

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

EDUCATION COMMITTEE

Thursday, May 19, 2016
Roughrider Room, State Capitol
Bismarck, North Dakota

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

Members present: Senators Donald Schaible, Robert Erbele, Tim Flakoll, Joan Heckaman, Erin Oban, David S. Rust; Representatives Richard G. Holman, Bob Hunsakor, Mary C. Johnson, Jerry Kelsh, Lisa Meier, David Monson, Mike Nathe, Karen M. Rohr, Mark Sanford, Cynthia Schreiber Beck, Kris Wallman, Denton Zubke

Members absent: Senators Howard C. Anderson, Jr., Kyle R. Davison, Richard Marcellais, Nicole Poolman; Representative Alex Looyesen

Others present: Senator Ray Holmberg, Grand Forks, member of the Legislative Management
John Walstad, Legal Division Director, Legislative Council
See [Appendix A](#) for additional persons present.

It was moved by Senator Flakoll, seconded by Senator Erbele, and carried on a voice vote that the minutes of the February 18, 2016, meeting be approved as distributed.

NORTH DAKOTA UNITED

Chairman Schaible called on Ms. L. Anita Thomas, General Counsel, North Dakota School Boards Association, for a presentation ([Appendix B](#)) regarding the effect of the North Dakota United bill draft [[17.0043.01000](#)] on the membership requirements, appointment processes, and authority of the North Dakota Education Association. Ms. Thomas said she respectfully disagrees with the notion the North Dakota United bill draft is a "technical corrections" bill draft. She said North Dakota United is an entirely new group and is different from the North Dakota Education Association. She said the former North Dakota Education Association merged with the North Dakota Public Employees Association. She said the represented group includes education support professionals, food service workers, maintenance and trade workers, transportation workers, groundskeeping staff, security personnel, health services personnel, higher education employees, state employees, county employees, and municipal employees. She said changing the statutorily provided name from the North Dakota Education Association to North Dakota United allows for input from an entity whose membership is much more diverse than just teachers. She said the perspective of North Dakota United is not necessarily one which is connected to the classroom or the delivery of K-12 education services.

Ms. Thomas said including the language ". . .or its successor organization" in the bill draft seems like a convenient way to avoid needing future legislation in the event of a future organizational name change. She said the issue with the language is it fails to give the public due notice of which entity is becoming the successor organization or who the successor organization is going to be. She said the language also creates an issue if the entity splits into multiple entities. She said there is no way to determine which entity will become the successor organization.

Ms. Thomas said the bill draft references language changes in subsections and subdivisions. She said the bill draft is not prepared incorrectly, but using subsections and subdivisions can make it difficult to determine the context of the changes. She said Sections 1 and 2 of the bill draft address the State Securities Act. She said Section 1 of the bill draft addresses an exemption to the registration requirements for securities issued to North Dakota Education Association members by the North Dakota Education Association dues credit trust. She said Section 2 addresses an exemption to the registration requirements for the offer or sale of securities issued to North Dakota Education Association members by the North Dakota Education Association dues credit trust. She said she is not sure if there have been additional changes to the trust fund as a result of the merger of the entities. She said the Securities Department should be consulted to determine the appropriateness of Sections 1 and 2 of the bill draft.

Ms. Thomas said Section 3 of the bill draft deals with the Teachers' Fund for Retirement. She said the law says unless otherwise provided, every teacher is a member of the fund. The law provides for an assessment of the teacher's salary. She said it makes the determination of who counts as a teacher very important. She said according to the statutory provision, a teacher includes the Executive Director and professional staff of the North Dakota Education Association who are members of the fund on July 1, 1995. She said it is a grandfathering provision.

Ms. Thomas said Section 4 of the bill draft also deals with the Teachers' Fund for Retirement. She said the section addresses the composition of the board of trustees of the fund. She said the question is whether the pool of potential board members is being limited by the entity statutorily required to submit the names to the Governor. She said there are great teachers all across the state. She said this provision limits the submissions for potential nominees to an entity not representing all of the teachers. She said the statutory provision could simply direct the Governor to appoint two teachers to the board. She said if the Legislative Assembly wanted to require a list of nominees, the North Dakota School Boards Association would be happy to provide a list. She said the school boards employ all the teachers in the state.

Ms. Thomas said Section 5 pertains to the composition of the State Board of Public School Education. She said six of the seven board members represent various counties. She said the board members serve 6-year terms and are appointed by the Governor. She said the State Board of Public School Education is most closely associated with its role in approving annexations, reorganizations, and dissolutions. She said the board with the additions of the Executive Director of Job Service North Dakota and the Commissioner of Higher Education still constitutes the State Board for Career and Technical Education. She said members of the State Board of Public School Education are not required to be teachers. She said the interim Education Committee should determine whether the nominating committee for the State Board of Public School Education has broader perspectives than just education, including agriculture, business, industry, and natural resources.

Ms. Thomas said Section 6 of the bill draft addresses the North Dakota Teacher of the Year award. She said the judging committee for the award consists of eight members appointed by the Superintendent of Public Instruction. She said there should be concern over the fact the committee includes the voice of an entity not representing all or even a majority of the teachers in the state.

Ms. Thomas said Section 7 of the bill draft addresses the annual school report. She said the committee convened annually by the Governor to review the information-gathering format for the report consists of 13 members. She said she does not know whether this section of the law has ever been used. She said if it has not been used the North Dakota Century Code could be shortened by repealing the section.

Ms. Thomas said Section 8 of the bill draft pertains to the credentialing process and requirements of special education teachers. She said the section prevents the Superintendent of Public Instruction from unilaterally altering the credentialing requirements in effect on July 1, 2001, for special education teachers without first convening a meeting of the interest groups. She said if any two of the interest groups objected to the proposed changes the Superintendent of Public Instruction could not change the credentialing requirements prior to July 1, 2003. She said this section of law is out of date and likely could be repealed.

Ms. Thomas said the North Dakota Education Association also has a role in deciding who sits on the State Board of Higher Education. She said the role in determining the State Board of Higher Education is laid out under Article VIII, of Section 6, of the Constitution of North Dakota. She said it is true the state constitution cannot be amended through legislative bill drafts. She said amending the state constitution would require a resolution to amend. She said if the resolution passed the Legislative Assembly, it would then go to a vote of the people. She said the President of the North Dakota Education Association is one of the members of the nominating committee that submits potential names for consideration to be appointed to the State Board of Higher Education. She said the interim Education Committee should determine whether the members of the nominating committee are an appropriate combination of perspectives for determining nominees to the State Board of Higher Education given the challenges of higher education today. She said the committee needs to make sure when a teacher's voice is to be sought for a board, commission, or a committee, the voice should come from the depth and breadth of the state's talented teacher pool. She said the voice should not be limited to an organization whose teacher membership is only a fraction of the teachers in the state.

In response to a question from Representative Wallman, Ms. Thomas said Section 8 of the bill draft is out of date because it references specific dates that are no longer relevant. Ms. Thomas said Section 7 of the bill draft has never been used to the best of her knowledge.

In response to questions from Senator Oban, Ms. Thomas said the references to the labor organizations were pointed out to show the committee organizations can morph, change, and merge over time. Ms. Thomas said the point is there is no way to know what a successor organization may look like in the future. She said the committee needs to ask how North Dakota United separates its allegiance to teachers versus the rest of its members.

Senator Oban said she thinks there is a pretty clear distinction within North Dakota United between educator members and noneducator members.

In response to questions from Senator Flakoll, Ms. Thomas said she was in attendance at the interim Education Committee meeting when it was decided the references within Century Code should potentially be changed through a bill draft. Ms. Thomas said currently if there was an opening on the State Board of Higher Education, the state constitution requires the President of the North Dakota Education Association to be on the board. She said the organization does not currently exist. She said if a member of North Dakota United was recommended to the board, she would strongly say the recommendation is currently in violation of the state constitution. She said this is different from bill drafts in the agriculture rewrite project because those bill drafts addressed changes in the names of organizations, but not the membership of those organizations. She said the present bill draft is not a technical corrections bill draft because the merger of two organizations to create North Dakota United changed the membership of the organization. She said the North Dakota School Boards Association believes there are some areas of Century Code which the committee should consider making some changes, especially regarding the State Board of Higher Education. She said the North Dakota School Boards Association would be happy to work with the committee in proposing more defined alternatives.

Ms. Thomas said the bill drafts in the agriculture rewrite project were not technical corrections bill drafts. She said the bill drafts looked at the policies to determine if they were still relevant to agricultural practice and the way in which state agencies administered the laws. She said changes were made if the laws were no longer relevant.

Senator Flakoll said he disagrees the agriculture rewrite bills were not technical corrections. He said it was agreed upon by Ms. Thomas and committee members the agriculture rewrite bills did not include substantive changes. He said his intention with the North Dakota United bill draft was simply to clean up and clarify language in Century Code. He said he did not intend to make any substantive changes with this bill draft.

Ms. Thomas said if the committee intends to change the name reference in Century Code, they should consult with the Securities Department to determine if the name change is appropriate, especially in light of Sections 1 and 2 of the bill draft. She said she is also confident Sections 7 and 8 of the bill draft can be eliminated.

In response to a question from Senator Flakoll, Ms. Thomas said it would be up to the committee to consider language proposed by the entity to determine if the language adequately addresses the potential issues in the bill draft.

Chairman Schaible said the purpose of the bill draft and testimony was to determine if the committee is heading in the right direction and to determine what else needs to be done with the bill draft before proceeding any further.

In response to a question from Senator Flakoll, Chairman Schaible requested the Legislative Council staff determine if there was a bill draft to remove the North Dakota Education Association from the recommending committee for the State Board of Higher Education in the past.

Comments by Interested Persons

Mr. Nick Archuleta, President, North Dakota United, said North Dakota United is a member of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and not the other way around. He said the AFL-CIO does not have individual members. He said the AFL-CIO has associated unions that have their own members. He said North Dakota United differentiates between their public employee members and their education members by doing work on behalf of members as the work is brought to North Dakota United. He said the way in which North Dakota United appoints members to committees has not changed since they were the North Dakota Education Association. He said the change to North Dakota United occurred 3 years ago. He said he is surprised there is any controversy over the bill draft at all. He said it is true the membership of the organization has changed, but the way in which the organization does business has not changed. He said there have been no changes regarding the sections of the bill draft dealing with securities.

In response to a question from Representative Kelsh, Mr. Archuleta said the two organizations merged to form North Dakota United, but education and public employee issues are still addressed separately within the organization. Mr. Archuleta said North Dakota United is a joint member of both the American Federation of Teachers and the National Education Association. He said the public employee members of North Dakota United have no

input regarding the composition of the Board of Trustees for the Teachers' Fund for Retirement under Section 4 of the bill draft. He said he does not see an issue with a member of North Dakota United sitting on the recommending committee for the State Board of Higher Education under the Constitution. He said in the time he has been President of North Dakota United, the recommending committee has met four times to recommend names for the Governor's consideration. He said there has never been an indication from the Chief Justice of the North Dakota Supreme Court there is a constitutional issue.

In response to a question from Senator Rust, Mr. Archuleta said North Dakota United has approximately 8,500 active teacher members. He said North Dakota United has approximately 11,500 total members.

In response to a question from Representative Kelsh, Mr. Archuleta said North Dakota United does not currently have any members who are private school teachers.

In response to a question from Representative Schreiber Beck, Mr. Archuleta said North Dakota United has a board consisting of approximately 20 members. Mr. Archuleta said the board members represent the rest of the organizational membership. He said the organization has written bylaws dictating how North Dakota United addresses education-related issues.

In response to questions from Senator Oban, Mr. Archuleta said educator members of North Dakota United would be upset if noneducator members were appointed to committees addressing education-related issues and policies. Mr. Archuleta said North Dakota United still recognizes both the North Dakota Education Association and the North Dakota Public Employees Association as separate organizations under North Dakota United for historical purposes when referencing the predecessor organizations. He said North Dakota United owns the rights to the names of both organizations which are registered with the Secretary of State.

In response to a question from Representative Zubke, Mr. Archuleta said he does not see the bill draft as being more than a technical correction. Mr. Archuleta said the basic function of North Dakota United is still the same as when the organization was the North Dakota Education Association.

In response to questions from Senator Flakoll, Mr. Archuleta said North Dakota United cannot envision ever appointing a public employee member to serve in any capacity on a committee or in a position addressing education issues and policies. Mr. Archuleta said North Dakota United has not yet contemplated what language might best be used to clarify and define that teachers or other educators would be involved in the areas addressed by the bill draft. He said North Dakota United did not foresee any issues with the bill draft.

In response to a question from Representative Monson, Mr. John Walstad, Legal Division Director, Legislative Council, said the Constitutional provision specifically references the President of the North Dakota Education Association. Mr. Walstad said although North Dakota United encompasses the North Dakota Education Association, they are not the same organization. He said the President of the North Dakota Education Association is only one of five members of the recommending committee. He said recommendations likely would not be able to be challenged and overturned if the other four members were in agreement with each other, but a recommendation may be able to be overturned if only four members, one of which was the member of North Dakota United, were in agreement. He said it is probably in the committee's best interest to revise the Constitutional provision to reflect an organization currently in existence.

In response to a question from Senator Oban, Mr. Archuleta said the potential issues in the bill draft would be simplified and resolved by using language such as "educator members of North Dakota United."

In response to a question from Representative Holman, Mr. Archuleta said the bylaws of North Dakota United separate between the former North Dakota Education Association and the North Dakota Public Employees Association in several instances. Mr. Archuleta said Senator Oban's suggested language would likely resolve any potential issues.

In response to a question from Representative Kelsh, Mr. Archuleta said the majority of the board members for North Dakota United served on the boards of their predecessor organizations.

In response to a question from Senator Rust, Mr. Archuleta said licensed staff may or may not be teachers. Mr. Archuleta said there are approximately 10,000 to 12,000 teachers in the state depending on which information is being referenced.

In response to a question from Senator Flakoll, Mr. Archuleta said he does not recall any conversations with other members of the recommending committee regarding any potential constitutional issue with a member of

North Dakota United serving on the recommending committee. Mr. Archuleta said he would agree with Senator Flakoll that it may be best to expand on Senator Oban's proposed language to include language specifying "an elementary or secondary educator member of North Dakota United." He said the more definitive the committee can be the better.

In response to a question from Representative Schreiber Beck, Mr. Archuleta said the delegates at the delegate assembly elect the president of North Dakota United. Mr. Archuleta said the board of North Dakota United serves as the governance body of the organization.

In response to a question from Representative Schreiber Beck, Chairman Schaible requested the Legislative Council staff to obtain a copy of the bylaws of North Dakota United and forward them to members of the committee.

NORTH DAKOTA EDUCATION STANDARDS AND PRACTICES BOARD

Chairman Schaible called on Dr. Janet Welk, Executive Director, North Dakota Education Standards and Practices Board, for a presentation ([Appendix C](#)) regarding a report on the electronic satisfaction survey results of all interactions with individuals seeking information or services from the board.

In response to a question from Senator Heckaman, Dr. Welk said regarding question five on courtesy, some of the negative responses came from individuals who were working with staff members of other state agencies and not with the staff of the North Dakota Education Standards and Practices Board directly.

In response to a question from Representative Hunsakor, Dr. Welk said the response time of her staff to inquiries from members of the public depends on the amount of time it takes to gather the information. Dr. Welk said it takes approximately 10 days to get fingerprint records back from the Federal Bureau of Investigation (FBI) and Bureau of Criminal Investigation (BCI) currently. She said once her staff has the information, required transcripts, and the licensure fee, her staff can issue licenses within a day.

In response to a question from Representative Rohr, Dr. Welk said based on the results of the survey she would recommend upgrading the web page for the board. Dr. Welk said she would like to add frequently asked questions to the web page so individuals looking for information do not need to call every time. She said she would like to make the web page more user friendly.

In response to a question from Senator Flakoll, Dr. Welk said the board was not charged to produce the survey. Dr. Welk said she would like to refine several of the existing questions for future surveys.

In response to a question from Representative Kelsh, Dr. Welk said teachers coming to teach in North Dakota from out of state are for the most part as qualified as in-state teachers.

In response to a question from Senator Rust, Dr. Welk said she does not have the percentage of people who completed the survey versus those who chose not to complete the survey.

In response to a question from Senator Heckaman, Dr. Welk said if a teacher has a revoked license that individual still is on the online database as revoked.

In response to questions from Representative Hunsakor, Dr. Welk said some school districts provide additional training for their licensed substitute teachers. Dr. Welk said she cannot predict whether the required 48 semester hours to be qualified for a substitute teaching license will go up in the future. She said the 48-hour requirement allows for a 1-year license and the local school administrator must send a letter recommending the teacher for a renewal each year.

In response to a question from Representative Meier, Dr. Welk said every out-of-state applicant who met the requirements to be a teacher received a license in the state of North Dakota. Dr. Welk said teachers who have passed the test and have received a valid license from another state qualify for a North Dakota license.

In response to a question from Representative Nathe, Dr. Welk said even if an out-of-state teacher has a valid license in another state that individual is still required to pass the criminal background check to become licensed in the state. Dr. Welk said they also double check to see if an applicant has ever been suspended or revoked in another state. She said if an applicant has been suspended or revoked in another state that individual's application goes before the board to determine whether the individual will be licensed in North Dakota. She said any teacher convicted of a crime against a child automatically has that individual's license revoked. She said teachers convicted of other felonies are evaluated on a case-by-case basis to determine whether their license will be revoked. She said North Dakota has a law that allows for the board to determine a teacher rehabilitated if the individual has had a clean record for 5 years and are off probation.

In response to a question from Senator Flakoll, Dr. Welk said she will work with the Department of Public Instruction (DPI) to provide the Legislative Council staff with information regarding the satisfaction rate of in-state teachers versus out-of-state teachers to forward to committee members.

In response to a question from Representative Sanford, Dr. Welk said she does not have data regarding the number of classroom teachers in the state versus teachers that do other special forms of teaching. Dr. Welk said she believes DPI would be able to provide the information.

RESTRAINT AND SECLUSION

Chairman Schaible called on the Legislative Council staff for a presentation regarding a bill draft [[17.0143.01000](#)] requiring reporting to DPI by school districts that adopt a policy on restraint and seclusion. The Legislative Council staff said the bill draft was prepared at the request of the Chairman for the committee's consideration. He said there is currently no mandate requiring a school district must adopt a policy on restraint and seclusion. He said the bill draft does not require school districts to adopt a policy. He said the bill draft requires school districts to report whether or not they have adopted a policy.

Chairman Schaible said he requested the bill draft as a starting point to get the discussion moving on restraint and seclusion. He said it is important to know whether schools have adopted a policy. He said it is also important to impose some degree of reporting requirements on schools.

In response to a question from Representative Wallman, the Legislative Council staff said the bill draft is not requiring school districts to adopt a policy. The Legislative Council staff said the draft only requires the school district to report whether it has adopted a policy, and what the policy is if it has adopted a policy.

Representative Wallman said she is happy the committee has a starting point on restraint and seclusion. She said she would like the committee to move beyond simply requiring school districts to report whether they have a policy. She said she would like to see a mandate requiring school districts to have a policy on restraint and seclusion.

In response to a question from Representative Nathe, the Legislative Council staff said September 11 was chosen as the date by which school districts must report incidents of restraint and seclusion from the previous year simply because school should be in session by September 11.

Senator Heckaman said she agrees with Representative Wallman that it is good to have a starting point, but there are potential issues. She said she is concerned the committee does not have a consistent definition of restraint and seclusion. She said she is also concerned there is no penalty for school districts failing to report under the bill draft.

In response to a question from Representative Nathe, Chairman Schaible said he is unaware of whether any school districts have weighed in on whether requiring reporting is necessary. Chairman Schaible said the initial bill draft was intentionally left vague to determine if the school district reporting review committee was placing any restrictions on school districts that fail to report. He said he wants to be sure any bill draft from the committee stays consistent with the requirements of the reporting review committee.

Senator Heckaman said many schools are adopting policies on restraint and seclusion but it does not mean those schools experience the majority of restraint and seclusion incidents. She said there is a task force currently looking at restraint and seclusion. She said she hopes it will have recommendations for the committee soon.

In response to a question from Representative Kelsh, Ms. Thomas said at the first or second interim Education Committee meeting there was a background memorandum on restraint and seclusion which included the model policy. Ms. Thomas said currently 120 school districts in the state have adopted or are in the process of adopting the model policy. She said she believes the 120 school districts account for approximately 62 percent of all the school districts in the state. She said those school districts account for approximately 76 percent of the students in the state. She said school districts are required to report incidents of restraint and seclusion to the Office of Civil Rights. She said the latest data shows 727 incidents statewide. She said 91 percent of those incidents involve students covered under the Individuals with Disabilities Act or Section 504 of the Rehabilitation Act of 1973.

In response to a question from Chairman Schaible, Ms. Thomas said typically the parents are called for a student who has an unanticipated incident at school. Ms. Thomas said the parents and the school administrator then sit down and attempt to develop a behavioral intervention plan for the student to ensure the student is treated appropriately and there is a safe environment within the school. She said an individualized education plan would hopefully work closely with a policy on restraint and seclusion.

Senator Heckaman said she disagrees. She said not every student with an individualized education plan has behavioral issues. She said not every student who has a disability requires behavioral intervention.

In response to a question from Representative Wallman, Ms. Thomas said the Office of Civil Rights strongly recommends schools report incidents of restraint and seclusion. Ms. Thomas said the Office of Civil Rights has a specific definition of restraint and seclusion it uses when requesting incident data from school districts.

Representative Wallman said in her experience school districts routinely ignore the recommendation to report all incidents to the Office of Civil Rights.

In response to a question from Representative Nathe, Ms. Thomas said the information from the Office of Civil Rights only showed the total number of incidents not the number of repeat offenders.

In response to a question from Representative Kelsh, Ms. Thomas said she is unaware how many incidents of restraint and seclusion in North Dakota have resulted in lawsuits.

In response to a question from Representative Holman, Ms. Thomas said the background memorandum on restraint and seclusion introduced at a previous meeting looked at some of the laws applying to adults at residential care facilities.

In response to a question from Representative Nathe, Ms. Thomas said she does not know what the purpose of the bill draft on restraint and seclusion is other than to create paperwork. Ms. Thomas said she does not know if the state needs a statute requiring school districts to report if they have adopted a policy on restraint and seclusion. She said DPI can ask for the information at any time. She said she is not sure what the Superintendent of Public Instruction is supposed to do with the information once it is received. She said requiring districts to file a report if they have adopted a policy creates a disincentive for school districts to adopt a policy.

In response to a question from Senator Flakoll, Ms. Thomas said the superintendents of school districts are interested in seeing whether their incidents of restraint and seclusion involve the same teachers, classrooms, and students. Ms. Thomas said patterns may indicate a teacher needs additional professional development.

In response to a question from Representative Hunskor, Ms. Thomas said schools that have not adopted a policy on restraint and seclusion may be sued from incidents. Ms. Thomas also said just because a school has adopted a policy on restraint and seclusion does not mean the school district will avoid legal action if there is an incident of restraint and seclusion. She said the school district should focus on whether it has sufficient staff training to ensure students are treated appropriately on an individual basis. She said a policy on restraint and seclusion will only ever be as good as the people who implement it.

In response to a question from Senator Heckaman, Ms. Thomas said school districts have policies on restraint and seclusion as a generic starting point on how to approach certain situations.

In response to a question from Representative Wallman, Ms. Thomas said there are mixed feelings from superintendents on the use of restraint and seclusion. Ms. Thomas said some superintendents believe there are no circumstances where the use of restraint and seclusion is appropriate. She said it is important to conduct research to determine what educators out in the field want. She said once it is known what the educators and superintendents want, the state can then look at policies and ensure teachers are appropriately trained to meet the goals and standards established by the policies. She said there should be more discussion before the state gets to the point of trying to determine what a mandated policy should include.

In response to a question from Senator Oban, Chairman Schaible said the task force on restraint and seclusion was not created by the committee and is not directed by the committee. Chairman Schaible said the committee will gladly accept any information the task force comes up with and wishes to share with the committee. He said the task force is not mandated to provide the committee with information.

DEPARTMENT OF CAREER AND TECHNICAL EDUCATION

Chairman Schaible called on Mr. Wayne Kutzer, Director and Executive Officer, Department of Career and Technical Education, for a presentation ([Appendix D](#)) regarding funding and evaluation of career and technical education programs. Mr. Kutzer said on the blue handout entitled *2015 Cohort - ND Academic and CTE Scholarship*, a "career development counselor" is someone who is funded through the Department of Career and Technical Education and who has an approved program. He said to be clear even schools that do not have a career development counselor still have counselors. He said on the pink handout entitled *2015 - 2016 State Obligations*, the Department of Career and Technical Education is responsible for the funding in the middle column. He said the ivory handout entitled *Standards of Quality* addresses program evaluations.

In response to a question from Chairman Schaible, Mr. Kutzer said through the evaluation process they are finding programs are doing quite well. Mr. Kutzer said if there are recommendations the majority revolve around making sure the program has an active advisory committee. He said Department of Career and Technical Education stresses making sure there is a leadership component to every program.

In response to a question from Representative Rohr, Mr. Kutzer said Department of Career and Technical Education uses a different evaluation tool for online versus face-to-face programs. Mr. Kutzer said the department expects the assessment for both online and face-to-face programs to be conducted exactly the same.

In response to a question from Representative Hunskor, Mr. Kutzer said there is an increasing demand by students to get involved with the science, technology, engineering, and mathematics programs.

In response to a question from Senator Heckaman, Mr. Kutzer said due to the 4.05 percent allotment issued by the state the reimbursement of state funded programs had to be reduced. Mr. Kutzer said the percentages on the back of the yellow handout entitled *State Board for Career and Technical Education - Revised Policy for Reimbursement of State Funded Programs - FY 2016* were all reduced by 1 percent from what they were in 2015. He said the department also accounted for the allotment by reducing salaries and operating costs.

In response to a question from Representative Monson, Mr. Kutzer said he thinks more schools should be utilizing career development counselors.

In response to a question from Representative Wallman, Mr. Kutzer said state funds are allocated based on the number of programs a school has.

In response to a question from Senator Oban, Mr. Kutzer said the allotment reduces the funds allocated for reimbursement of the programs. He said the department does not sign contracts with teachers directly. Mr. Kutzer said the teachers sign contracts with the schools and the schools are responsible for meeting the contracts. He said the budget was reduced in order to balance the budget. He said the department is currently in the process of preparing a 90 percent budget. He said preliminary figures show instead of the current 1 percent drop in the reimbursement rates, they will need to increase the figure to 4 percent in order to balance the budget.

In response to a question from Representative Rohr, Mr. Kutzer said student participation in the programs has been increasing minimally over the years. Mr. Kutzer said funding over the years has increased steadily.

DEPARTMENT OF PUBLIC INSTRUCTION

Chairman Schaible called on representatives of DPI for reports due to the committee. Mr. Jerry Coleman, Director of School Finance and Organization, Department of Public Instruction, gave a presentation (Appendices [E](#) and [E](#)) regarding the financial condition of school districts. Mr. Coleman said page 2 of Appendix F contains the foundation aid status report.

In response to a question from Representative Nathe, Mr. Coleman said the \$20 million carryover of excess funds from the yearly appropriations for the biennium is a result in part of budgeting for more students than were actually in attendance.

Mr. Coleman said page 3 is a budget versus actual comparison. He said page 4 addresses future enrollments. He said the forecast indicates the state will continue to see gains in enrollment.

In response to a question from Senator Heckaman, Mr. Coleman said he has not received any phone calls from people who feel schools are getting short changed on how much money they get back and the way counties are reporting "in lieu of taxes."

In response to a question from Senator Flakoll, Mr. Coleman said the rapid enrollment grants expect to stay steady in the number of school districts eligible to receive grants.

In response to a question from Representative Nathe, Mr. Coleman said for the 2016-17 school year they are projecting a \$20 million carryover in appropriation funding.

In response to a question from Representative Meier, Mr. Coleman said Fund Group 1 in the school finance facts book references the general fund for school districts.

In response to a question from Representative Kelsh, Mr. Coleman said the birth rates in the handout come from the Division of Vital Records. Mr. Coleman said he believes the primary residence of the parents is used to determine how the birth rate is tallied.

In response to a question from Senator Heckaman, Mr. Coleman said in order to make the school budgets whole, approximately \$72 million was transferred from the foundation aid stabilization fund. Mr. Coleman said the money covered the per pupil payments, the transportation costs, and the special education costs.

In response to a question from Representative Nathe, Mr. Coleman said the Fund Group 1 total cost per pupil includes the transportation cost and extracurricular activities.

In response to a question from Representative Sanford, Mr. Coleman said the average cost per pupil under a federal definition differs in the sense the state definition includes equipment. Mr. Coleman said equipment is not included in the federal definition. He said the federal government uses average daily attendance in its funding formula where the state uses average daily membership, which is different.

Mr. Coleman said page 5 shows for 2016 there are approximately 9,000 children entering kindergarten in the state while 7,400 are graduating. He said this--in combination with increases in birth rates--shows why the department is projecting increases in enrollments across the state. He said page 9 shows the cost-to-continue projections.

In response to a question from Senator Flakoll, Mr. Coleman said he has not looked at the contribution from the common schools trust fund at this point. Mr. Coleman said they would probably need to speak with the Office of Management and Budget to obtain the information. He said he believes the amount they can distribute out of the fund is set by a formula based in the Constitution.

Mr. Don Kaiser, Research Analyst III, Department of Public Instruction, gave a presentation ([Appendix G](#)) regarding reports on annual school district employee compensation. He said the first page shows the compensation of only administrators. He said the report only shows 2014-15 because the report is always from the previous year.

In response to a question from Representative Wallman, Mr. Kaiser said the reason assistant principals make more on average than principals is because the report is averaged and there are more principals, which skews the average.

In response to a question from Representative Nathe, Mr. Kaiser said teachers who obtain masters degrees make approximately \$5,000 more per year than their counterparts who have bachelors degrees.

In response to a question from Representative Kelsh, Mr. Kaiser said averages are calculated by position in this report, but they can also calculate the averages by school district.

Ms. Gail Schauer, Director of Teacher and School Effectiveness, Department of Public Instruction, gave a presentation ([Appendix H](#)) regarding requests from a school or school district for a waiver of North Dakota Century Code Section 15.1-21-03 regarding high school unit instructional time.

Mr. Greg Gallagher, Assessment Director, Department of Public Instruction, gave a presentation ([Appendix I](#)) regarding the compilation of test scores of a test aligned to the state content standards in reading and mathematics given annually to students in three grades statewide. He said the assessments given are aligned to the state standards. He said the state standards are the foundation of what every student should know and be able to do. He said alignment is a critical component of the administration of any assessment. He said after alignment it is important to obtain an appropriate understanding of where proficiency lies. He said proficiency is determined through an achievement standard setting. He said the key element to any assessment is getting the scale right.

Mr. Gallagher said page 8 shows a breakdown of the established cut scores for mathematics and English language arts proficiency. He said proficiency is determined by the green line in the middle. He said the green line shows an expectation of proficiency for students across the state at various grade levels.

Mr. Gallagher said page 9 shows the results of the state assessment and the proficiency rates overall. He said page 10 shows the breakdown for how the state sees the performance of students across the years. He said it shows the proficiency rates from 2004 through 2014-15. He said from 2004 through 2013-14 students in the state had approximately 78 percent efficiency. He said the proficiency rate dropped in 2014-15 to 45 percent. He said the drop in the proficiency rate can be attributed in part to the implementation of a new state assessment. He said the blue dots reference the National Assessment of Education Progress (NAEP). He said the NAEP test has generally

stayed steady around the 45 percent mark. He said this indicates the new test based on the new standards are replicating the performance seen for years in the NAEP test. He said students in the 11th grade do not take the NAEP test, which is why the test is not shown on page 12. He said the general lowering of performance across the grade levels is a result of more rigorous state standards being implemented in terms of content and coverage.

Mr. Gallagher said page 13 shows where the state of North Dakota was as a whole under the old assessments. He said every dot represents a school in North Dakota. He said page 14 shows where the state of North Dakota is as a whole under the new assessment as of 2014-15. He said while the scores have generally dropped, the dynamic of the chart is essentially the same as the one shown on page 13. He said as a matter of observation, lower performing schools tend to be at a higher socio-economic disadvantage.

Mr. Gallagher said beginning on page 9 the handout shows the breakdown of overall proficiencies. He said the breakdown generally shows a proficiency rate around 40 percent for English language arts and mathematics. He said the 2014-15 assessment was the very first year the state implemented an online assessment through both the Smarter Balanced Assessment Consortium (SBAC) and Dynamic Learning Maps. He said the Smarter Balanced Assessment is the larger of the two by far. He said the vast majority of the 55,000 students in the state took the Smarter Balanced Assessment.

Mr. Gallagher said the state experienced certain test disruptions during the administration of the 2014-15 assessment. He said the disruptions affected certain students in certain locales, but the disruption was not uniform. He said after accounting for disruptions they were able to determine 86 percent of all students in the state were able to take all elements of the test. He said another 6 to 7 percent of students voluntarily took only a part of the test. He said approximately 1 to 2 percent of students were unable to complete the test due to disruptions and the state was unable to get results from those students. He said there was an overall participation rate of approximately 96 percent which can be accounted for through the data.

Mr. Gallagher said based on the results of the 2014-15 test, the state is moving forward with enhancements to the test. He said the state will be conducting a validity study to determine the overall impact of the performance of the test. He said the state received a rebate back from SBAC as a result of the difficulties encountered. He said as of the 2015-16 test, there has been a year of the test with no disruptions. He said the feedback is people out in the field are overall quite satisfied with the test. He said the state should have the full data from the 2015-16 test within approximately 1 month. He said it currently takes about 1 month to process results after a student takes a test. He said the time required for results to be processed is caused by having both a computer and human scoring element to the test.

Mr. Gallagher said the perspective within the department is the foundation of the assessment is quite solid. He said the test has all the makings of a valid and reliable assessment tool. He said a test is only as good as the administration of the test. He said the first year of the administration of the test encountered disruptions. He said the results of the assessment leads the department to believe much of the data reflects a true understanding of the students in the state. He said moving forward they need to look at the degree they attend to the building of the test and ensuring there are measures in place for proper administration of the test so the system can be perceived as valid and reliable.

In response to a question from Representative Meier, Mr. Gallagher said there are 15 states, the United States Virgin Islands, and the Bureau of Indian Education currently using SBAC. Mr. Gallagher said at one time there were 24 states participating in SBAC.

In response to a question from Representative Hunskor, Mr. Gallagher said it is a fair observation that members in the field would have been concerned with the length of the testing time and time required to obtain results after the first year of the assessment. Mr. Gallagher said following the first year of the assessment it took several months to receive results. He said the design under the contract with SBAC says the state is to receive results within 1 month. He said the assessment results are now being returned within the desired time period. He said from 2014-15 to 2015-16 the efficiency in administering the test was improved by 1.5 hours and is now at 5.5 hours. He said the current length of time required to administer the test is comparable to the amount of time required under the old assessment model. He said there is currently a task force in place reviewing the options for the future of assessments in North Dakota.

In response to a question from Representative Sanford, Mr. Gallagher said it is pretty accurate to say there is affirmation the Smarter Balanced Assessment is a high-quality assessment, year one ran into issues in the administration of the test, year two brought improvements to the test and the administration efficiency, the state is writing new standards under the existing assessment for next year, and once the new standards are written the state can evaluate them and determine which assessment best serves the standards the state is trying to achieve. Mr. Gallagher said the issues in the administration of the year one test was not entirely the fault of the vendor. He said test packaging is a huge element in proper administration of a test. He said in year one the majority of the test

packaging was perfect but certain elements of the packaging were challenged. He said the issues were limited, but they still impacted certain students. He said in year two SBAC increased the quality assurance of the test packaging to help resolve the issues. He said in year one the state used an open source SBAC operating system to administer aspects of the test. He said the system was at the limit of its ability which caused some disruptions during administration. He said the disruptions were caused by inefficiencies in the code which have since been corrected.

In response to a question from Representative Wallman, Mr. Gallagher said an open source is a tool that allows various parties to adjust materials to suit their needs. Mr. Gallagher said an open source allows for flexibility within the system. He said North Dakota has a year-to-year contract with SBAC. He said the state has flexibility in determining the proper assessment to use in the future.

In response to a question from Representative Meier, Mr. Gallagher said the state has spent approximately \$550,000 per year on SBAC. Mr. Gallagher said the contract with Measured Progress accounts for approximately \$1.4 million per year. He said in total the state spends approximately \$1.9 million per year on assessments and results. He said under the old assessments the price was approximately \$3.4 million per year.

Mr. Steve Snow, Director, Management Information System Unit, Department of Public Instruction, gave a presentation ([Appendix J](#)) regarding the findings and recommendations of the School District Reporting Review Committee.

Ms. Tara Bitz, Early Childhood Administrator, Department of Public Instruction, gave a presentation ([Appendix K](#)) regarding the implementation of a uniform system for the accounting, budgeting, and reporting of data by an early childhood education provider who has received a grant distributed in accordance with Senate Bill No. 2151.

In response to a question from Senator Flakoll, Ms. Bitz said the parental contact provision is being addressed in a number of different ways. Ms. Bitz said some educators have developed their own parent curriculum. She said some are using a combination of different approaches.

In response to a question from Senator Erbele, Ms. Bitz said 49 grants have been distributed statewide. Ms. Bitz said more rural districts are taking advantage of the grants than larger districts.

In response to a question from Representative Nathe, Ms. Bitz said all of the programs were already in existence in the rural communities.

In response to a question from Representative Rohr, Ms. Bitz said she was not sure if a determination has been made as to the total number of applications that could be accepted. Ms. Bitz said at the time the bill was passed there were already approximately 75 approved school districts. She said the number is now closer to 95.

In response to a question from Senator Erbele, Ms. Bitz said part of the application process is to list the number of 4-year olds the school district currently has and how many 4-year olds it is anticipating will receive free or reduced lunch.

In response to a question from Senator Oban, Ms. Bitz said the 49 applications already have programs so they are essentially applying for expansions or enhancements of those programs.

In response to a question from Senator Heckaman, Ms. Bitz said she would have to defer to the North Dakota Department of Commerce on how they are handling the 4.05 percent budget allotment.

In response to previous questions, Mr. Wayne Sick, Director of Workforce Development, Department of Commerce, said the department was anticipating receiving applications from all of the preapproved programs. He said the department was surprised when it did not receive all of the applications. He said after receiving input from members out in the field on the Early Childhood program the department cut \$1.25 million from the prekindergarten program to account for the 4.05 percent budget allotment because the department expected the funds would not be utilized based on the number of students the department anticipated requiring free or reduced lunch in the state. He said the 49 applications account for \$890,000. He said the 49 applications will serve 345 qualified 4-year olds for free lunch and 189 for reduced lunch.

In response to a question from Senator Flakoll, Mr. Sick said the Department of Commerce is not intending to open another round of applications for the program because the planning needed to occur during the first year.

PUBLIC COMMENTS

Ms. Teresa Larsen, Executive Director, North Dakota Protection and Advocacy Project, said the restraint and seclusion task force was able to come to a consensus on a policy and definitions for reporting in 2013. She said the process can work if all of the stakeholders get together at the table. She said there are approximately three dozen

members of the task force. She said members of the task force have extensive knowledge and experience with restraint and seclusion. She said the goal of the task force is to come to a consensus and report back to the interim Education Committee on recommendations for restraint and seclusion. She said the task force has only had one meeting to date. She said she agrees with Ms. Thomas there needs to be more discussion on the topic. She said the North Dakota School Boards Association was invited to participate with the task force on multiple occasions and share the model policy they have developed, but they have repeatedly declined.

In response to a question from Senator Oban, Ms. Larsen said at the first meeting of the task force there was discussion and input on the need for training the task force feels is necessary for educators if a policy is agreed upon.

STAFF DIRECTIVES

Chairman Schaible said he would like to have two more meetings, in July and September, to wrap up the work of the committee. He said the committee needs to wrap up the North Dakota United and restraint and seclusion bill drafts. He said he would like to add definition language of restraint and seclusion into the bill draft.

In response to questions from Representative Kelsh and Senator Flakoll, Chairman Schaible said legislators can individually request the Attorney General's opinions on the constitutionality of the issues with North Dakota United if they wish. Chairman Schaible said the committee can ask for an opinion and recommendations on how to best resolve the issue but he is not sure the Attorney General would complete an opinion before the committee wraps up its work for the interim.

In response to a request from Senator Erbele, Chairman Schaible requested the Legislative Council staff to remove the language "or its successor organization" from the North Dakota United bill draft for the next meeting. Chairman Schaible also requested staff to add language to say "educator member of North Dakota United."

Senator Flakoll said he would be willing to work with the Legislative Council staff on amending the North Dakota United bill draft since he initially brought up some of the issues in the meeting.

Chairman Schaible said any committee member with suggestions for amendments to the bill drafts can forward them to the Legislative Council staff for consideration at the next meeting.

In response to a request from Representative Monson, Chairman Schaible requested the Legislative Council staff to work with Ms. Thomas and Mr. Archuleta on amendments for the North Dakota United bill draft.

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

Dustin Assel
Counsel

ATTACH:11