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10/2/03
Date

2003 HOUSE EDUCATION

HB 1086

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2003 HOUSE STANDING COMMITTEE MINUTES
BILL/RESOLUTION NO. HB 1086

House Education Committee

☐ Conference Committee

Hearing Date January 13, 2003

Tape Number	Side A	Side B	Meter #
1	x		2038-6233
1		x	00-2520
Committee Clerk Signature <i>Linda Kuchner</i>			

Minutes:

Chairman Kelsch open hearing on bill.

SUPPORT

Tom Decker, Director of School Finance and Organization, Department of Public

Instruction. See Attached Testimony. (2099-2865) Provided and over view and then introduced two following testimonies in support of HB1086.

Linda Johnson, Director of School Health Programs, Department of Public Instruction. See Attached Testimony (2915-3450), and Laurie Matzke, Director of Title I, Department of Public Instruction. See Attached Testimony (3510-4123).

Rep. Hanson (Johnson) In the definition of Adequate Yearly Process (AYP), how much is that to be?

(4207) Johnson: ND and well as all states are currently in the process of defining their definition of AYP. We are to submit this definition to the US Dept. of Ed in a January 31 submission. We are currently in the process of developing this. There isn't one sentence that will define it there is

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Page 2
House Education Committee
Bill/Resolution Number HB1086
Hearing Date January 13, 2003

a whole series of things that we need to look at. For example, ND teacher met last summer and established the cut point which established proficiency on state assessment. That was the first piece. Now we need to go through a formula in the law where we rank the schools from high to low, list their enrollment, we count up 20%, we go over and what ever percent happens to be in that particular spot, that is the percent for the entire state of how many students need to meet the proficiency mark est. by the ND teachers. Lets say it is 50, and then that 50% of our students need to meet that mark now in 2001/2002 data. And then that would increase over the 12 year timeline to 100% proficiency. There are many other things we need to identify in our definition of AYP, as far as, how will we determine how these numbers are statistically reliable and valid.

What constitutes a full academic year so that students that are not there from day one are not counted in the AYP definition. We will be submitting this report within the next three weeks.

Vice Chair Johnson : How are the 21 schools doing that are in this so far, are they all okay?

(4367) Johnson: Hopefully will have the AYP report generated by February. Then these schools will have an accurate picture of how they are did. There are so many factors they have to meet the cut point, they have to have 95% of their students tested and they need to meet the secondary indicator. So it will be difficult for all schools to meet the criteria, esp. those 21 schools that are already identified.

Rep. Jon Nelson : If more than one school that didn't meet the criteria in a district, will that prohibit a student from transferring from one school to another? Does the student have to transfer to a school that does meet the criteria?

Johnson: That is correct. They can only transfer to a school that has not been identified for program improvement. So that will limit their choices, esp. in the rural communities.

Page 3
House Education Committee
Bill/Resolution Number HB1086
Hearing Date January 13, 2003

(4619) Rep. Jon Nelson : Would some of the reservation schools have a hard time.

Johnson: That is correct.

Rep. Hawken: There will not be a school that will be failing in the nine year period of time, What is your department doing to discuss with the US Department of Ed. about the consequences of what they are asking them to do. It is not feasible that every child will have a 100% proficiency. It is humanly impossible. Are states coordinating with the US government to make this a doable thing?

Johnson: There is absolutely no opportunity to negotiate this information with the US Department of Ed. We are continuously receiving letters from Secretary Page that "I have heard rumors from people that are unhappy or who are contacting legislators trying to get this changed. Stop it! It's not going to happen you need to find a way to deal with it" this administration is committed implementing the law they passed.

Rep. Hawken: Are they funding it this year?

Johnson: In President Bush's radio address which he gave a week ago last Saturday, I know that many education programs are being cut and eliminated, however he is funding his two main education bills. Each state will receive there state assessment grant to pay for the additional assessments in NCLB and Bush has also proposing 1 Billion increase for Title I. Title I is the main program to implement NCLB.

(4993) Rep. Mueller : Requirement of moving tuition to follow the student to a new school district on the open enrollment, is that part of NCLB? or is that something additional.

Johnson: That is not part of NCLB that is something added to this bill.

Page 4
House Education Committee
Bill/Resolution Number HB1086
Hearing Date January 13, 2003

Rep. Solberg (line 13 of bill) Who determines if the school is unsafe? (Johnson deferred to Matzke)

Matzke: This is to be determined by the department with representative from the state schools. We are working with a team of 20 principals to determine this definition. The definition of AYP needs to be consistent over time.

(5349) Rep. Mueller: How would we not have an open enrollment that would be voluntary?

Matzke: The open enrollment is the parent/student decision in the area of safety and Title I is a student decision to if they want to move.

Chairman Kelsch : If you have a school that is not performing, and under AYP, the parent/student who wish to move, may not have a option?

Rep. Mueller: In the process of open enrollment there are timelines involved, this act will open up to any point in the school year?

Matzke: That is correct.

Rep. Williams Is Fargo part of the open enrollment?

Chairman Kelsch : Yes they are.

Rep. Williams: This doesn't force schools into open enrollment?

Matzke: It is a parent/student choice, yes, you do not have to leave this school, but you have the choice to leave.

Rep. Williams Lets say a school has the policy that they will not participate in open enrollment, can a student from an adjoining school district opt to go into that school?

Matzke: State law supersedes local policy.

someone on the committee said no

Page 5
House Education Committee
Bill/Resolution Number HB1086
Hearing Date January 13, 2003

Rep. Williams : A Student could not open enroll if they were suspended in one district. Would local control would still be there in this situation?

Johnson: No, it takes some of the local control away from that district. But there are some students with low scores in low performing schools, could not be denied.

Chairman Kelsch When you look at what you wanted to implement for the choice there were other options as well. Was this the easiest one to implement.

Johnson: Several issues. For Title I there are two main issues at hand- 1. schools in a given year take state assessment in March and they will not receive their AYP report until July, which tells them whether or not they have been identified for program improvement. That is well past the February date to open enroll. Federal law require that if they are identified for AYP that first year they must offer school choice. So that is one issue. The second, looking at year seven and looking at the sanctions that they have in place, none of them are allowable in ND law and (6233) (FLIP TAPE)

For schools that have not meet the requirements for six consecutive years what menu could we put in play. Four options on testimony. We feel we don't need law to address those issues. However the issue at hand here to day is to allow them to transfer across district lines and then you will be hearing the third issue in another bill.

Rep. Mueller Involuntary open enrollment on the part of the student, would the tuition follow the student. In essence a lot of students could transfer out, thus closing the school.

Chairman Kelsch : Some of those questions we may be talking about that this afternoon, I have had some of those discussions at the national level.

Page 6
House Education Committee
Bill/Resolution Number HB1086
Hearing Date January 13, 2003

Matzke: If the school is named persistently dangerous, the student can opt to leave that school, the school is not closed and a corrective action will be put in place until the school is deemed not dangerous.

Chairman Kelsch : Potentially it could happen in a small school.

Rep. Mueller : Conflict if in the fact that's not voluntary, but forced to go to another because it is unsafe.

Chairman Kelsch : traditionally open enrollment is voluntary- parent/student decision.

Involuntary open enrollment in this bill is if parent/child want to go to another district, while the school is under probation until it comes out of notice and must comply before the child can return.

Rep. Hawken: Why are these two things together?

Matzke: The tie between this is the need for the student to be able to open enroll at any time and right now a safety issue could hinder this immediate move.

Chairman Kelsch Linda could we have just taken the cap off of the open enrollment?

Matzke: Chairman Kelsch the timeline is also an issue and the cap is an issue.

Chairman Kelsch If we could remove the cap and put in requirement that if they were under AYP they could open enroll at any time.

Matzke: That would mean that the letter of the law doesn't agree with itself. This is the emotion that it showing up.

Rep. Haas (To Johnson) : Is there a difference in how we perceive Title I students and compared to non Title I student?

Page 7
House Education Committee
Bill/Resolution Number HB1086
Hearing Date January 13, 2003

Johnson: There is no difference on how you treat a Title I child/no title I child in a Title I building. Now Title I buildings not receiving title I funds can not be placed in AYP and can not go through the sanctions. So there maybe differences from school to school. But in a title I building there is not difference on how the children are treated.

Rep. Haas So if a school building within a district that not eligible for Title I funds, then AYP apply to that school?

(670) Johnson: yes it does, but the law requires that we have a single accountability system that all schools and districts be held accountable to. All schools and districts every will get an AYP report, but if that building doesn't receive Title I funds that's where it ends. It is recorded to the patrons and the community that the school does not meet the criteria.

Rep. Haas : If we have a school building that does not receive a report of AYP and no title I fund, we do not have to provide open enrollment options for those students/parents. Is this correct

Johnson: Yes Federal law does not require us to .

Chairman Kelsch :They may be a failing school, however they are not a title I schools so that they don't have to go on the AYP. So the Q. is how many schools do we have that are not Title I schools.

Johnson: 300 buildings that are title I and 170 that are not

Chairman Kelsch How many High Schools is that?

Johnson: That number is very small on high school that participate on Title I.

(839) Rep. Meier I f 20 % cap is lifted for schools, then who would receive the acceptance of the kids into the districts would that be up to the school board?

Page 8

House Education Committee
Bill/Resolution Number HB1086
Hearing Date January 13, 2003

Johnson: Not sure of open enrollment requirements, the receiving district has a process that they can go through to receive or reject a student.

Rep. Norland: There are some districts who can be self sufficient without federal funds, does that leave them out of NCLB.

Johnson: They are still held accountable to the state's accountability system, they will still get an AYP report that would be disseminated to the people in that area.

Vice Chair Johnson: 21 schools that are identified as failing are they minority school, how are you joint to deal with these schools and the schools that are just starting?

Johnson: Unfortunately everyone wasn't given a clean slate, but the schools that are in year four, this year is a holding pattern for them and everything will be based on this July AYP report. If they do not make AYP on July submission they go into year five.

Rep. Haas: Elects not to accept title I money will that sacrifice all my other federal moneys?

Johnson: not necessarily, if they say we don't want to participate in NCLB then yes, but if they say they don't want title I moneys then no.

(1153) Chairman Kelsch: Would they receive the highly qualified teachers moneys?

Johnson: Probably not.

Chairman Kelsch: I'm not in total agreement with Lori, because I do think you would loose federal funds.

Johnson: I specifically asked this question in Chicago the end of October when we met at the US Department of Ed regionally sponsored meeting. I informed them that many school districts in ND receive little funds, as low as \$5,000. I specifically asked. If they choose not to accept the

Page 9
House Education Committee
Bill/Resolution Number HB1086
Hearing Date January 13, 2003

Title I funds, is that acceptable, does that mean they are held to the system and they don't go through the sanctions. They still get the other funds and that was their interpretation.

OPPOSITION

(1320) Dean Bard, registered lobbyist for ND Small Organized Schools

When I first looked HB1086, I concluded rather quickly that I was concerned about what it might do. But after hearing the testimony here today, I am much more concerned about the effects of this legislation might be. Because I seen some things in here that I didn't see earlier. First, just as a general rule I think it is bad legislation to put a word in quotes in a bill, which means that it is a term of art and subject to definition someplace. With no definition established first.

Second, the matter of open enrollment is threaded through here and it is not clear, read page 1 line 21/22 about the admitting school district must approve or deny the application. Apparently they can refuse the student coming in. But yet over on page 2 line 4, an enrollment made under this section may not be denied based upon the limits imposed in section 15.1-31-02. There is a conflict there.

The observation made to remove the cap on open enrollment made by you, Chairman Kelsch, at first blush that sounded like a good idea but there are concerns about that also. That the limitations that are in the open enrollment law now are among other things designed to let school districts know in advance what kind of enrollment they are going to have, what kind of teachers they are going to have to hire to service the things that those children need. That's why we have the limitations now. I'd be real careful about removing that, those caps are for a reason.

(1735) Bev Nielson, Executive Director for the ND School Boards Association

Page 10
House Education Committee
Bill/Resolution Number HB1086
Hearing Date January 13, 2003

It is difficult to say that you are in opposition for requirement that the federal law has put on us.

So you are the wrong group people to be talking to.

The tuition issue: right now in open enrollment when students, foundation aid follows the student. In this bill foundation aid follows the student plus the local district has to pay tuition.

The federal bill doesn't require transportation. Now there is nothing that says the student has to open enroll into the closest non identified school. So a student from a failing school in the Southwest could go to Fargo. That district would have to pay the full cost of education plus transportation.

When we talked about whether a school decides that they wont accept the Title money and then are they still required to comply with the sanctions. The answer was no. My question is that parting from the federal law, if this becomes state law, there is nothing in here that says NCLB takes it. These become state sanctions. We may need a legal opinion on this.

(1983) Bad thing that I like to talk about are the deadlines that are in the current open enrollment. the February deadline for application. That wasn't just pulled out of the air, that is for a reason, for planning and staffing purposes. If you don't find out until July that you now in the portion of your sanctions where you can pick any school in the state and have all your education and transportation costs paid for, we now have passed by several months the non-renewal deadline for teachers which is April 15.

Chairman Kelsch What is your answer then, do you have another choice for us as far as what we are going to do for schools that are under program improvement? Do you have another solution for this bill?

Page 11
House Education Committee
Bill/Resolution Number HB1086
Hearing Date January 13, 2003

Nielson: 1) I wouldn't require any more that you have to. Under open enrollment now
Foundation aid moneys follow the child.

Chairman Kelsch Fine, I still have a problem with that because I don't understand why the
money doesn't go with the child totally.

Nielson: If x number of students leave but you still have 3-4 students in that class, you still have
the expense of that teacher. So it is an issue. If tuition has to be paid as well as losing your
Foundation Aid, it makes it very difficult to continue to educate the students that are still there.
The time lines, this could be a federal issue as well as a State issue, But if we can't identify a
school as not failing and under sanctions before our non-renewal deadlines for our employment
contracts. It a problem.

Chairman Kelsch I was told under the federal law that a child and parent had the choice during
any time of that school year. They are given that choice option.

Nielson: I don't disagree. But I think if we identified the schools as being under sanction, in the
February/ March area before the non-renewal deadlines and filing practices for the next year.

Chairman Kelsch Where have the heads been during this planning?

Nielson: No one asked us.

Close the hearing (2520)

2003 HOUSE STANDING COMMITTEE MINUTES
BILL/RESOLUTION NO. HB 1086

House Education Committee

☐ Conference Committee

Hearing Date February 11, 2003

Tape Number	Side A	Side B	Meter #
1	x		100-2260
Committee Clerk Signature <i>Linda Giechtraw</i>			

Minutes: **Chairman Kelsch** opened HB 1086

Chairman Kelsch recapped the bill, reviewed the amendments proposed, Tom Decker amendments in testimony.

Rep. Haas moved the amendment, **Rep. Meler** seconded the motion

discussion: voice vote passed.

Rep. Hanson Is this the one that removes the 20%

Chairman Kelsch No this is the one basically allows for the parent to make that choice if they are in a school needing improvement that they can move to another school any time during the year. It is a little bit different than our normal open enrollment. But this is the choice part of NCLB if your current school needs improvement.

Rep. Herbel I didn't get in on the testimony when that was given, I have a couple of questions. First of all, if these people choose to open enroll to a different school, because the school has not met the improvements requirements, is there a limit to how far those students can go, in which that school district would be responsible for paying transportation.

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Date

Page 2
House Education Committee
Bill/Resolution Number HB1086
Hearing Date February 11, 2003

Chairman Kelsch This one 'apply to at any time during the school year..' The problem is we didn't know how to say 'closest school district to you, which is qualified' however the purpose behind this is to give that choice to the parents to send their child wherever they want to go. The chances of them sending from Grafton to Fargo, are slim to none, because they aren't going to send them that far away unless they are moving too. **Rep. Haas** Unless they are a hockey player **Rep. Herbel** One of the school board members called me, I told him I thought they could go anywhere they wanted to. He was very concerned about that. I can See Attached Testimony open enrolling to the closest qualified school. But the fact that the school could be 100 miles away and that could be a burden on the school district.

Chairman Kelsch When another public school choice option isn't available within the district of residence. **Rep. Herbel** That won't work, because most districts only have one.

Rep. Sitte Page 2 line 4, "may not be denied"

Chairman Kelsch That is the code relating to (02) the 20% cap.

Rep. Haas I have it right here, 02 is the grounds for denial. Says: Accept as provided in Section 15.1-31-04 'the board of a school district.....previous school year' that is the 20% cap.

Chairman Kelsch You could not deny them based on the 20%, you would have to take them

Chairman Kelsch Bev Nielsen is that a concern

Nielson: I brought that up in testimony, because in National literature some of the kids are going all different directions and they are going far distances and the schools of residence have to pay the transportation costs for wherever they go to.

Rep. Sitte She testified in my notes that this bill goes further than the Federal want us to really go. It required Foundation Aid plus tuition which hurts an already failing district. And it could

Page 3
House Education Committee
Bill/Resolution Number HB1086
Hearing Date February 11, 2003

require transportation and possible housing.

Chairman Kelsch Page 2, line 9 we can amend out 'and transportation' The school district residence is responsible for costs of providing a needed education of the student. and delete transportation. And then on Page 1, When another public school choice option is not available within the district of residence, a parent of a student within ...ND school district."

Rep. Herbel use on line 9, add to the end of the line " to the nearest qualified approved school"

Chairman Kelsch Not necessarily, because they are saying that the agreement must provide. I think where you are laying out, front page, what choices they have, that is where you should say they go to the closest school district. **Rep. Herbel** What language do you suggest for there

Chairman Kelsch On line 18 may apply to enroll the student "in the closest non-state identified ND school district". The problem with doing it like that is we are not giving them a total choice, however they are at least able to open enroll out.

Rep. Mueller put in a qualification and said 'one of the three' closest approved schools.

Rep. Herbel I know how enthusiastic my hockey people are in Grafton and they would consider open enrolling very quickly into Grand Forks for a good hockey team

Chairman Kelsch The other thing is that would take care of the transportation part of it, I think it is included in there. If we do the closest three schools. Will say then : may apply to enroll the student in 'any one of the three closest' and then add 's' to districts.

Discussion on page 1 line 17, to replace of with whose child is

Passed by voice vote.

Rep. Haas moved a DO PASS as amended (3 of them), **Rep. Williams** second the motion

Roll call, passed 9-3-2, **Chairman Kelsch** will carry the bill to the floor.

2003 HOUSE STANDING COMMITTEE MINUTES
BILL/RESOLUTION NO. HB 1086
House Education Committee

☐ Conference Committee

Hearing Date February 18, 2003

Tape Number	Side A	Side B	Meter #
1	x		00-600
Committee Clerk Signature <i>Linda Fiechter</i>			

Minutes: Chairman Kelsch opened HB 1086

Rep. Hanson moved to reconsider, Rep. Meier seconded, voice vote passed.

Chairman Kelsch : LEGISLATIVE COUNCIL 38228.0201 reviewed new amendment.

If you remember we amended this bill so that you could open enroll to three closest districts to you. The way the amendment came in, the perception of what we wanted was not clear. So I took it up to Anita at Legislative Council, we need to make the changes to this document to clean it up, we wanted to say the three closest districts, we didn't want it to be the hockey player situation. She read over the bill and said this bill was poorly written. So basically what we have is a hog house amendment to clean this bill up and make it clearer. It does the same thing and it is written a lot clearer. What she said is the fact that it would be 'contiguous' district. She felt that it was cleaner, and most school districts have contiguous districts around them. At least 2 if not three around them. By doing the three closest you could run into problems. Then 'state identified school' sounded like the Grafton State School, instead of a school marked for improvement.

Yalosta Rickford
Operator's Signature

10/2/03
Date

Page 2

House Education Committee
Bill/Resolution Number HB1086
Hearing Date February 18, 2003

Rep. Hanson They have to be a joining.

Chairman Kelsch Right, contiguous.

Rep. Hanson What happens if a student from school A to school B is about 100 miles down the road and live with a uncle?

Chairman Kelsch you could open enroll to the school, and then you would have to pay your transportation. If they chose a contiguous school the cost of education plus transportation would be paid, which is the way it is laid out in NCLB.

Rep. Mueller Then they wouldn't receive the tuition.

Chairman Kelsch Right just the cost of education, no tuition no transportation, just like the normal open enrollment laws.

Chairman Kelsch Anita just felt that the safety circumstance was also cleaner.

Rep. Hawken: Everything that the state board of education deals with is with contiguous school districts. That is how it is and this stays in line with everything we have and how we operate.

Rep. Hunsaker Three closest school districts, is that still involved.

Chairman Kelsch: No, it is now contiguous.

Rep. Sittler I had added before the 1b2, language, do we want to add that.

Chairman Kelsch no we will add that to the one coming from the Senate, because it fits over there better.

Rep. Hanson moved the amendments, Rep. Haas seconded the motion.

Rep. Mueller moved a DO PASS as amended, Rep. Hanson seconded the motion.

Roll vote, passed 14-0-0, Rep Hawken will carry the bill.

38228.0101
Title.0200

Adopted by the Education Committee
February 11, 2003

VK
2/11/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1086 HEDU 2-12-03

Page 1, line 14, after "improvement" insert "for the sixth consecutive year"

Page 1, line 16, replace "the district" with "any one of the three closest districts"

Page 1, line 17, replace "of" with "whose child is"

Page 1, line 22, after "application" insert "as provided in section 15.1-31-06"

Renumber accordingly

Page No. 1

38228.0101

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Date

10/2/03

Date: 2/11/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1086

House HOUSE EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Decker
Amendments
as read.

Action Taken

Motion Made By

Haas

Seconded By

Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch					
Rep. Johnson					
Rep. Nelson					
Rep. Haas					
Rep. Hawken					
Rep. Herbel					
Rep. Meier					
Rep. Norland					
Rep. Sitte					
Rep. Hanson					
Rep. Hunsakor					
Rep. Mueller					
Rep. Solberg					
Rep. Williams					

Total (Yes)

No

Absent

Floor Assignment

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

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Valosta Rickford

Date

10/2/03

48
Date: 2/11/03
Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1086

House HOUSE EDUCATION

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

2nd amendment

pg 1 line 18
Action Taken

'anyone of the three closest'

As amended

Motion Made By

Seconded by

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch					
Rep. Johnson					
Rep. Nelson					
Rep. Haas					
Rep. Hawken					
Rep. Herbel					
Rep. Meier					
Rep. Norland					
Rep. Sitte					
Rep. Hanson					
Rep. Hunsakor					
Rep. Mueller					
Rep. Solberg					
Rep. Williams					

Total (Yes)

No

Absent

Floor Assignment

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

Herbel
1900 3rd amendment / passed
voice vote

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Yolanda Rickford

Date

10/2/03

Date: 9/11/03
Roll Call Vote #: 3

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1086

House HOUSE EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO Pass as amended (3)

Motion Made By Herbel Seconded By Williams

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓				
Rep. Johnson	AB				
Rep. Nelson	AB				
Rep. Haas	✓				
Rep. Hawken	✓				
Rep. Herbel	✓				
Rep. Meier	✓				
Rep. Norland	✓	✓			
Rep. Sitte		✓			
Rep. Hanson	✓				
Rep. Hunsakor	✓				
Rep. Mueller	✓				
Rep. Solberg		✓			
Rep. Williams	✓				

Total (Yes) 9 No 3

Absent 2

Floor Assignment Kelsch

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

REPORT OF STANDING COMMITTEE (410)
February 12, 2003 8:15 a.m.

Module No: HR-27-2350
Carrier: R. Kelsch
Insert LC: 38228.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1086: Education Committee (Rep. R. Kelsch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (9 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING). HB 1086 was placed on the Sixth order on the calendar.

Page 1, line 14, after "improvement" insert "for the sixth consecutive year"

Page 1, line 16, replace "the district" with "any one of the three closest districts"

Page 1, line 17, replace "of" with "whose child is"

Page 1, line 22, after "application" insert "as provided in section 15.1-31-06"

Renumber accordingly

4
Date: 8/15/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1086

House HOUSE EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Reconsider

Action Taken

Motion Made By

Hanson

Seconded By

Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	/				
Rep. Johnson					
Rep. Nelson					
Rep. Haas					
Rep. Hawken					
Rep. Herbel					
Rep. Meier					
Rep. Norland					
Rep. Sitte					
Rep. Hanson					
Rep. Hunsakor					
Rep. Mueller					
Rep. Solberg					
Rep. Williams					

Total (Yes) _____

passed No _____

Absent _____

Floor Assignment _____

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

38228.0201
Title.0300

Prepared by the Legislative Council staff for
Representative R. Kelsch
February 17, 2003

JK
2-18-03

HOUSE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1086 EDU 2-18-03

Page 1, line 6, replace "Students in state-identified schools or in a safety circumstance"
with "Transfer of students - Responsibility of district of residence"

Page 1, line 7, remove "- Exception - Definitions"

Page 1, replace lines 8 through 23 with:

- "1. Notwithstanding the provisions of chapter 15.1-31, a student's parent may apply to a contiguous school district for admission of the student at any time during the school year if:
 - a. The student was a victim of violence occurring within the school in which the student was enrolled and the violence was documented;
 - b. The superintendent of public instruction has declared the school in which the student was enrolled to be an unsafe school; or
 - c. The superintendent of public instruction has identified the school in which the student was enrolled as one that requires program improvement.
2. The school district receiving an application under subsection 1 shall review the application to ensure compliance with the provisions of subsection 1 and shall notify the student's parent and the student's school district of residence of the arrangements for the student's transfer within five days from the date the application was received.
3. The student's school district of residence shall consider the student transferred as of the date of enrollment by the admitting district.
4. Upon transfer of a student under this section, the board of the admitting district and the board of the student's school district of residence shall enter into a tuition agreement. The student's school district of residence shall reimburse the admitting district for all costs incurred by the admitting district in providing education for the student.
5. The student's school district of residence shall transport the student to school in the admitting district or shall reimburse the admitting district for all costs incurred in transporting the student or providing for the transportation of the student to school in the admitting district.
6. The provisions of this section are applicable to a student until the conclusion of the school year in which the superintendent of public instruction declares that the school in the student's district of residence is no longer an unsafe school or that the school no longer requires program improvement."

HOUSE AMENDMENTS TO ENGROSSED HB 1086

EDU 2-18-03

Page 2, remove lines 1 through 16

Renumber accordingly

Page No. 1

38228.0201

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Valosta Rickford
Operator's Signature

10/2/03
Date

Date: 2/18/03
Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1086

House HOUSE EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number LC 38228.0201

Action Taken _____

Motion Made By Hanson Seconded By Haas

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch					
Rep. Johnson					
Rep. Nelson					
Rep. Haas					
Rep. Hawken					
Rep. Herbel					
Rep. Meier					
Rep. Norland					
Rep. Sitte					
Rep. Hanson					
Rep. Hunsakor					
Rep. Mueller					
Rep. Solberg					
Rep. Williams					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Yolanda Rickford
Operator's Signature

10/2/03
Date

64

Date: 2/18/03
Roll Call Vote #: 3

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1086

House HOUSE EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38 228.0201

Action Taken Do Pass as amended

Motion Made By Mueller Seconded By Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓				
Rep. Johnson	✓				
Rep. Nelson	✓				
Rep. Haas	✓				
Rep. Hawken	✓				
Rep. Herbel	✓				
Rep. Meier	✓				
Rep. Norland	✓				
Rep. Sitte	✓				
Rep. Hanson	✓				
Rep. Hunsakor	✓				
Rep. Mueller	✓				
Rep. Solberg	✓				
Rep. Williams	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Kelsch, Hawken

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

Yolanda Rickford 10/2/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
February 18, 2003 12:47 p.m.

Module No: HR-31-3079
Carrier: Hawken
Insert LC: 38228.0201 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1086, as engrossed: Education Committee (Rep. R. Kelsch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1086 was placed on the Sixth order on the calendar.

Page 1, line 6, replace "Students in state-identified schools or in a safety circumstance" with "Transfer of students - Responsibility of district of residence"

Page 1, line 7, remove "- Exception - Definitions"

Page 1, replace lines 8 through 23 with:

- "1. Notwithstanding the provisions of chapter 15.1-31, a student's parent may apply to a contiguous school district for admission of the student at any time during the school year if:
 - a. The student was a victim of violence occurring within the school in which the student was enrolled and the violence was documented;
 - b. The superintendent of public instruction has declared the school in which the student was enrolled to be an unsafe school; or
 - c. The superintendent of public instruction has identified the school in which the student was enrolled as one that requires program improvement.
2. The school district receiving an application under subsection 1 shall review the application to ensure compliance with the provisions of subsection 1 and shall notify the student's parent and the student's school district of residence of the arrangements for the student's transfer within five days from the date the application was received.
3. The student's school district of residence shall consider the student transferred as of the date of enrollment by the admitting district.
4. Upon transfer of a student under this section, the board of the admitting district and the board of the student's school district of residence shall enter into a tuition agreement. The student's school district of residence shall reimburse the admitting district for all costs incurred by the admitting district in providing education for the student.
5. The student's school district of residence shall transport the student to school in the admitting district or shall reimburse the admitting district for all costs incurred in transporting the student or providing for the transportation of the student to school in the admitting district.
6. The provisions of this section are applicable to a student until the conclusion of the school year in which the superintendent of public instruction declares that the school in the student's district of residence is no longer an unsafe school or that the school no longer requires program improvement."

Page 2, remove lines 1 through 16

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

HR-31-3079

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Operator's Signature

Halosta Rickford

10/2/03
Date

2003 SENATE EDUCATION

HB 1086

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Yolanda Rickford
Operator's Signature

10/2/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. Engrossed HB 1086

Senate Education Committee

☐ Conference Committee

Hearing Date 3-12-03

Tape Number	Side A	Side B	Meter #
1	x		0 - 52.9
Committee Clerk Signature <i>Linda Johnson</i>			

Minutes: CHAIRMAN FREBORG called the committee to order. Roll Call was taken with all (6) members present.

CHAIRMAN FREBORG opened the hearing on Eng. HB 1086 which relates to open enrollment and the transfer of students from certain schools.

Testimony in support of Eng. HB 1086:

TOM DECKER, DPI, presented prepared testimony in support of the bill. (see attached). In his testimony he proposes an amendment.

LINDA JOHNSON, DPI, presented prepared testimony in support of the bill. (see attached)

Attached to her testimony is a draft of the proposed UNSAFE SCHOOL CHOICE OPTION policy that DPI is considering.

LAURIE MATZKE, DPI, presented prepared testimony in support of the bill. (see attached)

Attached to her testimony is a chart listing the Year 1 through Year 7 consequences for NOT making AYP (Adequate Yearly Progress).

Page 2

Senate Education Committee

Bill/Resolution Number Eng. HB 1086

Hearing Date 3-12-03

SENATOR COOK asked about governance. Is it a DPI plan for governance to use Rules or Legislation. MS. MATZKE replied through DPI, no intent to go through the rules process.

SENATOR COOK asked if the only governance change in requirements is going to be the open enrollment plan. MS. MATZKE stated that ND law does not allow for alternative governance.

Discussion on the chart attached to Ms. Matzke's testimony. SENATOR COOK asked and what if ND doesn't comply with NCLB because ND law doesn't allow it, would funds be withheld.

MS. MATZKE stated there is that possibility, but they have been told that if there is a good faith effort put forth by the state, they will work with the state and come up with a plan acceptable to all involved. Withholding of funds is the end of the line.

SENATOR FLAKOLL has a concern with the 6 year time frame that a school can be judged to be in need of improvement to comply with adequate yearly progress (AYP). He thinks 6 years is a long time for a student to have to be in a "bad" school. MS. MATZKE replied that we are now in year three and in some cases, year four.

SENATOR FLAKOLL would be interested in how this bill interfaces with HB 1361. TOM DECKER replied both bills are addressing very specific circumstances. SENATOR FLAKOLL asked who will bear the transportation costs for students. MR. DECKER stated the reimbursement goes to whomever owns the bus.

SENATOR LEE stated he is not clear as to the receiving school and if they have to accept a student. MR. DECKER stated they don't have to accept the student under current law on open enrollment, but it isn't very clear in this legislation.

SENATOR CHRISTENSON asked if federal law supersedes state law. MR. DECKER stated that DPI is working on a plan to show how North Dakota complies with NCLB.

Page 3

Senate Education Committee

Bill/Resolution Number Eng. HB 1086

Hearing Date 3-12-03

SENATOR COOK asked about transportation. Shall the district of residence either transport the student or pay the costs to transport and who decides which way the costs are to be paid. MR. DECKER stated the decision should be made between the two districts. He gave the options within current statute on transporting students.

LAURIE MATZKE stated that 5% of Title I funds are to be held for transportation costs only.

She stated to SENATOR COOK that the school of residence would be the one to use their funds.

SENATOR COOK asked how the legislature can know what the schools will be faced with in the future as to NCLB and how can they set policy. MS. MATZKE feels NCLB is clear and DPI is working through it to make it compatible to ND. SENATOR COOK asked if DPI can refuse to accept the option the school chooses to use to comply with AYP. MS. MATZKE stated they could, but doesn't see that happening.

SENATOR FLAKOLL asked about the violence in Section a, if it could be at an extra curricular event. LINDA JOHNSON replied yes. More discussion from members.

BEV NIELSON, ND School Boards Assn., stated several concerns she has with the bill. She presented testimony (see attached) stating an amendment that line 15 should have "for six consecutive years" added. She felt in line 8 there needs to be a clarification on "contiguous school districts". She would like it to read contiguous non-identified school district.

Transportation costs were discussed as were the committee's concerns on the violence portion, assaults, harassment, etc. The committee is concerned with harassment which would not result in battery and if the consequences are the same.

SENATOR COOK asked MR. DECKER to respond to the questions: 1. what happens in regard to NCLB if HB 1086 is not passed, and 2. what happens if HB 1086 passes without section 5.

Page 4
Senate Education Committee
Bill/Resolution Number Eng. HB 1086
Hearing Date 3-12-03

There was no opposition to HB 1086:

The hearing was closed on HB 1086.

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Valista Rickford
Operator's Signature

10/2/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. Engrossed HB 1086

Senate Education Committee

☐ Conference Committee

Hearing Date 3-18-03

Tape Number	Side A	Side B	Meter #
2		x	0 - 10.3
Committee Clerk Signature <i>Alexia Johnson</i>			

Minutes: CHAIRMAN FREBORG called the committee to order with all members present.

SENATOR COOK presented testimony from TOM DECKER, in answer to the questions that were asked about this bill. (see attached) especially what would happen if we removed Section 5. There were questions on who is to transport the students and which funds will pay for the transportation.

SENATOR FREBORG asked who has the Title I funds. SENATOR COOK stated they come from DPI to the district.. He wants the 5% of Title I funds that are to be used for transportation of students used for that and that it should not be a general fund transportation cost.

SENATOR CHRISTENSON asked if the legislative intent "of all costs" would make it so a district could not wiggle out of it, the transportation costs for students.

SENATOR FREBORG asked if the verbage, "in providing education for the student", include transportation for the education.

Page 2

Senate Education Committee

Bill/Resolution Number Eng. HB 1086

Hearing Date 3-18-03

SENATOR FREBORG stated no district has to transport students. He wonders if this only required the district of residence to reimburse the admitting district in providing education, which would not include transportation.

SENATOR COOK stated the legislature needs to find a solution to the anticipated problem of transportation. We now have students open enrolling to a district for no other reason than to go there.

Committee Adjourned

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Operator's Signature

Yolanda Rickford

Date

10/2/03

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. Enrossed HB 1086

Senate Education Committee

☐ Conference Committee

Hearing Date 3-24-03

Tape Number	Side A	Side B	Meter #
2	x		34.6 - end
2		x	0 - 1.3
Committee Clerk Signature <i>Andrew Johnson</i>			

Minutes: CHAIRMAN FREBORG called the committee to order with all members present.

SENATOR COOK moved the amendment, "page 1, line 15, after improve, add for six consecutive years" and "remove subsection 5".

Seconded by SENATOR FLAKOLL.

SENATOR COOK wants the district to pursue the dollars that are available from Title I funds.

His concern is that if school transportation costs are incurred because of the conditions met in this bill, he would like to have them paid for with the 5% of Title I funds that are available for that, and that they are not paid for with the \$36 million from the general funds appropriation that is put into school transportation. That is why he would remove subsection 5.

SENATOR FREBORG asked which district will transport the student if we remove subsection 5.

TOM DECKER, DPI, said that either district could still transport the student but neither district would have to since there is no requirement to transport students. Instead of removing

Page 2
Senate Education Committee
Bill/Resolution Number Eng. HB 1086
Hearing Date 3-24-03

subsection 5, why not add language at the end of subsection 5, page 2, line 7, after district, "not to be reimbursed through state transportation funds".

SENATOR COOK moved to withdraw his motion. **SENATOR FLAKOLL** withdrew his second.

SENATOR COOK moved to amend the bill by "page 1, line 15, after improve, add for six consecutive years" and "page 2, line 7, after district, add are not to be reimbursed through state transportation funds". Seconded by **SENATOR FLAKOLL**.

SENATOR TAYLOR, asked about students in a district, the schools may transport, and in this bill, when students are going to another district, it says shall transport. Is there any difficulty with this. **SENATOR FREBORG** stated that schools may transport. However, within a district, if you transport one student, you have to offer transportation to all students.

TOM DECKER, stated that with this bill, the transfer to another school is not voluntary on the part of the student, therefore transportation will be provided. Either district can transport, but the district of residence pays the cost..

More discussion on open enrolled students and the transportation involved.

Roll Call Vote: 6 YES.. 0 NO. 0 Absent. Amendment Adopted.

SENATOR COOK moved a **DO PASS AS AMENDED**. Seconded by **SENATOR CHRISTENSON**.

SENATOR COOK asked if this is required because of NCLB and referred to Mr. Decker's response to questions on HB 1086. (see attached)

Page 3
Senate Education Committee
Bill/Resolution Number Eng. HB 1086
Hearing Date 3-24-03

MR. DECKER said DPI feels this will increase their chances for their plan to be approved.

Roll Call Vote: 6 YES. 0 NO. 0 Absent. Motion Carried.

Carrier: SENATOR COOK.

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Yalosta Rickford
Operator's Signature

10/2/03
Date

38228.0301
Title.0400

Adopted by the Education Committee
March 24, 2003

[Signature]
3-24-03

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1086

Page 1, line 15, after "improvement" insert "for six consecutive years"

Page 2, line 7, after the period insert "These transportation costs are not reimbursable through state transportation funds."

Renumber accordingly

Page No. 1

38228.0301

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[Signature]
Operator's Signature

10/2/03
Date

Date: 3/24/03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. Eng HB 1086

Senate EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken moved amendments

Motion Made By Sen. Cook Seconded By Sen. Flakoll

Senators	Yes	No	Senators	Yes	No
LAYTON FREBORG, CHAIR.	✓		LINDA CHRISTENSON	✓	
GARY A. LEE, V. CHAIR.	✓		RYAN M. TAYLOR	✓	
DWIGHT COOK	✓				
TIM FLAKOLL	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

add "for 6 consecutive years" line 15, page 1
add "not reimbursed thru state transportation funds"
line 7, pg 2
amendments adopted

Valista Rickford
Operator's Signature

10/2/03
Date

Date: 3/24/03

Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate EDUCATION

☐ Check here for Conference Committee**Legislative Council Amendment Number**

Action Taken

Motion Made By[illegible]**Total (Yes)**

Absent

Floor Assignment

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

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Operator's Signature Yalosta Rickford

10/2/03
Date

REPORT OF STANDING COMMITTEE (410)
March 25, 2003 8:33 a.m.

Module No: SR-53-5623
Carrier: Cook
Insert LC: 38228.0301 Title: .0400

REPORT OF STANDING COMMITTEE
HB 1086, as reengrossed: Education Committee (Sen. Freborg, Chairman) recommends
AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1086 was
placed on the Sixth order on the calendar.

Page 1, line 15, after "Improvement" insert "for six consecutive years"

Page 2, line 7, after the period insert "These transportation costs are not reimbursable through
state transportation funds."

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

SR-53-5623

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Valosta Rickford
Operator's Signature

10/2/03
Date

2003 HOUSE EDUCATION
CONFERENCE COMMITTEE

HB 1086

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Valista Rickford
Operator's Signature

10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES
BILL/RESOLUTION NO. HB 1086
House Education Committee

☐ Conference Committee

Hearing Date April 9, 2003

Tape Number	Side A	Side B	Meter #
1	x		00-415
Committee Clerk Signature <i>Linda Giechtr</i>			

Rep. Haas called the conference meeting to order, roll was taken.

Rep. Haas, Rep. Johnson, Rep. Mueller, Sen. Cook, Sen. Lee, Sen. Taylor, all present.

Rep. Haas reviewed the bill.

Rep. Johnson: explained conversations with Department of Public Instruction. That Title I money can be used for transportation for open enrolled students who leave do to failing school.

We probably won't have any over the next two years and can review this next session.

Rep. Mueller six years have to pass before we have an issue on this.

Sen. Cook: issue of block grants on transportation will change this whole issue.

Rep. Johnson moved to have the House accede to the Senate amendments, seconded by

Rep. Mueller. Roll vote: 6-0-0 passed.

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Yolanda Rickford
Operator's Signature

10/2/03
Date

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420

07398

(Bill Number) HB 1086 (, as (re)engrossed):

Your Conference Committee

For the Senate:

Sen Cook P Y N
Sen Lee P ✓
Sen Taylor P ✓

For the House:

Rep Haas P Y N
Rep Johnson P ✓
Rep Mueller P ✓

☐ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
the (Senate/House) amendments on (SJ/HJ) page(s) 1171 -

☐ and place HB 1086 on the Seventh order.

☐ , adopt (further) amendments as follows, and place
_____ on the Seventh order:

☐ having been unable to agree, recommends that the committee be discharged
and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the
calendar.

DATE: 4/9/03

CARRIER: Rep Haas

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

Rep Johnson moves, Mueller seconds
House accede to Senate Amendments

Yalissa Rickford
Operator's Signature

10/2/03
Date

REPORT OF CONFERENCE COMMITTEE (420)
April 10, 2003 8:43 a.m.

Module No: HR-65-7271

Insert LC: .

REPORT OF CONFERENCE COMMITTEE

HB 1066, as reengrossed: Your conference committee (Sens. Cook, G. Lee, Taylor and Reps. Haas, D. Johnson, Mueller) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ page 1171 and place HB 1066 on the Seventh order.

Reengrossed HB 1066 was placed on the Seventh order of business on the calendar.

(2) DESK, (2) COMM

Page No. 1

HR-65-7271

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Yalosta Rickford
Operator's Signature

10/2/03
Date

2003 TESTIMONY

HB 1086

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Yolanda Rickford
Operator's Signature

10/2/03
Date

**TESTIMONY ON HB 1086
HOUSE EDUCATION COMMITTEE**

January 13, 2003

by Tom Decker, Director of School Finance and Organization

328-2267

Department of Public Instruction

Madam Chairperson and members of the committee:

My name is Tom Decker and I am the Director of School Finance and Organization for the Department of Public Instruction. I am here to provide testimony in support of House Bill 1086.

House Bill 1086 is the first of a series of bills which education committees of this legislature will hear designed to facilitate North Dakota's compliance with No Child Left Behind. Before we proceed further with an overview or discussion of the bill I want to introduce two amendments. Copies of the amendments are attached to my testimony.

On line 14 of page one after "improvement" add to words for the sixth consecutive year.

On page one line 22 after the word "application" add the words as provided in section 15.1-31-06.

Chairperson Kelsch and members of the committee I will provide an overview of the bill and deal specifically with the aspects of the bill that relate to changing North Dakota's current open enrollment law.

Linda Johnson of our staff will talk to you in more detail about the definition of safety circumstances in line 9 and about a state identified school that is defined as an unsafe school as provided for in lines 11 through 13.

Lauri Matzke of our staff will talk to you more about schools identified for program improvement as identified in line 14.

UP

The purpose of House Bill 1086 is to provide a waiver to North Dakota's open enrollment statute for students who are attending schools that fit circumstances outlined in section 1 on lines 8 through 14 of page 1. The nature of the waiver proposed is to simply outline in section 1 no. 2a from lines 16 through 20.

"When another public school choice option is not available within the district of residence a parent of a student within a state identified school or in a safety circumstance may apply to enroll the student in a non-state identified North Dakota school district outside the district of residence at any time within a school year."

This waiver of open enrollment is being proposed at this time because the state of North Dakota must submit a compliance plan as required by the NCLB federal legislation by May of 2003. While some of the aspects of this waiver of open enrollment may not come into play for a number of years into the future we must have a plan to comply with the requirements now. No child left behind is federal legislation, which covers all states and all public schools in the nation. As you are aware there is some amount of difficulty in passing legislation, which fits all circumstances across this country equally well. One of the aspects of NCLB that has been widely discussed is the provision of the statute, which allows students to move from a school, which is failing to meet requirements to another public school within the district. However, North Dakota and many other rural states have circumstances in which there is no other public school within a district to which a parent may move their student under these circumstances. Approximately 180 of North Dakota's 220 school districts are single facility districts. That is their entire K-12 enrollment attends school in one facility, the only facility within the district. If the circumstances outlined in section 1, no 1 are present, the parent would have no option to exercise parental choice and place the student in a different school within the district. About 50% of North Dakota's public school enrollment attend school in districts where, for most grades, at least parents would have a choice of another public school within the district. There are, of course, more districts where choice of public schools exist for grades K-6 than for other grades. As you move through junior high and high school the number of districts that can provide a choice of public schools to attend continues to drop. At the high school level there are actually only three districts with multiple public high schools, Grand Forks, Fargo and Bismarck. Providing the waiver

proposed is an equity issue and a parental choice issue. Some North Dakota parents will have the opportunity to move their students out of the school that is identified as a safety concern or one that is failing to meet program requirements to another public school within the district. Many others will not. Their option for equity and parental choice can only be exercised if we provide a waiver through the open enrollment law that allows them to move their student to a school in another district.

We understand the potential difficulties for many of these parents in actually exercising their option to send their student to school in another district. In many places in North Dakota the distances may be nearly prohibitive. However, we feel it is essential that we provide a choice that guarantees equitable opportunity as we move forward with implementation of NCLB.

Therefore, as outlined in section 1 no 2a when a school falls into one of the definitions outlined in section 1 no. 1 parents could immediately access open enrollment to move their student to a school in another district. The school board of the admitting district the school to which the parent chooses to send their student would have the same options to accept or reject open enrolled students as currently provided under North Dakota's open enrollment law. That acceptance or rejection would be based on a district policy that outlines capacity in various grades and programs and their decision would have to be based on implementation of that policy. The school district of residence would have no choice in granting the open enrollment. That choice would be in the hands of students and their parents. The 20% cap which currently limits the number of open enrollments out of a given school during one year would be waived.

Finally, school districts accepting students under the provisions of this waiver would receive tuition payments from the district of residence. The resident district would be required to pay tuition as provided under North Dakota's tuition formula and to provide transportation or the cost of transportation. The payment structure for students with disabilities would follow the current open enrollment pattern under which resident district continues to be responsible for costs related to the student's disability. At any point at which the school district of residence no longer falls in the state identified school category

Yalosta Rickford
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10/2/03
Date

provisions of this section would no longer apply and the student would fall into the regular open enrollment provisions or have the option of returning to their district of residence. The tuition provisions of section 1 no. 2e of this bill on lines 6 through 11 are recognition of the fact that the students involved here did not choose to open enroll but find themselves for reasons beyond their control in circumstances where their district of residence is unable to provide them with a safe or quality education. Because this was not an open enrollment made by the student voluntarily it is appropriate that the district of residence pay tuition to the receiving district for the period of time that they are identified as meeting one of the criteria in section 1 no. 1 of this bill.

Chairperson Kelsch I suggest that we hear from the other two members of our staff regarding the definition of safety circumstances and the state identified school for purposes of this bill and then take questions.

PROPOSED AMENDMENT TO ENGROSSED HOUSE BILL NO. 1086

Page 1, line 14, after "improvement" insert "for the sixth consecutive year"

Page 1, line 22, after "application" insert "as provided in section 15.1-31-06"

Renumber accordingly

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Date

6

**TESTIMONY ON HB 1086
HOUSE EDUCATION COMMITTEE**

January 13, 2003

by Linda L. Johnson, Director of School Health Programs

(701) 328-4138

Department of Public Instruction

Madam Chair Kelsch and members of the committee:

My name is Linda Johnson and I am the Director of School Health Programs including Safe and Drug Free Schools for the Department of Public Instruction. I am here to speak in favor of HB 1086 and provide information regarding the school safety issues in this bill.

Under the No Child Left Behind (NCLB) legislation, "Each State must develop a policy which allows students who

- attend a persistently dangerous school or
- students who become victims of violent criminal offenses while in or on the grounds of a public school that they attend, to attend a safe public school within the local educational agency."

DPI, in consultation with a representative sample of local educational agencies, is responsible for establishing a definition for persistently dangerous schools in the State. The definition is based on "violent criminal offenses" as defined by North Dakota criminal code. The four major categories are murder, rape, robbery and assault. Currently a team of twenty principals and DPI staff are in the process of completing this definition. The latest draft is attached. It will be submitted to the US Department of Education for approval.

In 2003-2004, districts will collect this data and report to the DPI as a part of the Uniform Management Information and Report System. Data on firearm expulsions and other suspension and expulsion data for violent and drug related offenses will be collected.

In addition, when a student becomes a victim of violent crime while in or on the grounds of a public school, this student must be offered the opportunity to transfer.

The proposed exception to NDCC 15.1-31 will allow transferring outside the district whenever necessary, assuring all students receive equitable treatment. There is tension in the NCLB law for districts that only have one school. The Unsafe School Choice Option Guidance states, "All students attending a persistently dangerous school must be offered the opportunity to transfer." The same document states, "If there is not another safe school in the LEA for transferring students, LEAs are encouraged, but not required, to explore other appropriate options such as an agreement with a neighboring LEA to accept transfer students." Title V, Part A funds may be used to help cover costs such as tuition or transportation related to the expansion of public school costs.

We predict the numbers of students seeking these transfers will be small based on the following data: DPI has collected data on firearms in schools according to NDCC 15.1-19-10 since the 1995-1996 term. All districts currently report having a policy in place to expel or modify the expulsion for students bringing firearms to school. In seven years of data collection, the average expulsions in North Dakota is 1.57 expulsions per year, most of which were modified.

According to the ND Youth Risk Behavior Survey 1999 and 2001 students in North Dakota feel the safest in school of all the states and cities participating in the survey. Our students do, however, carry weapons to school at the national average rate.

Questions from YRBS	ND 1999	ND 2001	US
Felt too unsafe to go to school on 1 or more of the past 30 days	2.9%	3%	6.6%
Carried a weapon (knife, gun or club) on school property in the past 30 days	7.5%	6.4%	6.4%
Threatened or injured with a weapon on school property	8.0%	8.9%	8.9%
Engaged in a physical fight on school property in the past 12 months	10.0%	11.1%	12.5%

In conclusion, passage of HB 1086 will assure all students in North Dakota the equal opportunity to transfer to a safe school at any time of the year if circumstances dictate for a small but necessary number of students in unsafe circumstances.

North Dakota - DRAFT - (January 2, 2003)

UNSAFE SCHOOL CHOICE OPTION

Persistently Dangerous Schools

I. Introduction

The Unsafe School Choice Option (section 9532 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001, requires that each state receiving funds under the ESEA, establish and implement a statewide policy requiring that students attending a persistently dangerous public school, or students who become victims of a violent criminal offense while in or on the grounds of a public school that they attend, be allowed to attend a safe public school.

II. Identification of Persistently Dangerous Schools

With the input of school administrators throughout the state, the Department of Public Instruction (DPI) has adopted the following definition for North Dakota:

In the context of the No Child Left Behind Act of 2001 (ESEA), public elementary or secondary schools in North Dakota shall be considered to be persistently dangerous if two of the three conditions exist for 3 consecutive years:

- (a) A school has expelled 1% of the student population or 5 students (whichever is higher) for violent criminal offenses: (murder, rape, robbery, assault specific NDCC number will be inserted here).

OR

- (b) 3% or more percent of the student enrollment is exercising the Unsafe School Choice Option to transfer to another school because they have been victims of violent criminal offenses.

OR

- (c) Gun-Free Schools/weapons violation.

The North Dakota criminal code defines "violent crime" in Chapter 12.1-06.2, subsection 12.1-06.2-01(2):

"Crime of violence" means any violation of state law where a person purposely or knowingly causes or threatens to cause death or physical bodily injury to another person or persons.

Chapter 12.1-34, subsection 12.1-34-01 (3):

"Crime or violence" means any crime in which force, as defined by section 12.1-01-04, or threat of force was used against the victim.

"Force" means physical action.

The Department of Public Instruction is responsible for identifying persistently dangerous schools using the objective criteria contained within the definition.

Data will be collected using the on-line Suspension/Expulsion report submitted by each school site in June of each year. The on-line report captures the elements required by federal law. Training and technical assistance are available from the DPI to assist schools in completing the report correctly.

The U.S. Department of Education requires annual accounting from the DPI regarding the number of schools determined to have met the state's definition of persistently dangerous. (Individual schools will not be identified). The basis for the federal report will be the data drawn from the Suspension/Expulsion report.

The DPI is required to annually reassess a school determined to be persistently dangerous, using criteria contained in the definition and in II (c). The persistently designation will be removed when the school no longer qualifies under the state definition.

III. Providing a Safe Public School Choice Option

A local education agency (LEA) identified, as a persistently dangerous school must in a timely manner:

- (a) Notify parents of each student attending the school that the state has identified the school as persistently dangerous;
- (b) Offer all students the opportunity to transfer to a safe public school within the LEA. If there is not another school in the LEA, the LEA is encouraged, but not required, to explore other options such as an agreement with a neighboring LEA to accept transfer students;
- (c) For those students who accept the offer, complete the transfer.

In addition, an LEA must also:

- (d) Develop a corrective action plan; and
- (e) Implement the plan in timely manner.

Parental notification regarding the status of the school and the offer to transfer students may be made simultaneously.

Transfers

- LEA's should allow students to transfer to a school that is making adequate yearly progress and is not identified as being in need of school improvement, corrective action or restructuring.
- Transfers may be temporary or permanent, but must be in effect as long as the original school is identified as persistently dangerous.

- When there is not another school in the LEA for the transferring student, LEA's are encouraged, but not required, to explore other options such as an agreement with a neighboring LEA to accept the student(s).

IV. Timely Implementation

Dependent on the specific circumstances within the LEA, general notification to parents should be within ten school days from the time the LEA is notified by the DPI that the school has been identified as persistently dangerous.

Development of a corrective action plan and the offer to students to transfer should occur within twenty days from the time that the LEA is notified by the DPI that the school has been identified as persistently dangerous.

Transfers of students generally should occur within 30 school days.

V. Corrective Action

LEA's must submit a corrective action plan to the DPI for approval. The DPI will provide technical assistance and monitor the LEA's actions throughout the process.

Upon completion of the planned corrective action, the LEA must apply to the DPI to have the school removed from the list of persistently dangerous schools. The DPI will use the criteria contained in the definition of persistently dangerous schools and II (c) to determine whether the school should be removed the list.

VI. Students who have been victims of a violent criminal offense

LEA's must provide safe school options to a student who has been a victim of a violent criminal offense while in or on the grounds of a public school that the student attends:

- The LEA should, within ten days, offer an opportunity to transfer to a safe public school within the LEA.
- When another school is not available within the LEA, it is encouraged, but not required, that the LEA seek other appropriate options such as an agreement with a neighborhood LEA to accept the student.

The federal statute does not authorize resources specifically to help cover costs such as: transportation, to assist the transferring student. Under certain circumstances, other federal funds may be used, such as Title IV Part A, or Title V Part A.

Please contact the DPI Title IV – Safe and Drug Free Schools and Communities for additional information or guidance on this option.

G/Pat/Persistently Dangerous School. doc. (11-19-2002)

**TESTIMONY ON HB 1086
HOUSE EDUCATION COMMITTEE
January 13, 2003
By Laurie Matzke, Director of Title I
(701) 328-2284
Department of Public Instruction**

Madam Chair and Members of the Committee:

My name is Laurie Matzke and I am the Director of Title I for the Department of Public Instruction. I am here to speak in favor of HB 1086 which would allow open enrollment across district boundaries for students in schools that have been identified for Program Improvement for six consecutive years.

Federal law under the No Child Left Behind Act (NCLB), signed into law by President Bush on January 8, 2002, requires states to adopt a single, statewide accountability system for all Local Educational Agencies (LEAs) and public schools. Under this system, states set a definition of Adequate Yearly Progress (AYP) for holding all LEAs and schools accountable for educational progress. States must annually review the progress of each school and school district to determine whether they are making adequate yearly progress, and then publicize and disseminate the results of this review. Title I schools and districts that fail to make the state's definition of adequate yearly progress for two consecutive years must be identified as in need of improvement (which, in North Dakota, is referred to as "Program Improvement").

NCLB made significant changes to the Title I Program Improvement regulations. State assessment data from the 2001-2002 school year establishes the baseline data for the new Program Improvement process in the NCLB Act.

The North Dakota Department of Public Instruction (NDDPI) tentatively plans on releasing AYP reports for all LEAs and schools from the 2001-2002 state assessment data in February 2003. These reports will be the first AYP reports generated based on the criteria established in the NCLB Act. No new schools will be identified for Program Improvement when the February AYP reports are released, as this information is to be used as the baseline data for the first year of implementation for NCLB.

AYP reports will again be generated after North Dakota's students participate in the state assessment in March 2003. These reports are tentatively scheduled to be released by the NDDPI in July 2003. We anticipate that new schools will be identified for Program Improvement in July 2003.

The consequences for not making AYP, and subsequently being identified for Program Improvement, are clearly defined in the NCLB Act. Once identified, if schools continue to not make AYP, they must then go through a series of sanctions that increase in seriousness each year. Enclosed please find a chart which outlines this series of sanctions.

Schools that have not made AYP for six consecutive years are required to plan for "alternative governance." The menu of options outlined for year seven in the Program Improvement timeline are listed on the enclosed chart. None of the options listed are currently allowed in North Dakota state law. Therefore, North Dakota has been informed by the United States Department of Education (USDE) staff that our state must adopt a plan of what consequence(s) will occur for schools that have not made AYP for six consecutive years. We must outline these consequences in our state plan, which is due to the USDE in May 2003. The NDDPI has listed possible sanctions for year seven in North Dakota on the enclosed chart. HB 1086 would allow students who are attending a school that has been identified for Program Improvement for six consecutive years to open enroll to another school that has not been identified for Program Improvement.

The NCLB Act outlines the procedure for states to follow for schools that were already in Program Improvement on January 8, 2002 when this new Act became law. To prevent the clock from starting over for those schools already identified as failing under the previous law, NCLB requires these schools to start in the same category after its enactment. Therefore, for 21 of the schools in our state currently identified for Program Improvement, this plan for alternative governance is only two years away.

It is imperative that North Dakota take steps to define what happens to schools that have not made AYP for six consecutive years for two main reasons. First, as stated, North Dakota needs to submit this information to the USDE in our state plan due in May 2003. Secondly, for those 21 schools who are already in year four, they need to know what the consequences are if they continue to not make AYP so that they can plan ahead for the changes that will need to be made.

I and others from the Department would be happy to respond to any questions that you may have. Thank you.

DRAFT

Consequences for NOT Making Adequate Yearly Progress

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Fails AYP	Fails AYP	School must participate in "School Choice"	Continue: "School Choice" LEA - TA	Continue: "School Choice" LEA - TA "Supplemental Services"	Continue: "School Choice" LEA - TA "Supplemental Services" Corrective Action	Continue: "School Choice" LEA - TA "Supplemental Services" Corrective Action
Fails AYP	Identified for Program Improvement	LEA must give Technical Assistance (TA)	School must offer "Supplemental Services"	Corrective Action: Replace staff OR New curriculum OR New Management OR Extend Yr/Day OR Restructure	Plan for Alternative Governance	Alternative Governance: Charter OR Replace Staff OR Private Management OR State Control OR Other Fundamental Reform
	Within three months after identification, school is required to submit an Improvement Plan					In North Dakota Defer administrative funds to program improvement schools OR Offer signing bonus or merit pay to retain exemplary staff in program improvement schools OR Offer school choice across district boundaries OR Contract with outside expert

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Val Costa Rickford

Date

10/2/03

4

**TESTIMONY ON HB 1086
SENATE EDUCATION COMMITTEE**

March 12, 2003

**by Tom Decker, Director of School Finance and Organization
328-2267
Department of Public Instruction**

Mr. Chairman and members of the committee:

My name is Tom Decker and I am the Director of School Finance and Organization for the Department of Public Instruction. I am here to provide testimony in support of House Bill 1086. (second engrossment)

House Bill 1086 is the one of a series of bills which education committees of this legislature will hear designed to facilitate North Dakota's compliance with No Child Left Behind. Before we proceed further with an overview or discussion of the bill I want to introduce an amendment.

On line 15 of page one after "improvement" add the words for the sixth consecutive year.

Mr. Chairman and members of the committee I will provide an overview of the bill and deal specifically with the aspects of the bill that relate to changing North Dakota's current open enrollment law.

Linda Johnson of our staff will talk to you in more detail about the definition of safety circumstances in line 10 and 11 and about a state identified school that is defined as an unsafe school as provided for in lines 12 and 13.

Lauri Matzke of our staff will talk to you more about schools identified for program improvement as identified in lines 14 and 15.

The purpose of House Bill 1086 is to provide a waiver to North Dakota's open enrollment statute for students who are attending schools that fit circumstances outlined in section 1 on lines 7 through 15 of page 1. The nature of the waiver proposed is outlined in section 1 no. 2 through 6 from lines 16 on. In the original bill the purpose was clearly stated.

"When another public school choice option is not available within the district of residence a parent of a student within a state identified school or in a safety circumstance may apply to enroll the student in a non-state identified North Dakota school district outside the district of residence at any time within a school year."

This waiver of open enrollment is being proposed at this time because the state of North Dakota must submit a compliance plan as required by the NCLB federal legislation by May of 2003. While some of the aspects of this waiver of open enrollment may not come into play for a number of years into the future we must have a plan to comply with the requirements now. No Child Left Behind is federal legislation, which covers all states and all public schools in the nation. As you are aware there is some amount of difficulty in passing legislation, which fits all circumstances across this country equally well. One of the aspects of NCLB that has been widely discussed is the provision of the statute, which allows students to move from a school, which is failing to meet requirements to another public school within the district. However, North Dakota and many other rural states have circumstances in which there is no other public school within a district to which a parent may move their student under these circumstances. Approximately 180 of North Dakota's 220 school districts are single facility districts. That is their entire K-12 enrollment attends school in one facility, the only facility within the district. If the circumstances outlined in section 1, lines 7-15 are present, the parent would have no option to exercise parental choice and place the student in a different school within the district. About 50% of North Dakota's public school enrollment attend school in districts where, for most grades, at least parents would have a choice of another public school within the district. There are, of course, more districts where choice of public schools exist for grades K-6 than for other grades. As you move through junior high and high school the number of districts that can provide a choice of public schools to attend continues to drop. At the high school level there are actually only three districts with multiple public high schools, Grand Forks, Fargo and Bismarck.

Providing the waiver proposed is an equity issue and a parental choice issue. Some North Dakota parents will have the opportunity to move their students out of a school that is identified as a safety concern or one that is failing to meet program requirements to another public school within the district. Many others will not. Their option for equity and parental choice can only be exercised if we provide a waiver through the open enrollment law that allows them to move their student to a school in another district.

We understand the potential difficulties for many of these parents in actually exercising their option to send their student to school in another district. In many places in North Dakota the distances may be nearly prohibitive. However, we feel it is essential that we provide a choice that guarantees an equitable opportunity as we move forward with implementation of NCLB.

Therefore, as provided for in section 1, lines 7-15 when a school falls into one of the definitions outlined parents could immediately access open enrollment to move their student to a school in another district. The school board of the admitting district, the school to which the parent chooses to send their student, would have the same options to accept or reject open enrolled students as currently provided under North Dakota's open enrollment law. That acceptance or rejection would be based on a district policy that outlines capacity in various grades and programs and their decision would have to be based on implementation of that policy. The school district of residence would have no choice in granting the open enrollment. That choice would be in the hands of students and their parents. The 20% cap which currently limits the number of open enrollments out of a given school during one year would be waived.

Finally, school districts accepting students under the provisions of this waiver would receive tuition payments from the district of residence. The resident district would be required to pay tuition as provided under North Dakota's tuition formula and to provide transportation or the cost of transportation. The payment structure for students with disabilities would follow the current open enrollment pattern under which the resident district continues to be responsible for costs related to the student's disability. At any point at which the school district of residence no longer falls in the state identified school category

provisions of this section would no longer apply and the student would fall into the regular open enrollment provisions or have the option of returning to their district of residence. The tuition provisions of section 1 no. 4 of this bill are recognition of the fact that the students involved here did not choose to open enroll but find themselves for reasons beyond their control in circumstances where their district of residence is unable to provide them with a safe or quality education. Because this was not an open enrollment made by the student voluntarily it is appropriate that the district of residence pay tuition to the receiving district for the period of time that they are identified as meeting one of the criteria in section 1 lines 7-15 of this bill.

Mr. Chairman, I suggest that we hear from the other two members of our staff regarding the definition of safety circumstances and the state identified school for purposes of this bill and then take questions.

Yolanda Rickford
Operator's Signature

10/2/03
Date

PROPOSED AMENDMENT TO RE-ENGROSSED HOUSE BILL NO. 1086

Page 1, line 15, after "improvement" insert "for the sixth consecutive year"

Renumber accordingly

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Date

**TESTIMONY ON HB 1086
SENATE EDUCATION COMMITTEE**

March 12, 2003

**by Linda L. Johnson, Director of School Health Programs
(701) 328-4138**

Department of Public Instruction

Chairman Freborg and members of the committee:

My name is Linda Johnson and I am the Director of School Health Programs including Safe and Drug Free Schools for the Department of Public Instruction. I am here to speak in favor of HB 1086 and provide information regarding the school safety issues in this bill.

Under the No Child Left Behind (NCLB) legislation, "Each State must develop a policy which allows students who

- attend a persistently dangerous school or
 - students who become victims of violent criminal offenses while in or on the grounds of a public school that they attend,
- to attend a safe public school within the local educational agency." LEA

There is tension in the NCLB law for districts that only have one school. The Unsafe School Choice Option Guidance states, "All students attending a persistently dangerous school must be offered the opportunity to transfer." The same document states, "If there is not another safe school in the LEA for transferring students, LEAs are encouraged, but not required, to explore other appropriate options such as an agreement with a neighboring LEA to accept transfer students." Title V, Part A funds may be used to help cover costs such as tuition or transportation related to the expansion of public school costs. The proposed change to NDCC 15.1-31 will allow transferring outside the district whenever necessary, assuring all students an education in a safe environment.

DPI, in consultation with a representative sample of local educational agencies, is responsible for establishing a definition for persistently dangerous schools in the State. The definition is based on "violent criminal offenses" as defined by North Dakota criminal code. The four major categories are murder, rape, robbery and assault. A team of twenty superintendents, principals,

counselors and DPI staff developed the attached definition, which is ready for submission to the Department of Education for final approval. This definition covers both schools being named "persistently dangerous" and students who become victims of violent crime.

We predict the numbers of students seeking these transfers will be minimal as these are violent crime circumstances only. DPI has collected data on firearms in schools according to NDCC 15.1-19-10. In seven years of data collection, the average expulsions in North Dakota has been two per year for firearms, most of which were modified.

In conclusion, passage of HB 1086 will assure all students in North Dakota the equal opportunity to transfer to a safe school at any time of the year if circumstances dictate for a small but necessary number of students in unsafe circumstances.

Are there any questions?

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Operator's Signature

10/2/03
Date

North Dakota - (February 28, 2003)

UNSAFE SCHOOL CHOICE OPTION

Persistently Dangerous Schools

I. Introduction

The Unsafe School Choice Option (section 15.32 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001, requires that each state receiving funds under the ESEA, establish and implement a statewide policy requiring that students attending a persistently dangerous public school, or students who become victims of a violent criminal offense while in or on the grounds of a public school that they attend, be allowed to attend a safe public school.

II. Identification of Persistently Dangerous Schools

With the input of school administrators throughout the state, the Department of Public Instruction (DPI) has adopted the following definition for North Dakota:

In the context of the No Child Left Behind Act of 2001 (ESEA), a public school in North Dakota is persistently dangerous if these conditions exist for three consecutive years:

- (a) A state firearms violation as defined in NDCC 15.1-19-10 that resulted in a one year expulsion or a violent criminal offense has been committed in school or on school property.
- and
- (b) A school has expelled 1% of the student population or 5 students (whichever is higher) for violent criminal offenses as described in the ND Criminal Code and designated as applying to this rule as listed below.
- (c) Prior to designating a school as persistently dangerous, DPI will take into consideration:
- the school's safety plan
 - local efforts to address the school's safety concerns
 - other information deemed relevant by the Department of Public Instruction.

Definition of violent criminal offense:

For the purpose of this rule, a violent criminal offense must be reported to the appropriate law enforcement agency. Following are the violent criminal offenses that apply to this rule:

Homicide:

Chapter 12.1-16, subsection: 01, 02, 03.

Assaults-Threats, Coercion, Harassment:

Chapter 12.1-17, subsection: 01, 01.1, 02, 03, 04, 10.

Kidnapping:

Chapter 12.1-18, subsection: 01, 02.

Sex Offenses:

Chapter 12.1-20, subsection: 03, 04, 17.

Robbery:

Chapter 12.1-22, subsection: 01.

Inciting a riot:

Chapter 12.1-25, subsection: 01.

The Department of Public Instruction will determine which schools meet the persistently dangerous criteria. Data will be collected on the on-line Suspension/Expulsion report submitted by each school site in June of each year. The on-line report captures the elements required by federal law. Training and technical assistance are available from the DPI to assist schools in completing the report correctly.

The U.S. Department of Education requires annual accounting from the DPI regarding the number of schools determined to have met the state's definition of persistently dangerous. Individual schools will not be identified. The basis for the federal report will be the expulsion data drawn from the North Dakota Suspension/Expulsion report.

The DPI is required to annually reassess a school determined to be persistently dangerous, using criteria contained in the definition II a,b,c. The persistently dangerous designation will be removed when the school no longer qualifies under the state definition.

III. Providing a Safe Public School Choice Option

A local education agency (LEA) identified as a persistently dangerous school must in a timely manner:

- (a) Notify parents of each student attending the school that the state has identified the school as persistently dangerous;
- (b) Offer all students the opportunity to transfer to a safe public school within the LEA. If there is not another school in the LEA, the LEA is encouraged to explore other options such as an agreement with a neighboring LEA to accept transfer students;
- (c) For those students who accept the offer, complete the transfer.

In addition, an LEA must also:

- (d) Develop a corrective action plan; and
- (e) Implement the plan in a timely manner.

Parental notification regarding the status of the school and the offer to transfer students may be made simultaneously.

Transfers

- LEA's should allow students to transfer to a school that is making adequate yearly progress and is not identified as being in need of school improvement, corrective action or restructuring.
- Transfers may be temporary or permanent, but must be in effect as long as the original school is identified as persistently dangerous.
- When there is not another school in the LEA for the transferring student, LEA's are encouraged, but not required, to explore other options such as an agreement with a neighboring LEA to accept the student(s).

IV. Timely Implementation

Dependent on the specific circumstance within the LEA, general notification to parents should be within ten school days from the time the LEA is notified by the DPI that the school has been identified as persistently dangerous.

Development of a corrective action plan and the offer to students to transfer should occur within twenty days from the time that the LEA is notified by the DPI that the school has been identified as persistently dangerous.

Once a school has been designated persistently dangerous, the transfer of students can occur at any time. Request for transfer must specify why the student is transferring.

V. Corrective Action

LEA's must submit a corrective action plan to the DPI for approval. The DPI will provide technical assistance and monitor the LEA's actions throughout the process.

Upon completion of the planned corrective action, the LEA must apply to the DPI to have the school removed from the list of persistently dangerous schools. The DPI will use the criteria contained in the definition of persistently dangerous schools and II (c) to determine whether the school should be removed from the list.

VI. Students who have been victims of a violent criminal offense

LEA's must provide safe school options to a student who has been a victim of a violent criminal offense while in or on the grounds of a public school that the student attends:

- Once it has been determined that a student has been a victim of a violent criminal offense, the LEA must, within five days, offer an opportunity to transfer to a safe public school within the LEA.
- When another school is not available within the LEA, it is encouraged, but not required, that the LEA seek other appropriate options such as an agreement with a neighborhood LEA to accept the student.

The federal statute does not authorize resources specifically to help cover costs such as: transportation, to assist the transferring student. Under certain circumstances, other federal funds may be used, such as Title IV Part A, or Title V Part A.

Please contact the DPI Title IV – Safe and Drug Free Schools and Communities for additional information or guidance on this option.

TESTIMONY ON HB 1086
SENATE EDUCATION COMMITTEE
March 12, 2003
By Laurie Matzke, Director of Title I
(701) 328-2284
Department of Public Instruction

Chairman Freborg and Members of the Committee:

My name is Laurie Matzke and I am the Director of Title I for the Department of Public Instruction. I am here to speak in favor of HB 1086 which would allow open enrollment across district boundaries for students in schools that have been identified for Program Improvement for six consecutive years.

Federal law under the No Child Left Behind Act (NCLB), signed into law by President Bush on January 8, 2002, requires states to adopt a single, statewide accountability system for all Local Educational Agencies (LEAs) and public schools. Under this system, states set a definition of Adequate Yearly Progress (AYP) for holding all LEAs and schools accountable for educational progress. States must annually review the progress of each school and school district to determine whether they are making adequate yearly progress, and then publicize and disseminate the results of this review. Title I schools and districts that fail to make the state's definition of adequate yearly progress for two consecutive years must be identified as in need of improvement (which, in North Dakota, is referred to as "Program Improvement").

NCLB made significant changes to the Title I Program Improvement regulations. State assessment data from the 2001-2002 school year establishes the baseline data for the new Program Improvement process in the NCLB Act.

The North Dakota Department of Public Instruction (NDDPI) tentatively plans on releasing AYP reports for all LEAs and schools from the 2001-2002 state assessment data in late March 2003. These reports will be the first AYP reports generated based on the criteria established in the NCLB Act. No new schools will be identified for Program Improvement when the February AYP reports are released, as this information is to be used as the baseline data for the first year of implementation for NCLB.

AYP reports will again be generated after North Dakota's students participate in the state assessment in March 2003. These reports are tentatively scheduled to be released by the NDDPI in July 2003. We anticipate that new schools will be identified for Program Improvement in July 2003.

The consequences for not making AYP, and subsequently being identified for Program Improvement, are clearly defined in the NCLB Act. Once identified, if schools continue to not make AYP, they must then go through a series of sanctions that increase in seriousness each year. Enclosed please find a chart which outlines this series of sanctions.

Schools that have not made AYP for six consecutive years are required to plan for "alternative governance." The menu of options outlined for year seven in the Program Improvement timeline are listed on the enclosed chart. None of the options listed are currently allowed in North Dakota state law. Therefore, North Dakota has been informed by the United States Department of Education (USDE) staff that our state must adopt a plan of what consequence(s) will occur for schools that have not made AYP for six consecutive years. We must outline these consequences in our state plan, which is due to the USDE in May 2003. The NDDPI has listed possible sanctions for year seven in North Dakota on the enclosed chart. HB 1086 would allow students who are attending a school that has been identified for Program Improvement for six consecutive years to open enroll to another school that has not been identified for Program Improvement.

The NCLB Act outlines the procedure for states to follow for schools that were already in Program Improvement on January 8, 2002 when this new Act became law. To prevent the clock from starting over for those schools already identified as failing under the previous law, NCLB requires these schools to start in the same category after its enactment. Therefore, for 21 of the schools in our state currently identified for Program Improvement, this plan for alternative governance is only two years away.

It is imperative that North Dakota take steps to define what happens to schools that have not made AYP for six consecutive years for two main reasons. First, as stated, North Dakota needs to submit this information to the USDE in our state plan due in May 2003. Secondly, for those 21 schools who are already in year four, they need to know what the consequences are if they continue to not make AYP so that they can plan ahead for the changes that will need to be made.

I and others from the Department would be happy to respond to any questions that you may have. Thank you.

DRAFT

Consequences for NOT Making Adequate Yearly Progress

21 schools

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Fails AYP	Fails AYP	School must participate in "School Choice"	Continue: "School Choice" LEA - TA	Continue: "School Choice" LEA - TA "Supplemental Services"	Continue: "School Choice" LEA - TA "Supplemental Services" Corrective Action	Continue: "School Choice" LEA - TA "Supplemental Services" Corrective Action
Fails AYP	Identified for Program Improvement	LEA must give Technical Assistance (TA)	School must offer "Supplemental Services"	Corrective Action: <u>Replace staff</u> OR New curriculum OR New Management OR Extend Yr/Day OR Restructure NCLB money allowed	probably not option in ND Plan for Alternative Governance	Alternative Governance: Charter OR Replace Staff OR Private Management OR State Control OR Other Fundamental Reform
	Within three months after identification, school is required to submit an Improvement Plan					In North Dakota Defer administrative funds to program improvement schools OR Offer signing bonus or merit pay to retain exemplary staff in program improvement schools OR Offer school choice across district boundaries OR Contract with outside expert

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Operator's Signature Yolanda Rickford

Date 10/2/03



**NORTH DAKOTA
SCHOOL BOARDS
ASSOCIATION**
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Excellence in North Dakota public education through local school board governance

SENATE EDUCATION COMMITTEE

HB1086

Bev Nielson, North Dakota School Boards Association

HB1086 is a compliance bill relating to NCLB. It is to meet the options for parents/students in schools that have been identified as requiring program improvement for 6 consecutive years.

In order to be clear about the intent, the bill needs to be amended as follows:

Line 15 "...requires program improvement for six consecutive years."

Without this amendment, the bill would require all identified schools provide this out-of-district transfer option immediately upon being identified.

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Yolanda Rickford
Operator's Signature

10/2/03
Date



Department of Public Instruction

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(701) 328-2260 Fax - (701) 328-2461
<http://www.dpi.state.nd.us>

Dr. Wayne G. Sanstead
State Superintendent

3-18-03

MEMO

To: Senator Dwight Cook

From: Tom Decker, Director
School Finance and Organization

Date: March 17, 2003

Re: House Bill 1086

The following are responses to your questions of last week regarding HB 1086.

1) **What is the impact if HB 1086 does not pass?** HB 1086 is not required for North Dakota to get an approved federal plan. Passage of the bill would simply increase the likelihood of approval by federal authorities.

As you noticed, our proposed menu for ND is already less stringent than the one listed in the NCLB Act. Any component that we have to delete from that proposed menu will lessen our chances of being approved. We are unsure of the outcome of federal review of the plan we will submit May 1. We believe that passage of HB 1086 would improve our chances for our adequate yearly progress plan being approved by the Department of Education.

Federal law did not anticipate places where without an open enrollment provision students would not have access to other public schools in circumstances where their school was not making adequate yearly progress. We think this is a necessary remedy to provide all children in North Dakota some option.

2) **What would be the impact of not providing transportation reimbursement from state sources to school districts under the provisions of HB 1086?** School districts may use up to 5% of their federal Title I funds and any of their Title V funds to provide transportation for students to other schools in cases where their school of attendance fails to meet adequate yearly progress requirements. We do not believe that lack of transportation reimbursement through state sources would create a problem in this regard. If transportation money is not available through state sources we could monitor the situation and see what impact a lack of transportation aid from state dollars has on access to options for students in schools where adequately yearly progress is an issue.

School for the Deaf
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(701) 862-9000

School for the Blind
Grand Forks, ND
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State Library
Bismarck, ND
(701) 328-2492

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Operator's Signature

Yalosta Rickford

Date

10/2/03