



EDUCATION COMMITTEE

Tuesday, August 29, 2023
Pioneer Room, State Capitol
Bismarck, North Dakota

Senator Michelle Axtman, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Michelle Axtman, Todd Beard, Cole Conley, Jay Elkin, Judy Estenson, Kent Weston; Representatives LaurieBeth Hager, Patrick Hatlestad, Dori Hauck, Pat D. Heinert, Jim Jonas, Donald W. Longmuir, Andrew Marschall, David Monson, Eric James Murphy, Mitch Ostlie, David Richter, Kelby Timmons

Members absent: Senator Doug Larsen; Representative Cynthia Schreiber-Beck

Others present: See [Appendix A](#)

COMMITTEE RESPONSIBILITIES

Ms. Liz Fordahl, Counsel, Legislative Council, presented the committee's statutory responsibilities and a memorandum entitled [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

SCHOOL DISTRICT ENDING FUND BALANCE STUDY

Ms. Fordahl presented a memorandum entitled [School District Ending Fund Balance Study - Background Memorandum](#) noting rural or small school districts may face budgetary challenges because the permissible ending fund balance is based off actual expenditures, which vary widely between large and small school districts.

Mr. Adam Tescher, School Finance Officer, Department of Public Instruction, presented testimony ([Appendix B](#)) regarding school district ending fund balances. He noted:

- The Coronavirus (COVID-19) pandemic caused school closures and resulted in additional funding causing larger ending fund balances. In response, a moratorium on the penalty relating to a school district's ending fund balance was adopted and has been in effect since 2021.
- The ending fund balance only relates to a school district's general fund. As a result, a school district may transfer general fund dollars (not levied from taxpayers) to the building fund to avoid incurring a penalty for exceeding the permissible ending fund balance, but may not return the funds to the general fund. However, the Legislative Assembly permitted school districts that followed this practice in 2021 to return funds to the general fund for a limited time.
- Historical statutory changes have increased the permissible ending fund balance to help small schools by allowing a larger amount of funds to be carried over to pay for necessary expenditures.

In response to questions from committee members, Mr. Tescher noted:

- Funds earmarked for July and August teacher salaries are included in the ending fund balance because the expenditures have not yet occurred or been paid.
- A school district's ending fund balance is calculated differently depending on the school district's accounting method. If the school district's accounting method is a cash basis of accounting, the ending fund balance is based on the funds in the general fund account on a particular date. If the school district implements an accrual basis of accounting, the balance will reflect a deduction based on when the expenditure occurred, not necessarily when the funds leave the account.
- Approximately 70 to 80 percent of a school district's ending fund balance is expended for teacher salary payments.

SCHOOL CHOICE MODELS STUDY

Ms. Fordahl presented a memorandum entitled [School Choice Models Study - Background Memorandum](#). She noted:

- House Bill No. 1532 (2023) would have established an educational reimbursement program, but the bill was vetoed by Governor Burgum, who stated he supports school choice but wishes to see more comprehensive legislation passed.
- The Legislative Assembly expanded open enrollment with the passage of House Bill No. 1376 (2023).

Ms. Lucy Berrier Matheson, Deputy Director of K-12, Hunt Institute, presented an overview ([Appendix C](#)) of school choice programs, including a description of public school options, including charter schools, open enrollment, and magnet schools. She noted charter schools generally receive approximately 70 percent of the per student payment amount that public schools receive per student.

In response to questions from committee members, Ms. Matheson noted:

- Charter schools may not offer services to students with disabilities or transportation for students in the same manner as public schools because charter schools receive a reduced payment compared to public schools.
- Although charter schools receive public funding, charter schools are responsible for building costs.
- Unlike public schools, charter schools are not required to admit each applicant, so students expelled from charter schools typically return to public schools.
- Admission requirements may contribute to inflated scores, but the success of charter schools is due largely to innovation.

Ms. Matheson presented testimony ([Appendix C](#)) regarding private school choice options, including voucher systems, tax credit scholarships, individual tax credits or deductions, and education savings accounts. In response to questions from committee members, she noted:

- The Legislative Assembly could modify the school funding formula to make up for revenue losses due to a decline in enrollment.
- Caps on student enrollment and school participation could be implemented to protect small schools from closing.
- Schools typically do not close when a school choice model becomes available because most families choose to continue with the public school because they are familiar with the public school model.

Chairman Axtman noted Hunt Institute will continue to work in parallel with the committee.

REPLACEMENT OF STORM MAKE UP DAYS WITH VIRTUAL INSTRUCTION DAYS STUDY

Ms. Fordahl presented a memorandum entitled [Replacement of Storm Make Up Days with Virtual Instruction Days Study - Background Memorandum](#).

Ms. Kirsten Baesler, Superintendent of Public Instruction, presented testimony ([Appendix D](#)) regarding the replacement of storm make up days with virtual instruction days, including a history of the legislation related to the implementation of virtual days, data related to virtual instruction due to weather or other conditions, and information related to academic performance. She noted the Department of Public Instruction will be required to provide a comparison of the academic performance of students participating in virtual instruction with students not participating in virtual instruction due to the passage of House Bill No. 1376 (2023).

In response to questions from committee members, Ms. Baesler noted:

- There are no state requirements related to virtual instruction due to the passage of House Bill No. 1232 (2021), which removed department oversight and the waiver requirement that was included in the bill as introduced.
- A local school board policy may have requirements pertaining to virtual instruction.
- When a school implements late starts due to inclement weather and the same class hour is missed on multiple occasions, the school district may, in its discretion, make schedule modifications to provide equitable instruction across classes.

- School district reports on virtual instruction do not differentiate between synchronous and asynchronous, and attendance for virtual instruction is recorded based on local school board policies.

REQUIRED REPORTS RELATED TO WAIVERS OF INSTRUCTIONAL TIME, INNOVATION WAIVERS, AND THE INNOVATIVE EDUCATION PROGRAM

Mr. Joe Kolosky, Director, Office of School Approval and Opportunity, and Ms. Ann Ellefson, Director, Office of Academic Support, Department of Public Instruction, presented reports ([Appendix E](#)) required under:

- North Dakota Century Code Section 15.1-06-08, regarding requests from schools or school districts for waivers of rules governing the accreditation of schools.
- Section 15.1-06-08.1, regarding waiver applications.
- Section 15.1-06-08.2, regarding the innovative education program, including the status of the implementation plan, a summary of any waived statutes or rules, and a review of evaluation data results.

Ms. Ellefson noted the creation of the North Dakota Network for Personalized Learning, a network designed for schools interested in innovative education to share resources and experiences.

In response to a question from a committee member, Ms. Ellefson noted:

- Approximately two to three school districts per year consider innovative education in addition to the seven school districts currently participating in the program.
- A waiver may not always be necessary for a school district because there may not be a statute preventing the school district from implementing its innovative idea.

CENTER FOR DISTANCE EDUCATION ENROLLMENT REPORT

Dr. Alyssa Martin, Director, North Dakota Center for Distance Education, presented testimony ([Appendix F](#)) regarding enrollment statistics for the North Dakota Center for Distance Education. She noted:

- Enrollment numbers for the 2023-24 school year have surpassed pandemic levels.
- Approximately 400 students are enrolled in over 2,600 courses. These students typically are not enrolled full time at the North Dakota Center for Distance Education, but also are enrolled at another school, usually the student's school of residence.

In response to questions from committee members, Dr. Martin noted:

- Out-of-state enrollments, which also have increased, subsidize the cost of providing instruction to in-state students.
- In-state students would have top priority for admissions if it becomes necessary to cap enrollment.
- Students may take courses because a particular course is unavailable at the student's school, a course is unavailable due to teacher shortages, or a student prefers a teacher different from the one available.
- The completion rate for a course is approximately 85 percent, and the school district of residence is required to pay the fees associated with the course.

COMMENTS BY INTERESTED PERSONS

School Choice Models Study

Andrew Nyhus, Americans for Prosperity North Dakota, presented testimony regarding the school choice movement. He noted:

- 16 states have created universal school choice models, 17 states offer education savings accounts (ESAs), 26 states offer tax credits, 2 states offer individual tax credits, and 25 states have voucher programs.
- A number of ESAs were enacted in states in 2023.
- North Dakota is the only state without a charter law or a school choice program, excluding open enrollment.

Tom Nitzschke, Superintendent, Litchville Public Schools, presented testimony regarding House Bill No. 1376 (2023). He noted:

- A student wished to take a course, which was offered at Litchville Public Schools, from the North Dakota Center for Distance Education because the student wished to take the course from a different teacher.

- Due to the small size of Litchville Public Schools, space was not available for the student to take the North Dakota Center for Distance Education class at the same time the course was offered.
- The student left the district because the student could not take the North Dakota Center for Distance Education class.

Replacement of Snow Makeup Days with Virtual Instruction Days Study

Dr. Mike Bitz, Superintendent, Mandan Public Schools, presented testimony ([Appendix G](#)) related to snow days. He noted:

- Mandan Public Schools implemented seven virtual days due to inclement weather during the 2022-23 school year.
- A Mandan School District survey completed by 935 respondents indicated 86.6 percent of respondents preferred virtual instruction to making up snow days.
- The district would prefer to continue implementing virtual instruction.
- The district uses the Canvas platform for virtual instruction.
- A helpful feature of Canvas is the option for teachers to upload videos to instruct students, allowing students to watch a video as many times as needed.
- Canvas also allows teachers to monitor whether the student is engaged on a virtual instruction day.

Dr. Jeff Fastnacht, Superintendent, Bismarck Public Schools, presented testimony requesting school districts maintain the flexibility in place to become proficient in using the learning management systems available to provide virtual instruction.

In response to a question from a committee member, Mr. Fastnacht noted the ability to provide flexibility to learners who need repetition of a lesson, transparency in sharing curriculum with parents, and continuity for students who move between learning locations are positive features of a learning management system like Canvas.

Dr. Aimee Copas, Executive Director, North Dakota Council of Educational Leaders, presented testimony related to virtual instruction on snow days. She noted:

- School districts modified virtual instruction policies based on input from parents over the past year, and community members requested a variety of policies from school districts depending on their unique needs.
- School districts are improving implementation of virtual instruction as the districts gain more experience.
- School districts should be granted the trust and responsibility to develop local policies.

No further business appearing, Chairman Axtman adjourned the meeting at 2:33 p.m.

Liz Fordahl
Counsel

ATTACH:7