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## EDUCATION FUNDING FORMULA REVIEW COMMITTEE

Monday, September 28, 2020  
Harvest 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 Representative Owens, and carried on a voice vote that the minutes of the August 26, 2020, meeting be approved as distributed.**

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

- Dr. Mike Bitz, Superintendent, Mandan Public Schools;
- 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.

### **ELEMENTARY AND SECONDARY EDUCATION TRANSPORTATION STUDY**

At the request of Chairman Schaible, Mr. Adam J. Tescher, Director, School Finance and Organization, Department of Public Instruction, provided information ([Appendix B](#)) regarding transportation grants provided during the 1<sup>st</sup> year of the biennium; the impact of the Coronavirus (COVID-19) pandemic on transportation funding during the 2<sup>nd</sup> year of the 2019-21 biennium; and an estimate of the cost to continue transportation aid during the 2021-23 biennium. Mr. Tescher said during the 2019-20 school year, \$28.5 million, or 50.4 percent of the \$56.5 million appropriation for transportation grants, was distributed to school districts based on miles and ridership reported by school districts for the 2018-19 school year. He said beginning on March 16, 2020, due to the COVID-19 pandemic, buses were not used to transport students to and from school for the remainder of the 2019-20 school year. He said transportation grant payments for the 2020-21 school year will be based on lower miles and rides reported by school districts for the 2019-20 school year. He said the Department of Public Instruction (DPI) is reviewing transportation reports submitted for the 2019-20 school year and the impact on transportation grants during the 2020-21 school year. He said preliminary information submitted through the state automated reporting system (STARS) application would result in total transportation grant payments of approximately \$21.7 million for the 2020-21 school year, 24 percent less than 2019-20 school year transportation grants. He said based on this estimate, approximately \$6.3 million of the transportation grant appropriation would remain unspent. Although the cost to continue transportation grant payments for the 2021-23 biennium is difficult to project, he said, DPI's preliminary estimate is approximately \$57 million (2 years at \$28.5 million per year). He said DPI would not have complete information to estimate the 2021-23 biennium until school districts submit 2020-21 school year information in June 2021. He said reimbursement for miles and ridership will be impacted by distance and hybrid schedules, social distancing guidance, and family safety concerns.

In response to a question from Senator Heckaman regarding a performance audit of transportation grant reimbursement by DPI, Mr. Tescher said the department does not have enough staff resources to perform a detailed review of each school district report. He said DPI staff does some comparisons to prior years and communicates with the school district to resolve questions. He said DPI does not have the authority to reject a request for reimbursement, but there is a penalty for fraudulent reporting. He said DPI will be updating guidance regarding miles and rides and reviewing processes and documenting correspondence with districts.

Senator Heckaman suggested the Legislative Assembly review DPI staffing to determine if additional staff is needed to review the accuracy of school district transportation data submissions.

In response to a question from Representative Nelson, Mr. Tescher said funding not spent in the transportation grants line item remains in the general fund.

In response to a question from Chairman Schaible, Mr. Tescher said DPI is required to distribute transportation grants based on the state transportation formula as it existed on June 30, 2001. He said that formula provided for reimbursement of transportation to and from school, special education routes, and career and technical education. He said DPI does not reimburse for other transportation, such as meal delivery, and that is why reimbursement for the coming school year will be significantly less.

In response to a question from Representative Monson, Mr. Tescher said DPI informed districts they would not be reimbursed for meal delivery costs through the state transportation grant program. He said funding from the federal Elementary and Secondary School Emergency Relief (ESSER) Fund could be used to offset the cost of meal delivery, but it would not be reimbursed on the same basis as traditional transportation grants.

### **ELEMENTARY AND SECONDARY EDUCATION STATE AID FUNDING FORMULA STUDY**

At the request of Chairman Schaible, Mr. Tescher provided information ([Appendix C](#)) regarding the impact of transition maximum adjustments on the state school aid formula. Mr. Tescher said during the 2019-21 biennium, transition maximum districts are receiving a 5 percent increase each year of the biennium. He said if the 5 percent annual increase is continued into the 2021-23 biennium, the cost to the state would be approximately \$5.4 million. He said if transition maximum districts received increases of 7 percent in the 1<sup>st</sup> year and 8 percent in the 2<sup>nd</sup> year of the 2021-23 biennium, the cost would be approximately \$7.6 million. He said if transition maximum districts receive 10 percent annual increases during the 2021-23 biennium, the cost would be approximately \$10.2 million. He said the number of districts transitioning to the formula with the proposed increases would depend on potential changes to the per student payment. He said if there were no changes to the per student payment rate and a 10 percent increase each year to the transition maximum payments, DPI estimates seven school districts would continue to receive a transition maximum deduction, reducing formula payments by approximately \$3 million.

Mr. Lemer said when there is little or no change to the transition maximum adjustment, funding for transition maximum school districts may be reduced. He said he would suggest a 7-year transition to the formula, similar to what the committee has considered for transition minimum school districts.

In response to a question from Chairman Schaible, Mr. Tescher said if transition maximum school districts were given a percentage increase each year, a few school districts would take significantly longer to transition than the others. He said to ensure all the school districts are on the formula the Legislative Assembly could implement a program to adjust the deduction by a percent of the difference over 7 years rather than providing percentage increases each year.

In response to a question from Mr. Poitra, Mr. Tescher said DPI could review a hybrid method of bringing transition maximum school districts on to the formula. He said recent formula changes provide new students at transition minimum school districts are funded at the statutory rate. He said a similar change could be implemented to allow transition maximum school districts to receive the statutory per student rate for new students as opposed to their lower transition rate.

Mr. Lemer said the transition could be accomplished by providing a percentage increase, but also requiring the formula gap be reduced by a certain percentage to ensure all districts are transitioned to the formula over 7 years.

At the request of Chairman Schaible, Mr. Jim Upgren, Assistant Director, Office of School Approval and Opportunity, Department of Public Instruction, provided information ([Appendix D](#)) regarding the impact of distance learning on school districts' ability to fulfill school calendar hour requirements. Mr. Upgren said under the Governor's Executive Order 2020-38, school districts received a waiver of instructional seat time as long as the district submitted a school board-approved distance learning plan to DPI. He said this resulted in varying

attendance and engagement policies. He said there is no consistent or uniform measurement for distance learning time or engagement. He said when the executive order is lifted there will be no mechanism to allow distance learning to be counted for instructional time. He reviewed how other states are handling distance learning in their school calendar requirements and shared language some states have used to define seat time as it relates to distance learning. He said the states he reviewed are either waiving the seat time minutes requirement for schools doing distance learning or making adjustments to allow for distance learning to count in meeting the seat requirement for the 2020-21 school year.

At the request of Chairman Schaible, Mr. Tescher provided information ([Appendix E](#)) regarding the impact of distance learning on school districts' state school aid calculation. Mr. Tescher said Executive Order 2020-38 provides school districts that meet or exceed the requirements for distance learning plans may consider distance learning students as enrolled for purposes of calculating average daily membership for foundation aid payments. He said every school district was required to submit a calendar to DPI indicating the days and hours of instruction each day. He said if the school district's distance learning plan is approved by DPI, students participating in hybrid and distance learning qualify for purposes of the state aid calculation. He said in 2019 the Legislative Assembly adjusted the school calendar from days to hours. He said DPI does not distinguish between face-to-face, hybrid, or distance learning hours for purposes of calculating state school aid.

In response to a question from Senator Poolman, Mr. Joe Kolosky, Director, Office of School Approval and Opportunity, Department of Public Instruction, said there is no minimum requirement for synchronous learning time. He said some districts are not using synchronous learning and some are. He said the school boards are responsible for making those decisions, resulting in a variety of synchronous and asynchronous plans.

Dr. Bitz said Mandan Public Schools is not using synchronous learning. He said the school district determined sending all video at the same time was problematic for bandwidth and for parents with more than one child participating in distance learning.

In response to a question from Representative Nelson, Mr. Kolosky said initially there were issues for special education and individualized education plans; however, DPI has continued to issue guidance.

Ms. Kirsten Baesler, Superintendent of Public Instruction, said the executive order requires DPI to audit a representative sampling of distance learning programs. She said the report is due on November 30, 2020, and the information can be sent to legislators. She said the public also can access real-time data regarding the COVID-19 response on DPI's [insights.nd.gov](https://insights.nd.gov) website.

At the request of Chairman Schaible, Mr. Tescher provided information ([Appendix F](#)) regarding funding approved by the Emergency Commission and the Budget Section to mitigate the impacts of COVID-19 on school districts. Mr. Tescher said there have been three grant programs made available to school districts. He said the ESSER funds were provided through the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the education corps funding and broadband grants are provided from the state's allocation of coronavirus relief funds. He said both public and private schools are eligible for broadband grants, but only public schools are eligible for ESSER funds and education corps funding. He reviewed grant guidance on DPI's website and provided a summary of the funding available by school district, grant allocation methods, allowable uses, distributions to date, and deadlines for the following grants:

	<b>ESSER Funds</b>	<b>Education Corps Funding</b>	<b>Broadband Grants</b>
Funding available	\$30,063,929	\$30,000,000	\$500,000
Allocation method	\$29,967,929 allocated based on the Title I formula and \$96,000 allocated to 16 school districts (\$6,000 each) that do not qualify for Title I	Each school district will receive a base of \$30,000 plus \$217.19 per student	Allocated based on the number of free and reduced meals
Allowable uses	COVID-19-related expenses, including emergency response and to develop and implement procedures and systems to improve preparedness and response efforts	Contracted services and additional staffing needs caused by COVID-19	To support families in need of broadband telecommunications
Distributions as of September 24, 2020	\$3,969,279	\$0	\$0
Deadline	Funds must be spent by September 30, 2022	Funds must be spent by December 30, 2020	Funds must be spent by December 30, 2020

In response to a question from Senator Heckaman, Mr. Tescher said DPI has received the grant funds and will distribute the funding to districts on a reimbursement basis.

At the request of Chairman Schaible, Dr. Bitz provided comments ([Appendix G](#)) regarding the restrictions and timeline of COVID-19 relief funding. Dr. Bitz said restrictions on the use of some of the grant funding and the short time period to incur the expenditures for certain grants has made it difficult for school districts to spend the funds wisely. He said education corps grants require schools to use the funding to supplement, but not supplant employee positions in the prior year budget. He said if school districts hire new staff in the fall, the funding only is available for those positions until December 2020. He said school districts would have to terminate the new employees or find another funding source. He said school districts also are having a difficult time filling the types of positions for which the funding is available. He said state law provides a teacher hired before January 1 has continuing contract rights for the following school year and there is no provision allowing a school district to terminate a teacher in January when the funding expires. He said while the supplement, not supplant, and the December 2020 deadline are federal provisions, the Emergency Commission and the Budget Section could revise the allowable uses of the funds. He said the need for funding extends beyond personnel costs and suggested the uses of the education corps grants be expanded to the same areas as the ESSER funds. He said the ESSER funds, distributed based on the Title I formula, made significant funding available to some districts and a minimal amount to others. He said because education corps grants were distributed with a base payment and per student amount, even smaller schools received adequate funding. However, he said, school districts need flexibility to use the funding to meet unique needs.

In response to a question from Chairman Schaible, Dr. Bitz said if school districts are given flexibility with regard to the types of expenditures eligible for the education corps grants, school districts could spend the funding wisely before the December 2020 deadline.

In response to a question from Representative Nelson, Ms. Baesler said funding for the education corps grants was made available from funding previously allocated to a Bank of North Dakota program, but not used. She said the Emergency Commission determined the funding should be dedicated to a specific purpose and at the time it appeared there was a need for human resources. She said later it became clear the funding would exceed what is needed for salaries, but DPI was unable to change the request that already had been approved by the Emergency Commission.

In response to a question from Senator Heckaman, Ms. Baesler said the education corps funding could be used for parent liaison positions if the positions were not part of the prior year budget and the positions are related to the COVID-19 response.

At the request of Chairman Schaible, Mr. Tescher provided information ([Appendix H](#)) regarding the fiscal impact of funding formula changes approved by the Legislative Assembly in 2019 compared to estimates made during the 2019 legislative session and a comparison of budgeted 2019-21 state school aid to 2019-20 actual state school aid and updated projections of 2020-21 state school aid. Mr. Tescher said lower than anticipated enrollment, increased contributions from in lieu of property taxes, and a large ending fund balance deduction resulted in budget savings of \$19.5 million during the 2019-20 school year. He said fall enrollment data for the 2020-21 school year was due on September 15, 2020, and will be updated by the end of October. He said based on preliminary 2020-21 school year estimates, on-time funding is anticipated to cost approximately \$15.8 million compared to \$15.2 million estimated during the 2019 legislative session. He said the impact of COVID-19 on fall enrollments may reduce the estimated cost of on-time funding. He said based on preliminary estimates, state school aid payments for the 2<sup>nd</sup> year of the biennium are anticipated to be \$13.3 million less than budgeted.

In response to a question from Mr. Lemer, Mr. Tescher said DPI spent approximately 50 percent of the special education contracts line item in the 1<sup>st</sup> year of the biennium, including funding used to pay 2017-19 biennium contracts. He said there are still many uncertainties regarding the 2020-21 school year, but DPI anticipates remaining funding will be sufficient to provide special education reimbursements for the 2<sup>nd</sup> year of the biennium.

At the request of Chairman Schaible, Mr. Ross Roemmich, Management Information Systems Director, Department of Public Instruction, provided information ([Appendix I](#)) regarding an update on enrollments, including information regarding the number of students enrolled in home-based education, distance learning education, hybrid education programs, and full-attendance education programs. Mr. Roemmich said in October 2019, 3,443 students participated in home-based education and by June 2020, an additional 274 students were homeschooled bringing the total to 3,717 students at the end of the 2019-20 school year. He said in September 2020, 4,498 students are participating in home-based education, 1,055 students more than the beginning of the 2019-20 school year. He said during the 2019-20 school year, 3.19 percent of the state's students participated in home-based education compared to 3.4 percent nationally. He said as of September 2020, 3.8 percent of the state's students

are participating in home-based education. He said nationally, home-based education has increased from 1.7 to 3.4 percent of students over the last 10 years. He said home-based education in the state has increased, but still remains below the national average. He said it is likely COVID-19 has contributed to some of the recent increase and those students eventually may return to school. He demonstrated the real-time enrollment data available on DPI's interactive insights dashboard (<https://insights.nd.gov/Education/State/COVID>), including the number of students attending in person, distance learning, or through a hybrid model. He said the information is available by building in each school district and includes the district's distance learning plan and the health and safety plan.

At the request of Chairman Schaible, Mr. Tescher provided information ([Appendix J](#)) regarding the cost to continue state school aid during the 2021-23 biennium. Mr. Tescher said because the impact of on-time funding will depend on the number of students by which actual fall enrollment exceeds the prior year average daily membership, the impact is not known until fall enrollment is verified each year. He said DPI will update 2021-23 biennium projections when reviews of 2019-20 school data are complete and 2020-21 fall enrollment data is finalized. He said DPI is projecting a 2.2 percent increase in average daily membership each year of the 2021-23 biennium. He said, based on current per student payment rates and weighting factors, the cost to continue state school aid will be approximately \$45.5 million during the 2021-23 biennium. He said the cost of enrollment increases will be partially offset by savings related to reductions in transition minimum adjustments (\$20.9 million) and savings related to adjustments to school districts' property tax contribution to bring all school districts to a 60-mill contribution (\$12.7 million). He said the projections do not include potential changes to the school size weighting factors discussed by the committee or the impact of COVID-19 in March. He said updated projections should be available by the middle of November, but final projections will not be available until January when DPI receives property tax valuations.

In response to a question from Mr. Lemer, Mr. Tescher said the 2021-23 biennium common schools trust fund distribution is expected to increase by \$52 million which would reduce the cost of state school aid provided from the general fund.

Mr. Tescher provided information ([Appendix K](#)) regarding the impact of weighting factor changes for school districts with enrollments of less than 375 students and information ([Appendix L](#)) regarding the impact of weighting factor changes for school districts with enrollments of fewer than 230 students for the committee's review.

Dr. Aimee Copas, Executive Director, North Dakota Council of Educational Leaders, provided comments ([Appendix M](#)) regarding ways to manage quarantine in schools. Dr. Copas said schools are going to extraordinary measures to ensure the safety of everyone in the school. She said even with all the precautions, schools are learning the precautions cannot keep healthy students out of quarantine when there is close contact with a positive case. She said a survey, conducted as of September 23, 2020, indicated in the 150 school districts responding there were 562 students and 150 staff members who tested positive for COVID-19. She said due to those positives, nearly 3,800 students and staff had to quarantine and of those 40 ultimately tested positive. She said half of those testing positive were in school districts that do not require masks. She said schools are struggling to keep healthy kids in school. She said other states are taking a new approach to how quarantines are managed in a school environment. She said the new approach recognizes mitigation measures, especially masks, are working and can help students and staff stay in school. She said Nebraska allows students who are wearing masks in school to continue to attend school after exposure to a close contact in school if they continue to wear a mask and self monitor for symptoms. She requested committee support for the Nebraska model.

In response to a question from Senator Oban, Dr. Copas said most school districts mandate masks.

Mr. Jeff Fastnacht, Assistant Superintendent, Mandan Public Schools, provided comments ([Appendix N](#)) regarding the balance between health safety and the education needs of students. Mr. Fastnacht said Mandan Public Schools began in August with K-5 students in school every day and grades 6 through 12 on a hybrid schedule. He said the district requires masks to be worn when physical distancing is not possible. He said students are not receiving the type of education North Dakotans expect from their schools in this configuration. He said students are affected by stress and anxiety, and addressing the unique needs of students with an individualized education plan or needing English language instruction is challenging. He said the hybrid schedule also puts pressure on families for child care and in some instances diminishes families access to food and other supports normally received at school. He expressed concern regarding the negative educational effects of quarantining large numbers of students relative to the low risk of transmission within the student body. He said as of September 27, 2020, less than 1 percent of the school district's enrollment, or 33 students, has tested positive for COVID-19; however, the school district has quarantined 8.5 percent of the student body, or 349 students, including those testing positive. He said less than one-half of those quarantined, or 150 students, were due to school-related exposure. He said of the 316 students quarantined who were not sick, 7 students, or 2.2 percent, eventually tested positive. He said schools have not been responsible for significant COVID-19 community spread. He said changes

that reinforce mask wearing while reducing the number of students removed from school and activities would be widely supported.

Mr. Rick Diegel, Superintendent, Kidder County School District #1, provided comments ([Appendix O](#)) regarding the impacts of student quarantine. Mr. Diegel said Kidder County Public School continues with face-to-face instruction in prekindergarten through grade 12. He said the school recommends, but does not require, mask wearing when social distancing is not possible. He said the incidence of quarantined students who eventually test positive is very similar to Mandan Public Schools. He said the most significant effect of COVID-19 is lost education for students placed in quarantine. He said there should be a balance between the mental health and educational needs of students and the health and safety of students. He expressed support for the Nebraska model because it would incentivize students to wear a mask by reducing their risk of quarantine. He said more students would wear masks without a mandate if they would benefit from not having to quarantine.

Mr. Matthew Fetsch, Executive Director, North Dakota High School Activities Association, provided comments ([Appendix P](#)) regarding the impact of COVID-19 on high school activities. He said in July 2020, the association approved comprehensive competition guidelines, including modified rules for fall sports, daily attendance logs to aid in identifying close contacts, and guidance on masking. He said considerations for limiting attendance at large gatherings and recommendations for transporting students to and from practices and contests in cohort groups also were included in the guidance. He said the guidelines appear to be working as intended. He said several schools quarantined teams as needed due to contact tracing and to prevent further spread in buildings and to other programs. He said in September 2020 the State Department of Health released updated guidance for close contacts in sports, recommending blanket quarantines any time a positive test is discovered in a student-athlete. He said although exceptions to the recommendation were included, member schools that have been affected have indicated blanket quarantines have been placed on teams with no regard for contact tracing. He said there is evidence of the adverse effect of inactivity on high school aged students' mental health, including an increase in moderate to severe depression. He said there is concern for students' mental health when they are following mitigation strategies, but are fearful of their team receiving a blanket quarantine. He said inconsistent application of recommendations and quarantine requirements among local health units exacerbates this concern and creates skepticism regarding the value and intent of the recommendations.

Senator Heckaman suggested the Legislative Assembly consider changes to the ending fund balance deduction, using turnback funds anticipated in the state school aid line item to pay for any underfunding of special education contracts, and approving a special education contract study regarding the types of services available.

Senator Rust said school districts losing funding due to the phase-out of the transition minimum adjustment would benefit from repeal or adjustment of the ending fund balance deduction.

Chairman Schaible thanked the school administrators who assisted the committee.

Representative Owens said he anticipates bills relating to the ending fund balance deduction will be introduced.

**It was moved by Senator Heckaman, seconded by Senator Rust, and carried on a voice vote that the Chairman and the Legislative Council staff be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Management.**

**It was moved by Representative Monson, seconded by Representative Owens, and carried on a voice vote that the committee be adjourned sine die.**

No further business appearing, Chairman Schaible adjourned the committee sine die at 12:34 p.m.

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Sheila M. Sandness  
Senior Fiscal Analyst

ATTACH:16