and programs. Different uses of data require different policies.

- 1. **Require accountable and transparent third-party relationships.**
  - Require service providers in your state to establish shared guidelines, and increase transparency about the data they collect and how the data are used.
  - Require districts to establish accountability and transparency through the contractual process, including ensuring that contracts articulate what data providers receive, permissible uses of those data, and consequences for violating contract provisions. These contracts should also include a statement that the service provider does not own the data it manages or analyzes.
  - Require all contracts with third-party service providers to be placed on the state or district website so that the public can view them.



#### IV. BUILD STATE AND LOCAL CAPACITY TO SAFEGUARD DATA

**Support districts to enable them to fulfill their role in safeguarding data** by providing the following tools:

- a training module on data privacy and security that could be offered to district leadership
- model third-party contract language
- guidance for districts—and educators in particular—outlining important considerations when using “click-through” agreements
- guidance that districts can follow in the event of a data breach
- a channel for open, ongoing communication about district responsibilities and pressing questions they have
- resources for professional development and training for teachers and all staff

#### Related Resources

- Student Data: Trust, Transparency, and the Role of Consent* (Future of Privacy Forum)
- A Stoplight for Student Data Use* (Data Quality Campaign)
- Supporting Early Warning Systems* (Data Quality Campaign)
- Framing the Law & Policy Picture: A Snapshot of K-12 Cloud-Based Ed Tech & Student Privacy in Early 2014* (Berkman Center for Internet and Society, Harvard University)
- Our Commitment to You: Clear Privacy Practices* (Consortium for School Networking)
- Privacy and Cloud Computing in Public Schools* (Center on Law and Information Policy, Fordham Law School)
- Policy Guidelines for Building a Student Privacy Trust Framework* (Software & Information Industry Association)

For more Data Quality Campaign privacy, security, and confidentiality resources visit [www.dataqualitycampaign.org/action-issues/privacy-security-confidentiality](http://www.dataqualitycampaign.org/action-issues/privacy-security-confidentiality).

*This brief was developed with contributions from the following individuals:*

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The Data Quality Campaign will continue to engage the education and privacy communities to learn from each other and provide useful guidance to policymakers and practitioners on how to effectively use education data while safeguarding them.



The Data Quality Campaign (DQC) is a nonprofit, nonpartisan, national advocacy organization committed to realizing an education system in which all stakeholders—from parents to policymakers—are empowered with high-quality data from early childhood, K-12, postsecondary, and workforce systems. To achieve this vision, DQC supports policymakers and other key leaders to promote effective data use to ensure students graduate from high school prepared for success in college and the workplace. For more information, visit [www.dataqualitycampaign.org](http://www.dataqualitycampaign.org).



#5 HB

1283

January 28, 2015

The table below lists the assessments that are required by North Dakota Code and/or federal law and the timeframes in which the assessments are administered.

All other assessments are selected and administered at the discretion of the local districts. DPI does not track specific tools chosen at the district level.

Assessment	Required By	Students/Grades	Test Window
North Dakota State Assessment	NDCC 15.1-21-08 and PL 107-110 (ESEA, Section III(b)(3))	3 – 8, 11	Spring: Math, reading, language arts October: Science
Interim Assessment (ie NWEA MAP)	NDCC 15.1-21-17	2-10	Under district control
ACT or WorkKeys	NDCC 15.1-21-19	11	April
National Assessment of Educational Progress (NAEP)	Federal Register, 34 CFR Part 200 § 200.11 Participation in NAEP	4,8	Biennial Late January to early March
ACCESS from WIDA Consortium	ND Administrative Code 67-28-01-01 and 34 CFR 200.6	All ELL students	Late February to early March
W-APT or MODEL from WIDA Consortium	NDAC 67-28-01-01 and 34 CFR 200.6	All ELL students	As needed for an initial screening.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1283

Page 1, line 18, remove "superintendent shall"

Page 1, line 19, remove "provide to the"

Page 1, line 19, replace "notification" with "must be informed"

Page 1, line 20, after the underscored period insert "This information must be conveyed by means of a notice posted on the school district's website or by any other method determined to be appropriate by the board of the school district."

Page 2, line 5, remove "school"

Page 2, line 6, replace "district superintendent shall provide to students' parents notification" with "parents of students must be informed"

Page 2, line 8, after the underscored period insert "This information must be conveyed by means of a notice posted on the school district's website or by any other method determined to be appropriate by the board of the school district."

Page 2, line 18, replace "school district superintendent shall provide to the students' parents notification" with "parents of students must be informed"

Page 2, line 20, after the underscored period insert "This information must be conveyed by means of a notice posted on the school district's website or by any other method determined to be appropriate by the board of the school district."

Page 3, line 10, remove "school district superintendent shall provide to"

Page 3, line 11, replace "notification" with "must be informed"

Page 3, line 12, after the underscored period insert "This information must be conveyed by means of a notice posted on the school district's website or by any other method determined to be appropriate by the board of the school district."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1283

Page 1, line 1, after "to" insert "create and enact a new section to chapter 15.1-20 of the North Dakota Century Code, relating to student attendance; to"

Page 1, after line 4 insert:

"**SECTION 1.** A new section to chapter 15.1-20 of the North Dakota Century Code is created and enacted as follows:

**Administration of test or assessment - Student attendance.**

1. If a parent directs that a test or an assessment not be administered to a child, as permitted under sections 15.1-21-08, 15.1-21-17, 15.1-21-18, and 15.1-21-19, the parent may withhold the child from school during the period of time within which normal classroom activities are not occurring because of the test or assessment administration.
2. A child withheld from school under the provisions of subsection 1 is deemed to be in attendance for all purposes under this title."

Renumber accordingly

#1  
3/10/15

### 3.10.2014 Testimony on HB 1283

Mr. Chairman and members of the Senate Education Committee, I am Rep. Ben Koppelman from District 16 in West Fargo, ND, and am here to testify in favor of HB1283.

The Purpose of HB1283 is to codify into law the rights of parents to choose to opt their children out of taking the state assessments and ACT/ Work keys if they decide it is what is best for their children.

Currently, it is recognized by the Department of Public Instruction, through policy or practice, that parents have this right, however, DPI refers to it as parents "refusing" these tests while at the same time citing to districts that law does not allow parents to "opt-out". This parsing of words brings us to the crux of the problem. This has resulted in school districts giving a variety of responses to requests to opt-out. These responses range from districts saying a parent can't opt-out without consequences, allowing an opt-out but not provide alternative activities such as study time or library time, or flat out saying to parents that it is unlawful for them to opt-out. Although I don't necessarily blame DPI or school districts for the mixed messages or the variety of responses to opt-out request, I do think that it demonstrates the need to make it clear in law that parents have the right to opt their children out of state assessments that they do not approve of and that do not have direct bearing on the students grades.

You will likely hear testimony in opposition to this bill that if law states a parent's right to opt their children out, it will lead to more parents opting out. I'm not sure this would be the case, but if it is, it will be because we have made them aware of their rights, and I never consider informing someone of

their rights to be a bad thing. In education circles, we always hear a longing for the days when a majority of parents were engaged in their student's education and wished more were interested now. I submit to you, the parents who are concerned enough to opt their children out of these assessments are engaged. I have spoke with several of these parents, and they are some of the most interested and concerned parents regarding their child's education that I have met. School administrators may not always agree with the parent's choice, but they should respect it.

You may also hear testimony that suggests that we should not allow these choices because it harms student's opportunities at scholarships or college entry. Lets keep in mind that parents, especially those that are this engaged, only want what is best for their children. I have no problem with districts promoting the advantages of taking assessments such as the ACT or Work Keys, and how they may improve the prospects for a student getting scholarships or gaining entry into college, but once the case has been made and parents are informed, the decision should and does lie with the parent.

It has long been my belief that schools serve at the will of parents and taxpayers. North Dakota public schools have been more successful than public schools in many other areas because of the governance structure that we have. Part of that structure is recognizing that the schools are not the parents, and therefore should not presume to possess the role of getting to decide what is best for that child if the parent disagrees.

Mr. Chairman and members of the committee, I urge a do-pass recommendation of HB1283. This concludes my testimony and I would be happy to answer any questions.

Committee,

This is an email that I received from a concerned parent from Dickinson. This was her experience. Per the parents request so that there is no retribution toward her student. I have removed her name.

- Ben Koppelman

> My experience with opting out has not been a good one. My son goes to  
> Elementary school in Dickinson. I have known the principle for over  
> 30 years so I felt he would listen and respect my decision to opt out  
> my son. Well that was not the case. By the end of the phone call I  
> was in tears and felt defeated. I had turned in one opt out form to  
> the secretary when school started. And I also sent one sent one  
> certified mail, I would say about a week later. It was NWEA testing  
> time and I had sent an email to my sons teacher (whom I had sign opt  
> out form night of open house) reminding him that my son was opting out  
> of testing. Well I received a phone call from my sons principle.  
> He was upset with me that I sent a certified opt out form and that I  
> was not letting my son take NWEA test. He said he spoke with our  
> superintendent and that they decided they were not going to put opt  
> out forms in my sons file because they did not recognize the forms as  
> legitimate and legal. He asked me why I felt the need to send a  
> certified copy? I told him I sent the certified copy because I wanted  
> a paper trail. As far as not letting my son take the NWEA test he said  
> my son needed to. If I did not want my son to take testing that I  
> should look into sending my son to a different school or to home  
> school him. I could not believe he said that to me. By the end of  
> the conversation I was so upset and caved. So I let my son take the  
> NWEA.

> -Dickinson Parent

>  
>  
>  
>







# West Fargo Public Schools

*Educating today's learners for tomorrow's world.*

## Key Communications

October 13, 2014

### Author List

⇒ David Flowers

⇒ Ed Mitchell

### *Our Response to "Opt Out" Requests*

*Dr. David Flowers, Superintendent*

We have recently started receiving forms from parents requesting an "opt out" from state assessments, and even any standardized formative assessments, for their student.

We think it is important for families to receive information about what some perceive as their legal option (opting out). To that end, we have drafted a letter that will be sent to any family attempting to exercise this option.

It is also important for staff members to know the facts about such efforts, so we are sharing the text of the letter here. The decision to send the actual letter to specific parents will be made by the principal and the assistant superintendent. If you receive an "opt out" form from a student or parent, please share it with your principal so the appropriate action can be taken.

*Dear (Parent/Guardian):*

*You have submitted a form requesting that your student not participate in the North Dakota State Assessment, and any forms of formative or summative assessment. Please be informed that the West Fargo Public Schools cannot agree to an opt-out form.*

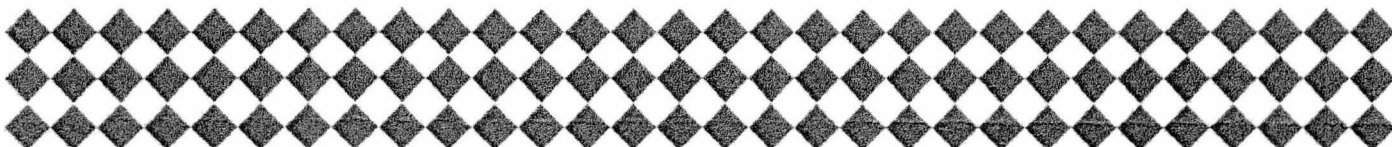
*In 2001, the North Dakota State Legislature enacted North Dakota law (NDCC 15.1-21-08) which mandates all school districts administer a summative test each year aligned to state content and achievement standards to all students in grades 3-8 and 11 in reading and mathematics, and in grades 4, 8 and 11 in science. State law specifically requires the state assessment be given to all public school students in those grades. West Fargo Public Schools cannot approve an opt-out form, since any such option provided by the district is incompatible with state law.*

*The state further requires that all districts administer a formative assessment. Most districts administer the MAP (Measure of Academic Progress). Our district is transitioning from the MAP to the STAR, which is a less time-consuming assessment than the MAP. If you are objecting to other types of assessment, please know that good instruction includes formative assessment by the teacher almost daily, as well as locally adopted assessments and the state-required formative assessment. These help to determine if students are ready to move on or whether they need additional instruction, help or practice. These assessments also help the teacher, school and district assess our performance.*

5/16

*As a publically funded school district, we are required to comply with state law. However, as a district ,we will not take any adverse action against a student whose family makes the decision to refuse to complete the state assessment. We do not intend to arrange alternative assignments, activities or classes, since our staff will be engaged in helping administer the legally required assessments.*

*If you are objecting to or wish to have your child "opt out" of the ND State Standards as drivers of the curriculum, please understand that West Fargo Public Schools does not recognize nor respond to a form that places conditions or expectations upon our school system beyond what is required through the law and local school board policy. Our curriculum is aligned with the state standards. Thus, if your objection is not only to the assessments used to measure attainment of the curriculum, but to the curriculum and standards themselves, it may be impossible for your concerns to be satisfied through any avenue other than home schooling.*



HB 1283 re: parents right to Opt Out of testing. (heard in the Senate Education Committee) 9:05am Missouri River Room  
Tuesday, March 10th, 2015

For the record, my name is Lori Hinz. I am the mother of three teen sons. I reside here in Bismarck. I come before you today in support of HB 1283 as a parent. I urge a DO PASS vote.

I recently opted out my 8th grader from all standardized testing at his middle school. I had a cordial sit down with his principal, and we agreed he would not participate in assessments that were not written by his teachers.

Data collection of our children is a very serious concern, and though loss of privacy through data collection is a major issue, it is only one of many reasons we are refusing the tests. Today I will give you a few of the other reasons. This list is presented in no particular order and is in no way exhaustive.

1. I am offended that educational policy is being dictated by billionaires, private entities, and politicians who have no educational experience, while the professional expertise of educators, and the knowledge and wishes of parents, are being ignored. This is being done in the name of ensuring that our students are prepared to compete in a global market. But the idea that our students are falling behind their international peers is a myth. We've had 14 years of national standardized tests now, yet we have seen little to any improvement in outcomes for our children.

2. The tests are illegal.

According to SBAC, the test has no external validity. SBAC cannot prove that the test measures what it says it measures. State law in North Dakota requires the state to administer tests with validity and reliability. Thus, the SBAC tests violate state law. Furthermore, you may have heard that just last month, on February 24, 2015, Judge Green of the circuit court of Cole County ruled that Missouri's membership fees to SBAC are unlawful under the United States Constitution as well as state and federal law. Judge Green permanently enjoined the state of Missouri from making payments to SBAC. Since Missouri's participation in the SBAC has been ruled unconstitutional, the tests associated with that membership are also unconstitutional. As a result, there is currently a class action lawsuit being drawn up which addresses the demands of the state and their edicts on schools to force children to take the illegal test.

3. The tests are not valid assessment tools.

Standardized tests cannot accurately measure the ability of a student, a teacher, or a school. These tests do not tell our children's teachers anything about how well a student mastered material presented in class. Research conclusively demonstrates that 80% of a student's academic performance is linked to factors beyond school walls; such as environment, family, health, and socioeconomic status. None of which can be measured on a test. Furthermore, the results of the exams will not be available until after the next school year begins and have no value in the timely assessment of our children's learning or needs. By the time results of the standardized tests are available, it is too late to take any corrective action with instruction.

4. The tests are not transparent.

As parents, we have the legal right to know what is being asked of our minor children. But the tests have faced no viable public scrutiny or peer review and are NOT available for review by parents or teachers. My son's school principal could still not give me exact testing dates. I was given a three month "window." The assessments have been written and designed by people with little to no experience as educators. This results in questions which are poorly written, convoluted and confusing, with seemingly multiple correct answers, that are factually inaccurate, not grade or age appropriate, and which request personal family information that neither SBAC nor the schools have any business asking.

5. The tests do not benefit our children in any way and actually cause them harm.

Over a decade of research and analysis by academic experts working at universities from the University of Pennsylvania to Harvard conclusively prove that high stakes testing harms children socially, emotionally, and physically. These tests constitute an undue burden of stress particularly on young children. They are conducted under high pressure with an enforced, unrealistic time limit and contribute to high anxiety and physical illness in our children. They are destroying our children's love of learning and their natural curiosity. Why would I, as a loving parent, purposely subject my child to that? [<http://www.newdemocracyworld.org/old/mcas.htm>]

6. The test scores are meaningless.

The proficiency cut scores for the SBAC were based on a pilot of both the test items and delivery system simultaneously, which makes cut score determinations arbitrary. And the use of the fixed form of the

test this spring does not match the test piloted in 2014 upon which the cut scores were developed. By continually changing the exam, the baseline is continually changing each year, making a passing score arbitrary and meaningless. Furthermore, the tests have been designed with a projected failure rate of 70%. The tests are DESIGNED to fail the majority of our children, including high achieving and advanced children like mine. Even one failure can send a high achiever over the edge.

7. The tests take away valuable instruction time from the classroom. It's disturbing, the outrageous amount of time that is being spent preparing for the tests, taking the tests, and administering make-up tests. Tests which are meaningless and do not benefit our children. Time that would much better be spent in meaningful learning activities. Preparing for weeks on end takes away from a well-rounded, exciting, and engaging education and is destructive to the educational well being of our children. I love my kids' teachers. I'd like to let them TEACH.

8. The tests constitute an undue financial burden on our schools. How much is the state of North Dakota spending on the creation, training, execution, and grading of these exams, and who is financially benefitting? I have yet to hear a straight answer to this question. I would prefer my tax dollars to go toward education, not toward over-testing or to line private company coffers. We pay taxes for education, not for testing, and certainly not to provide profits to private companies!

9. The tests are developmentally inappropriate and not aligned to the grade being tested.

In general, the readability of the SBAC tests is two years beyond the grade being tested. The test does not measure our children's knowledge; it can't when it's too hard. Under the guise of being, I love this overused word, "rigorous", the tests are essentially giving our children a task they cannot do and then telling them they are stupid when they can't do it. That is abusive and I will not subject my child to it.

10. The tests drive instruction.

Over-emphasis on testing is not only driving instruction, it is narrowing the curriculum in our schools. It should be the other way around. Instruction should drive the tests, which should be created and administered by the teachers. The tests also result in an over-emphasis on learning via "informational text," leaving little

time for other types of learning. There are many good teachers who are leaving the teaching profession because they cannot educate children in an innovative and creative way because they are being forced to teach-to-the-test. Maybe you've notice an uptick in the number of teachers retiring in North Dakota recently...

11. The tests were not created by nor will they be graded by educators. SBAC test essays that teachers have spent months preparing children to write, and that have been anxiously written by the children in the limited time available, will be scored in a matter of seconds by part-time employees hired from Craigslist with no educational requirements, minimal training and no teaching experience; where's the fairness in that? This is why I must refuse to have my child be a part of a research project for a testing or curriculum company.

12. High stakes testing is the exact opposite of how top performing countries are approaching education.

Many other successful developed nations are moving away from standardized testing because it does not provide any benefit to the students or the schools. For example, Finland only requires 1 standardized test which is given at the high school level, Wales has outlawed national testing under the age of 14, Scotland does not have national tests for children under the age of 16, and teachers in England boycotted the national tests for 11-year-olds because it took away from valuable teaching time and put an undue burden of stress on young children. Even China is moving away from its rote-learning, pass-the-test-at-all costs system. Our children and their teachers deserve better. Our city, state, and country deserve better.

And finally, 13. We are obviously over testing.

Students attend school to learn, not to be subjected to a battery of data gathering procedures. Admittedly, not every grade takes every test. But my 8th grader would have been expected to take multiple exams and assessments and surveys this year, above and beyond the regular end of chapter type tests the teacher prepares. That is excessive.

**MY PARENTAL RIGHTS UNDER FEDERAL LAW SUPERSEDE ANY SCHOOL DISTRICT POLICIES AND/OR STATE EDUCATION LAWS.**

The United States Constitution's 14th amendment protects our rights and responsibilities as parents to direct the upbringing of our children, particularly with regard to their education. The Supreme Court of the United States Parental Rights Doctrine has been upheld on

numerous occasions. The Supreme Court has repeatedly stated that parents possess the fundamental right to direct the upbringing and education of their children. The Court has also criticized a state legislature for trying to interfere with the power of parents to control the education of their own. (Meyer v. Nebraska, 262 U.S. 390, 402.) This is a parental rights issue, not an education issue. There is simply no reason to punish a child with truancy or an absence when a parent is exercising a constitutional right.

Mr. Chairman and members of the Committee, I urge a DO PASS on House Bill 1283.



Mr. Flakoll  
& members  
of the Committee

Support  
this  
Bill

# 3

3/10/15

HB 1283

Ridge Castleman

you should give us the  
right to opt out. all year  
we have spent most of our  
time learning how to take  
a test. ~~we~~ We practice to  
practice to take a test. We  
spend more time on this  
test than spending on  
our regular stuff. like Science,  
& reading <sup>spelling</sup> nobody has time  
for those things because  
our station time is for getting  
ready for the test. I  
feel sorry for my friends. Because  
my mom opted me out, I get  
to spend more time learning  
about things that will help  
me become ~~who~~ who I  
want to be. We should  
be able to decide if we  
want to spend time on a  
crazy test that won't tell  
anyone who I am.

#4  
3/10/15

Testimony  
**HB 1283 – Parental Opt Out of Assessment**  
3/10/2015

For the record, my name is Aimee Copas and I serve as the Executive Director for the ND Council of Educational Leaders. I'm here today to help with the understanding of the importance of assessments and for the participation of public school children to equally participate in them.

Effective use of education data to improve student achievement requires that data are safe and secure. Parents should be able to understand what data are collected about their child, how those data are used and shared, and how the data are protected.

High-quality education data can empower parents to better understand their child's academic progress and play a greater role in their child's education. Current law requires that parents have access to the data in their child's education record. Some have advocated for policies that allow parents to have more choice, specifically the ability to "opt out," when it comes to what data are collected, used, and shared about their child. Yet including more consent allowances could make it more difficult for parents to receive information about their child's progress and could disrupt other core school and district activities.

**It is not feasible to allow parents to limit the data schools collect about their child for administrative, instructional, or assessment and measurement purposes** because it would hinder or minimize the impact of data's use to improve student achievement and would strain everyday school functions.

Policy leaders need to understand the potential implications of enacting such policies and be prepared to help parents understand this issue.

**The Facts:**

Within the Elementary and Secondary Education Act (ESEA), one of the requirements is that there will be a state assessment for all students grades 3-8 and 11. School districts are held accountable to assess all students and report out on the achievement and participation results. The State Education Agency creates an Adequate Yearly Progress (AYP) report for every school and district that highlights the results of the state assessment. In addition to reporting the results in reading/language arts and mathematics, the report also indicates

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whether the school or district had at least 95% of their students participate in the state assessment at the composite and subgroup levels. This regulation was put into place to ensure that all students, even those with a disability, those who have limited English proficiency, or those living in poverty are assessed to hold schools accountable for their education of all children. Schools and districts who are not able to demonstrate that 95% of their students participated in the state assessment will consequently not make AYP as a school or district. Schools and districts that do not make AYP are identified for program improvement and must meet a number of sanctions as identified on the chart which can be accessed at [www.dpi.state.nd.us/title1/progress/schoolconsequence.pdf](http://www.dpi.state.nd.us/title1/progress/schoolconsequence.pdf)

On February 27, 2015, the USDE has provided ND with the opportunity to request state flexibility to freeze AYP calculations for one year due to the fact that North Dakota will be administering a new State Assessment in the spring of 2015. However, in order to hold schools and districts accountable for ensuring that all students participate in the state assessment, USED has said the freeze in AYP calculations does not apply to any school or district that cannot demonstrate that 95% of their students were assessed.

\*In order for students to receive Title I and Special Education services, they must first be assessed. The results of the multiple assessments will determine whether students meet the criteria and are eligible for supplemental services within one or both of these federal programs.

\*In order for students to participate in the State Scholarship program (NDCC 15.1-21), the students must participate in certain assessments and obtain an eligible score. Students who are not assessed are not eligible to apply for a scholarship.

\*For any student that intends to go to college after high school, they must participate in certain assessments that will be used to determine acceptance and/or placement into certain remedial courses.

\*North Dakota teachers will be evaluated using a new teacher/principal evaluation tool that takes into consideration as one of many criteria the level of proficiency of the students they teach. Students that are not assessed may cause an unfair evaluation of a particular teacher.

Our schools are bound by testing requirements within both federal and state law and their percentage of participation is monitored and they are held to a standard. If we legislate the opening for parents to opt out, the schools *should* ultimately be held harmless for any results our % tested as the data sample could be substantially altered. We believe it to be ill-advised to support a law that blatantly counter acts another law.

As educators, we've worked hard to believe that these laws were enacted to ultimately empower parents and children through quality information – we must be cautionary to move down a road toward enabling. As my very wise father states regularly – life wasn't meant to be easy, it was meant to be worth it. Are the assessments hard? Yes, sometimes they are. Do our kids get nervous taking them? Yes, sometimes they do. Do parents want to protect their children from things that might be deemed uncomfortable? Yes, of course. Is that action something that we should legislate – knowing the consequences of doing so. We don't believe so.

We as states provide free public education. Just like with a free public transit system, we may not like all the mandated stops along the way, but if we want to participate in the free opportunity, that is part of the price we pay as citizens. That analogy could be applied to education as well.

We recommend a DO NOT PASS for HB 1283.



*Tune in. Explore emerging education developments.*

2015  
FEBRUARY

AB 1283 #5  
3/10/15



## Assessment Opt-Out Policies: State responses to parent pushback

Stephanie Aragon, Julie Rowland and Micah Ann Wixom

With new state assessments kicking into full swing across the country, schools are seeing more and more parents wanting to opt out their children. Determining whether states allow assessment opt-outs can be complex and is constantly evolving. In some states the answer is clear: State policies either allow or prohibit state assessment opt-outs, or state departments of education issue clear guidance that opt-outs are not allowed.

In many states, however, the guidance as to whether opt-outs are allowed is far less clear, as departments of education are often silent on the issue. Additionally, many states have no consequences in place for not participating in mandatory assessments, adding a further wrinkle to defining what it means for states to truly prohibit opt-outs.

Confusion is growing as parents increasingly want to opt their children out of state tests. Some state policies are clear on this issue, but many are still working through the process.

### KEY TAKEAWAYS

State laws in California and Utah allow parents to opt their children out of state assessments for any reason.

Legislation introduced in New Jersey would allow opt-outs. Similar legislation in Mississippi failed to progress.

Laws in some states — such as Arkansas and Texas — clearly prohibit opt-outs, while the law is less clear in other states.



*The information provided in this report is not exhaustive and derives from a variety of sources. It is meant to provide state education leaders a broad look at how their peer states are handling similar challenges.*

## Opt-outs allowed

A few states have laws or regulations expressly allowing parents to opt out of assessments for any reason. **Utah**<sup>1</sup> and **California**<sup>2</sup> provide good examples of explicit opt-out language. Additionally, legislators in **New Jersey** and **North Dakota** recently introduced bills that would allow parents to opt out of assessments.

New Jersey's bill would require parents to provide written notification at least 14 days before the assessment and would require districts and schools to provide alternative activities.<sup>3</sup> North Dakota's bill would require parents to be notified of their right to opt out prior to test administration.<sup>4</sup> Another bill expressly permitting opt-outs was introduced this session in **Mississippi**, but subsequently died in committee.<sup>5</sup>

In several other states, opt-outs are not provided for in statute but are permitted by the department of education. The **Minnesota** Department of Education, for example, has indicated that there are no consequences for students who opt out of state exams.<sup>6</sup> Even though the completion of state exams is included as a graduation requirement, diplomas cannot be withheld from students who refuse to participate. Similarly, the **Michigan** Department of Education discourages but does not prohibit student opt-outs.<sup>7</sup>

Many states exempt students from participating in state assessments in cases of a physical disability, medical reasons or emergencies. Two states allow parents to opt out for a religious objection (see sidebar). Activist groups across the country have encouraged parents to use these limited exemptions as a basis for opting out even when students may not fit within the exemptions. This is occurring in Portland, **Oregon**, where activists are encouraging parents to opt out under the state's religious exemption.<sup>8</sup>

### Religious exemptions

**Oregon**<sup>16</sup> and **Pennsylvania**<sup>17</sup> excuse students from state testing to accommodate religious beliefs. In Pennsylvania, parents seem to be utilizing this policy to opt their students out of state tests.<sup>18</sup> It doesn't appear the state has issued guidance to parents or districts on this issue, although some school districts are apparently taking disciplinary action against teachers who inform parents about this opt-out provision.<sup>19</sup>

## Opt-outs not allowed: The spectrum of guidance

In states that do not expressly allow students and parents to opt out, publicly available responses from state departments of education run along a spectrum from silence on the issue to state guidance or policies clearly prohibiting opt-outs.

Departments of education in several states — such as **New Jersey**<sup>9</sup> and **South Carolina**<sup>10</sup> — have given guidance to local district and school leadership that either prohibits schools and districts from allowing parents to opt their children out or expressly states that students must take state assessments.

Few state departments provide information directly to parents and the public about opting out. **Oregon**<sup>11</sup> and **Ohio**<sup>12</sup> appear to be two of the only states that take the extra step of providing public information, clearly outlining both the purpose of their state assessments and the potential consequences to not taking them.

In states that prohibit opting out of state assessments, departments frequently cite state policies. These policies usually require school districts to administer state assessments to all students in specified grades — sometimes with limited exceptions. In addition to requiring districts to administer assessments to all students, some states' policies also require students to take them. For example, state law in **Arkansas** says that participation in the state testing program is mandatory,<sup>13</sup> while **Texas** does not allow parents to

### Research on opt-outs and their impact

A **New Jersey** law firm has analyzed court cases and laws commonly cited by the parent advocacy group United Opt Out. The analysis concluded that these sources do not support a parent's right to opt students out of state assessments.<sup>20</sup>

Research for Action's policy brief describes how opt-outs may positively or negatively impact school performance ratings and teacher and principal evaluations.<sup>21</sup>



remove a student from class or other school activity to avoid a test.<sup>14</sup> Many departments of education also cite provisions from Section 1111 of the No Child Left Behind Act to support their stance that students must participate in state assessments.<sup>15</sup>

Finally, many states appear to be silent on the issue, meaning there is no publicly available communication from departments of education to local district and school leaders or the public about the state's stance on opting-out. In these cases, local district or school leaders may adopt their own policies. For example, a **North Dakota** school district informed parents that while state policies require the district to administer state assessments to all students, the district will not take action against any student who does not participate.<sup>22</sup>

## Loosening a state's grip on testing

A handful of states are seeking ways to bypass state laws to release districts from their testing obligations. In **Colorado**, the state Board of Education was stymied in its attempt to grant testing waivers to districts after the state attorney general determined that it does not have this authority. However, the board recently passed a motion that relieves districts of any penalty if fewer than 95 percent of students participate in testing because of opt-outs this spring.<sup>23</sup> The Department of Education encouraged districts to make a good faith effort to test all students in accordance with state and federal law.

In **Louisiana**, Gov. Bobby Jindal recently issued an executive order that could allow parent opt-outs, although stakeholders have requested that the Board of Education clarify the state's policy.<sup>24</sup>

### A parent rights state of mind: New York City

New York City's City Council is currently considering allowing parents to opt out of assessments.<sup>25</sup> A potential resolution, which will likely be released by publication of this paper, would ask the city's Education Department to add provisions about parent opt-out to the department's Parents' Bill of Rights and Responsibilities.

While **New York** state does not have a formal opt-out provision, the city's parent guide to assessment participation indicates that principals must respect the parents' decision about testing and work with parents to provide students with an alternate activity.<sup>25</sup>

## Related ECS resources:

For a high-level overview of which tests are taken where, check out our snapshot of states' assessment choices, *50 Ways to Test: A look at state summative assessments in 2014-15*.

To better understand the standards landscape, *States and the (not so) new standards – where are they now?* examines how states are affirming, modifying or replacing the Common Core State Standards and provides information about who controls standard-setting in various states.

Take a deeper dive with *State standard-setting processes*, which includes profiles of the actions taken in eight states, as well as the measures used by those states to validate their standards.

The following appendix provides a brief snapshot of information related to assessment opt-outs across the 50 states and District of Columbia, where available.



# Appendix

## Alabama

No information identified.

## Alaska

No information identified.

## Arizona

The Department of Education's [parent guide to understanding state assessments](#) clearly states that, per state and federal policies, parents may not allow students to opt out of state assessments.

## Arkansas

According to the [state Department of Education](#), participation in state assessments is mandatory under state law unless the state Board of Education decides otherwise. However, the state board is not permitted to make accommodations that negate the validity of a statewide assessment, which result in less than 95 percent of all students attending public school participating in the testing program.

## California

California law ([Cal. Educ. Code § 60615](#)) allows parents to [opt their children out of assessments](#) through a written request. Districts are required to keep track of how many students were opted out by their parents.

## Colorado

Although the state attorney general recently found that the state Board of Education does not have the authority to grant testing waivers to districts, the board recently passed a motion that seeks to exempt districts from any penalty if fewer than 95 percent of students participate in testing this spring.

## Connecticut

The Department of Education clarified the state's policies on state assessments in [two separate documents](#) sent to district-level staff, namely that all students (with two minor exemptions) must take them.

## Delaware

Citing state and federal law, the Department of Education's one-page [publication on opt-outs](#) states that students are exempt from state tests only for extreme medical incidents or for reasons of mental health.

## District of Columbia

While information from the District of Columbia was not identified, [one high school](#) warned that students who do not participate in assessments will not be eligible to participate in sports next year.

## Florida

Although information about Florida's position could not be located on the Department of Education's website, it appears that Florida does not allow students to opt out of assessments. Pam Stewart, the state's commissioner of education, wrote a [letter](#) to state Sen. Don Gaetz clarifying Florida's position and highlighting, in detail, the potential consequences of a student opting out. Interestingly, a Florida school district had voted to opt the entire district out of state tests but [reversed that decision](#) because of the consequences.

## Georgia

No information identified.

## Hawaii

Hawaii appears to require all students to participate in state assessments (see p. 14 of the state's [test administration manual](#)).

## Idaho

Idaho [has no policy allowing for students to opt out](#). It appears that districts can make their own decisions, but the Department of Education provides help for any districts that need to respond to parents who want to opt out. The state's [Smarter Balanced Educator Communicators Toolkit](#) includes suggested answers to questions about opting out.

## Illinois

The Illinois State Board of Education issued a [letter](#) to parents stating that students may not opt out of the PARCC assessment under state and federal law. The board also states that districts can develop a policy for those students who refuse to take assessments on testing days, but emphasizes that refusal would violate state and federal laws.

## Indiana

Indiana's [Department of Education](#) acknowledges that it is not against the law for a parent to refuse to allow a child to participate in assessments but cautions that students must participate in statewide assessments to graduate. Additional consequences and procedures to manage students who refuse to participate are determined at the local school level.

### Iowa

Iowa provides clear guidance on its Department of Education website, prohibiting opt-outs under state and federal law. The department provides that school districts determine the consequences for parents who choose to opt their children out.

### Kansas

Opt-out issues are handled at the local level. Kansas expects a minimum of 95 percent participation this year.

### Kentucky

The commissioner of education clarified that opting out of assessments is prohibited. He cited Kentucky statute [Ky. Rev. Stat. Ann. § 158.6453](#) and [703 Ky. Admin. Regs. 5:140](#) as creating an accountability system that is designed to ensure that all schools and districts are serving all students and that gaps in categories of students are identified, addressed and closed. The commissioner asked that schools explain to parents that all students must be tested to accomplish these goals.

### Louisiana

In addition to efforts to remove the Common Core standards from his state, Gov. Bobby Jindal issued an [executive order](#) on Jan. 30, 2015, that could allow parent opt-outs. According to [news reports](#), the governor, state school boards association and a state teachers union, along with several districts and Common Core opponents, have requested that the Board of Elementary and Secondary Education schedule a special meeting to clarify the state's opt-out policy.

### Maine

No information identified.

### Maryland

According to a [brochure](#) released by the Maryland State Department of Education, while parents have a fundamental right to choose whether to send their children to a public school, they cannot selectively choose or reject parts of the public education program itself – including student testing. A parent-initiated [lawsuit](#) challenging mandatory assessments and confirming a parent's right to refuse testing in Maryland is pending.

### Massachusetts

According to a 2014 [letter](#) from the state's commissioner of education, participation is mandatory because Massachusetts law ([Mass. Gen. Laws Ann. 69 §11](#)) does not contain an opt-out provision. However, the same letter requires schools to provide an alternative educational activity for students who refuse to participate in the assessment. Still, one [Massachusetts district](#) that allowed students to refuse to take a state pilot exam received a

[notice](#) from the Board of Elementary and Secondary Education reiterating the assessment mandate.

### Michigan

According to a [report](#) by the Michigan Department of Education, there is no rule prohibiting parents from opting their students out of assessments. However, districts are encouraged to limit exemptions because they will be held to the requirement that 95 percent of their students complete the assessment.

### Minnesota

Currently, no consequences exist for students in Minnesota who opt out of state exams. According to a [Department of Education presentation](#), although students in grade 8 and above are expected to participate in the exams in order to meet their graduation assessment requirements, diplomas will not be withheld from students who are absent during testing. While state statute does not specifically allow for opt-outs, it does not prevent students from refusing to participate. Some districts assist in this process by providing opt-out forms (like the form provided by Minneapolis Public Schools).

### Mississippi

State statute ([Miss. Code Ann. § 37-16-7](#)) requires students to achieve a passing score on each of the required high school exit exams in order to receive their diploma. There is a [bill](#) working its way through the legislature that would prohibit entirely the state Board of Education and local school districts from including assessments in graduation requirements. Another [bill](#) that specifically granted parents the right to opt their children out of the exams and to formalize a procedure for opt-outs died in committee.

### Missouri

Currently, no formal process exists for students to opt out of state assessments. A [Q&A report](#) by the Department of Education notes that districts are compelled by federal and state statute to assess all of the students in their district. [State statute](#) requires district school boards to establish a written policy on student participation in these exams.

### Montana

No information was identified.

### Nebraska

It is unclear if parents may opt out of state assessments on behalf of students. Some materials from the Department of Education (including the [2013 online test administration manual](#) and the [accountability scoring rules](#)) reference a mechanism for parent refusal of state assessments, but other materials do not. The



department's position on this issue is unclear.

### Nevada

Apparently the Department of Education [allowed parents](#) to opt out of 2013 state assessment [field testing](#). No further information was identified.

### New Hampshire

[State law](#) requires that assessments be administered in all school districts and that all students in all grades participate. According to a [release](#) from the Department of Education, public school children are legally required to take the assessment and parents have no legal right to opt their children out. [Exemptions exist](#) only in special circumstances, such as serious illness, severe emotional distress and participation in another state or alternative assessment.

### New Jersey

The Department of Education sent [guidance](#) to district and school leadership on the opt-out issue, informing them that state and federal policy requires students to participate in statewide assessments and encouraging district and school leadership to inform parents and students why the assessments are important. According to a few news articles ([here](#) and [here](#)), Commissioner of Education David Hespe encouraged districts to create policies handling opt outs, including potential disciplinary actions.

### New Mexico

In [this assessment procedures manual](#), the Department of Education makes clear that federal and [state law](#) require all students to participate in state assessments. Students who refuse to take the test, with the exception of those who receive a state medical exemption, count against the school for A-F School Grades. Although alternative methods are identified, the state requests that students demonstrate competency in the five core subject areas through completion of the accountability assessment in order to meet graduation requirements.

### New York

While there is a contingent in New York actively advocating for testing opt outs, the New York Department of Education issued guidance in 2013 clearly stating that there is no provision in statute or regulation allowing parents to opt their children out of state tests. Despite this guidance, education policy leaders in New York City are taking steps that would allow for opt outs (see sidebar).

### North Carolina

According to a [handbook](#) released by the state Board of Education, [board policy](#) prevents students from opting out of exams. An exam answer sheet must be provided to all students. Students whose answer sheets are blank will receive the lowest

possible score and the student's course and overall grade point average may be negatively affected. A [memo](#) from the deputy state superintendent provides additional information to LEA superintendents and charter school directors about assessment mandates and the protocol for handling refusal requests.

### North Dakota

There is no information from the Department of Education on this matter. However, legislators recently introduced [H.B. 1283](#), which would allow parents to opt out of state assessments and would require parents to be notified of their right to opt out prior to test administration. In addition, officials from the [West Fargo Public Schools District](#) disseminated information to parents informing them that while the district is required to administer assessments to all students, the district will not take action against any student and any student's family if the student does not complete the assessment.

### Ohio

The Department of Education prepared a [document](#) outlining the importance of student participation in state tests and three possible consequences to opting out. Ohio is one of only a few states in which the department clearly and publicly outlined the potential consequences of students not taking state assessments. Some of those consequences include:

1. Third graders may be retained due to the state's third-grade reading and retention policies.
2. Opting out may affect high school graduation, as assessments are part of the state's graduation requirements.
3. English language learners may be delayed or prevented from exiting the English development program.

### Oklahoma

The Department of Education does not provide opt-out options to students. According to a [report](#), statutory and Department of Education rules require all districts to provide a test to every student enrolled in respective testing grades. If a parent wants to opt a child out of an exam, the district must provide the test to the student and document the student's refusal to participate. The failure of a district to achieve a 95 percent participation rate will result in the district automatically earning a lower grade on the A-F report card.

### Oregon

The Department of Education provides an [FAQ](#) on testing exemptions, which includes information about allowed exemptions (disabilities or religious beliefs) and the request process; federal and state requirements; how exemptions impact school accountability ratings; and the impact of opt-outs on

graduation.

### Pennsylvania

State policy allows parents to opt their children out of state assessments if a test conflicts with a family's religious or moral beliefs, and parents seem to be using this policy. It doesn't appear the state has issued guidance to parents or districts on this issue, although some school districts are apparently taking disciplinary action against teachers who inform parents about this opt-out provision.

### Rhode Island

The Department of Education expects all students to participate in statewide assessments, and students may only be exempted, with department approval, for medical reasons or emergencies.

### South Carolina

One of South Carolina's state superintendents sent guidance to school district leaders on this issue. In short, state and federal policy does not provide opt-out provisions for parents or students.

### South Dakota

State policies require districts to administer state assessments to all students (S.D. Code Ann. § 13-3-55; S.D. Admin. R. 24:55:07:08) and all students are required to take them (S.D. Admin. R. 24:55:07:01), with an exemption for English language learner students (S.D. Admin. R. 24:55:07:11). No information from the Department of Education was identified.

### Tennessee

It does not appear that the Department of Education has issued any guidance on this issue. However, state achievement tests for students in grades 3-8 compose a percentage of the student's final grade, up to 25 percent (Tenn. Code Ann. §49-1-617).

The department does allow for department-approved medical exemptions. Legislation enacted in 2014 allows parents to opt their student out of participating in a survey, analysis, or evaluation, but it is not clear if this extends to state assessments (Tenn. Code Ann. §49-2-211).

### Texas

According to Texas law (Tex. Educ. Code Ann. § 26.010), parents are not entitled to remove a child from class or other school activity to avoid a test. Although no information from the Texas Education Agency was identified, the Texas Association of School Boards has provided guidance to school boards about opting out of standardized tests, including the potential consequences of missing these tests.

### Utah

Utah law (Utah Code Ann. § 53A-15-1403(9)) allows parents to opt their children out of state assessments. These students are excluded from state accountability measures but cannot be excluded from federal accountability measures and reports. (Also see a recent memo from the Department of Education about the state's opt-out policy.)

### Vermont

In 2014, the Department of Education issued a statement to help districts and school boards answer questions about opting out. In short, school districts are required to participate in state assessments and each school must account for 100 percent of its enrolled students by reporting a score or documenting a valid exemption, which include health or personal emergencies but not parent refusal.

### Virginia

In a 2013 memo to school district leaders, the state superintendent clarified that state assessment regulations do not provide for an opt-out policy and gave procedures to follow for any students refusing to take assessments. One of the procedures strongly encourages schools to request a written statement from parents about the reason for refusal, which should be included in the student's file.

### Washington

According to the Department of Education, a parent may refuse to have his/her child take state tests. However, high school students must pass certain state assessments before graduating.

### West Virginia

No information was identified.

### Wisconsin

Per state policy (Wis. Stat. § 118.30(2)(b)3), school districts in Wisconsin must excuse students in grades 4, 8 and 9-11 from state assessments at any time during the testing window upon the request of a parent. Students in other grades may only be excused at the discretion of the school board.

### Wyoming

In 2014, the Department of Education requested an opinion from the Wyoming Attorney General's office regarding parent opt-outs from state-mandated testing. According to an opinion from the office of the state's attorney general, districts are required to assess all eligible students and students may not opt out of assessment.



## ENDNOTES

- 1 Utah Code Ann. § 53A-15-1403(9)
- 2 Cal. Educ. Code § 60615
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- 4 H.B. 1283, 64th Leg., (January 13, 2015), <http://www.legis.nd.gov/assembly/64-2015/bill-actions/ba1283.html> (accessed February 24, 2015).
- 5 H.B. 1176, 2015 Reg. Session, (January 19, 2015), <http://billstatus.ls.state.ms.us/documents/2015/pdf/HB/1100-1199/HB1176IN.pdf> (accessed February 24, 2015).
- 6 Jennifer Dugan, Minnesota Department of Education, "Minnesota Assessment System: Update", slide 15 (Minnesota Department of Education) <http://webcache.googleusercontent.com/search?q=cache:MJqAluYZw6EJ:www.mn-acac.org/Resources/Documents/ACI/New%2520ACT%2520Test%2520Requirements.pptx+&cd=8&hl=en&ct=clnk&gl=us> (February 24, 2015).
- 7 Michigan Department of Education, "Frequently Asked Questions About Assessment," May 13, 2014, [http://www.michigan.gov/documents/mde/MDE\\_Frequently\\_Asked\\_Questions\\_on\\_Assessments\\_-\\_May\\_2014\\_455973\\_7.pdf](http://www.michigan.gov/documents/mde/MDE_Frequently_Asked_Questions_on_Assessments_-_May_2014_455973_7.pdf) (February 24, 2015).
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- 9 David C. Hespe, Memorandum to Chief School Administrators, Charter School Lead Persons, School Principals, District and School Test Coordinators, "Student Participation in the Statewide Assessment Program," October 30, 2014, Trenton, New Jersey: State of New Jersey Department of Education. <http://education.state.nj.us/broadcasts/2014/OCT/30/12404/Students%20Participation%20in%20the%20Statewide%20Assessment%20Program.pdf> (February 23, 2015).
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- 11 Oregon Department of Education, "Exemptions from Testing: Frequently Asked Questions," [http://www.ode.state.or.us/wma/teachlearn/testing/admin/asmt\\_exemption\\_faq.pdf](http://www.ode.state.or.us/wma/teachlearn/testing/admin/asmt_exemption_faq.pdf) (February 23, 2015).
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- 13 Ark. Code Ann. § 6-15-433(c)(7)
- 14 Tex. Educ. Code Ann. § 26.010
- 15 20 U.S.C. § 6311
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## Authors

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# Growing up in the educational divide

DAVID BROOKS

One of America's leading political scientists, Robert Putnam, has just come out with a book called "Our Kids" about the growing chasm between those who live in college-educated America and those who live in high-school-educated America. It's got a definitive collection of data about this divide.

Roughly 10 percent of the children born to college grads grow up in single-parent households. Nearly 70 percent of children born to high school grads do. There are a bunch of charts that look like open scissors. In the 1960s or 1970s, college-educated and noncollege-educated families behaved roughly the same. But since then, behavior patterns have ever more sharply diverged. High-school-educated parents dine with their children less than



Brooks

engaging in developmental activity.

## Behavior patterns instructive

Interspersed with these statistics, Putnam and his research team profile some of the representative figures from each social class.

The profiles from high-school-educated America are familiar but horrific.

David's mother was basically absent. "All her boyfriends have been nuts," he said. "I never really got to see my mom that much." His dad dropped out of school, dated several

college-educated parents, read to them less, talk to them less, take them to church less, encourage them less and spend less time

women with drug problems and is now in prison. David went to seven different elementary schools. He ended up under house arrest and got a girl pregnant before she left him for a drug addict.

Kayla's mom married an abusive man but lost custody of their kids to him when they split. Her dad married a woman with a child but left her after it turned out the child was fathered by her abusive stepfather.

Kayla grew up as one of five half siblings from three relationships until her parents split again and coupled with others.

Elijah grew up in a violent neighborhood and saw a girl killed in a drive-by shooting when he was 4. He burned down a lady's house when he was 13. He goes through periods marked by drugs, clubbing and sex but also dreams of being a preacher. "I just love beating up somebody," he told a member of Putnam's team,

"and making they nose bleed and just hurting them and just beating them on the ground."

The first response to these stats and to these profiles should be intense sympathy. We now have multiple generations of people caught in recurring feedback loops of economic stress and family breakdown, often leading to something approaching an anarchy of the intimate life.

But it's increasingly clear that sympathy is not enough. It's not only money and better policy that are missing in these circles; it's norms. The health of society is primarily determined by the habits and virtues of its citizens.

Reintroducing norms will require, first, a moral vocabulary. These norms weren't destroyed because of people with bad values. They were destroyed by a plague of nonjudgmentalism, which refused to assert that one way of behaving was better than another.

People got out of the habit of setting standards or understanding how they were set.

Next it will require holding people responsible. People born into the most chaotic situations can still be asked the same questions: Are you living for short-term pleasure or long-term good? Are you living for yourself or for your children? Do you have the freedom of self-control or are you in bondage to your desires?

Next it will require holding everybody responsible. America is obviously not a country in which the less-educated are behaving irresponsibly and the more-educated are beacons of virtue. America is a country in which privileged people suffer from their own characteristic forms of self-indulgence: the tendency to self-segregate, the comprehensive failures of leadership in government and industry. Social norms need repair up and

down the scale, universally, together and all at once.

People sometimes wonder why I've taken this column in a spiritual and moral direction of late. It's in part because we won't have social repair unless we are more morally articulate, unless we have clearer definitions of how we should be behaving at all levels.

History is full of examples of moral revival, when social chaos was reversed, when behavior was tightened and norms reasserted. It happened in England in the 1830s and in the U.S. amid economic stress in the 1930s.

It happens through organic communal effort, with voices from everywhere saying gently: This we praise. This we don't.

Every parent loves his or her children. Everybody struggles. But we need ideals and standards to guide the way.

(David Brooks writes a syndicated column for the New York Times.)

Bismarck Tribune

March 15, 2015

AB 1283

3/18/15  
#1



March 17, 2015

# 2  
3/18/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1283

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15.1-21 relating to parental directives; and to provide an expiration date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Parental directive - Administration of tests and assessments.**

1. A student's parent may direct that the school district in which the student is enrolled not administer a specific test or assessment to the student, provided that a parental directive does not apply to:
  - a. Any test or assessment required by the student's school district of enrollment or this state for the completion of any grade from kindergarten through twelve;
  - b. Any test or assessment required by the student's school district of enrollment or this state for high school graduation;
  - c. The ACT; or
  - d. WorkKeys assessments.
2. a. A parental directive is valid only if it is presented to the school district using a standardized form, prepared by the superintendent of public instruction, and signed by the student's custodial parent.
  - b. A parental directive is valid only until the conclusion of the school year in which it is received by the school district.
  - c. A parental directive submitted to a school district in accordance with this section must be retained as part of the student's educational record.
3. A school district is not liable for any consequences incurred by a student as a result of a parental directive submitted in accordance with this section.
4. Each school district must post the parental directive form on its website and make the form available to a parent, upon request.

**SECTION 2. EXPIRATION DATE.** This Act is effective through June 30, 2017, and after that date is ineffective."

Renumber accordingly



#3  
HB 1283  
3/18/15

The citation shown below is from HB 1400 in 2009 and relates to mandatory testing for ACT or WorkKeys.  
Senator Flakoll

**SECTION 24.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Summative assessment - Selection - Cost - Exemptions.**

1. Except as otherwise provided, each public and nonpublic school student in grade eleven shall take the ACT or three WorkKeys assessments recommended by the department of career and technical education and approved by the superintendent of public instruction.

H. B. No. 1400 - Page 14

The student shall determine which summative assessment to take. The student's school district of residence is responsible for the cost of one summative assessment and its administration per student.

2. The student's career advisor or guidance counselor shall meet with the student to review the student's assessment results.

3. A school district superintendent or a school administrator in the case of a nonpublic school student may exempt a student from the requirements of this section if taking the test is not required by the student's individualized education program plan or if other special circumstances exist.

4. If the superintendent of public instruction determines that the cost of the summative assessment and its administration can be reduced through use of a state procurement process, the superintendent shall work with the school districts to procure and arrange for the administration of the assessment and shall withhold each district's share of the total cost from any state aid otherwise payable to the district.

#4  
HB 1283  
3/18/15

**From:** Thomas, Anita  
**Sent:** Monday, March 23, 2015 2:02 PM  
**To:** Flakoll, Tim  
**Subject:** RE: Q

As a general rule, parents are responsible for their minor children (until age 18). There are a few exceptions, such as for an emancipated minor.

If a student wants to take a test and the parent does not want that child to do so, it would be similar to a child wanting to go on a field trip and the parent saying no.

The bigger issue would appear to be the parent/child relationship.



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

#1  
HB 1283  
4/6/15

February 3, 2015

The Honorable Mike Hanley  
Commissioner of Education  
Alaska Department of Education and Early Development  
801 West 10th Street, Suite 200  
Juneau, Alaska 99811-0500

Dear Commissioner Hanley:

This letter serves as a response to your letter dated January 20, 2015, regarding the requirements for State assessments under the Elementary and Secondary Education Act of 1965 (ESEA). Before I respond to your four specific questions, please let me emphasize the importance of the assessment requirements in the ESEA, which are focused on ensuring that parents and educators have the information they need to help every student be successful and on protecting equity for all students by maintaining a consistent measure of what students know and are able to do regardless of where they live. High-quality, annual statewide assessments are essential to providing critical information about student achievement and growth to parents, teachers, principals, and administrators at all levels. When that system is aligned with the academic content and achievement standards that a State expects all children to know and be able to do, it provides the road map for aligning instruction to the academic needs of students identified by the assessment system. High-quality, annual, statewide assessments provide information on *all* students so that educators can improve educational outcomes, close achievement gaps among subgroups of historically underserved students, increase equity, and improve instruction.

Below, I have responded to each question, providing the statutory and regulatory citations, as applicable, and noting any differences between the statutory and regulatory requirements of the ESEA and ESEA flexibility.

1. What are the Federal requirements regarding the frequency, grade levels, and content areas of State assessments? Can ED provide an outline of the requirements in section 1111(b)(3)?

ESEA section 1111(b)(3) (20 U.S.C. § 6311(b)(3)) requires a State educational agency (SEA) that receives funds under Title I, Part A of the ESEA to implement in each local educational agency (LEA) in the State a set of high-quality, yearly academic assessments that includes, at a minimum, assessments in mathematics, reading or language arts, and science. With respect to reading/language arts and mathematics, the assessments must be administered in each of grades 3 through 8 and not less than once in grades 10 through 12. With respect to science, the assessments must be administered not less than once during grades 3 through 5, grades 6 through 9, and grades 10 through 12.

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<http://www.ed.gov/>

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

Under ESEA section 1111(b)(3)(C) (20 U.S.C. § 6311(b)(3)(C)) and 34 C.F.R. § 200.2, the State assessments must —

- Be the same academic assessments used to measure the achievement of all children (§ 1111(b)(3)(C)(i); § 200.2(b)(1));
- Be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and English Learners (§ 200.2(b)(2));
- Be aligned with the State's challenging academic content and achievement standards and provide coherent information about student attainment of the standards (§ 1111(b)(3)(C)(ii); § 200.2(b)(3));
- Be used for purposes for which they are valid and reliable and be consistent with relevant, nationally recognized professional and technical standards (§ 1111(b)(3)(C)(iii); § 200.2(b)(4));
- Be supported by evidence from the test publisher or other relevant sources that the assessment system is of adequate technical quality for each required purpose (§ 1111(b)(3)(C)(iv); § 200.2(b)(5));
- Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding, which may include single or multiple question formats that range in cognitive complexity within a single assessment and multiple assessments within a subject area (§ 1111(b)(3)(C)(vi); § 200.2(b)(7));
- Provide for the participation of all students in the tested grades, including students with disabilities, who must be provided reasonable accommodations, and English Learners, who must be assessed in a valid and reliable manner and provided reasonable accommodations including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what those students know and can do in academic content areas until they have achieved proficiency in English (§ 1111(b)(3)(C)(ix); §§ 200.2(b)(9), 200.6);
- Assess English Learners who have been in schools in the United States for three or more consecutive years in English on the reading/language arts assessments, except that, on a case-by-case basis, an LEA may assess those students in their native language for not more than two additional years (§ 1111(b)(3)(C)(x));
- Produce individual student interpretive, descriptive, and diagnostic reports that allow parents, teachers, and principals to understand and address the specific academic needs of students (§ 1111(b)(3)(C)(xii); § 200.2(b)(11));
- Enable results to be disaggregated within each State, LEA, and school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to nondisabled students, and by economically disadvantaged students compared to students who are not economically disadvantaged (§ 1111(b)(3)(C)(xiii); § 200.2(b)(10));
- Be consistent with widely accepted professional testing standards, objectively measure academic achievement, knowledge, and skills, but do not measure personal or family beliefs or attitudes (§ 1111(b)(3)(C)(xiv); § 200.2(b)(8)); and
- Enable the production of itemized score analyses (§ 1111(b)(3)(C)(xv); § 200.2(b)(12)).

For each grade and subject assessed, a State's academic assessment system must —

- Address the depth and breadth of the State's academic content standards;
- Be valid, reliable, and of high technical quality;

- Express student results in terms of the State's academic achievement standards; and
- Be designed to provide a coherent system across grades and subjects. 34 C.F.R. § 200.3(a).

ESEA flexibility does not remove these requirements.

2. Do States have to administer the same general assessment to all students?

ESEA section 1111(b)(3)(C)(i) requires State assessments to "be the same academic assessments used to measure the achievement of *all* children (emphasis added)." So, with certain limited exceptions described below, the assessments an SEA develops must be the same for all students in the State. An SEA may not assess only a sample of students, even if that sample is representative of students in each LEA or the State as a whole. One reason for this is to help ensure that all students in a State are held to the same high expectations, regardless of a student's race, ethnicity, socioeconomic status, or neighborhood.

One exception to the general requirement that a State's assessment must be the same for all students is the authority in the Title I regulations for an SEA to adopt alternate academic achievement standards and alternate assessments aligned with those standards for students with the most significant cognitive disabilities. See 34 C.F.R. §§ 200.1(d), 200.6(a)(2)(ii)(B). These standards and assessments apply to a very small number of students with disabilities who, even with the very best instruction, are not likely to meet the grade-level academic achievement standards that apply to all students.

ESEA section 1111(b)(5) (20 U.S.C. § 6311(b)(5)) is another exception. It applies *only* in a State that provides evidence, satisfactory to the Secretary, that neither the SEA nor any other State government entity has sufficient authority under State law to adopt standards and assessments that would be applicable to all students enrolled in public schools in the State. In this case, the SEA may meet the requirements of ESEA section 1111(b)(3) by adopting academic standards and assessments on a statewide basis, and limiting their applicability to students served under Title I, or adopting and implementing policies that ensure the each Title I LEA in the State adopts academic content and achievement standards and aligned assessments that meet all of the requirements in section 1111(b)(3) and corresponding regulations and apply to all students in the LEA. Currently, this exemption does not apply to any States.

ESEA section 1111(b)(5) has no counterpart under ESEA flexibility; no SEA that has received ESEA flexibility is prohibited under State law from adopting a single statewide assessment system that applies to all students in the State. In other words, each SEA that has received ESEA flexibility has indicated it has authority under State law to adopt a single statewide assessment system that applies to all students in the State.

3. What are the consequences if a State or district fails to adhere to the Federal assessment requirements?

If an SEA fails to comply with the assessment requirements in either ESEA or ESEA flexibility, ED has a range of enforcement actions it can take. These include sending a written request to the SEA that it come into compliance, increasing monitoring, placing a condition on the SEA's Title

I, Part A grant award or its ESEA flexibility request, placing the SEA on high-risk status (34 C.F.R. § 80.12), issuing a cease and desist order (GEPA section 456 (20 U.S.C. § 1234e)), entering into a compliance agreement with the SEA to secure compliance (GEPA 457 (20 U.S.C. § 1234f)), withholding all or a portion of the SEA's Title I, Part A administrative funds (ESEA section 1111(g)(2) (20 U.S.C. § 6311(g)(2))), and suspending, and then withholding, all or a portion of the State's Title I, Part A programmatic funds (GEPA section 455 (20 U.S.C. § 1234d)). An SEA has similar enforcement actions available to it with respect to noncompliance by an LEA, including withholding an LEA's Title I, Part A funds. *See, e.g.*, GEPA section 440 (20 U.S.C. § 1232c(b)).

The specific enforcement action(s) ED would take depends on the severity of non-compliance. For example, if an SEA has developed a statewide assessment system but that system is not approvable because it fails to meet all statutory and regulatory requirements, ED might condition the SEA's Title I, Part A grant award, place the SEA on high-risk status, enter into a compliance agreement, or withhold State administrative funds. ED has, in fact, withheld Title I, Part A administrative funds under ESEA section 1111(g) (20 U.S.C. § 6311(g)) from a number of States for failure to comply with the assessment requirements in ESEA section 1111(b)(3). If an SEA or LEA refuses to implement an assessment system that meets the statutory and regulatory requirements, ED might seek to withhold programmatic funds from the State and expect the SEA to withhold from the LEA. Clearly, if an SEA or LEA fails to comply with the assessment requirements in either the ESEA or ESEA flexibility, it could place its Title I, Part A funds in jeopardy. In addition, the SEA or LEA could find itself out of compliance with a wide range of additional Federal programs that rely on statewide assessment results, putting additional funds at risk. These additional programs include those targeting students most at risk including, but not limited to: the School Improvement Grants (SIG) program; ESEA Title III; Part B of the Individuals with Disabilities Education Act (IDEA); programs for rural schools under ESEA Title VI; migrant education under ESEA Title I, Part C; and programs focused on professional development and other supports for teachers, such as ESEA Title II.

Please note that an LEA may not avoid administering the State assessments required under ESEA section 1111(b)(3) by declining to accept Title I, Part A funds. As noted above, the assessment requirements are State-level requirements that apply to any SEA that accepts Title I, Part A funds. That SEA must then administer its assessments statewide — including to students in LEAs that do not participate in Title I.

4. Would legislative language that allows parents to opt their children out of participating in statewide Federally required assessments be considered as a failure to adhere to the Federal assessment system?

Section 1111(b)(3)(A) of the ESEA requires each SEA to have a set of high-quality, yearly student academic assessments for reading/language arts and mathematics in grades three through eight and once in high school, and for science once each in grades 3-5, 6-8, and 10-12. SEAs and LEAs must provide for the participation of *all* students on the assessments (*see* ESEA section 1111(b)(3)(C)(ix)(I)) so that they can identify the learning progress of all students against the same high expectations, regardless of a student's race, ethnicity, socioeconomic status, or neighborhood. This requirement does not permit certain students or a specific percentage of students to be excluded from assessments. Rather, it sets out the rule that *all* students in the

tested grades must be assessed. (ESEA section 1111(b)(2)(I)(i) permits an LEA or school to make adequate yearly progress as long as it assesses at least 95 percent of its students.)

In applying for funds under Title I, Part A of the ESEA, the SEA assured that it would administer the Title I, Part A program in accordance with all applicable statutes and regulations (*see* ESEA section 9304(a)(1)). Similarly, each LEA that receives Title I, Part A funds assured that it would administer its Title I, Part A program in accordance with all applicable statutes and regulations (*see* ESEA section 9306(a)(1)). If an SEA does not ensure that all students are assessed, ED has a range of enforcement actions it can take (as described in response to question 3 above). The SEA has similar enforcement actions available to it with respect to an LEA that does not ensure that all students participate in the State assessments, including withholding the LEA's Title I, Part A funds (20 U.S.C. § 1232c(b)). In addition, all SEAs with approved ESEA flexibility plans have included specific consequences in their accountability systems for any school that misses participation rate, and must implement this component of their accountability systems with fidelity.

As noted above, an SEA or its LEAs may find themselves out of compliance with other Federal programs that use student achievement results as well, including programs targeting students most at risk including, but not limited to: SIG; ESEA Title III; Part B of the IDEA; programs for rural schools under ESEA Title VI; migratory students under ESEA Title I, Part C; and programs focused on professional development and other supports for teachers, such as ESEA Title II.

Please do not hesitate to contact me if you need additional information or clarification. Thank you for your continued commitment to enhancing education for all of Alaska's students.

Sincerely,

/s/

Deborah S. Delisle  
Assistant Secretary

## Opt-out movement not beneficial

Bismarck Tribune Editorial April 05, 2015 2:00 am

Parents are the first educators of their children. And when parents enroll their children in the public education system, they are entrusting the education of their children to teachers, administrators, school districts and even government education standards.

By enrolling their children in school, parents are in essence giving up some control of the education of their children. This can lead to a tug-of-war in publicly-funded education.

The current tug-of-war battleground is Common Core standards and Smarter Balanced Assessment standardized testing. The North Dakota Legislature already rejected attempts to prevent the state from using Common Core standards — a decision we applaud.

Since it became clear Common Core was here to stay, an opt-out movement has kicked into high gear.

House Bill 1283, which would guarantee parents the right to opt their kids out of certain tests, is currently in consideration before the North Dakota Legislature.

HB1283 has undergone amendments in both the House and Senate. The latest version of the bill includes several exceptions — notably, parents could not opt children out of taking the ACT or WorkKeys assessments.

Following multiple amendments, some of the bill's original proponents would now prefer to see HB1283 defeated, stating they have more opt-out rights as parents without the amended bill.

We find this opt-out movement to be detrimental in the larger scheme of things. Our public education system needs to have benchmarks and a way to measure educational progress — or regress.

Many of these tests are not grading the students. They are grading the quality of the education system. We want a high quality of education in our public school system, and these tests are not unreasonable.

For some parents, opting out is a form of protest against Common Core education standards. Knee-jerk reactions are not helpful.

Among those opposing Common Core, there have been rumors that the standardized tests will foster data-mining by the government. These rumors have not been substantiated.

Some parents may be choosing to opt children out of tests because their child is anxious or stressed out about the tests. Some students get test anxiety, and giving them an easy out does nothing to help them in the long run.

We need to be able to test and measure the quality of our public education. Standardized tests are an education tool that the North Dakota and United States education systems need.



#3 HB1283  
4/6/15



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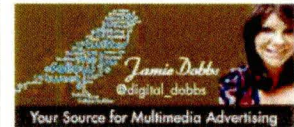
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# Education commissioner: Students can't opt out of testing

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Posted Sunday, April 5, 2015 9:18 am | Updated: 12:02 pm, Sun Apr 5, 2015

Associated Press |

FRANKFORT, Ky. (AP) — Kentucky Education Commissioner Terry Holliday says school districts cannot honor requests from parents who want to opt their children out of participating in standardized tests.

According to the Lexington Herald-Leader (<http://bit.ly/1DrGFOA>), Holliday sent an email to superintendents saying students who don't participate in assessments will receive a "0" score, and that will be part of the school's accountability calculation.

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"Kentucky's statewide accountability system depends on the testing of every student," Holliday wrote. "No student may opt out of the standardized assessments conducted under this system. The purpose of testing every student is to ensure that all schools and districts are serving all students and that gaps in categories of students are identified, addressed and closed."

He encouraged district officials to review policies and to communicate them to parents. Holliday sent a similar message to superintendents last year.

Nancy Rodriguez, education department spokeswoman, said last week that a couple of districts had sought guidance on how to handle such requests this year.

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LOUISVILLE, Ky. (AP) — Former Kentucky Poet Laur...

Laura Arrasmith of Mason County says she has requested to opt out her children from the statewide testing assessment that takes place during a district's last 14 instructional days. She says she is in touch with other parents who feel the same way.

"We've been using the word opt out, but we really need to use the word refuse — we are refusing," she said.

Terry Donoghue, a member of Kentuckians Against Common Core, said the group isn't urging families to opt out of testing but says they are protected by the U.S. Constitution if that's the route they choose.

Todd Allen, the assistant general counsel for the education department, said in a statement that parents can opt out of public education completely, but they can't stay in public schools and choose which provisions to follow and which to disregard.

Information from: Lexington Herald-Leader, <http://www.kentucky.com>

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Posted in **State** on Sunday, April 5, 2015 9:18 am Updated: 12:02 pm

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Flakoll, Tim

#4  
HB1283

4/6/15

**From:** Flakoll, Tim  
**Sent:** Sunday, March 22, 2015 3:06 PM  
**Subject:** Letter to the editor on opt out

## Parents, Don't 'Opt Out' of Transparency in Our Schools



By Pamela Norton | March 17, 2015 *Denver resident Pamela Norton is the founder and president of Activate, mother of two, and has many friends with children across the Colorado school system.*

Parents, teachers, and the larger community in Colorado are frustrated with the amount of testing in our schools. Unfortunately, to demonstrate this concern, some parents are threatening to pull students out of the statewide PARCC test. This dissenting voice should be heard, but the tactic of opting-out doesn't solve the problem of over-testing. Instead, it reduces transparency.

I am a parent of two children, who were students at what I thought were high performing public schools. However, after my oldest graduated, I was shocked to learn that she didn't have many of the skills needed to succeed in college. Since then, I also realized my son is behind in high school. How could a school be labeled as an A+ school yet still have 40 percent of its students needing some sort of remedial education? That doesn't sound like an A+ to me.

Past assessments failed to accurately measure the college readiness of my children, and in turn led me to be a misinformed parent. PARCC is a positive solution to this very real problem. Unlike other assessments, PARCC goes beyond testing a student's memory. Instead it assesses skills like problem-solving, collaboration, communication and critical thinking.

**By opting out of the PARCC test, parents are sacrificing their right to know if their child is mastering the skills they need to be on track for graduation.** Without that information, parents don't know where their child stands. Opting out also removes a parent's ability to accurately assess how their neighborhood school is doing compared to other schools in their district and across the state. Without the comparison, parents are giving up the transparency they need to make an educated school choice decision and to select the school that is best able to deliver on the promise of educating their kids for college and career.

This is incredibly important, because like my kids, not all students are graduating college ready, and the statewide test is a powerful tool that shines light on knowledge gaps. When a student isn't on track on the PARCC test, it is highly likely they will need remediation in college.

Colorado currently sends nearly half of its graduates to college only to find they have to re-take the same basic math classes that they should have mastered in high school. The same goes for language arts classes; more than 30 percent of students need remedial coursework in English when they get to college. Most of the costs for those classes come out of the pockets of either the students or their parents, costing a total of \$37.5 million annually.

The transparency provided by the annual test can help flag if a student needs to work on those skills before they get to college. It can also flag if there is a school that is making improvements—and celebrate that. And it



enables the state to know if they need to intervene when schools need improvement. This can't be done without a statewide assessment taken by all students.

The PARCC test allows the state to work for parents, to act as a watchdog, and make sure that all kids have access to a high quality public education. And it isn't the culprit when it comes to over-testing. Most testing, according to a statewide survey released earlier this year, is required by the school itself or by the local district. The PARCC test is a very small piece of it—less than 2 percent of students' time is used on statewide testing. The result is that all taxpayers get a high return on their investment when it comes to the transparency and accountability from those scores.

So, for parents who are angry about over-testing: don't opt-out of PARCC. Instead, opt-in to the transparency and accountability that it provides while working together with teachers, principals, superintendents and school boards in the community to find a better balance of school and district tests. We will fix this problem, but opting out simply is not the solution.

*Denver resident Pamela Norton is the founder and president of Activate, mother of two, and has many friends with children across the Colorado school system.*

## **Senator Tim Flakoll**

*Tim Flakoll*

District 44

Chairman, Senate Education committee

Government and Veterans Affairs committee

Chairman, Council of State Governments Midwest



#1 HB1283  
4/8/15  
15.1-21-1'

Source: :

Effective 1  
This sect

**15.1-21-17. Interim assessment.** Each school district shall administer annually to students in grades two through ten the measures of academic progress test or any other interim assessment approved by the superintendent of public instruction.

Source: S.L. 2009, ch. 175, § 22.

**Effective Date.**

This section became effective July 1, 2009.

**15.1-21-18. Career interest inventory — Educational and career planning — Consultation.**

1. A school district shall administer to students, once during their enrollment in grade seven or eight and once during their enrollment in grade nine or ten, a career interest inventory recommended by the department of career and technical education and approved by the superintendent of public instruction.
2. At least once during the seventh or eighth grade, each school district shall arrange for students to participate in either an individual consultative process or a nine-week course, for the purpose of discussing the results of their career interest inventory, selecting high school courses appropriate to their educational pursuits and career interests, and developing individual high school education plans.
3. Each school district shall notify its high school students that, upon request, a student is entitled to receive a consultative review of the student's individual high school education plan at least once during each high school grade. Upon the request of a student, the school district shall provide the consultative review.
4. Each school district shall verify compliance with the requirements of this section at the time and in the manner required by the superintendent of public instruction.

Source: S.L. 2009, ch. 175, § 23; 2011, ch. 147, § 16. section 16 of chapter 147, S.L. 2011 became effective July 1, 2011.

This section became effective July 1, 2009.

**Effective Date.**

The 2011 amendment of this section by

**15.1-21-19. Summative assessment — Selection — Cost — Exemptions.**

1. Except as otherwise provided, each public and nonpublic school student in grade eleven shall take the ACT, including the writing test, or three WorkKeys assessments recommended by the department of career and technical education and approved by the superintendent of public instruction. The student shall determine which summative assessment to take. The superintendent of public instruction is responsible for the cost of procuring and administering one summative assessment per student.
2. The student's career advisor or guidance counselor shall meet with the student to review the student's assessment results.

CURRICULUM AND TESTING

15.1-21-21

3. A school district superintendent or a school administrator in the case of a nonpublic school student may exempt a student from the requirements of this section if taking the test is not required by the student's individualized education program plan or if other special circumstances exist.
4. At the time and in the manner determined by the superintendent of public instruction, each school district superintendent and each school administrator in the case of a nonpublic school shall report the number of eleventh grade students who:
  - a. Took the ACT, including the writing test;
  - b. Took the three WorkKeys assessments; and
  - c. Were exempted from the requirements of this section, together with the reason for each exemption.

Source: S.L. 2009, ch. 175, § 24; 2011, ch. 147, § 17. section 17 of chapter 147, S.L. 2011 became effective July 1, 2011.

This section became effective July 1, 2009.

**Effective Date.**

The 2011 amendment of this section by

**15.1-21-20. Summative assessment — General educational development diploma — Selection — Cost.**

1. Except as otherwise provided, each student pursuing a general educational development diploma may take the ACT or three WorkKeys assessments recommended by the department of career and technical education and approved by the superintendent of public instruction. The student shall determine which summative assessment to take. The school district in which the student resides at the time the student takes the summative assessment is responsible for the cost of one summative assessment and its administration per student.
2. The student's career advisor or guidance counselor shall meet with the student to review the student's assessment results.
3. This section is applicable only to a student who has not reached the age of twenty-one before August first of the year of enrollment.

Source: S.L. 2009, ch. 175, § 25.

**Effective Date.**

This section became effective July 1, 2009.

**15.1-21-21. Concepts of personal finance — Inclusion in curriculum.**

1. Beginning July 1, 2010, each school district shall ensure that its curriculum for either economics or problems of democracy includes the exposure of students to concepts of personal finance, including:
  - a. Checkbook mechanics, including writing checks, balancing, and statement reconciliation;
  - b. Saving for larger purchases;
  - c. Credit, including credit card usage, interest, and fees;
  - d. Earning power, including jobs for teenagers;
  - e. Taxation and paycheck withholdings;
  - f. College costs;
  - g. Making and living within a budget; and
  - h. Mortgages, retirement savings, and investments.



# 2  
HB 1283  
4/8/15

**Sixty-first Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1400  
(Representatives R. Kelsch, Mueller, Wall)  
(Senators Flakoll, Holmberg, Taylor)

Senate 46-0  
House 86-6

AN ACT to create and enact two new sections to chapter 15-20.1, two new sections to chapter 15.1-02, two new sections to chapter 15.1-06, two new sections to chapter 15.1-07, a new section to chapter 15.1-09, a new section to chapter 15.1-13, chapter 15.1-18.2, sections 15.1-21-02.3, 15.1-21-02.4, 15.1-21-02.5, 15.1-21-02.6, and 15.1-21-02.7, seven new sections to chapter 15.1-21, two new sections to chapter 15.1-27, and three new sections to chapter 15.1-37 of the North Dakota Century Code, relating to career development facilitation, student health insurance, the use of federal stimulus dollars, school personnel, student information systems, school district insurance, national board certification, program and course requirements, assessments, state aid payments, and an early childhood education council; to amend and reenact sections 15.1-06-04, 15.1-09.1-10, 15.1-21-02, 15.1-21-02.1, 15.1-23-03, 15.1-23-17, 15.1-27-03.1, 15.1-27-04, 15.1-27-07.2, 15.1-27-11, 15.1-27-19, 15.1-27-35, 15.1-27-35.3, 15.1-27-41, 15.1-32-18, 15.1-36-01, 15.1-38-01.1, and 57-15-14 of the North Dakota Century Code and section 55 of chapter 163 of the 2007 Session Laws, relating to school calendars, course requirements, home education, state aid payments, special education, school construction, English language learners, and school district general fund levies; to repeal sections 15.1-21-02.2, 15.1-27-20.1, 15.1-27-41, and 15.1-38-01.2 of the North Dakota Century Code, relating to high school graduation requirements, the minimum mill levy offset, the commission on education improvement, and new immigrant English language learners; to provide an appropriation; to provide a continuing appropriation; to provide for compensation increases; to provide for the distribution of supplemental one-time grants, supplemental operations grants, teacher support system grants, transportation grants, reorganization planning grants, regional education association grants, baseline recalculation grants, and contingency payments; to provide for a contingent transfer; to provide for legislative council studies and reports; to provide an effective date; to provide an expiration date; and to declare an emergency.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 15-20.1 of the North Dakota Century Code is created and enacted as follows:

**Career development facilitation - Certificate - Qualifications.**

1. The department shall develop a program leading to a certificate in career development facilitation. The department shall award the certificate to any individual who:
  - a. Holds a baccalaureate degree from an accredited institution of higher education;
  - b. Has at least a five-year employment history; and
  - c. Successfully completes the department's programmatic requirements.
2. An individual holding a certificate awarded under this section is a career advisor.

**SECTION 2.** A new section to chapter 15-20.1 of the North Dakota Century Code is created and enacted as follows:

1



**Career development facilitation - Provisional approval.**

1. The department may provisionally approve an individual to serve as a career advisor if the individual:
  - a. Holds a baccalaureate degree from an accredited institution of higher education;
  - b. Has at least a five-year employment history; and
  - c. Provides the department with a plan for completing the department's programmatic requirements within a two-year period.
2. Provisional approval under subsection 1 is valid for a period of two years and may not be extended by the department.

**SECTION 3.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Health insurance programs - Joint enrollment program.** The superintendent of public instruction and the department of human services jointly shall develop a system under which families of children enrolling in the public school system are provided with information regarding state and federally funded health insurance programs and encouraged to apply for such coverage if determined to be eligible.

**SECTION 4.** A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

**Education stabilization fund dollars - Notification of nonreplacement - Publication of notice.**

1. The superintendent of public instruction shall notify the superintendent and board of each school district in the state, by certified mail, that any education stabilization fund dollars received by the district as a result of the American Recovery and Reinvestment Act of 2009 must be used first to restore funding deficiencies in the 2009-10 school year when compared to the 2005-06 school year and that any additional dollars received under the American Recovery and Reinvestment Act of 2009 must be used for one-time, nonrecurring expenditures because this state is not responsible for replacing that level of funding or otherwise sustaining that level of funding during the 2011-13 biennium.
2. During the thirty-day period following receipt of the notification, the superintendent of each school district shall arrange to publish the notice at least twice in the official newspaper of the district.

**SECTION 5. AMENDMENT.** Section 15.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-06-04. School calendar - Length.**

1. During ~~each~~ the 2009-10 school year, a school district shall provide for a school calendar of at least one hundred eighty days, ~~apportioned as follows:~~
  - a. One hundred seventy-three ~~full~~ days ~~of~~ must be used for instruction;
  - b. ~~Three days must be used for holidays listed in subdivisions b through j of subsection 1 of section 15.1-06-02 and, as selected by the school board in consultation with district teachers from the list provided for in subdivisions b through j of subsection 1 of section 15.1-06-02;~~

- c. ~~Up to two full days during which parent-teacher conferences are held or which are deemed by the school board to be compensatory~~ must be used for:
    - (1) Parent-teacher conferences; or
    - (2) Compensatory time for parent-teacher conferences held outside regular school hours; and
  - d. Two days must be used for professional development activities.
- 2. During the 2010-11 school year, a school district shall provide for a school calendar of at least one hundred eighty-one days.
  - a. One hundred seventy-four days must be used for instruction;
  - b. Three days must be used for holidays, as selected by the board in consultation with district teachers from the list provided for in subdivisions b through j of subsection 1 of section 15.1-06-02;
  - c. Up to two days must be used for:
    - (1) Parent-teacher conferences; or
    - (2) Compensatory time for parent-teacher conferences held outside of regular school hours; and
  - d. Two days must be used for professional development.
- 3. Beginning with the 2011-12 school year, a school district shall provide for a school calendar of at least one hundred eighty-two days.
  - a. One hundred seventy-five days must be used for instruction;
  - b. Three days must be used for holidays, as selected by the board in consultation with district teachers from the list provided for in subdivisions b through j of subsection 1 of section 15.1-06-02;
  - c. Up to two days must be used for:
    - (1) Parent-teacher conferences; or
    - (2) Compensatory time for parent-teacher conferences held outside of regular school hours; and
  - d. Two days must be used for professional development.
- 4. A day for professional development must consist of:
  - a. Six hours of professional development, exclusive of meals and other breaks, conducted within a single day; or
  - b. Two four-hour periods of professional development, exclusive of meals and other breaks, conducted over two days.
- 5. If a school district offers a four-hour period of professional development, as permitted in subdivision b of subsection 4, the school district may schedule instruction during other available hours on that same day and be credited with providing one-half day of instruction to students. This subsection does not apply unless the one-half day of instruction equals at least one-half of the time required for a full day of instruction, as defined in this section.



6.
  - a. In meeting the requirements for two days of professional development activities under ~~subsection 4~~ this section, a school district may require that its teachers attend the North Dakota education association instructional conference and may pay teachers for attending the conference, provided their attendance is verified.
  - b. In meeting the requirements for two days of professional development activities under ~~subsection 4~~ this section, a school district may consider attendance at the North Dakota education association instructional conference to be optional, elect not to pay teachers for attending the instructional conference, and instead direct any resulting savings toward providing alternate professional development opportunities.
  - c. ~~For purposes of this section, a "day for professional development activities" means:~~
    - (1) ~~Six hours of professional development activities, exclusive of meals and other breaks, conducted within a single day; or~~
    - (2) ~~Two four hour periods of professional development activities, exclusive of meals and other breaks, conducted over two days.~~
3. ~~If a school district offers a four hour period of professional development activities, as permitted in subdivision c of subsection 2, the school district may schedule instruction during other available hours on that same day and be credited with providing one half day of instruction to students. The provisions of this subsection do not apply unless the one half day of instruction equals at least one half of the time required for a full day of instruction, as defined in this section.~~
4. A school district may not require the attendance of teachers in school or at any school-sponsored, school-directed, school-sanctioned, or school-related activities and may not schedule classroom instruction time nor alternate professional development activities on any day that conflicts with the North Dakota education association instructional conference.
5.
  - a. ~~During the 2007-08 school year, a full day of instruction consists of:~~
    - (1) ~~At least five and one half hours for elementary students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction; and~~
    - (2) ~~At least six hours for high school students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction.~~
  - b. ~~Beginning with the 2008-09 school year, a full day of instruction consists of:~~
    - (1) ~~At least five and one half hours for kindergarten and elementary students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction; and~~
    - (2) ~~At least six hours for high school students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction.~~
7. Beginning with the 2010-11 school year, if a school district elects to provide an optional third day of professional development, the school district shall do so by:
  - a. Meeting the requirements for a day of professional development as set forth in subsection 4; or
  - b. Shortening four instructional days, for the purpose of providing for two-hour periods of professional development, provided:



- (1) Each instructional day on which such professional development occurs includes at least four hours of instruction for kindergarten and elementary students and four and one-half hours for high school students;
  - (2) The instructional time for each course normally scheduled on that day is reduced proportionately or the daily schedule is reconfigured to ensure that the same course is not subject to early dismissal more than one time per school calendar, as a result of this subdivision; and
  - (3) All teachers having a class dismissed as a result of this subdivision are required to be in attendance and participate in the professional development.
- 6- 8. a. If a school's calendar provides for an extension of each schoolday beyond the statutorily required minimum number of hours, and if the extensions when aggregated over an entire school year amount to more than eighty-four hours of additional classroom instruction during the school year, the school is exempt from having to make up six hours of instruction time lost as a result of weather-related closure. In order to make up lost classroom instruction time beyond the six hours, the school must extend its normal school calendar day by at least thirty minutes.
- 7- b. A school that does not qualify under the provisions of ~~subsection 6~~ this subsection must extend its normal schoolday by at least thirty minutes to make up classroom instruction time lost as a result of weather-related closure.
- 8- c. If because of weather a school must dismiss before completing a full day of instruction, the school is responsible for making up only those hours and portions of an hour between the time of early dismissal and the conclusion of a full day of classroom instruction.
9. For purposes of this section, a full day of instruction consists of:
- a. At least five and one-half hours for kindergarten and elementary students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction; and
  - b. At least six hours for high school students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction.

**SECTION 6.** A new section to chapter 15.1-06 of the North Dakota Century Code is created and enacted as follows:

**Counselor positions - Requirement.**

1. Beginning with the 2010-11 school year, each school district must have available one full-time equivalent counselor for every three hundred students in grades seven through twelve.
2. Up to one-third of the full-time equivalency requirement established in subsection 1 may be met by career advisors.
3. For purposes of this section, a "career advisor" means an individual who holds a certificate in career development facilitation issued by the department of career and technical education under section 1 of this Act or an individual who is provisionally approved by the department of career and technical education under section 2 of this Act to serve as a career advisor.

**SECTION 7.** A new section to chapter 15.1-06 of the North Dakota Century Code is created and enacted as follows:



**Career advisor - Duties.** A career advisor shall provide sequential career development activities, current career information, and related career exploration opportunities to students in grades seven through twelve. A career advisor shall use computer-assisted career guidance systems and work at the direction and under the supervision of the school district counseling staff.

**SECTION 8.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

**Student performance strategist - Verification - Qualifications.** Beginning with the 2010-11 school year, each school district must have available one full-time equivalent student performance strategist for every four hundred students in average daily membership in kindergarten through grade three. Each school district shall submit documentation to the superintendent of public instruction, at the time and in the manner directed by the superintendent, verifying the amount of time that each student performance strategist expended in tutoring students on a one-to-one basis or in groups ranging from two to five, or in providing instructional coaching to teachers. For purposes of this section, a "student performance strategist" must meet the qualifications of an elementary school teacher as set forth in section 15.1-18-07 and serve as a tutor or an instructional coach.

**SECTION 9.** A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

**Student information system - Statewide coordination.** Notwithstanding any other technology requirements imposed by the superintendent of public instruction, the information technology department, or the North Dakota educational technology council, each school district shall acquire PowerSchool through the information technology department and use it as its principal student information system.

**SECTION 10.** A new section to chapter 15.1-09 of the North Dakota Century Code is created and enacted as follows:

**Maintenance of insurance - Report to superintendent of public instruction.**

1. During the 2009-10 school year and at least once every eight years thereafter, each school district shall obtain an appraisal of its buildings and its facilities, and an inventory of their contents.
2. Annually, each school district shall review the terms of any insurance policies providing coverage for its buildings, its facilities, and their contents and ensure that there are in place policies sufficient to provide in full for the repair or replacement of the buildings, its facilities, and their contents, in the event of a loss.
3. Annually, the superintendent of public instruction shall verify that each school district is in compliance with the requirements of this section.

**SECTION 11. AMENDMENT.** Section 15.1-09.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-09.1-10. State aid - Payable to a regional education association - Obligation of district.**

1. The superintendent of public instruction shall forward the portion of a school district's state aid ~~that~~ which is payable by the superintendent under subdivision n of subsection 1 of section 15.1-27-03.1 as a result of the district's participation in a regional education association directly to the association in which the district participates. The superintendent shall forward the amount payable under this subsection at the same time and in the same manner as provided for other state aid payments under section 15.1-27-01.
2. If the superintendent of public instruction determines that a school district failed to meet any contractual or statutory obligation imposed upon it as a result of the district's



participation in a regional education association, the superintendent shall subtract the amount for which the district was not eligible from any future distribution of state aid to the district under section 15.1-27-01.

**SECTION 12.** A new section to chapter 15.1-13 of the North Dakota Century Code is created and enacted as follows:

**National board certification fund - Creation - Continuing appropriation.**

1. The national board certification fund is a special fund in the state treasury. The state investment board shall invest the fund in accordance with chapter 21-10. All interest and income received on investments are appropriated on a continuing basis to the superintendent of public instruction for the purpose of allowing the education standards and practices board to award grants to teachers pursuing national board certification.
2. The education standards and practices board shall make grants available to applicants in an amount equal to the cost of obtaining national board certification, but not exceeding two thousand five hundred dollars per applicant. The board shall make the grants available to applicants in chronological order, based on the date the board receives an applicant's completed application.
3. As a condition of the grant, the education standards and practices board may require recipients who achieve national board certification to mentor other individuals who are licensed to teach by the board.

**SECTION 13.** Chapter 15.1-18.2 of the North Dakota Century Code is created and enacted as follows:

**15.1-18.2-01. Professional development plan - Adoption - Review by school district.**

1. Each school district shall adopt a professional development plan. The plan must include a description of the professional development activities that the district offers or makes available, the district's requirements for participation by teachers, and the manner in which participation is documented.
2. Each school district shall review and if necessary modify its plan at least once every five years.
3. Each school district shall file a copy of its most recent professional development plan with the superintendent of public instruction.

**15.1-18.2-02. Professional development plan - Review by superintendent of public instruction.** The superintendent of public instruction shall review each school district's professional development plan to ensure that the plan meets the requirements of section 15.1-18.2-01, is designed to improve the quality of teaching and learning in the district, and is implemented in an efficient and effective manner.

**15.1-18.2-03. Professional development advisory committee - Duties - Staff support.**

1. The superintendent of public instruction shall appoint a professional development advisory committee to:
  - a. Examine the delivery of professional development in this state;
  - b. Review professional development needs from the perspective of teachers, school administrators, school board members, and parents;
  - c. Review the professional development plans filed by school districts and propose changes to improve the opportunities for professional development; and

- d. Advise the superintendent regarding regulatory and statutory measures that could be pursued to improve the quality and availability of professional development opportunities.
- 2. The superintendent shall provide staff support to the professional development advisory committee.

**SECTION 14. AMENDMENT.** Section 15.1-21-02 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-02. High schools - Required units.**

- 1. In order to be approved by the superintendent of public instruction, each public and nonpublic high school shall make available to each student:
  - a. Four units of English language arts from a sequence that includes literature, composition, and speech;
  - b. Four units of mathematics; including:
    - (1) One unit of algebra II; and
    - (2) One unit for which algebra II is a prerequisite;
  - c. Four units of science; including:
    - (1) One unit of physical science; and
    - (2) One unit of biology;
  - d. Four units of social studies, including ~~one~~:
    - (1) One unit of world history ~~and one~~;
    - (2) One unit of United States history; and
    - (3) (a) One unit of problems of democracy; or  
(b) One-half unit of United States government and one-half unit of economics;
  - e. One-half unit of health;
  - f. One-half unit of physical education during each school year, provided that once every four years the unit must be a concept-based fitness class that includes instruction in the assessment, improvement, and maintenance of personal fitness;
  - g. Two units of fine arts, at least one of which must be music;
  - h. Two units of the same foreign or native American language; ~~and~~
  - i. One unit of an advanced placement course or one unit of a dual-credit course; and
  - j. Two units of career and technical education from a coordinated plan of study recommended by the department of career and technical education and approved by the superintendent of public instruction.
- 2. In addition to the requirements of subsection 1, each public and nonpublic high school shall make available to each student, at least once every two years, one-half unit of North Dakota studies, with an emphasis on the geography, history, and agriculture of this state.



3. Each unit which must be made available under this section must meet or exceed the state content standards.
4. For purposes of this section, unless the context otherwise requires, "make available" means that:
  - a. Each public high school and nonpublic high school shall allow students to select units over the course of a high school career from a list that includes at least those required by this section;
  - b. If a student selects a unit from the list required by this section, the public high school or the nonpublic high school shall provide the unit to the student; and
  - c. The unit may be provided to the student through any delivery method not contrary to state law and may include classroom or individual instruction and distance learning options, including interactive video, computer instruction, correspondence courses, and postsecondary enrollment under chapter 15.1-25.
5. The board of a school district may not impose any fees or charges upon a student for the provision of or participation in units as provided in this section, other than the fees permitted by section 15.1-09-36.
6. If in order to meet the minimum requirements of this section a school district includes academic courses offered by a postsecondary institution under chapter 15.1-25, the school district shall:
  - a. Pay all costs of the student's attendance, except those fees that are permissible under section 15.1-09-36; and
  - b. Transport the student to and from the location at which the course is offered or provide mileage reimbursement to the student if transportation is provided by the student or the student's family.
7. The requirements of this section do not apply to alternative high schools or alternative high school education programs.
8. The requirements of subdivisions g and h of subsection 1 do not apply to the North Dakota youth correctional center.

**SECTION 15. AMENDMENT.** Section 15.1-21-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-21-02.1. High school graduation - Diploma requirements.** ~~Before~~ Except as provided in section 15.1-21-02.3, before a school district, a nonpublic high school, or the center for distance education issues a high school diploma to a student, the student must have successfully completed at least twenty-one the following twenty-two units of high school coursework from the minimum required curriculum offerings established by section 15.1-21-02. Beginning with the 2009-10 school year, the number of units required by this section increases to twenty-two and beginning with the 2011-12 school year, the number of units required by this section increases to twenty-four;

1. Four units of English language arts from a sequence that includes literature, composition, and speech;
2. Three units of mathematics;
3. Three units of science, including:
  - a. One unit of physical science;



- b. One unit of biology; and
- c. (1) One unit of any other science; or  
(2) Two one-half units of any other science;
- 4. Three units of social studies, including:
  - a. One unit of United States history;
  - b. (1) One-half unit of United States government and one-half unit of economics; or  
(2) One unit of problems of democracy; and
  - c. One unit or two one-half units of any other social studies, which may include civics, civilization, geography and history, multicultural studies, North Dakota studies, psychology, sociology, and world history;
- 5. a. One unit of physical education; or  
b. One-half unit of physical education and one-half unit of health;
- 6. Three units of:
  - a. Foreign languages;
  - b. Native American languages;
  - c. Fine arts; or
  - d. Career and technical education courses; and
- 7. Any five additional units.

**SECTION 16.** Section 15.1-21-02.3 of the North Dakota Century Code is created and enacted as follows:

**15.1-21-02.3. Optional high school curriculum - Requirements.** If after completing at least two years of high school a student has failed to pass at least one-half unit from three subsections in section 15.1-21-02.1 or has a grade point average at or below the twenty-fifth percentile of other students in the district who are enrolled in the same grade, the student may request that the student's career advisor, guidance counselor, or principal meet with the student and the student's parent to determine if the student should be permitted to pursue an optional high school curriculum, in place of the requirements set forth in section 15.1-21-02.1. If a student's parent consents in writing to the student pursuing the optional high school curriculum, the student is eligible to receive a high school diploma upon completing the following requirements:

- 1. Four units of English language arts from a sequence that includes literature, composition, and speech;
- 2. Two units of mathematics;
- 3. Two units of science;
- 4. Three units of social studies, which may include up to one-half unit of North Dakota studies and one-half unit of multicultural studies;
- 5. a. One unit of physical education; or  
b. One-half unit of physical education and one-half unit of health;

6. Two units of:
  - a. Foreign languages;
  - b. Native American languages;
  - c. Fine arts; or
  - d. Career and technical education courses; and
7. Any seven additional units.

**SECTION 17.** Section 15.1-21-02.4 of the North Dakota Century Code is created and enacted as follows:

**15.1-21-02.4. North Dakota career and technical education scholarship.** Any resident student who graduates from a high school during or after the 2010-11 school year is eligible to receive a North Dakota career and technical education scholarship provided the student completes all requirements set forth in subsections 1 through 5 and subsection 7 of section 15.1-21-02.1 for a high school diploma and:

1.
  - a. Completes one unit of algebra II, as defined by the superintendent of public instruction, in fulfillment of the mathematics requirement set forth in subsection 2 of section 15.1-21-02.1;
  - b. Completes two units of a coordinated plan of study recommended by the department of career and technical education and approved by the superintendent of public instruction; and
  - c. Completes three additional units, two of which must be in the area of career and technical education;
2. Obtains a grade of at least "C" in each unit or one-half unit required for the diploma;
3. Obtains a cumulative grade point of at least "B", as determined by the superintendent of public instruction; and
4. Receives:
  - a. A composite score of at least twenty-four on an ACT; or
  - b. A score of at least five on each of three WorkKeys assessments recommended by the department of career and technical education and approved by the superintendent of public instruction.

**SECTION 18.** Section 15.1-21-02.5 of the North Dakota Century Code is created and enacted as follows:

**15.1-21-02.5. North Dakota academic scholarship.** Any resident student who graduates from a high school during or after the 2010-11 school year is eligible to receive a North Dakota academic scholarship provided the student completes all requirements set forth in subsections 1 through 5 and subsection 7 of section 15.1-21-02.1 for a high school diploma and:

1.
  - a. Completes one unit of algebra II, as defined by the superintendent of public instruction, in fulfillment of the mathematics requirement set forth in subsection 2 of section 15.1-21-02.1;
  - b. Completes one additional unit of mathematics for which algebra II, as defined by the superintendent of public instruction, is a prerequisite; and



c. Completes:

- (1) Two units of the same foreign or native American language;
  - (2) One unit of fine arts or career and technical education; and
  - (3) One unit of a foreign or native American language, fine arts, or career and technical education;
2. Obtains a grade of at least "C" in each unit or one-half unit required for the diploma;
  3. Obtains a cumulative grade point of at least "B", as determined by the superintendent of public instruction;
  4. Receives a composite score of at least twenty-four on an ACT; and
  5. Completes one unit of an advanced placement course and examination or a dual-credit course.

**SECTION 19.** Section 15.1-21-02.6 of the North Dakota Century Code is created and enacted as follows:

**15.1-21-02.6. North Dakota scholarship - Amount - Applicability.**

1. The state board of higher education shall provide to any student certified as being eligible by the superintendent of public instruction either a North Dakota academic scholarship or a North Dakota career and technical education scholarship in the amount of seven hundred fifty dollars for each semester during which the student is enrolled full time at an accredited institution of higher education in this state and maintains a cumulative grade point average of 2.75.
2. A student is not entitled to receive more than six thousand dollars under this section.
3. The state board of higher education shall forward the scholarship directly to the institution in which the student is enrolled.
4. This section does not require a student to be enrolled in consecutive semesters. However, a scholarship under this section is valid only for six academic years after the student's graduation from high school and may not be applied to graduate programs.
5. A scholarship under this section is available to any eligible student who graduates from a high school in this state or from a high school in a bordering state under chapter 15.1-29.

**SECTION 20.** Section 15.1-21-02.7 of the North Dakota Century Code is created and enacted as follows:

**15.1-21-02.7. North Dakota scholarship opportunities - 2009-10 high school graduates.**

1. Except as provided in subsection 3, any resident student who graduates from a high school during the 2009-10 school year is eligible to receive a North Dakota academic scholarship, provided the student is certified by the superintendent of public instruction as having obtained a composite score of at least twenty-four on an ACT.
2. Except as provided in subsection 3, any resident student who graduates from a high school during the 2009-10 school year is eligible to receive a North Dakota technical scholarship, provided the student is certified by the superintendent of public instruction as having obtained:
  - a. A composite score of at least twenty-four on an ACT; or



- b. A score of at least five on each of three WorkKeys assessments recommended by the department of career and technical education and approved by the superintendent of public instruction.
- 3. A student is eligible to receive a scholarship under either subsection 1 or 2, but may not receive a scholarship under both subsections.

**SECTION 21.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Summer school courses and programs - Eligibility for payment.** The summer school courses and programs for which a school district may receive payment as provided in section 15.1-27-19 are:

- 1.
  - a. Remedial mathematics provided to students enrolled in any grade from kindergarten through eight;
  - b. Remedial reading provided to students enrolled in any grade from kindergarten through eight;
  - c. Beginning after the conclusion of the 2009-10 school calendar, mathematics provided to students enrolled in any grade from five through eight;
  - d. Beginning after the conclusion of the 2009-10 school calendar, reading provided to students enrolled in any grade from five through eight;
  - e. Beginning after the conclusion of the 2009-10 school calendar, science provided to students enrolled in any grade from five through eight; and
  - f. Beginning after the conclusion of the 2009-10 school calendar, social studies provided to students enrolled in any grade from five through eight; and
- 2. Any other high school summer courses that satisfy requirements for graduation, comprise at least as many clock-hours as courses offered during the regular school term, and comply with rules adopted by the superintendent of public instruction.

**SECTION 22.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Interim assessment.** Each school district shall administer annually to students in grades two through ten the measures of academic progress test or any other interim assessment approved by the superintendent of public instruction.

**SECTION 23.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Career interest inventory.** A school district shall administer to students, once during their enrollment in grade seven or eight and once during their enrollment in grade nine or ten, a career interest inventory recommended by the department of career and technical education and approved by the superintendent of public instruction.

**SECTION 24.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Summative assessment - Selection - Cost - Exemptions.**

- 1. Except as otherwise provided, each public and nonpublic school student in grade eleven shall take the ACT or three WorkKeys assessments recommended by the department of career and technical education and approved by the superintendent of public instruction.



The student shall determine which summative assessment to take. The student's school district of residence is responsible for the cost of one summative assessment and its administration per student.

2. The student's career advisor or guidance counselor shall meet with the student to review the student's assessment results.
3. A school district superintendent or a school administrator in the case of a nonpublic school student may exempt a student from the requirements of this section if taking the test is not required by the student's individualized education program plan or if other special circumstances exist.
4. If the superintendent of public instruction determines that the cost of the summative assessment and its administration can be reduced through use of a state procurement process, the superintendent shall work with the school districts to procure and arrange for the administration of the assessment and shall withhold each district's share of the total cost from any state aid otherwise payable to the district.

**SECTION 25.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Summative assessment - General educational development diploma - Selection - Cost.**

1. Except as otherwise provided, each student pursuing a general educational development diploma may take the ACT or three WorkKeys assessments recommended by the department of career and technical education and approved by the superintendent of public instruction. The student shall determine which summative assessment to take. The school district in which the student resides at the time the student takes the summative assessment is responsible for the cost of one summative assessment and its administration per student.
2. The student's career advisor or guidance counselor shall meet with the student to review the student's assessment results.
3. This section is applicable only to a student who has not reached the age of twenty-one before August first of the year of enrollment.

**SECTION 26.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Concepts of personal finance - Inclusion in curriculum.**

1. Beginning July 1, 2010, each school district shall ensure that its curriculum for either economics or problems of democracy includes the exposure of students to concepts of personal finance, including:
  - a. Checkbook mechanics, including writing checks, balancing, and statement reconciliation;
  - b. Saving for larger purchases;
  - c. Credit, including credit card usage, interest, and fees;
  - d. Earning power, including jobs for teenagers;
  - e. Taxation and paycheck withholdings;
  - f. College costs;
  - g. Making and living within a budget; and



h. Mortgages, retirement savings, and investments.

2. Upon written request, the superintendent of public instruction may allow a school district annually to select courses other than economics or problems of democracy for purposes of exposing students to the concepts of personal finance, as listed in this section, provided the school district can demonstrate that the number of students exposed to the concepts in the other selected courses would meet or exceed the number of students exposed under the requirements of subsection 1.
3. The requirements of this section may be provided by the regular classroom teacher of the course in which the concepts of personal finance are incorporated.

**SECTION 27.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Required reading of historical documents.** Before a student is deemed to have successfully completed either United States government or problems of democracy, as required by section 15.1-21-02.1, the student's school district shall ensure that the student has read the Declaration of Independence, the United States Constitution, and the Bill of Rights.

**SECTION 28. AMENDMENT.** Section 15.1-23-03 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-23-03. Home education - Parental qualifications.** A parent may supervise home education if the parent:

1. ~~Is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;~~
2. ~~Holds a baccalaureate degree~~ high school diploma or a general educational development diploma;
3. ~~Has met or exceeded the cutoff score of a national teacher examination given in this state or in any other state if this state does not offer such a test; or~~
4. 2. Meets the requirements of section 15.1-23-06.

**SECTION 29. AMENDMENT.** Section 15.1-23-17 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-23-17. Home education - High school diplomas.**

1. A child's school district of residence, an approved nonpublic high school, or the center for distance education may issue a high school diploma to a child who, through home education, has met the issuing entity's requirements for high school graduation provided the child's parent submits to the issuing entity a description of the course material covered in each high school subject, a description of the course objectives and how the objectives were met, and a transcript of the child's performance in grades nine through twelve.
2. In the alternative, a high school diploma may be issued by the child's school district of residence, an approved nonpublic high school, or the center for distance education provided the child, through home education, has completed at least twenty-one units of high school coursework from the minimum required curriculum offerings established by law for public and nonpublic schools and the child's parent or legal guardian submits to the issuing entity a description of the course material covered in each high school subject, a description of the course objectives and how the objectives were met, and a transcript of the child's performance in grades nine through twelve. The issuing entity may indicate on a diploma issued under this subsection that the child was provided with home education.

Beginning with the 2010-11 school year, the number of units required by this section increases to twenty-two.

3. If for any reason the documentation required in subsection 1 or 2 is unavailable, the entity issuing the diploma may accept any other reasonable proof that the child has met the applicable requirements for high school graduation.

**SECTION 30. AMENDMENT.** Section 15.1-27-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-03.1. Weighted average daily membership - Determination.**

1. For each school district, the superintendent of public instruction shall multiply by:
  - a. 1.00 the number of full-time equivalent students enrolled in a migrant summer program;
  - b. 1.00 the number of full-time equivalent students enrolled in an extended educational program in accordance with section 15.1-32-17;
  - c. 0.60 the number of full-time equivalent students enrolled in a summer education program;
  - d. 0.50 the number of full-time equivalent students enrolled in a home-based education program and monitored by the school district under chapter 15.1-23;
  - e. 0.30 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be least proficient and are enrolled in a program of instruction for English language learners;
  - f. 0.25 the number of full-time equivalent students enrolled in an alternative high school;
  - ~~f.~~ g. 0.25 the number of full-time equivalent students enrolled in an isolated elementary school;
  - ~~g.~~ h. 0.25 the number of full-time equivalent students enrolled in an isolated high school;
  - ~~h.~~ i. 0.20 the number of full-time equivalent students attending school in a bordering state in accordance with section 15.1-29-01;
  - ~~h.~~ j. 0.20 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be not proficient and are enrolled in a program of instruction for English language learners;
  - k. 0.17 the number of full-time equivalent students enrolled in an early childhood special education program;
  - ~~j.~~ ~~0.14 the number of full-time equivalent students enrolled in a new immigrant English language learner program;~~
  - ~~k.~~ l. ~~0.067~~ 0.07 the number of students enrolled in average daily membership, in order to support the provision of special education services; ~~and~~
  - ~~l.~~ ~~0.02 the number of full-time equivalent students, other than those provided for in subdivision j, who are enrolled in an English language learner program~~
  - m. 0.07 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be



somewhat proficient and are enrolled in a program of instruction for English language learners;

n. 0.004 the number of students enrolled in average daily membership in a school district that is a participating member of a regional education association meeting the requirements of chapter 15.1-09.1; and

o. 0.002 the number of students enrolled in average daily membership, in order to support technology.

2. The superintendent of public instruction shall determine each school district's weighted average daily membership by adding the products derived under subsection 1 to the district's average daily membership.

**SECTION 31. AMENDMENT.** Section 15.1-27-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-03.1. Weighted average daily membership - Determination.**

1. For each school district, the superintendent of public instruction shall multiply by:
- a. 1.00 the number of full-time equivalent students enrolled in a migrant summer program;
  - b. 1.00 the number of full-time equivalent students enrolled in an extended educational program in accordance with section 15.1-32-17;
  - c. 0.60 the number of full-time equivalent students enrolled in a summer education program;
  - d. 0.50 the number of full-time equivalent students enrolled in a home-based education program and monitored by the school district under chapter 15.1-23;
  - e. 0.30 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be least proficient and are enrolled in a program of instruction for English language learners;
  - f. 0.25 the number of full-time equivalent students enrolled in an alternative high school;
  - ~~f.~~ g. 0.25 the number of full-time equivalent students enrolled in an isolated elementary school;
  - ~~g.~~ h. 0.25 the number of full-time equivalent students enrolled in an isolated high school;
  - ~~h.~~ i. 0.20 the number of full-time equivalent students attending school in a bordering state in accordance with section 15.1-29-01;
  - ~~i.~~ j. 0.20 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be not proficient and are enrolled in a program of instruction for English language learners;
  - k. 0.17 the number of full-time equivalent students enrolled in an early childhood special education program;
  - ~~j.~~ ~~0.14 the number of full-time equivalent students enrolled in a new immigrant English language learner program;~~



- ~~k.~~ l. ~~0.067~~ 0.07 the number of students enrolled in average daily membership, in order to support the provision of special education services; ~~and~~
  - m. 0.07 the number of full-time equivalent students who on a test of English language proficiency approved by the superintendent of public instruction are determined to be somewhat proficient and are enrolled in a program of instruction for English language learners;
  - ~~h.~~ n. ~~0.02~~ 0.025 the number of ~~full-time equivalent students, other than those provided for in subdivision j, who are enrolled in an English language learner program~~ students representing that percentage of the total number of students in average daily membership which is equivalent to the three-year average percentage of students in grades three through eight who are eligible for free or reduced lunches under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.];
  - o. 0.004 the number of students enrolled in average daily membership in a school district that is a participating member of a regional education association meeting the requirements of chapter 15.1-09.1; and
  - p. 0.002 the number of students enrolled in average daily membership, in order to support technology.
2. The superintendent of public instruction shall determine each school district's weighted average daily membership by adding the products derived under subsection 1 to the district's average daily membership.

**SECTION 32. AMENDMENT.** Section 15.1-27-04 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-04. Per student payment rate.**

- 1.
  - a. The per student payment rate to which each school district is entitled for the first year of the biennium is three thousand two hundred ~~fifty~~ dollars.
  - b. The per student payment rate to which each school district is entitled for the second year of the biennium is three thousand ~~three~~ seven hundred ~~twenty-five~~ seventy-nine dollars.
- 2. In order to determine the state aid payment to which each district is entitled, the superintendent of public instruction shall multiply each district's weighted student units by the per student payment rate set forth in subsection 1.

**SECTION 33. AMENDMENT.** Section 15.1-27-07.2 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-07.2. Baseline funding - Determination - Minimum and maximum allowable increases.**

- 1. The superintendent of public instruction shall determine each school district's baseline funding per weighted student unit by:
  - a. Adding together all state aid received by the district during the 2006-07 school year;
  - b. Subtracting the amount received by the district during the 2006-07 school year for transportation aid, special education excess cost reimbursements, special education contracts, prior year funding adjustments, and per student payments for participation in educational associations governed by joint powers agreements; and



- c. Dividing the amount determined under subdivision b by the district's 2007-08 weighted student units.
2.
  - a. The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, for the ~~2007-08~~ 2009-10 school year, is at least equal to one hundred ~~three and one-half~~ eight percent of the baseline funding per weighted student unit, as established in subsection 1.
  - b. The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, for each school year after the ~~2007-08~~ 2009-10 school year, is at least equal to one hundred ~~six~~ twelve and one-half percent of the baseline funding per weighted student unit, as established in subsection 1.
3.
  - a. The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, less any amount received as equity payments under section 15.1-27-11 per weighted student unit, does not exceed, for the ~~2007-08~~ 2009-10 school year, one hundred ~~seven~~ twenty percent of the baseline funding per weighted student unit, as established in subsection 1.
  - b. ~~Beginning with the 2008-09 school year, the maximum percentage of allowable growth in the baseline funding per weighted student unit provided in subdivision a must be annually increased by three percentage points, plus the district's share of any increased state aid for that year. Payments received by districts for the provision of full day kindergarten do not constitute increases in state aid for purposes of this subdivision.~~ The superintendent of public instruction shall ensure that the total amount of state aid payable to a district per weighted student unit, less any amount received as equity payments under section 15.1-27-11 per weighted student unit, does not exceed, for each school year after the 2009-10 school year, one hundred thirty-four percent of the baseline funding per weighted student unit, as established in subsection 1.

**SECTION 34. AMENDMENT.** Section 15.1-27-11 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-11. Equity payments.**

1. The superintendent of public instruction shall:
  - a. Divide the imputed taxable valuation of the state by the total average daily membership of all school districts in the state in order to determine the state average imputed taxable valuation per student.
  - b. Divide the imputed taxable valuation of each school district by the district's total average daily membership in order to determine each district's average imputed taxable valuation per student.
2. ~~a. If a school district's imputed taxable valuation per student is less than eighty-eight and one-half percent of the statewide imputed taxable valuation per student, the superintendent of public instruction shall calculate the valuation deficiency by:~~
  - ~~(1) Determining the difference between eighty-eight and one-half percent of the state average imputed taxable valuation per student and the district's average imputed taxable valuation per student; and~~
  - ~~(2) Multiplying that difference by the district's total average daily membership.~~
- ~~b. Beginning July 1, 2008, if~~ b. If a school district's imputed taxable valuation per student is less than ninety percent of the statewide imputed taxable valuation per student, the superintendent of public instruction shall calculate the valuation deficiency by:



- (1) a. Determining the difference between ninety percent of the state average imputed taxable valuation per student and the district's average imputed taxable valuation per student; and
- (2) b. Multiplying that difference by the district's total average daily membership.
3. Except as provided in subsection 4, the equity payment to which a district is entitled under this section equals the district's valuation deficiency multiplied by the lesser of:
  - a. The district's general fund ~~mill~~ levy for the taxable year 2008; or
  - b. One hundred eighty-five mills.
4. a. The equity payment to which a district is entitled may not exceed the district's taxable valuation multiplied by its general fund ~~mill~~ levy for the taxable year 2008.
  - b. If a district's general fund levy for the taxable year 2008 is less than one hundred eighty-five mills, the superintendent of public instruction shall subtract the district's general fund ~~mill~~ levy for the taxable year 2008 from one hundred eighty-five mills, multiply the result by the district's taxable valuation, and subtract that result from the equity payment to which the district is otherwise entitled.
  - c. If a district's imputed taxable valuation per student is less than fifty percent of the statewide imputed taxable valuation per student, the payment to which the district is entitled under this section may not be less than twenty percent of the statewide imputed taxable valuation per student times the school district's average daily membership, multiplied by one hundred eighty-five mills.
5. In determining the amount to which a school district is entitled under this section, the superintendent of public instruction may not include any payments received by the district as a result of Public Law No. 81-874 [64 Stat. 1100; 20 U.S.C. 236 et seq.] and may not include in the district's average daily membership students who are dependents of members of the armed forces and students who are dependents of civilian employees of the department of defense.
6. For purposes of this section:
  - a. "General fund levy" includes a district's high school transportation levy and its high school tuition levy.
  - b. "Imputed taxable valuation" means the valuation of all taxable real property in the district ~~plus an amount determined by dividing sixty percent of the district's mineral and tuition revenue by the district's general fund mill levy. Beginning July 1, 2008, "imputed taxable valuation" means the valuation of all taxable real property in the district plus an:~~
    - (1) An amount determined by dividing seventy percent of the district's mineral and tuition revenue, revenue from payments in lieu of property taxes on distribution and transmission of electric power, revenue from payments in lieu of taxes from electricity generated from sources other than coal, and revenue received on account of the leasing of lands acquired by the United States for flood control, navigation, and allied purposes in accordance with 33 U.S.C. 701c-3 by the district's general fund mill levy; and
    - (2) An amount determined by dividing the district's revenue from mobile home taxes and telecommunications taxes by the district's general fund mill levy.
  - c. "Mineral revenue" includes all revenue from county sources reported under code 2000 of the North Dakota school district financial accounting and reporting manual as



developed by the superintendent of public instruction in accordance with section 15.1-02-08.

- d. "Tuition revenue" includes all revenue reported under code 1300 of the North Dakota school district financial accounting and reporting manual as developed by the superintendent of public instruction in accordance with section 15.1-02-08. "Tuition revenue" does not include tuition income received specifically for the operation of an educational program provided at a residential treatment facility.

**SECTION 35.** A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

**Reorganized district - Continuation of equity payment.** If a school district that received an equity payment under section 15.1-27-11 becomes part of a reorganized district after June 30, 2010, the newly reorganized district is entitled to receive, for a period of two years, an amount equal to the greater of:

1. The equity payment received by each of the school districts during the school year immediately preceding the reorganization; or
2. The equity payment to which the newly reorganized school district is entitled under section 15.1-27-11.

**SECTION 36.** A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

**Dissolved district - Continuation of equity payment.** If a school district that received an equity payment under section 15.1-27-11 dissolves after June 30, 2009, any school district that receives a portion of the dissolved district's land is entitled to receive, for a period of two years, an amount equal to the greatest of:

1. That percentage of the dissolved school district's equity payment from the school year immediately preceding the dissolution which is the same as that percentage of the dissolved district's land which was attached to the receiving district;
2. The same equity payment to which the receiving school district was entitled in the school year immediately preceding the dissolution; or
3. The equity payment to which the receiving school district is entitled under section 15.1-27-11.

**SECTION 37. AMENDMENT.** Section 15.1-27-19 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-19. Summer school courses and programs - Payments to school districts.**

1. Before a weight may be assigned under section 15.1-27-03.1 for a student enrolled in a high school summer course, the superintendent of public instruction shall verify that the course ~~satisfies requirements for graduation, comprises at least as many clock hours as courses offered during the regular school term, and complies with rules adopted by the superintendent of public instruction~~ meets the requirements of section 21 of this Act.
2. Before a weight may be assigned under section 15.1-27-03.1 for a student enrolled in an elementary summer program, the superintendent of public instruction shall verify that the program meets the requirements of section 21 of this Act and complies with rules adopted by the superintendent of public instruction.

**SECTION 38. AMENDMENT.** Section 15.1-27-35 of the North Dakota Century Code is amended and reenacted as follows:



**15.1-27-35. Average daily membership - Calculation.**

1.
  - a. ~~Average~~ During the 2009-10 school year, average daily membership is calculated at the conclusion of the school year by adding the total number of days that each student in a given grade, school, or school district is in attendance during a school calendar and the total number of days that each student in a given grade, school, or school district is absent during a school calendar, and then dividing the sum by the greater of:
    - ~~a-~~ (1) The school district's calendar; or
    - ~~b-~~ (2) One hundred eighty.
  - b. During the 2010-11 school year, average daily membership is calculated at the conclusion of the school year by adding the total number of days that each student in a given grade, school, or school district is in attendance during a school calendar and the total number of days that each student in a given grade, school, or school district is absent during a school calendar, and then dividing the sum by the greater of:
    - (1) The school district's calendar; or
    - (2) One hundred eighty-one.
  - c. Beginning with the 2011-12 school year, average daily membership is calculated at the conclusion of the school year by adding the total number of days that each student in a given grade, school, or school district is in attendance during a school calendar and the total number of days that each student in a given grade, school, or school district is absent during a school calendar, and then dividing the sum by the greater of:
    - (1) The school district's calendar; or
    - (2) One hundred eighty-two.
2. For purposes of calculating average daily membership, all students are deemed to be in attendance on:
  - a. The three holidays listed in subdivisions b through j of subsection 1 of section 15.1-06-02 and selected by the school board in consultation with district teachers;
  - b. The two days set aside for professional development activities under section 15.1-06-04; and
  - c. The two full days, or portions thereof, during which parent-teacher conferences are held or which are deemed by the board of the district to be compensatory time for parent-teacher conferences held outside regular school hours.
3. For purposes of calculating average daily membership:
  - a. A student enrolled full time in any grade from one through twelve may not exceed an average daily membership of 1.00. The membership may be prorated for a student who is enrolled less than full time.
  - b. ~~During the 2007-08 school year, a student enrolled full time in an approved regular education kindergarten program may not exceed an average daily membership of 0.50. Beginning with the 2008-09 school year, a~~ A student enrolled full time in an approved regular education kindergarten program may not exceed an average daily membership of 1.00. The membership may be prorated for a student who is enrolled less than full time.

- c. A student enrolled full time, as defined by the superintendent of public instruction, in an approved early childhood special education program may not exceed an average daily membership of 1.00. The membership may be prorated for a student who is enrolled less than full time.

**SECTION 39. AMENDMENT.** Section 15.1-27-35.3 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-35.3. Payments to school districts - Unobligated general fund balance - Report to legislative council.**

1. The superintendent of public instruction shall determine the amount of payments due a school district and shall subtract from that the amount by which the unobligated general fund balance of the district on the preceding June thirtieth is in excess of fifty percent of its actual expenditures, plus twenty thousand dollars. Beginning July 1, 2008, the superintendent of public instruction shall determine the amount of payments due a school district and shall subtract from that the amount by which the unobligated general fund balance of the district on the preceding June thirtieth is in excess of forty-five percent of its actual expenditures, plus twenty thousand dollars.
2. In making the determination required by subsection 1, the superintendent of public instruction may not include in a district's unobligated general fund balance any moneys that:
  - a. (1) Were received by the district during the school year ending June 30, 2009, on account of the leasing of lands acquired by the United States for flood control, navigation, and allied purposes in accordance with 33 U.S.C. 701c-3; and
  - (2) Exceeded the amount received by the district during the school year ending June 30, 2008, for the purpose stated in paragraph 1;
  - b. Were received directly by the district from the United States government in accordance with the American Recovery and Reinvestment Act of 2009; or
  - c. Were received by the district as supplemental one-time grants under section 52 of this Act.
3. Any district having more than fifty thousand dollars excluded in the determination of its ending fund balance, as required by subsection 2, shall provide a report to the legislative council. The report, which must be presented at the time and in the manner directed by the legislative council, must address how the money was expended, including the number of mills by which the district was able to decrease its property taxes, if such was a permitted use.

**SECTION 40. AMENDMENT.** Section 15.1-27-41 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-27-41. North Dakota commission on education improvement - Membership - Duties - Report to legislative council - Reimbursement for expenses.**

1. The North Dakota commission on education improvement consists of:
  - a. (1) The governor or an individual designated by the governor, who shall serve as the chairman;
  - (2) One individual, appointed by the ~~governor, who~~ chairman of the legislative management from a list of three nominees submitted by the North Dakota council of educational leaders, provided each nominee is employed as the superintendent of a high school district having more than one thousand



students in average daily membership and has not served on the commission for more than one interim;

- (3) One individual, appointed by the ~~governor, who~~ chairman of the legislative management from a list of three nominees submitted by the North Dakota council of educational leaders, provided each nominee is employed as the superintendent of a high school district having more than two hundred twenty but fewer than one thousand students in average daily membership and has not served on the commission for more than one interim;
- (4) One individual, appointed by the ~~governor, who~~ chairman of the legislative management from a list of three nominees submitted by the North Dakota council of educational leaders, provided each nominee is employed as the superintendent of a high school district having fewer than two hundred twenty students in average daily membership and has not served on the commission for more than one interim;
- (5) ~~One individual, appointed by the governor, who is employed as a school district business manager;~~
- (6) The chairman of the senate education committee or the chairman's designee;
- (7) (6) The chairman of the house education committee or the chairman's designee;
- (8) (7) The senate minority leader or the leader's designee;
- (9) (8) One legislator appointed by the chairman of the legislative ~~council~~ management; ~~and~~
- (10) (9) The superintendent of public instruction or an assistant superintendent designated by the superintendent of public instruction; and
- (10) The director of the department of career and technical education or the director's designee; and

b. The following nonvoting members:

- (1) One ~~nonvoting member~~ individual representing the North Dakota council of educational leaders, ~~one nonvoting member;~~
  - (2) One individual representing the North Dakota education association, ~~and one nonvoting member;~~
  - (3) One individual representing the North Dakota school boards association;
  - (4) One individual who is or has served as the president of a private four-year institution of higher education, appointed by the chairman of the legislative management;
  - (5) One individual who is the owner or manager of a business located in this state, appointed by the chairman of the legislative management from a list of three nominees submitted by the North Dakota chamber of commerce; and
  - (6) The commissioner of higher education or the commissioner's designee.
2. The commission shall establish its own duties and rules of operation and procedure, including rules relating to appointments, terms of office, vacancies, quorums, and meetings, provided that the duties and the rules do not conflict with any provisions of this section.



3.
  - a. The members of the commission are entitled to reimbursement for actual and necessary expenses incurred in the same manner as state officials.
  - b. In addition, members of the legislative assembly who serve on the commission and the individual who is the owner or manager of a business located in this state are entitled to receive compensation in the amount of one hundred thirty-five dollars per day if they are attending meetings or performing duties directed by the commission. The superintendent of public instruction shall use up to forty thousand dollars from moneys appropriated in the grants - state school aid line item in ~~section 3 of Senate Bill No. 2013~~ the appropriation bill for the superintendent of public instruction, as approved by the ~~sixtieth~~ legislative assembly, to provide the compensation and reimbursements.
4. The commission shall ~~examine~~:
  - a. Examine the current system of delivering and financing public elementary and secondary education and shall develop recommendations addressing educational adequacy, the equitable distribution of state education funds, the allocation of funding responsibility between federal, state, and local sources, and any other matters that could result in the improvement of elementary and secondary education in the state;
  - b. Examine the state's high school graduation requirements, curricular standards, and assessments to ensure that students have the academic skills necessary to move seamlessly and without remediation from high schools to institutions of higher education or to meet the performance levels expected by employers;
  - c. Examine the measures enacted by the most recent legislative assembly to improve student performance, confirm their full implementation, and recommend future measures for continued improvement; and
  - d. Examine the measures enacted by the most recent legislative assembly to improve the quality of instruction, confirm their full implementation, and recommend future measures for continued improvement.
5. The commission shall provide periodic reports to the governor and to the legislative council.

**SECTION 41. AMENDMENT.** Section 15.1-32-18 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-32-18. Cost - Liability of school district for special education.**

1. Each year the superintendent of public instruction shall identify the approximately one percent of special education students statewide who are not eligible for cost reimbursement under section 15.1-29-14 and who require the greatest school district expenditures in order to provide them with special education and related services. This percentage represents the number of students that would qualify for excess cost reimbursement beyond the multiplier that is established in subsection 3.
2. The excess costs of providing special education and related services to these students are the responsibility of the state and the superintendent of public instruction shall reimburse the school districts for any excess costs incurred in the provision of special education and related services to the identified students.
3. "Excess costs" are those that exceed four ~~and one-half~~ times the state average cost of education per student and which are incurred by the special education students identified in subsection 1.



4. All costs of providing special education and related services to those students identified in subsection 1, other than excess costs reimbursed by the state, are the responsibility of the student's school district of residence.
5. In addition to any other reimbursements provided under this section, if a school district expends more than two percent of its annual budget for the provision of special education and related services to one student, the district shall notify the superintendent of public instruction. Upon verification, the superintendent shall reimburse the district for the difference between:
  - a. Two percent of the district's annual budget; and
  - b. The lesser of:
    - (1) The amount actually expended by the district for the provision of special education and related services to that student; or
    - (2) The amount representing four ~~and one-half~~ times the state average cost of education per student.

**SECTION 42. AMENDMENT.** Section 15.1-36-01 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-36-01. School construction projects - Approval.**

1. Notwithstanding the powers and duties of school boards provided by law, the superintendent of public instruction shall approve the construction, purchase, repair, improvement, modernization, or renovation of any public school building or facility before commencement of the project if the cost of the project, as estimated by the school board, is in excess of ~~twenty-five~~ forty thousand dollars.
2. The superintendent of public instruction may not approve a project unless the school district proposing the project:
  - a. Demonstrates the need for the project; and the educational utility of the project; ~~and the ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project~~ or demonstrates potential utilization of the project by a future reorganized school district; and
  - b. Demonstrates the capacity to pay for the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32.
3.
  - a. If the superintendent of public instruction denies the project, the school board may appeal the superintendent's decision to the state board of public school education. In considering the appeal, the state board shall review:
    - (1) The need for the project;
    - (2) The educational utility of the project;
    - (3) ~~The school district's ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project;~~
    - ~~(4)~~ (4) The potential use of the project by a future reorganized school district;
    - ~~(5)~~ (4) The capacity of the district to pay for the project; and
    - ~~(6)~~ (5) Any other objective factors relative to the appeal.
  - b. The decision of the state board is final.

4. This section does not apply to any construction, purchase, repair, improvement, renovation, or modernization required as part of a plan of correction approved by the state fire marshal under section 15.1-06-09 unless the cost of the improvements exceeds seventy-five thousand dollars.
5. This section is applicable to any construction, purchase, repair, improvement, renovation, or modernization, even if the school board pays for the project in whole or in part with moneys received on account of the leasing of lands acquired by the United States for flood control, navigation, and allied purposes in accordance with 33 U.S.C. 701c-3 or in accordance with moneys received under the American Recovery and Reinvestment Act of 2009.
6. For purposes of this chapter, "facility" includes a public school parking lot, public school athletic complex, or any other improvement to real property owned by the school district.

**SECTION 43.** A new section to chapter 15.1-37 of the North Dakota Century Code is created and enacted as follows:

**North Dakota early childhood education council - Membership - Terms.**

1. The North Dakota early childhood education council consists of:
  - a. A chairman appointed by the governor;
  - b. The superintendent of public instruction, or the superintendent's designee;
  - c. The state health officer, or the officer's designee;
  - d. The director of the department of human services, or the director's designee;
  - e. The North Dakota head start - state collaboration administrator, or the administrator's designee;
  - f. The commissioner of higher education, or the commissioner's designee;
  - g. The chairman of the senate education committee, or the chairman's designee;
  - h. The chairman of the house of representatives education committee, or the chairman's designee; and
  - i. The following gubernatorial appointees:
    - (1) The superintendent of a school district having at least one thousand students in average daily membership;
    - (2) The superintendent of a school district having fewer than one thousand students in average daily membership;
    - (3) The superintendent of a school district headquartered on a reservation or including reservation land within its boundaries;
    - (4) The principal of a school district;
    - (5) An individual employed as an elementary school teacher;
    - (6) An individual representing a non-religious-based provider of preschool education;
    - (7) An individual representing a religious-based provider of preschool education;



- (8) An individual representing a center-based licensed child care provider;
  - (9) An individual representing a home-based licensed child care provider;
  - (10) An individual representing a reservation-based head start program;
  - (11) An elected member of a school board;
  - (12) The parent of a child not yet enrolled in elementary school; and
  - (13) The parent of a child with special needs not yet enrolled in elementary school.
2. a. The term of each member enumerated in subdivision g of subsection 1 is three years and begins on July first. The terms must be staggered by lot so that four of the terms expire each year.
- b. If at any time during a member's term the member ceases to possess the qualifications required by this section, the member's seat is deemed vacant and the governor shall appoint another qualified individual to serve for the remainder of the term.
- c. A member may not serve more than two consecutive terms. If an individual is appointed to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.
3. The council shall meet at least twice each year, at the call of the chairman.

**SECTION 44.** A new section to chapter 15.1-37 of the North Dakota Century Code is created and enacted as follows:

**Council - Duties.** The council shall:

- 1. Review the delivery of early childhood education in this state;
- 2. Conduct a needs assessment;
- 3. Review early childhood education standards and propose revisions to the standards as needed;
- 4. Review opportunities for public and private sector collaboration in the delivery of early childhood education in this state;
- 5. Develop a comprehensive plan governing the delivery of early childhood education in this state; and
- 6. Provide a biennial report regarding its activities to the governor and the legislative council.

**SECTION 45.** A new section to chapter 15.1-37 of the North Dakota Century Code is created and enacted as follows:

**Council members - Reimbursement for expenses.** Each member of the council is entitled to receive reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council. In addition, each member of the legislative assembly who serves on the council is entitled to receive compensation in the amount provided per day for members of the legislative council under section 54-35-10 for attending meetings or performing duties as directed by the council.

**SECTION 46. AMENDMENT.** Section 15.1-38-01.1 of the North Dakota Century Code is amended and reenacted as follows:



**15.1-38-01.1. English language learner - Definition.** English language learner means a student who:

1. Is at least five years of age but has not reached the age of ~~twenty-two~~ twenty-one before August first of the year of enrollment;
2. Is enrolled in a school district in this state;
3. Has a primary language other than English or comes from an environment in which a language other than English significantly impacts the individual's level of English language proficiency; and
4. Has difficulty speaking, reading, writing, and understanding English, as evidenced by a language proficiency test approved by the superintendent of public instruction and aligned to the state English language proficiency standards and the state language proficiency test.

**SECTION 47. AMENDMENT.** Section 57-15-14 of the North Dakota Century Code is amended and reenacted as follows:

**57-15-14. General fund levy limitations in school districts.** The aggregate amount levied each year for the purposes listed in section 57-15-14.2 by any school district, except the Fargo school district, may not exceed the amount in dollars which the school district levied for the prior school year plus ~~eighteen~~ twelve percent up to a general fund levy of one hundred eighty-five mills on the dollar of the taxable valuation of the district, except that:

1. In any school district having a total population in excess of four thousand according to the last federal decennial census:
  - a. There may be levied any specific number of mills that upon resolution of the school board has been submitted to and approved by a majority of the qualified electors voting upon the question at any regular or special school district election.
  - b. There is no limitation upon the taxes which may be levied if upon resolution of the school board of any such district the removal of the mill levy limitation has been submitted to and approved by a majority of the qualified electors voting at any regular or special election upon such question.
2. In any school district having a total population of less than four thousand, there may be levied any specific number of mills that upon resolution of the school board has been approved by fifty-five percent of the qualified electors voting upon the question at any regular or special school election.
3. After June 30, 2007, in any school district election for approval by electors of unlimited or increased levy authority under subsection 1 or 2, the ballot must specify the number of mills, the percentage increase in dollars levied, or that unlimited levy authority is proposed for approval, and the number of taxable years for which that approval is to apply. After June 30, 2007, approval by electors of unlimited or increased levy authority under subsection 1 or 2 may not be effective for more than ten taxable years.

The question of authorizing or discontinuing such specific number of mills authority or unlimited taxing authority in any school district must be submitted to the qualified electors at the next regular election upon resolution of the school board or upon the filing with the school board of a petition containing the signatures of qualified electors of the district equal in number to ten percent of the number of electors who cast votes in the most recent election in the school district. However, not fewer than twenty-five signatures are required unless the district has fewer than twenty-five qualified electors, in which case the petition must be signed by not less than twenty-five percent of the qualified electors of the district. In those districts with fewer than twenty-five qualified electors, the number of qualified electors in the



district must be determined by the county superintendent for such county in which such school is located. However, the approval of discontinuing either such authority does not affect the tax levy in the calendar year in which the election is held. The election must be held in the same manner and subject to the same conditions as provided in this section for the first election upon the question of authorizing the mill levy.

**SECTION 48. APPROPRIATION - TEACHER SUPPORT SYSTEM PROGRAM.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,300,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of providing a grant to the education standards and practices board for a teacher support system program, for the biennium beginning July 1, 2009, and ending June 30, 2011.

1. The education standards and practices board shall:
  - a. Employ an individual to serve as a teacher support system coordinator;
  - b. Administer and evaluate the program; and
  - c.
    - (1) Select and train experienced teachers who will serve as mentors for first-year teachers and assist the first-year teachers with instructional skills development; or
    - (2) If a school district is not in need of mentors for its first-year teachers, the board shall select and train experienced teachers who will work with school district administrators to identify the needs of the district's non-first-year teachers and through research-validated interventions and the use of proven instructional methods help the district's non-first-year teachers address their particular needs.
2. The education standards and practices board may use any moneys provided under this section for staff compensation, training, evaluation, stipends for mentors and experienced teachers who assist first-year and non-first-year teachers participating in the program, and any other administrative expenses resulting from the program; provided, however, that the board may not expend more than five percent of the funds appropriated in this section for administrative expenses.
3. The education standards and practices board may provide services under this section only to teachers employed by school districts and not to teachers employed by any other entity.

**SECTION 49. APPROPRIATION - NATIONAL BOARD CERTIFICATION FUND.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of creating the national board certification fund, for the biennium beginning July 1, 2009, and ending June 30, 2011.

**SECTION 50. APPROPRIATION - CONTINUING EDUCATION GRANTS.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of providing continuing education grants, for the biennium beginning July 1, 2009, and ending June 30, 2011.

1. The superintendent shall award grants in amounts up to \$1,200 to eligible recipients in chronological order, based on the date of an individual's application. An eligible recipient must:
  - a.
    - (1) Be licensed to teach by the education standards and practices board;
    - (2) Have taught in this state during each of the last three school years; and

- (3) Be enrolled at an institution under the control of the state board of higher education in either a master of education program in educational leadership or a program leading to a specialist diploma in educational leadership;
  - b. Be pursuing the requirements for a certificate in career development facilitation; or
  - c. Be pursuing a school counselor credential.
- 2. If any of the amount appropriated under this section remains after the superintendent of public instruction has awarded grants to all eligible recipients, the superintendent shall distribute that amount as additional per student payments on a prorated basis, according to the latest available average daily membership of each school district.

**SECTION 51. USE OF NEW MONEY - COMPENSATION INCREASES - REPORTS TO LEGISLATIVE COUNCIL.**

- 1. During the 2009-11 biennium, the board of each school district shall use an amount equal to at least seventy percent of all new money received by the district for per student payments and supplemental operations grants to increase the compensation paid to teachers, counselors, and career advisors and to provide compensation to teachers, counselors, and career advisors who begin employment with the district on or after July 1, 2009.
- 2. For purposes of this section, the superintendent of public instruction shall calculate the amount of new money received by a district during the 2009-11 biennium by:
  - a. Determining the total amount of dollars in the 2009-11 biennium grants - state school aid line item and in the grants - supplemental operations line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, and subtracting from that amount:
    - (1) Equity payments under section 15.1-27-11;
    - (2) Payments to school districts participating in regional education associations under section 15.1-27-03.1;
    - (3) Grants to school districts for reorganization planning under section 55 of this Act;
    - (4) Grants to regional education associations under section 56 of this Act; and
    - (5) Eleven dollars and fifty-eight cents per weighted student unit;
  - b. Determining the total amount of dollars in the 2007-09 biennium grants - state school aid line item in the appropriation bill for the superintendent of public instruction, as approved by the sixtieth legislative assembly, and subtracting from that amount:
    - (1) Equity payments under section 15.1-27-11; and
    - (2) Grants to school districts for reorganization planning under section 49 of chapter 163 of the 2007 Session Laws; and
  - c. Subtracting the amount arrived at under subdivision b from the amount arrived at under subdivision a.
- 3. For purposes of this section, money made available to the state as a result of federal action to stimulate the national economy or to address state fiscal recovery does not constitute new money unless the money is distributed through the state school aid formula as provided in chapter 15.1-27.

4. School districts providing educational services under a cooperative agreement approved by the superintendent of public instruction must be treated as a single district for purposes of this section.
5.
  - a. This section does not apply to a school district if the board of the school district, after a public hearing at which public testimony and documentary evidence are accepted, determines in its discretion and by an affirmative vote of two-thirds of the members of the board that complying with subsection 1 would place the school district in the position of having insufficient fiscal resources to meet the school district's other obligations.
  - b. Within ten days of the vote required by subdivision a, the school board shall notify the superintendent of public instruction of its action and shall file a report detailing the grounds for its determination and action.
  - c. The superintendent of public instruction shall report all notices received under this subsection to the legislative council.
6. This section does not extend, by intent, implication, or any other granting of unenumerated statutory rights, to teachers, counselors, and career advisors employed by an entity other than the board of a school district.

**SECTION 52. SUPPLEMENTAL ONE-TIME GRANTS - REPORT TO LEGISLATIVE COUNCIL.**

1. The superintendent of public instruction may expend up to \$85,644,337 from the grants - one-time supplemental payments line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, for the purpose of providing, during the biennium beginning July 1, 2009, and ending June 30, 2011, one-time supplemental payments to school districts on a prorated basis, according to the latest available average daily membership of each school district. The superintendent shall divide the amount due each school district under this section into four payments of approximately equal size and shall forward each payment on a monthly basis, beginning September 1, 2009.
2. Grants distributed under this section may be used only for:
  - a. The improvement, renovation, repair, or modernization of school buildings and facilities, including deferred maintenance; weatherization; heating, ventilation, and cooling projects; asbestos removal and abatement; security improvements; and laboratory improvements provided that the projects meet the approval requirements of section 15.1-36-01;
  - b. Building additions, provided the additions do not exceed twenty-five percent of the square footage of the building to which they are to be attached and further provided that the additions meet the approval requirements of section 15.1-36-01;
  - c. Equipment, including technological equipment, career and technical education equipment, vehicles for instructional purposes, and vehicles for student transportation;
  - d. Textbooks, instructional materials, and library media materials;
  - e. Title I expenditures; or
  - f. Professional development for teachers and administrators.

3. Grants distributed under this section may not be used for any other purpose, including temporary property tax reductions, principal payments on outstanding debts, construction of new buildings, hiring of new personnel, or compensation increases.
4. Grants distributed under this section do not constitute new money for purposes of increased compensation under section 51 of this Act.
5. Any school district receiving a grant under this section shall file a report with the superintendent of public instruction, at the time and in the manner directed by the superintendent. The report must include a description of all expenditures, obligations, or other commitments made as a result of receiving a grant under this section. The superintendent shall compile the information and present it to the legislative council.

**SECTION 53. SUPPLEMENTAL OPERATIONS GRANTS.** The superintendent of public instruction may expend up to \$16,795,584 from the grants - supplemental operations line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, for the purpose of providing during the first year of the biennium beginning July 1, 2009, and ending June 30, 2011, a supplemental grant to each school district on a prorated basis, according to the latest available average daily membership of each school district. The superintendent shall forward payment under this section to each school district on or before September 1, 2009.

**SECTION 54. TRANSPORTATION GRANTS - DISTRIBUTION.**

1. During each year of the 2009-11 biennium, the superintendent of public instruction shall calculate the payment to which each school district is entitled based on the state transportation formula as it existed on June 30, 2001, except that the superintendent shall provide reimbursement at the rate of:
  - a. Ninety-two cents per mile for schoolbuses having a capacity of ten or more passengers;
  - b. Forty-four cents per mile for vehicles having a capacity of nine or fewer passengers; and
  - c. Twenty-four cents per student for each one-way trip.
2. The superintendent of public instruction shall use the latest available student enrollment count in each school district in applying the provisions of the transportation formula as it existed on June 30, 2001.
3. If any moneys provided for transportation payments in the grants - transportation line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, remain after application of the formula provided for in this section, the superintendent of public instruction shall prorate the remaining amounts according to the percentage of the total transportation formula amount to which each school district is entitled.
4. This section does not authorize the reimbursement of any costs incurred in providing transportation for student attendance at extracurricular activities or events.

**SECTION 55. SCHOOL DISTRICT REORGANIZATION PLANNING GRANTS.** The superintendent of public instruction may expend up to \$100,000 from the grants - state school aid line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, for the purpose of providing planning grants to school districts participating in reorganizations under chapter 15.1-12, for the biennium beginning July 1, 2009, and ending June 30, 2011. A grant provided under this section may not exceed \$25,000 and may not be awarded unless the student enrollment of the participating districts exceeds three hundred sixty. If a grant is provided



and the recipient districts vote not to reorganize, the superintendent of public instruction shall withhold the grant amount that each district received under this section from any state aid payable to the district.

**SECTION 56. REGIONAL EDUCATION ASSOCIATIONS - GRANTS.** During each year of the 2009-11 biennium, the superintendent of public instruction shall expend up to \$200,000 from the grants - state school aid line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, for the purpose of providing grants in the amount of \$25,000, to each group of school districts which has been designated as a regional education association under section 15.1-09.1-02. Before September first of each year, the superintendent of public instruction shall divide each grant by the number of school districts in the respective association and forward that portion of each school district's individual grant directly to the association in which the district participates.

**SECTION 57. FEDERAL IMPACT AID - BASELINE RECALCULATION - GRANT.**

1. If the amount of federal impact aid received by a school district during the 2006-07 school year resulted in that district losing state aid under section 15.1-27-35.3 during the 2007-09 biennium, the superintendent shall reestablish that district's baseline by:
  - a. Adding together the amount of state aid that the district would have received during the 2006-07 school year if in determining the district's ending fund balance the average amount of federal impact aid received by the district during the 2005-06 and 2006-07 school years had been used, rather than the actual amount received during the 2006-07 school year;
  - b. Subtracting the amount received by the district during the 2006-07 school year for transportation aid, special education excess reimbursements, special education contracts, prior year funding adjustments, and per student payments for participation in regional education associations; and
  - c. Dividing the amount determined under subdivision b by the district's 2007-08 weighted student units.
2. On or before August 1, 2009, the superintendent of public instruction shall use up to \$300,000 from moneys appropriated in the grants - state school aid line item in the appropriation bill for the superintendent of public instruction, as approved by the legislative assembly, to provide to a school district a grant equaling the difference in the 2007-09 biennium state aid payments that resulted from the baseline recalculation required by this section.

**SECTION 58. AMENDMENT.** Section 55 of chapter 163 of the 2007 Session Laws is amended and reenacted as follows:

**SECTION 55. CONTINGENT MONEY - 2007-09.**

1. In determining the availability of contingent money under this section, the superintendent of public instruction shall first add to the money in the grants - state school aid line item in Senate Bill No. 2013, as approved by the sixtieth legislative assembly, any money that was appropriated to the superintendent for special education contracts in Senate Bill No. 2013 and which remains after the superintendent complied with all statutory special education contract payment obligations imposed for the biennium beginning July 1, 2007, and ending June 30, 2009.
2. If any money that was appropriated to the superintendent of public instruction for state aid payments to school districts or added to the grants - state school aid line item in accordance with subsection 1 remains after the superintendent complies with all statutory payment obligations imposed for the biennium beginning July 1, 2007, and ending June 30, 2009, the superintendent shall:

- ~~4-~~ a. Use the first \$1,000,000, or so much of that amount as may be necessary, to pay any state obligations in excess of the amount appropriated for special education contract charges;
- ~~2-~~ b. Use the next \$2,000,000, or so much of that amount as may be necessary, for the purpose of providing additional per student payments to school districts participating in regional education associations under chapter 15.1-09.1;
- ~~3-~~ c. Use the next \$550,000, or so much of that amount as may be necessary, for the purpose of providing additional payments to school districts serving English language learners and new immigrant English language learners, in accordance with chapter 15.1-38;
- ~~4-~~ d. Use the next \$200,000, or so much of that amount as may be necessary, for the purpose of providing additional payments to school districts offering an adult education program during the 2007-09 biennium; and
- ~~5-~~ e. Use the remainder of the moneys to provide additional per student payments on a prorated basis according to the latest available average daily membership of each school district.

**SECTION 59. CONTINGENT MONEY - 2009-11.**

1. In determining the availability of contingent money under this section, the superintendent of public instruction shall first add to the money in the grants - state school aid line item in the appropriation bill for the superintendent of public instruction, as approved by the sixty-first legislative assembly, any money that was appropriated to the superintendent for special education contracts and which remains after the superintendent complied with all statutory special education contract payment obligations imposed for the biennium beginning July 1, 2009, and ending June 30, 2011.
2. If any money that was appropriated to the superintendent of public instruction for grants - state aid payments to school districts or added to the grants - state school aid line item in accordance with subsection 1 remains after the superintendent complies with all statutory payment obligations imposed for the biennium beginning July 1, 2009, and ending June 30, 2011, the superintendent shall use the money to provide additional per student payments on a prorated basis according to the latest available average daily membership of each school district.

**SECTION 60. CONTINGENT TRANSFER BY BANK OF NORTH DAKOTA FOR SPECIAL EDUCATION.** If during the biennium beginning July 1, 2009, and ending June 30, 2011, the superintendent of public instruction determines that, using all available sources, there are insufficient funds with which to fully reimburse school districts for the excess costs of serving the one percent of special education students statewide who require the greatest school district expenditures in order to be provided with special education and related services, the industrial commission shall transfer from the earnings and accumulated and undivided profits of the Bank of North Dakota the amount the superintendent of public instruction certifies is necessary to provide the statutorily required level of reimbursement. The superintendent of public instruction shall file for introduction legislation requesting that the sixty-second legislative assembly return any amount transferred under this section to the Bank of North Dakota.

**SECTION 61. LEGISLATIVE COUNCIL STUDY - SCHOOL APPROVAL AND ACCREDITATION.** During the 2009-10 interim, the legislative council shall consider studying statutory criteria for the approval of public and nonpublic schools, regulatory criteria for the accreditation of schools, and the consequences to schools and school districts that fail to meet the criteria. In addition, the study must include a review of statutory sections that place specific requirements on school districts and the consequences to school districts that fail to abide by the requirements. The legislative council

shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 62. LEGISLATIVE COUNCIL STUDY - WEATHER-RELATED SCHOOL CANCELLATIONS.** During the 2009-10 interim, the legislative council shall consider studying the cancellation of school and early dismissal as a result of severe weather or other emergency conditions. The study must include parameters for determining whether to dismiss school early or cancel school for the entire day, statutory requirements for making up lost instructional time, issues related to personnel contracts, issues related to the school calendar and the payment of state aid, and gubernatorial authority to waive statutory rescheduling requirements. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 63. LEGISLATIVE COUNCIL STUDY - DISPLACEMENT OF STUDENTS - NATURAL OR MANMADE CAUSES.** During the 2009-10 interim, the legislative council shall consider studying longer term elementary and high school closings and student transfers necessitated by the occurrence of widespread or severe damage as a result of any natural or manmade cause, including fire, flood, tornado, storm, chemical spill, and epidemic. The study should address the coordination of plans to accommodate displaced students, examine responsibility for payment obligations to districts that are not able to provide services, examine responsibility for compensating districts that have accepted displaced students, and specifically examine the expenses incurred by school districts that provided services to displaced students during the 2009 floods. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 64. REPEAL.** Sections 15.1-21-02.2, 15.1-27-20.1, and 15.1-38-01.2 of the North Dakota Century Code are repealed.

**SECTION 65. REPEAL.** Section 15.1-27-41 of the North Dakota Century Code is repealed.

**SECTION 66. EFFECTIVE DATE.**

1. Section 47 of this Act is effective for taxable years beginning after December 31, 2008.
2. Sections 15 and 16 of this Act become effective on July 1, 2010.
3. Section 65 of this Act becomes effective on December 31, 2010.
4. Section 31 of this Act becomes effective on July 1, 2011.

**SECTION 67. EXPIRATION DATE.** Sections 39 and 42 of this Act are effective through June 30, 2011, and after that date are ineffective. Section 28 of this Act is effective through July 31, 2011, and after that date is ineffective.

**SECTION 68. EMERGENCY.** Sections 39 and 58 of this Act are declared to be an emergency measure.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1400 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote:      Yeas          86              Nays          6              Absent          2

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote:      Yeas          47              Nays          0              Absent          0

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2009.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2009.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State





UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

#3  
HB 1283  
4/8/15

February 3, 2015

The Honorable Mike Hanley  
Commissioner of Education  
Alaska Department of Education and Early Development  
801 West 10th Street, Suite 200  
Juneau, Alaska 99811-0500

Dear Commissioner Hanley:

This letter serves as a response to your letter dated January 20, 2015, regarding the requirements for State assessments under the Elementary and Secondary Education Act of 1965 (ESEA). Before I respond to your four specific questions, please let me emphasize the importance of the assessment requirements in the ESEA, which are focused on ensuring that parents and educators have the information they need to help every student be successful and on protecting equity for all students by maintaining a consistent measure of what students know and are able to do regardless of where they live. High-quality, annual statewide assessments are essential to providing critical information about student achievement and growth to parents, teachers, principals, and administrators at all levels. When that system is aligned with the academic content and achievement standards that a State expects all children to know and be able to do, it provides the road map for aligning instruction to the academic needs of students identified by the assessment system. High-quality, annual, statewide assessments provide information on *all* students so that educators can improve educational outcomes, close achievement gaps among subgroups of historically underserved students, increase equity, and improve instruction.

Below, I have responded to each question, providing the statutory and regulatory citations, as applicable, and noting any differences between the statutory and regulatory requirements of the ESEA and ESEA flexibility.

1. What are the Federal requirements regarding the frequency, grade levels, and content areas of State assessments? Can ED provide an outline of the requirements in section 1111(b)(3)?

ESEA section 1111(b)(3) (20 U.S.C. § 6311(b)(3)) requires a State educational agency (SEA) that receives funds under Title I, Part A of the ESEA to implement in each local educational agency (LEA) in the State a set of high-quality, yearly academic assessments that includes, at a minimum, assessments in mathematics, reading or language arts, and science. With respect to reading/language arts and mathematics, the assessments must be administered in each of grades 3 through 8 and not less than once in grades 10 through 12. With respect to science, the assessments must be administered not less than once during grades 3 through 5, grades 6 through 9, and grades 10 through 12.

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<http://www.ed.gov/>

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

Under ESEA section 1111(b)(3)(C) (20 U.S.C. § 6311(b)(3)(C)) and 34 C.F.R. § 200.2, the State assessments must —

- Be the same academic assessments used to measure the achievement of all children (§ 1111(b)(3)(C)(i); § 200.2(b)(1));
- Be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and English Learners (§ 200.2(b)(2));
- Be aligned with the State's challenging academic content and achievement standards and provide coherent information about student attainment of the standards (§ 1111(b)(3)(C)(ii); § 200.2(b)(3));
- Be used for purposes for which they are valid and reliable and be consistent with relevant, nationally recognized professional and technical standards (§ 1111(b)(3)(C)(iii); § 200.2(b)(4));
- Be supported by evidence from the test publisher or other relevant sources that the assessment system is of adequate technical quality for each required purpose (§ 1111(b)(3)(C)(iv); § 200.2(b)(5));
- Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding, which may include single or multiple question formats that range in cognitive complexity within a single assessment and multiple assessments within a subject area (§ 1111(b)(3)(C)(vi); § 200.2(b)(7));
- Provide for the participation of all students in the tested grades, including students with disabilities, who must be provided reasonable accommodations, and English Learners, who must be assessed in a valid and reliable manner and provided reasonable accommodations including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what those students know and can do in academic content areas until they have achieved proficiency in English (§ 1111(b)(3)(C)(ix); §§ 200.2(b)(9), 200.6);
- Assess English Learners who have been in schools in the United States for three or more consecutive years in English on the reading/language arts assessments, except that, on a case-by-case basis, an LEA may assess those students in their native language for not more than two additional years (§ 1111(b)(3)(C)(x));
- Produce individual student interpretive, descriptive, and diagnostic reports that allow parents, teachers, and principals to understand and address the specific academic needs of students (§ 1111(b)(3)(C)(xii); § 200.2(b)(11));
- Enable results to be disaggregated within each State, LEA, and school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to nondisabled students, and by economically disadvantaged students compared to students who are not economically disadvantaged (§ 1111(b)(3)(C)(xiii); § 200.2(b)(10));
- Be consistent with widely accepted professional testing standards, objectively measure academic achievement, knowledge, and skills, but do not measure personal or family beliefs or attitudes (§ 1111(b)(3)(C)(xiv); § 200.2(b)(8)); and
- Enable the production of itemized score analyses (§ 1111(b)(3)(C)(xv); § 200.2(b)(12)).

For each grade and subject assessed, a State's academic assessment system must —

- Address the depth and breadth of the State's academic content standards;
- Be valid, reliable, and of high technical quality;

- Express student results in terms of the State's academic achievement standards; and
- Be designed to provide a coherent system across grades and subjects. 34 C.F.R. § 200.3(a).

ESEA flexibility does not remove these requirements.

2. Do States have to administer the same general assessment to all students?

ESEA section 1111(b)(3)(C)(i) requires State assessments to “be the same academic assessments used to measure the achievement of *all* children (emphasis added).” So, with certain limited exceptions described below, the assessments an SEA develops must be the same for all students in the State. An SEA may not assess only a sample of students, even if that sample is representative of students in each LEA or the State as a whole. One reason for this is to help ensure that all students in a State are held to the same high expectations, regardless of a student's race, ethnicity, socioeconomic status, or neighborhood.

One exception to the general requirement that a State's assessment must be the same for all students is the authority in the Title I regulations for an SEA to adopt alternate academic achievement standards and alternate assessments aligned with those standards for students with the most significant cognitive disabilities. See 34 C.F.R. §§ 200.1(d), 200.6(a)(2)(ii)(B). These standards and assessments apply to a very small number of students with disabilities who, even with the very best instruction, are not likely to meet the grade-level academic achievement standards that apply to all students.

ESEA section 1111(b)(5) (20 U.S.C. § 6311(b)(5)) is another exception. It applies *only* in a State that provides evidence, satisfactory to the Secretary, that neither the SEA nor any other State government entity has sufficient authority under State law to adopt standards and assessments that would be applicable to all students enrolled in public schools in the State. In this case, the SEA may meet the requirements of ESEA section 1111(b)(3) by adopting academic standards and assessments on a statewide basis, and limiting their applicability to students served under Title I, or adopting and implementing policies that ensure the each Title I LEA in the State adopts academic content and achievement standards and aligned assessments that meet all of the requirements in section 1111(b)(3) and corresponding regulations and apply to all students in the LEA. Currently, this exemption does not apply to any States.

ESEA section 1111(b)(5) has no counterpart under ESEA flexibility; no SEA that has received ESEA flexibility is prohibited under State law from adopting a single statewide assessment system that applies to all students in the State. In other words, each SEA that has received ESEA flexibility has indicated it has authority under State law to adopt a single statewide assessment system that applies to all students in the State.

3. What are the consequences if a State or district fails to adhere to the Federal assessment requirements?

If an SEA fails to comply with the assessment requirements in either ESEA or ESEA flexibility, ED has a range of enforcement actions it can take. These include sending a written request to the SEA that it come into compliance, increasing monitoring, placing a condition on the SEA's Title

I, Part A grant award or its ESEA flexibility request, placing the SEA on high-risk status (34 C.F.R. § 80.12), issuing a cease and desist order (GEPA section 456 (20 U.S.C. § 1234e)), entering into a compliance agreement with the SEA to secure compliance (GEPA 457 (20 U.S.C. § 1234f)), withholding all or a portion of the SEA's Title I, Part A administrative funds (ESEA section 1111(g)(2) (20 U.S.C. § 6311(g)(2))), and suspending, and then withholding, all or a portion of the State's Title I, Part A programmatic funds (GEPA section 455 (20 U.S.C. § 1234d)). An SEA has similar enforcement actions available to it with respect to noncompliance by an LEA, including withholding an LEA's Title I, Part A funds. *See, e.g.*, GEPA section 440 (20 U.S.C. § 1232c(b)).

The specific enforcement action(s) ED would take depends on the severity of non-compliance. For example, if an SEA has developed a statewide assessment system but that system is not approvable because it fails to meet all statutory and regulatory requirements, ED might condition the SEA's Title I, Part A grant award, place the SEA on high-risk status, enter into a compliance agreement, or withhold State administrative funds. ED has, in fact, withheld Title I, Part A administrative funds under ESEA section 1111(g) (20 U.S.C. § 6311(g)) from a number of States for failure to comply with the assessment requirements in ESEA section 1111(b)(3). If an SEA or LEA refuses to implement an assessment system that meets the statutory and regulatory requirements, ED might seek to withhold programmatic funds from the State and expect the SEA to withhold from the LEA. Clearly, if an SEA or LEA fails to comply with the assessment requirements in either the ESEA or ESEA flexibility, it could place its Title I, Part A funds in jeopardy. In addition, the SEA or LEA could find itself out of compliance with a wide range of additional Federal programs that rely on statewide assessment results, putting additional funds at risk. These additional programs include those targeting students most at risk including, but not limited to: the School Improvement Grants (SIG) program; ESEA Title III; Part B of the Individuals with Disabilities Education Act (IDEA); programs for rural schools under ESEA Title VI; migrant education under ESEA Title I, Part C; and programs focused on professional development and other supports for teachers, such as ESEA Title II.

Please note that an LEA may not avoid administering the State assessments required under ESEA section 1111(b)(3) by declining to accept Title I, Part A funds. As noted above, the assessment requirements are State-level requirements that apply to any SEA that accepts Title I, Part A funds. That SEA must then administer its assessments statewide — including to students in LEAs that do not participate in Title I.

4. Would legislative language that allows parents to opt their children out of participating in statewide Federally required assessments be considered as a failure to adhere to the Federal assessment system?

Section 1111(b)(3)(A) of the ESEA requires each SEA to have a set of high-quality, yearly student academic assessments for reading/language arts and mathematics in grades three through eight and once in high school, and for science once each in grades 3-5, 6-8, and 10-12. SEAs and LEAs must provide for the participation of *all* students on the assessments (*see* ESEA section 1111(b)(3)(C)(ix)(I)) so that they can identify the learning progress of all students against the same high expectations, regardless of a student's race, ethnicity, socioeconomic status, or neighborhood. This requirement does not permit certain students or a specific percentage of students to be excluded from assessments. Rather, it sets out the rule that *all* students in the



tested grades must be assessed. (ESEA section 1111(b)(2)(I)(i) permits an LEA or school to make adequate yearly progress as long as it assesses at least 95 percent of its students.)

In applying for funds under Title I, Part A of the ESEA, the SEA assured that it would administer the Title I, Part A program in accordance with all applicable statutes and regulations (*see* ESEA section 9304(a)(1)). Similarly, each LEA that receives Title I, Part A funds assured that it would administer its Title I, Part A program in accordance with all applicable statutes and regulations (*see* ESEA section 9306(a)(1)). If an SEA does not ensure that all students are assessed, ED has a range of enforcement actions it can take (as described in response to question 3 above). The SEA has similar enforcement actions available to it with respect to an LEA that does not ensure that all students participate in the State assessments, including withholding the LEA's Title I, Part A funds (20 U.S.C. § 1232c(b)). In addition, all SEAs with approved ESEA flexibility plans have included specific consequences in their accountability systems for any school that misses participation rate, and must implement this component of their accountability systems with fidelity.

As noted above, an SEA or its LEAs may find themselves out of compliance with other Federal programs that use student achievement results as well, including programs targeting students most at risk including, but not limited to: SIG; ESEA Title III; Part B of the IDEA; programs for rural schools under ESEA Title VI; migratory students under ESEA Title I, Part C; and programs focused on professional development and other supports for teachers, such as ESEA Title II.

Please do not hesitate to contact me if you need additional information or clarification. Thank you for your continued commitment to enhancing education for all of Alaska's students.

Sincerely,

/s/

Deborah S. Delisle  
Assistant Secretary

April 8, 2015

#1 HB 1283  
4/9/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1283

That the Senate recede from its amendments as printed on pages 1106 and 1107 of the House Journal and page 848 of the Senate Journal and that Engrossed House Bill No. 1283 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15.1-21 of the North Dakota Century Code, relating to parental directives; and to provide an expiration date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Parental directive - Administration of tests and assessments - Report.**

1. A student's parent may direct that the school district in which the student is enrolled not administer any state test or state assessment required in accordance with section 15.1-21-08.
2. In addition to the authority granted under subsection 1, a student's parent may direct that the school district in which the student is enrolled not administer any other specific test or assessment to the student, provided that a parental directive under this subsection does not apply to:
  - a. Any test or assessment required by the student's school district of enrollment or this state for the completion of any grade from kindergarten through twelve;
  - b. Any test or assessment required by the student's school district of enrollment or this state for high school graduation;
  - c. The ACT; or
  - d. WorkKeys assessments.
3. a. A parental directive is valid only if it is presented to the school district using a standardized form, prepared by the superintendent of public instruction, and signed by the student's custodial parent.
  - b. A parental directive is valid only until the conclusion of the school year in which it is received by the school district.
  - c. A parental directive submitted to a school district in accordance with this section must be retained as part of the student's educational record.
4. A school district is not liable for any consequences incurred by a student as a result of a parental directive submitted in accordance with this section.

5. A school district is not required to provide instruction or activities for a student during the administration of any test or assessment referenced in the parental directive submitted by the student's parent.
6. Each school district must post the parental directive form on its website and make the form available to a parent, upon request.
7. At the time and in the manner directed by the superintendent of public instruction, each school district shall provide a report regarding:
  - a. The number of parental directives received;
  - b. The number of parental directives applicable to students who are economically disadvantaged, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency; and
  - c. Any loss of funding stemming from the parental directives.

**SECTION 2. EXPIRATION DATE.** This Act is effective through June 30, 2017, and after that date is ineffective."

Renumber accordingly