



EDUCATION FUNDING FORMULA REVIEW COMMITTEE

Wednesday, August 26, 2020
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, Joan Heckaman, Nicole Poolman, David S. Rust; Representatives David Monson, Marvin E. Nelson, Mark S. Owens, Mark Sanford

Members absent: None

Others present: Senator Erin Oban, Bismarck, member of the Legislative Management
Dustin Assel, Legislative Council, Bismarck
See [Appendix A](#) for additional persons present.

It was moved by Senator Rust, seconded by Senator Heckaman, and carried on a voice vote that the minutes of the June 16, 2020, meeting be approved as distributed.

ELEMENTARY AND SECONDARY EDUCATION TRANSPORTATION STUDY

Chairman Schaible said Mr. Mark Lemer, North Dakota Association of School Business Officials, and the following school district representatives, had joined the meeting remotely:

- Dr. Mike Bitz, Superintendent, Mandan Public School District;
- Mr. Brandt Dick, Superintendent, Underwood School District 8;
- Dr. Steve Holen, Superintendent, McKenzie County School District #1;
- Mr. Duane Poitra, Business Manager, Belcourt School District #7; and
- Mr. Darin Scherr, Business and Operations Manager, Bismarck Public Schools.

At the request of Chairman Schaible, Mr. Dustin Assel, Counsel, Legislative Council, reviewed a bill draft [[21.0033.02000](#)] relating to reimbursement for elementary and secondary education transportation costs. Mr. Assel said the bill draft codifies student transportation aid payment sections as the provisions existed on June 30, 2001, updates provisions to reflect current practices and reimbursement rates included in Section 10 of Senate Bill No. 2013 (2019), and prohibits school districts from receiving transportation reimbursement for certain students participating in open enrollment and tuition waiver agreements.

In response to a question from Representative Monson, Ms. Sheila M. Sandness, Senior Fiscal Analyst, Legislative Council, said if the bill draft is approved by the Legislative Assembly, transportation reimbursement rates would be codified and any rate change would require an amendment to North Dakota Century Code. She said funding for transportation is appropriated to the Department of Public Instruction (DPI) based on the department's estimates and distributed to school districts each year based on prior year ridership and mileage. She said at the end of each biennium, variances may result in excess funding available for turnback or result in a deficiency appropriation.

Representative Nelson expressed concern regarding the impact of school closures in March on transportation reimbursement. He said school districts used buses to deliver food; however, those miles are not reimbursable. In addition, he said, schools are required to contract for buses for the next school year even though they do not know if they will need them.

Chairman Schaible said because much of the impact of the Coronavirus (COVID-19) pandemic on school districts is not known, the Legislative Assembly likely will have to address the impacts retroactively during the next legislative session.

It was moved by Representative Monson, seconded by Senator Rust, and carried on a roll call vote that the bill draft [21.0033.02000] relating to reimbursement for elementary and secondary education transportation costs be approved and recommended to the Legislative Management. Senators Schaible, Heckaman, Poolman, and Rust and Representatives Monson, Nelson, Owens, and Sanford voted "aye." No negative votes were cast.

At the request of Chairman Schaible, Mr. Adam J. Tescher, Director, School Finance and Organization, Department of Public Instruction, provided information ([Appendix B](#)) regarding a comparison of transportation reimbursement in North Dakota to transportation funding provided by South Dakota. Mr. Tescher said South Dakota does not provide funding for student transportation nor is there a weighting factor associated with transportation in the South Dakota general aid funding formula. He said South Dakota provides additional funding for districts that meet the state's definition of a sparse school district. He said if access to bus service is not furnished by the school district to which the student is assigned, the student is entitled to a transportation or a room and board allowance which is provided by the school district. He said in South Dakota, families are reimbursed by school districts for distances traveled in excess of 5 miles each way. He said in North Dakota, travel in excess of 2 miles each way is reimbursed by the school district and may be submitted for state reimbursement. He said while North Dakota requires family reimbursement be made to a family member, South Dakota is more flexible and allows for reimbursement when families rideshare.

In response to a question from Representative Monson, Mr. Tescher said South Dakota school districts must fund transportation from their general state aid or some other source. He said the per student payment rate in South Dakota is just over \$6,000 per student; however, South Dakota's funding formula is different and that rate may not include local funding.

ELEMENTARY AND SECONDARY EDUCATION STATE AID FUNDING FORMULA STUDY

At the request of Chairman Schaible, Mr. Assel reviewed a bill draft [21.0116.01000] relating to the ability of a school district to temporarily transfer excess funds, accruing as a result of the COVID-19 pandemic, between the general fund and the building fund of the school district. Mr. Assel said there were no changes to the bill draft as it was presented to the committee in June. He said the bill draft allows school districts, which transferred funding from their general fund to their building fund between March 13, 2020, and July 1, 2020, to avoid an excess fund balance deduction to their state school aid, to return the funding to their general fund, if the transfer is done before June 30, 2021. He said it is a temporary exception to allow school districts to keep excess funding resulting from school district closures during the COVID-19 pandemic.

In response to a question from Senator Rust, Chairman Schaible said under current law, transfers from the building fund to the general fund are restricted. He said the bill draft will remove temporarily those restrictions for transfers related to the COVID-19 pandemic.

Mr. Dick said the early spring closure of several small school districts resulted in lower expenditures. In addition, he said, the lower level of expenditures meant a lower ending fund balance limit. He said the funding transferred from the building fund to the general fund could be used by school districts to pay extra expenditures related to the COVID-19 pandemic during the next school year.

In response to a question from Senator Oban, Mr. Dick said a survey has not been conducted and it is not known how many school districts may be impacted by the bill draft.

Chairman Schaible said an estimated 14 school districts took advantage of the transfer option and would like the opportunity to return funding to the general fund.

It was moved by Senator Rust, seconded by Representative Monson, and carried on a roll call vote that the bill draft [21.0116.01000] relating to the ability of a school district to temporarily transfer excess funds, accruing as a result of the COVID-19 pandemic, between the general fund and the building fund of the school district be approved and recommended to the Legislative Management. Senators Schaible, Heckaman, Poolman, and Rust and Representatives Monson, Nelson, Owens, and Sanford voted "aye." No negative votes were cast.

At the request of Chairman Schaible, Mr. Tescher provided an analysis ([Appendix C](#)) of potential changes to the school size weighting factors proposed by the North Dakota Council of Educational Leaders. Mr. Tescher said the analysis is similar to the analysis presented to the committee in June with a different set of potential weighting factors. He said the data, used to prepare both the current analysis and the June analysis, was the same as the data used to prepare the May 2020 foundation aid payment. He said phasing in this set of increased school size weighting factors is estimated to result in an additional 3,433 weighted student units over 7 years; however, the transition minimum adjustment, costing \$49.5 million during the 2019-20 school year, is reduced to zero in the 7th year. He said the net effect of the savings related to the phasing out of the transition minimum adjustments and the additional cost related to the potential changes to the school size weighting factors is a reduction in state aid from \$996.2 million in the 2019-20 school year to \$981.6 million in year 7 of the analysis.

Mr. Lemer said the analysis presented to the committee in June increased weighting factors for the smallest schools. He said very small school districts would double their size weighting factor from .36 to .72. He said the new analysis includes adjustments to the school size weighting factors for mid-sized school districts. He said the cost to operate an elementary district is approximately 92 percent of the cost to operate a K-12 district. He said although the factors in the analysis have not been adjusted for districts that only offer elementary grade levels, the factors should be adjusted to account for the lower cost of an elementary school district. He said the goal is to have one set of school size weighting factors and to provide for adjustments to those factors for K-6 and K-8 school districts to reflect the lower cost of elementary districts compared to districts that offer high school. He said the increase in the school size weighting factors in the analysis will offset the negative impact of the phase out of the transition minimum. He said the factor changes in the current analysis impact more school districts than the analysis prepared in June and have a higher cost. However, he said, the additional cost remains less than the savings from the phase out of the transition minimum.

Chairman Schaible said the goal of the committee has been to bring school districts on to the formula. He said the proposed weighting factors should be adjusted for elementary districts because the cost to provide an elementary education is less than secondary education.

Chairman Schaible said he does not anticipate the committee will advance a bill draft relating to proposed school size weighting factors. He said the committee will gather information that can be used to analyze any bill drafts proposed during the legislative session.

In response to a question from Representative Monson, Mr. Lemer said whether there is a net savings over the 7-year phase out of the transition minimum adjustment will depend on the set of weighting factors approved. He said the set of factors in the current analysis would save money if all other things are equal. He said some school districts that do not have a transition minimum adjustment may benefit from the change in the weighting factors. In addition, he said, some districts have so few students that the increase in the weighting factors will not generate enough funding to replace the additional funding they received from the transition minimum adjustment. He said funding for those districts would decrease.

Representative Monson said the goal is to bring school districts on to the formula without significant increases or funding reductions to school districts.

In response to a question from Representative Monson, Mr. Dick said the school size weighting factors proposed in the current analysis were not adjusted for school districts with an enrollment of more than 375 students.

Chairman Schaible said larger schools have economies of scale and budgets are better able to absorb changes. He said the 375 enrollment threshold in the presentation was for discussion purposes and could be adjusted.

Mr. Tescher said K-6 and K-8 elementary schools are not defined in statute. He said some K-8 school districts may not have students in grades 7 or 8 during a particular school year. He suggested using one adjustment percentage for both K-6 and K-8 districts.

Mr. Lemer said a K-6 school district would have 7 grades of a possible 13 grades and a K-8 school district would have 9 grades of a possible 13 grades. He said an average of 8 grades of a possible 13 grades would generate a 62 percent adjustment. He said applying a 62 percent adjustment to the average daily membership of both K-6 and K-8 school districts could be one way to convert an elementary district to a K-12 district for purposes of applying the school size weighting factor and it would make the formula less complicated for DPI.

At the request of Chairman Schaible, Mr. Tescher provided information ([Appendix D](#)) regarding transition maximum adjustments to the state school aid formula. Mr. Tescher said prior to the 2019-20 school year, every

school district received a baseline funding calculation that included a baseline for total dollars received, a weighted student unit baseline, and a per student payment baseline that were established using 2012-13 school year finance and student data. If a school district had a baseline per student payment rate less than the statutory per student payment rate for the 2013-14 school year, the school district received a transition maximum adjustment to its formula calculation to prevent significant changes in school district budgets due to the implementation of the funding formula change. He said in 2019 this baseline was recalculated using the foundation aid calculation for the 2019-20 school year. He said from the 2013-14 school year to the 2015-17 school year when the per student payment rate was increased 3 percent each year, school districts receiving a transition maximum adjustment received a 10 percent increase to their per student funding calculation each year to bring those school districts on to the formula. He said during the 2017-19 biennium, no districts received an increase to the per student payments and no adjustments were made to the transition maximum. He said in the current biennium, the per student payment was increased 2 percent each year while districts receiving a transition maximum adjustment received a 5 percent annual increase to their per student calculation. He said during the 2019-20 school year, 11 school districts received a transition maximum adjustment resulting in a reduction to the formula of \$10.5 million compared to the 2013-14 school year when 41 school districts received a transition maximum adjustment totaling \$19.5 million. He said as increases have been approved for the transition maximum, school districts have moved to the formula. However, he said, one school district accounts for more than one-half of the estimated 2020-21 transition maximum adjustment total of \$9.8 million and it will take longer for that district to transition to the formula.

At the request of Chairman Schaible, Mr. Poitra provided information regarding the impact of the transition maximum adjustment on school districts. Mr. Poitra said it was anticipated school districts would transition to the formula in 6 years. He said 30 of the 41 school districts have transitioned to the formula and the 11 remaining districts are mostly Native American school districts which operate differently. He said the transition maximum has resulted in little or no increase in funding and, in 2017, per student funding from the state for Belcourt School District #7 decreased.

Mr. Tescher said a minimum local effort, equivalent to 60 mills applied to 20 percent of the state average taxable valuation per student, resulted in a decrease in state school aid for Belcourt School District #7. He said because the local effort is based on the state average taxable valuation, the 60 mills was deducted in the formula even though the district did not collect the additional property tax funding.

Mr. Lemer said the committee could consider transitioning school districts from transition maximum adjustments in the same way school districts are being transitioned from transition minimum adjustments. He suggested the committee also review North Dakota Century Code Section 15.1-27-04.2 relating to the minimum local effort for state aid. He said this section requires if a school district's taxable valuation per student is less than 20 percent of the state average valuation per student, the Superintendent of Public Instruction, for purposes of determining state aid, must use an amount equal to 60 mills times 20 percent of the state average valuation per student multiplied by the number of weighted student units in the district. He said the committee may want to consider an appropriate level of local effort for all school districts, but in particular for districts with very low taxable valuations.

In response to a question from Chairman Schaible, Mr. Tescher said given increases in the transition maximum payments, the length of time to get all school districts on the formula will vary. He said the one district that accounts for most of the estimated 2020-21 transition maximum adjustment will take significantly longer. He said the length of time to transition these districts is also dependent on the gap between the percent increase in the transition maximum payment and the percent increase in the per student payment rate.

Representative Nelson said federal funds are meant to supplement not supplant state and local funding. He said the transition maximum adjustment should be eliminated.

Mr. Poitra said in the previous state school aid formula, school districts with low taxable valuations received the benefit of an equity payment based on the statewide average of taxable value. He said the 20 percent of the state average valuation minimum local effort has been part of at least the last two iterations of the state school aid formula. He said the percentage seems arbitrary as the taxation does not exist to generate the funding.

At the request of Chairman Schaible, Mr. Tescher provided information ([Appendix E](#)) regarding a study, assigned to DPI, the Indian Affairs Commission, and the Kindergarten Through Grade Twelve Education Coordination Council pursuant to Section 24 of Senate Bill No. 2265 (2019), regarding the effect of impact aid on the funding formula of reservation schools. Mr. Tescher said stakeholders have met twice and concerns discussed include the transition maximum adjustment, the deduction for an excess ending fund balance, and the minimum local effort set at 20 percent of the state average taxable valuation. He said there seemed to be a desire to move transition maximum school districts on to the formula in 7 years. He said the stakeholders have not determined a method by which school districts should be transitioned from the maximum adjustment. He said the excess ending fund

balance offset also can adversely affect reservation schools because impact aid is unpredictable and may arrive just before the end of the school year. He said the excess ending fund balance offset was established as a taxpayer protection tool, but reservation schools have minimal property tax revenue. He said because some of the school districts that receive large amounts of impact aid have low taxable valuations, stakeholders discussed omitting impact aid funds from the unobligated ending fund balance calculation. He said another concern was school facilities are funded locally; however, reservation school districts do not have a tax base to generate funding for facilities. He said if a school district were allowed to keep the excess ending fund balance, the funding could be used for construction. He said stakeholders also discussed the minimum local effort set at 20 percent of the statewide average taxable valuation, but did not yet have a recommendation.

In response to a question from Chairman Schaible, Mr. Tescher said two states have demonstrated a level of spending high enough to consider impact aid in their state school aid formulas. He said the process for approval by the United States Department of Education to use impact aid in the state school aid formula is cumbersome and the threshold is difficult to meet. He said DPI does not use impact aid in the formula; however, there is concern by some that the minimum local effort set at 20 percent of the statewide average taxable valuation is a substitute for impact aid in the formula.

Mr. Poitra said impact aid can arrive right before year end and districts are in the position of spending the funding or have the funding deducted from state school aid the next year. He said although districts have been told the impact aid represents the federal government's payment of property tax, they also have been told the impact aid should not be considered in the state school aid formula.

In response to a question from Representative Sanford, Mr. Tescher said the two Air Force base schools in the state are considered nonoperating and they do not receive state school aid. He said the impact aid received by Air Force base school districts is used to pay tuition to the local school districts educating children from the Air Force base. He said, after various adjustments, the tuition received from the Air Force base is deducted at 75 percent in the state school aid formula of the educating district.

At the request of Chairman Schaible, Mr. Tescher provided information ([Appendix F](#)) regarding DPI's study of the special education contract system. Mr. Tescher said the student contract system is designed to provide assistance for high-cost special education students. He said challenges administering the special education contract grant system have been evolving and contract situations relating to resident and financially responsible school districts are becoming more complex. The student contract system has experienced a significant increase in the number and cost of special education contracts. He said daily rates for some facilities have increased nearly 10 percent in the current year. He said state law does not address many of the contract situations that develop and it has become more difficult to determine which school district is responsible for some of the contracts. He said when there is a placement, the financially responsible school district is the district where the custodial parent or the legal guardian resides. He said challenges include:

- The definition of legal guardian and whether a power of attorney for education decisions may establish legal guardianship for educational purposes. Occasionally, court orders and powers of attorney are not written consistently and language is not always clear;
- Timely and accurate notifications of placement because, although an online system for contracts exists, outdated paper notifications still are used causing a delay in contract notifications;
- New programs, created for individuals who turn 18 in a facility and age out of the foster care system, result in confusion regarding whether the program qualifies as a student contract, eligible for reimbursement, and which school district may be responsible for the student; and
- Whether preparation for GED testing, while in certain placement situations or after dropping out of school at age 16 and later enrolling in a GED program, should be reimbursed by the special education contract system. Funding provided to DPI for adult education is limited and is primarily used for staffing and testing at GED centers.

Senator Heckaman said the state seems to be lacking services for high needs students and should review how facilities could serve more students. She said the cost to send students to facilities out-of-state is high and it is difficult for families to visit.

In response to a question from Representative Nelson, Mr. Tescher said even with joint custody, only one district is financially responsible for the student and the financially responsible district becomes more complex when the student is placed in foster care or a residential facility.

Mr. Lemer said many of the challenges DPI has identified exist in the West Fargo School District. He said a school district should not be responsible for GED services at a residential facility if DPI is not. He said the West Fargo School District has relied on DPI's interpretation regarding whether a placement is reimbursable to determine if the district will pay tuition to the placement agency.

Mr. Lemer said a power of attorney is not the same as legal guardianship; however, courts have determined education is provided where the student lives. He said students may live with a family member without an agreement. He said this complicates matters when there is a placement. He said there are no provisions for these types of students.

Mr. Lemer said the student contract system is a safety net that keeps student placement from having a significant overall impact on school district budgets. He said in addition to reimbursement for the excess cost of student placement, school districts also receive foundation aid for the student in placement.

Dr. Bitz said the special education contract system does not cover all high-cost students. He said a student that is not in need of special education services, but is in need of medical assistance does not qualify for reimbursement. He said school districts could benefit from a system that protects them from all high-cost students.

In response to a question from Senator Heckaman, Mr. Tescher said the 2019-21 biennium appropriation for special education contracts is \$24 million. He said DPI spent \$11.9 million for special education contracts during the 1st year of the biennium, of which approximately \$2 million was for prior biennium contracts. He said the remaining \$12.1 million appropriation may be sufficient for the 2nd year of the biennium; however, DPI will not know until after the legislative session because requests for reimbursement usually are not submitted until June.

Senator Heckaman suggested if funding in the special education contracts line item is not sufficient the Legislative Assembly allow DPI to use a portion of the excess funding in the state school aid line item of their appropriation, if available, to pay for special education contracts.

Dr. Holen said McKenzie County School District #1 has experienced challenges with custodial questions and has made a number of adjustments to policies regarding custodial documentation.

At the request of Chairman Schaible, Dr. Mathew Lonn, Director, Center for Distance Education, provided information ([Appendix G](#)) regarding the impact of the COVID-19 pandemic on enrollments of the Center for Distance Education (CDE). He said CDE provides adaptive learning where students progress at their pace. He said enrollments increased 7 percent during the 1st year of the biennium; however, growth has accelerated and enrollments are 23 percent more than 1 year ago. He said the center does not anticipate the growth will continue at that level, but anticipates 15 to 20 percent growth during the 2020-21 school year. He said for the 2019-21 biennium, the center's appropriation was increased by \$100,000 for enrollment growth. He said this level of funding is enough to provide 9,280 enrollments for the biennium; however, growth has exceeded what was anticipated and enrollment is over 6,628 to date during the 2019-21 biennium. He said CDE anticipates exceeding the enrollment used in the funding model before the second semester. He said to manage growth and ensure all capacity is used for resident students, the center could limit the number of out-of-state students, increase course prices, or limit all enrollments. He said limiting nonresident students also reduces center revenue used to supplement the program. He said the center could increase course prices beyond the \$10 increase implemented during the 2019-20 school year; however, this would increase the cost to families and small and rural school districts at a time when funding is already short. He said capping all enrollments would limit student access at a time when distance education is being used to keep citizens safe. He expressed concern regarding executive budget guidelines that require a 10 percent reduction in the center's 2021-23 biennium budget request. He reviewed budget options that include increased pricing, limited enrollment, and a funding model based on enrollment.

At the request of Chairman Schaible, Mr. Wayde Sick, Director and Executive Officer, Department of Career and Technical Education, provided information ([Appendix H](#)) regarding the impact of the COVID-19 pandemic on enrollments. Mr. Sick said there are 10 career and technical education (CTE) centers across the state. He said five are in facilities and five are virtual centers. He said all centers provide some virtual learning experiences. He said CTE directors have indicated most courses and instructors are at capacity. He said CTE concerns include:

- Transportation for students traveling for coursework or hands-on labs;
- Maintaining hands-on coursework with distance or hybrid teaching;
- Additional sanitation costs;
- Social distancing during labs; and
- Providing quality work-based learning opportunities.

In response to a question from Chairman Schaible, Mr. Sick said the budgets for CDE and CTE are combined. He said a 10 percent reduction in the CTE budget would not reduce grants to school districts, but would be a significant reduction to salaries, operating, and other programs. He said CDE's portion of the budget reduction is approximately \$600,000.

In response to a question from Chairman Schaible, Mr. Lonn said increasing CDE course prices is a continuing discussion. He said some school administrators believe course prices are too high. He said CDE has shifted to part-time instructors and has become more efficient because part-time instructors can be engaged as needed. He said CDE contracts with vendors for content so instructors do not spend time writing content. He said over the past decade prices varied from \$100 to \$250 per course. He said when the price was \$250 per course, districts found courses elsewhere. He said the market seems to support prices between \$150 and \$170 per course. He said CDE has tried to find a balance between price and quality.

In response to a question from Representative Monson, Mr. Lonn said CDE submitted a request for federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding in June; however, other needs were considered more immediate. He said CDE and CTE determined it would be best to monitor fall enrollment. He said they anticipate requesting CARES Act funding from the Office of Management and Budget and the Governor's office.

In response to a question from Representative Monson, Mr. Lonn said he anticipates CDE will have enough funding to complete the fall semester. He said there are many unknowns with regard to the spring semester; however, full participation in face-to-face classes by all school districts seems unlikely and it is likely CDE will exceed the 9,280 enrollment funding level.

In response to a question from Representative Monson, Mr. Lonn said nonresident CDE enrollments had been trending down, but began to surge recently as other large online education providers began to limit enrollment. He said CDE has decided to limit enrollment for 3 weeks to serve resident students first.

Senator Heckaman suggested CTE explore partnering with tribal colleges for training in programs the tribal colleges already offer.

Mr. Sick said CTE often partners with facilities and could collaborate with tribal colleges.

Chairman Schaible said he does not anticipate any additional bill drafts from the committee, and the last meeting will be in September.

No further business appearing, Chairman Schaible adjourned the meeting at 2:18 p.m.

Sheila M. Sandness
Senior Fiscal Analyst

ATTACH:8