

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**EDUCATION COMMITTEE**

Tuesday, November 24, 2015  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Donald Schaible, Chairman, called the meeting to order at 8:30 a.m.

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

**Others present:** John Walstad, Legal Division Director, Legislative Council  
See [Appendix A](#) for additional persons present.

**It was moved by Representative Sanford, seconded by Representative Monson, and carried on a voice vote that the minutes of the September 21-22, 2015, meeting be approved.**

**NATIONAL CONFERENCE OF STATE LEGISLATURES**

Chairman Schaible called on Mr. Daniel Thatcher, Senior Policy Specialist, Education, National Conference of State Legislatures, for testimony regarding recent activity among states on Common Core State Standards and content standards issues and assessments aligned to Common Core.

Mr. Thatcher said the question is why is there still too much testing. He said we first need to look at the state of state implementation of Common Core (college and career readiness standards) across the country. He provided a presentation ([Appendix B](#)) to supplement his testimony. He also provided a handout with links to additional materials ([Appendix C](#)).

Mr. Thatcher said implementing standards means:

- A combination of academic content standards;
- The educator's role in making the standards come alive;
- Professional development of educators to ensure they are qualified to implement any changes made to academic content standards;
- Actual classroom practices that evolve out of the educator's role in implementing the standards;
- The curriculum and instructional materials used by the educators in the classroom;
- An assessment system that accurately and reliably reflects what the students are learning in the classroom;
- Accountability measures in place for the state to ensure that the students are learning; and
- Higher education's role in ensuring that new educators coming into the field are aware of the current content standards.

Mr. Thatcher said it is important to ensure that these factors all align with the content standards. He said higher education is often the driver pushing for higher content standards because the remediation rates across the country are frustrating for higher education. He said approximately 15 to 30 percent of incoming college freshmen need some degree of remediation.

Mr. Thatcher said in order to comply with federal law, states are required to have college and career readiness standards. He said all states comply with the federal metric and have college and career readiness standards. He said in 2014 Oklahoma introduced legislation that revoked the state's adoption of Common Core. As a result, he said, the standards that were in place prior to Oklahoma's adoption of Common Core in 2010 were put back into effect. He said this resulted in Oklahoma losing its waiver under the federal Elementary and Secondary Education Act until the standards the state had in place could be verified as college and career readiness standards. He said this opened up a potential issue in trying to determine who will be the outside validator in a self-validating process.

In response to a question from Representative Wallman, Mr. Thatcher said while Massachusetts voted to use a "hybrid" of the Partnership for Assessment of Readiness for College and Careers (PARCC) Assessment, they are still an affiliate of the PARCC Assessment which is one of the assessments that is aligned to Common Core. So, he said, they are still using Common Core.

Mr. Thatcher said the best metric for determining whether a state has actually repealed Common Core is if there is legal authority given by the state legislature, or whomever has the ultimate authority over content standards that require a timeline and deadline for new standards to be implemented. He said there are six states that meet this metric and have developed new standards. He said there are a number of other states where a review of Common Core is being initiated by executive order. He said the question then becomes, does a review really repeal or revise Common Core content standards? He said the majority of states that have undergone a review of Common Core have implemented changes but the basic structure of the academic content standards have remained intact.

In response to a question from Representative Nathe, Mr. Thatcher said he believes states will continue to tweak and review their Common Core content standards. He said the Common Core State Standards Initiative, the body that created Common Core, has no intentions of creating any new standards. Additionally, he said, states typically have a 2- to 10-year window by which they review their content standards to determine if they are still relevant and accurate. He said most states have now hit that point following the adoption of Common Core and are going back to review their standards. He said as time progresses we may begin to see more state-specific standards. However, he said, the overall structure of Common Core should remain intact.

Mr. Thatcher said currently there are approximately 30 states that have changed the name of their content standards. He said they no longer use the terminology "Common Core." He said those states use terminology that is more reflective of their own state-specific content standards. He said there has been litigation in some states over the methods by which Common Core was adopted or claims that the Smarter Balanced Assessment Consortium (SBAC) or PARCC assessments violate the compact clause of the United States Constitution. He said the claims were successful in Missouri at the trial court level, but the issue was deemed moot by the appellate court due to the fact that the legislature precluded any spending on SBAC assessments. He said the states that are currently reviewing their Common Core Standards include Arizona, Arkansas, Louisiana, Missouri, North Carolina, and Tennessee.

Mr. Thatcher said when states initially adopted Common Core, there was a provision in the *Memorandum of Understanding* that states signed with the Common Core State Standards Initiative, that allowed the states to augment the standards by 15 percent. He said there are approximately 15 states that took advantage of the provision to augment the standards. He said the states did so in a wide variety of ways.

In response to a question from Representative Sanford, Mr. Thatcher said the rationale behind some of the political debates within state governments over Common Core stem from some potential missteps and lack of communication by the Common Core State Standards Initiative in being more open and transparent regarding its processes and methods leading up to the release of their final assessments. He said this has led to confusion and frustration among the people in those states.

In response to a question from Representative Wallman, Mr. Thatcher said the understanding is correct that any state that signed up for Common Core can take advantage of a provision to tweak their state standards up to 15 percent in the subjects of English language arts and mathematics, and still qualify as having acceptable college and career readiness standards.

In response to a question from Representative Nathe, Mr. Thatcher said Common Core will not be significantly impacted by the federal Elementary and Secondary Education Act. He said there is a provision that recognizes the content standards are and should be a state-driven policy. He said the role of federally required assessments is being reduced. He said this is especially true regarding assessments of annual yearly progress.

In response to a question from Representative Holman, Mr. Thatcher said it is true that Common Core consist of development, standards, and assessments. He said it is also true that resistance to Common Core tends to be focused more on how the standards were developed and how the assessments aligned to the standards, rather than on the standards themselves.

In response to questions from Senator Rust, Mr. Thatcher said states could augment Common Core under the SBAC or PARCC assessment agreements, while the standards were in the process of being adopted by the individual states, so long as the state-specific additions did not exceed 15 percent. He said once the standards were adopted by the state, when looking at the full spectrum of standards that were adopted, if the state specific content exceeded 15 percent the state would be in violation of the *Memorandum of Understanding*.

Mr. Thatcher said in Missouri litigation has decided the state can take away from Common Core by up to 15 percent, not just adding to the standards or augmenting them. He said the copyright on Common Core is held by the Common Core States Standards Initiative. He said members of the initiative are the states themselves. So, he said, the states own the copyright on Common Core. He said at this point, the understanding is that states are free to manipulate the standards by up to 15 percent by taking away from the standards, adding to them, or simply modifying them. He said in terms of the *Memorandum of Understanding* that states have signed with SBAC or PARCC, states have been free to negotiate the terms of the *Memorandum of Understanding*.

Mr. Thatcher said in answering what comes first between content standards and assessments, content standards should drive decisions on curriculum, instructional materials, and assessments.

In response to a question from Representative Wallman, Mr. Thatcher said additions and subtractions from Common Core content standards by states does not necessarily defeat the purpose of Common Core from a consistency perspective. He said the reasoning for this is because even after the reviews and the augmenting of standards by individual states, the structure and the standards used for mathematics and English largely remain intact and consistent across all states.

Mr. Thatcher said observers have indicated that the way college and career readiness standards have been implemented, the assessment results from SBAC and PARCC assessments show that students are less proficient. He said this raises the question as to whether Common Core is a good policy. He said classroom instruction is where standards matter most. He said there is concern that there has not been enough professional development to support teachers regarding the implementation of the new content standards. Also, he said, many textbooks and instructional materials indicating that they are aligned with Common Core content standards actually are not. As a result, he said, implementation has not gone as smoothly as planned.

Mr. Thatcher discussed the current status of state participation with PARCC or SBAC. He said just about all states have some degree of participation with one of the two assessment consortiums. He said by 2014 some states began pulling out of their associations with the assessment consortiums. He said as of November 2015, there are 16 states associated with SBAC, including North Dakota. He said there are five states, the District of Columbia, and the Department of Defense that are associated with PARCC. He said this is less than one-half of the total number of states that were associated with SBAC and PARCC in 2011. He said new assessment vendors have since entered the landscape. He said the big take away from the last four years is there are more rigorous assessments available now than were available in the past.

In response to a question from Senator Flakoll, Mr. Thatcher said the estimated costs associated with states developing and implementing their own standards beyond the requirements of Common Core are difficult to determine because states already had existing costs for assessments in place. However, he said, one figure estimated the total implementation cost of Common Core for all states combined since 2010 to be around \$7 billion. He said that figure does not include what states would have been spending on developing and implementing their own standards.

Mr. Thatcher said there has been a major increase in legislative activity across the nation regarding Common Core since 2011. He said in 2011 there were 42 bills introduced by state legislatures that dealt with Common Core, standards, and implementation. He said in 2015 there were 772 such bills and 280 of those are still pending. He said in 2011 there were six bills that addressed assessments alone. However, he said, by 2015 that number had jumped all the way up to 650 bills.

In response to a question from Senator Flakoll, Mr. Thatcher said it is true that not all states allow every bill to get a hearing and floor action like North Dakota. He said the 280 pending bills figure includes bills being carried over to the next legislative session. He said over one-half of the bills related to Common Core among the states as a whole will never have a hearing or be sent to the floor for action.

Mr. Thatcher said conclusions that can be drawn are that research shows that standards are influential on improving student learning and achievement. He said standards influence instruction and accountability drives student achievement. However, he said, standards alone are not enough. He said there needs to also be strong implementation and development of both instructional materials and educators to ensure that the assessments meet the content standards.

In response to questions from Representative Kelsh, Mr. Thatcher said Oklahoma is the only state that has completely removed Common Core. He said they went back to what they were using prior to the adoption of Common Core 4 years ago. He said Oklahoma is in the process of developing new standards.

In response to a question from Representative Nathe, Mr. Thatcher said the large increase in legislation regarding Common Core in 2015 is a result of concerns, questions, and opinions being raised as states began implementing the standards. He said people weren't discussing content standards prior to 2015 because they were boring and teachers, parents, and students were not aware of the points of potential concern prior to the standards being implemented.

In response to a question from Senator Flakoll, Mr. Thatcher said states that have had the most seamless transition with Common Core and college and career readiness standards are the ones that work hand-in-hand with higher education and the institutions associated with higher education. He said the participation of grades K-12 with higher education is key. He said doing so promotes a higher degree of preparedness for college. He said it allows education providers to identify curriculum, practices, and dual enrollment opportunities that best prepare students for college and career readiness standards.

In response to questions from Chairman Schaible, Mr. Thatcher said having a multitude of assessment consortia for states to choose from, beyond SBAC and PARCC, has resulted in the development and implementation of better and more efficient assessments. As a result, he said, there has also been improvement by students in their performance on the assessments and the results. Additionally, he said, more common standards among the states means that there are more resources available for educators to locate and use when developing their curriculum. He said there are now online banks of curriculum modules that educators can access. However, he said, textbooks for Common Core curriculum are still a struggle. He said educators and school districts want publishers to customize textbooks for their curriculums.

In response to a question from Senator Rust, Mr. Thatcher said since the 1990s, states have been pushed to adopt higher content standards. He said initially the reaction by the states was good. However, he said, in 2009 the federal government became involved and began offering incentives to states that adopted Common Core through the federal American Recovery and Reinvestment Act. He said there is some observation among state legislators that states would be more accepting of Common Core if the federal government had never gotten involved with it.

In response to a question from Representative Holman, Mr. Thatcher said Texas influences national curriculum, but he is unsure of the extent to which Texas-developed curriculum materials permeate the market in other states. He said he believes the extent is likely high because Texas has long been considered to have high content standards, so other states look to Texas and use its materials.

In response to a question from Representative Hunsakor, Mr. Thatcher said although there is concern, there should still be continuity and consistency among the states regarding content standards and student learning even if some states review their standards and pull out of Common Core. He said this is due to the fact that sequencing has largely remained the same from grade-to-grade and subject-to-subject even among the states that have revised their standards or completely pulled out of Common Core. However, he said, the content will not be nearly as consistent as it was initially intended to be.

## BISMARCK STATE COLLEGE

Chairman Schaible called on Ms. Kimberly Gutierrez, Assistant Professor of English, Bismarck State College, for testimony ([Appendix D](#)) regarding alignment of English language arts content standards with entry into higher education. In order to supplement her testimony, Ms. Gutierrez also submitted the findings of the Vertical Alignment Committee ([Appendix E](#)), Common Core for grades 9 through 10 and 11 through 12 ([Appendix F](#)), and a Writing Rubric Sample ([Appendix G](#)).

Ms. Gutierrez said within [Appendix E](#), a "W" indicates "writing" for the purposes of Common Core, and "110" is the course where students are entering college freshman composition English. She said an "R" stands for reading standards, an "LS" stands for listening/speaking, and an "L" stands for listening. She said the letter and number system in the findings for [Appendix E](#) then correspond to Common Core Standards indicated in [Appendix F](#). She said the findings and standards in Appendices [E](#) and [F](#) were then used to develop a rubric example, [Appendix G](#), to be used for the implementation and assessment of students to ensure that students are meeting the standards and what teachers want them to learn.

Ms. Gutierrez said assessment is a big part of determining what students know. However, she said, reading and writing can be difficult to evaluate and hard to measure on a standardized test. Initially, she said, the curriculum and learning was intended to fuel the assessments. She said, at some point, after Common Core started to become the standard, assessments started to fuel and influence the curriculum. She said students began preparing to take tests, but were not learning writing skills.

In response to a question from Representative Rohr, Ms. Gutierrez said students are placed in developmental writing based on the ACT scores they received during their high school testing.

### **NORTH DAKOTA STATE UNIVERSITY**

Chairman Schaible called on Dr. William Martin, Head, School of Education; Professor, Department of Mathematics, North Dakota State University, for testimony regarding alignment of mathematics content standards with entry into higher education. Dr. W. Martin provided a presentation ([Appendix H](#)) to supplement his testimony. He said the standards movement has been around for a very long time. He said standards date back to Sputnik and New Math in the 1960s. He said New Math was developed by university faculty in an attempt to determine what students would need to know in order to be successful at the college level. He said Direct Instruction in the 1980s said that all teachers should teach based on what expert teachers say are the most important materials. He said these methods were not particularly effective. He said in 1985 the National Council of Teachers of Mathematics started a project to develop standards documents over the next decade. He said their work is close to what we are currently using for mathematics content standards regarding development, teaching, and assessing standards.

Dr. W. Martin said the idea behind content standards is to determine student success by focusing on what students should be learning, rather than focusing on the curriculum. He said the actual content of mathematics has not changed much over the past 50 years. He said it is important for students to be able to solve new problems, not to just learn the content and be able to recite it. He said the assessment is critical in determining the extent to which students are able to use and apply the content they have been given.

In response to a question from Representative Holman, Dr. W. Martin said what high school teachers believe is useful is to encourage students to keep taking mathematics classes, rather than requiring them to take more classes. He said students were more responsive when university teachers explained to high school students the implications and consequences of not taking enough mathematics classes in high school. He said the university teachers had the students take an assessment test and then explained, based on the results, that they would be placed into a certain level mathematics class when entering college.

In response to questions from Representative Wallman, Dr. W. Martin said there is currently an issue nationally with teachers not being able to teach mathematics at the desired level, especially in elementary schools. He said teachers need to be trained more adequately to teach the rigorous Common Core. He said they need to be able to explain why something works, not just what is included in the content. He said there are currently efforts to align teacher preparation with Common Core. However, he said, teachers tend to teach the same way that they were taught, and changing those methods can be difficult.

In response to a question from Representative Rohr, Dr. W. Martin said the current content being taught matches the same content being taught at the same level internationally. He said there is no issue of sequencing, or whether the correct content is being taught at the correct time. He said the issue is that under the current system, teachers tend to revisit the same topics repeatedly with students.

In response to questions from Chairman Schaible, Dr. W. Martin said research shows there are not gaps in the content standards for mathematics. He said his opinion is that there is approximately a 50 percent overlap between Algebra I, Algebra II, and college algebra. He said there are no gaps, but the overlaps create inconsistent learning which requires spending time to review content that has already been taught. He said, in his opinion, concerns over potential gaps in learning come from assessments being used as punishments for schools and teachers not achieving what the standards say they should be achieving. He said the purpose of assessments should be to determine the strengths and weaknesses of the standards.

In response to a question from Senator Rust, Dr. W. Martin said he does not think that there is more mathematics being required at the high school level as a result of content standards. He said the amount and type of mathematics classes being taught in high school has remained relatively consistent. He said a big issue for teachers is that as schools have made higher level courses requisites, the varying abilities of students in classes makes it more difficult for teachers to teach to all students consistently.

In response to questions from Representative Hunskor, Dr. W. Martin said he would like it if all high schools in the state tested students and gave them feedback as to what college-level mathematics course they are currently prepared for, so the students would be more motivated to take additional mathematics courses in high school. However, he said, there is a high cost to achieving this and he is not sure if the state has enough resources to ensure that all high schools could make those tests available. He said it would also be time intensive for teachers to prepare and deliver such tests.

In response to questions from Senator Flakoll, Dr. W. Martin said at this point feedback is not given to high schools letting them know how their former students are faring in college-level mathematics courses. He said doing so may cause people to negatively judge high schools based on test results. He said the tendency of teachers is to focus only on the course that they are teaching. He said the goal is to get teachers to look beyond that and determine why the school, as a whole, is achieving certain results.

In response to questions from Representative Nathe, Dr. W. Martin said there is collaboration with the private sector to explain to students the potential job opportunities available to them if they take and do well in additional mathematics courses. He said the North Dakota State University Engineering Department works with high schools to give students internships in the summertime to enlighten students as to the potential employment opportunities. He said grade 7 is a critical grade in determining what mathematics class a student should take. He said studies have shown that based on a student's grade 7 mathematics course, it is predictable what level of mathematics understanding a student will have as a high school senior.

In response to questions from Senator Heckaman, Dr. W. Martin said statistically college freshmen tend to have the worst mathematics retention. He said part of the reasoning is that unless the students were taking high-level mathematics courses, high school seniors are just trying to survive their final mathematics course. He said they are not necessarily highly motivated and many are not thinking about the things they need to know for college mathematics.

Senator Flakoll requested that a copy of a North Dakota University System study on student remediation rates be sent out to the committee.

### **NORTH DAKOTA UNIVERSITY SYSTEM**

Chairman Schaible called on Ms. Lisa Johnson, Director of Systemwide Student Entry, Transfer, and Retention, North Dakota University System, for testimony regarding alignment of K-12 content standards with entry into higher education. Ms. Johnson provided a presentation ([Appendix I](#)) to supplement her testimony. She said in response to the request by Senator Flakoll, the University System would distribute a copy of the remediation report to the committee in the near future.

Ms. Johnson said there is collaboration between the K-12 and university faculty regarding vertical curriculum alignment. She said vertical curriculum alignment is a legislatively funded activity. She said the next step in vertical curriculum alignment is to determine the scalability of rubrics and assessments at the state level.

Ms. Johnson said placement of students in college courses is guided by the State Board of Higher Education. She said in addition to the use of ACT scores to place students, there are also complimentary University System procedures for placement, which are approved by the Chancellor. She said these are complimentary procedures which are then cross referenced with the ACT scores. She said North Dakota currently participates in the SBAC high school assessment. She said SBAC uses a one through four scoring system on its assessments. She said this can make it difficult to cross reference with ACT scoring, which uses a 36-point system. She said the most important thing is advising grade 12 to ensure seniors are signing up for the appropriate courses, especially in mathematics. She said SBAC assessment scores are not recommended to be used solely for admission purposes.

### **NORTH DAKOTA DEPARTMENT OF PUBLIC INSTRUCTION**

Chairman Schaible called on Ms. Kirsten Baesler, Superintendent, Department of Public Instruction, for testimony regarding state assessment test performance, comparisons to other states, plans for future assessments, plans for the Superintendent's Assessment Task Force, and assessments undertaken by school districts other than those required by statute. Ms. Baesler provided a presentation ([Appendix J](#)) and a handout ([Appendix K](#)) to supplement her testimony. She said in regards to the spring 2015 state assessment, the results align very closely with other national results on the ACT. She said the handout provides specifics.

Ms. Baesler said the purpose of the task force is to try to determine how to improve the system of assessments in North Dakota. She said all 179 school districts within North Dakota were surveyed. She said the districts were asked what assessments they give, at what grade levels, how many times per year, and how long they take. She said there are only a few assessments that are required by state and federal law. She said individual school districts may choose to offer more assessments than those required.

Ms. Baesler said the National Assessment of Education Progress is required to be given to grades 4 and 8 every other year. She said the ACT Work Keys is an assessment required by the state of North Dakota to be taken by grade 11. She said state and federal law requires a science assessment be given to students in grades 4, 8, and once in high school. She said state and federal law also requires assessments in mathematics and English language arts for grades 3 through 8 and grade 11. She said these are the only assessments required by law. She

said many school districts administer far more assessments than those required by law so they can make sure that they are ready for the state required assessments.

Ms. Baesler said on average in North Dakota, students spend 14,284 hours total in school between elementary, middle, and high school. She said a student on average spends 138 of those hours taking standardized assessments. She said the 138-hour average accounts for all required state and federal assessments, as well as all optional assessments that the school districts choose to utilize. She said this means that a student, on average, spends less than 1 percent of their total classroom time taking assessments. She said the amount of testing time varies from school district to school district. However, she said, no school district is administering assessments that account for more than 2 percent of the students total classroom time.

In response to a question from Senator Flakoll, Ms. Baesler said in calculating the hours spent testing, the amounts were rounded in a traditional manner. She said a test that took 3.3 hours to administer was counted as 3.5 hours for purposes of calculating the statistics.

In response to a question from Representative Kelsh, Ms. Baesler said the statistics only account for the time taken by the students to take the assessments. She said educators spend more time administering the assessments than the students spend taking the assessments. She said this is due to the fact that a student only has to take an assessment once, while an educator may have to administer the same assessment to multiple groups of students.

In response to questions from Senator Heckaman, Ms. Baesler said regarding the assessment of students with disabilities, North Dakota used to administer two alternative assessments. She said the Alternative 1 assessment was administered to the lowest performing 1 percent of students. She said the Alternative 2 assessment was administered to the lowest performing 2 percent of students. She said the Alternative 2 assessment was eliminated under federal law. She said 99 percent of all students are now tested under SBAC. She said 56,000 students were asked to sit for assessments this past year. Of those students, she said, 418 opted out of the assessments, which is less than 1 percent.

In response to questions from Senator Davison, Ms. Baesler said in order to qualify for Title I funding, a school district needs to provide two qualifying assessments in order to determine whether a child qualifies for Title I or special services. She said the assessment committee and task force are attempting to address the questions of determining how grade 11 students did on the state tests, and whether or not testing can be moved up to the spring of the grade 12 year so that universities can get a more accurate indication of the knowledge base of potential incoming students. She said the decision to have testing at the grade 11 level was made in cooperation with the University System. She said universities prefer having the tests at that point so that they can use the results to determine early admission and scholarship applications.

In response to questions from Representative Nathe, Ms. Baesler said SBAC was the assessment vendor used by the state of North Dakota for 2016. However, she said, the task force is looking at whether another vendor may be better for 2017. She said it takes approximately a year to go through the procurement and request for proposal process to secure a new assessment vendor and contract for delivery. She said one of the challenges involved is that if the state moves away from SBAC and chooses a new vendor, then a new baseline will need to be set and the state will completely start over.

In response to a question from Representative Meier, Ms. Baesler said district superintendents have data regarding how their districts did on the assessments. However, she said, there is no statewide data compiled to show how the state did on the assessments as a whole.

Senator Heckaman said as a member of the Superintendent's Assessment Task Force, it is her observation that high school students are not buying into the SBAC assessment process. She said high school students are more interested in ACT scores because there are scholarship incentives associated with that test.

Ms. Baesler said in her discussions with students there are two things that would make them care about assessments. She said the first is if the assessments were tied to scholarship dollars. She said the second is if the results of the assessments helped them to gain admission into universities of their choice.

Representative Sanford said the legislature approved funding for a predictive analytics project in higher education. He said the two institutions that utilized the project found that past performance is a strong indicator of future performance. He said as a result, students need to be tested early and be encouraged to work hard to be successful in the future.

Chairman Schaible directed the Legislative Council staff to contact representatives from SBAC and ACT Aspire and request them to present at the next Education Committee meeting on their testing protocols.

### **BISMARCK PUBLIC SCHOOLS**

Chairman Schaible called on Ms. Tamara Uselman, Superintendent, Bismarck Public Schools, for testimony ([Appendix L](#)) regarding restraint and seclusion policies of the Bismarck Public School District. Ms. Uselman said Bismarck Public Schools builds plans to try and ensure that all students are successful. She said they do so by including the parents of the relevant student, the teacher, the principal, and a teacher of special services. She said the plan that is built for the student includes a behavioral intervention plan. She said the plan calls for instructing the student on how to self regulate and recognize behaviors that cause the student to have to modify their behavior in order to be successful. She said the final element is a crisis plan in the event that a student's behavior becomes unsafe for the student or others.

Ms. Uselman said in the event of a crisis, a teacher will first attempt to de-escalate the situation verbally and calm the student down by offering a distraction. She said in the event that verbal de-escalation is unsuccessful, and there is concern that the student may injure themselves or others, the teacher may suggest that the student walk to a calming room. She said a calming room is a room where the student can go to calm down and self regulate when they are overwhelmed. She said plans are built with the intention of never requiring the use of a calming room. She said the focus is on teaching de-escalation techniques to educators, and giving the educators school-wide support. She said there are standards in place, which were created in 2011, which regulate the rooms that are used for physical seclusion. She said all dangerous items in the room are removed. She said Bismarck Public Schools has a policy in place which restricts the use of restraint and seclusion and that policy applies to all students.

Ms. Uselman said no mechanical or chemical, meaning psychotropic medication, restraints are used on students. She said Bismarck Public School District would not use such restraints even if it could. She said all plans that are developed for students are based on the principles of basic human dignity regardless of the age of the student.

Ms. Uselman said physical restraint and seclusion is used only in rare circumstances when the student's behavior poses an imminent danger of serious physical harm to themselves or others. She said restraint and seclusion is never used as punishment, discipline, retaliation, or coercion. She said restraint and seclusion is only used as a last resort when other methods have failed. She said all incidents of restraint and seclusion are documented and reported to district administrators. She said the administrators then review the reports to determine if the strategy and plan is working and if the policies are being followed. She said parents of the student are contacted immediately when an incident involving restraint or seclusion occurs.

In response to a question from Senator Heckaman, Ms. Uselman said Bismarck Public Schools has resource officers available but they are not used in restraint and seclusion situations for disabled students or any other students.

In response to a question from Representative Nathe, Ms. Uselman said no more than 20 incidents of restraint and seclusion occur each year across 25 campuses in Bismarck.

In response to a question from Representative Wallman, Ms. Uselman said incidents when students walk themselves to a calming room are recorded but those incidents are not included in the statistics of the number of incidents when students are escorted to a calming room.

In response to a question from Senator Marcellais, Ms. Uselman said calming rooms are not used in incidents involving bullying.

In response to a question from Representative Nathe, Ms. Uselman said she did not mean to imply that the state should come up with a restraint and seclusion policy. She said Bismarck Public Schools is happy with policies being developed by the individual school districts.

In response to a question from Senator Flakoll, Ms. Uselman said examples of what prototypical calming rooms look like were included in the documents provided at the last meeting. She said they are rooms that are empty of everything that could injure a student.

In response to a question from Senator Oban, Ms. Uselman said she would advise all school districts to have a restraint and seclusion policy in place with staff training that makes it clear that such methods should only be used as a last resort.

## **NORTH DAKOTA SCHOOL BOARDS ASSOCIATION**

Chairman Schaible called on Dr. Alyssa Martin, Director of Policy Services, North Dakota School Boards Association, for testimony ([Appendix M](#)) regarding restraint and seclusion policies adopted by the School Boards Association and school boards within the state. Dr. A. Martin said 47 percent of school districts in the state have adopted a restraint and seclusion policy. She said an additional 47 percent have not adopted a policy, and there is no information available for the remaining 6 percent. She said as of 2009, the United States Department of Education Office of Civil Rights requires all schools to report the number of incidents of restraint and seclusion that occur. She said in North Dakota from 2009 to 2011, there were 1,249 reports of restraint and seclusion being used in schools. She said of those incidents, 1,105 of those involved special education students.

In response to a question from Senator Poolman, Dr. A. Martin said she is not sure if districts without restraint and seclusion policies are dealing with incidents involving special education students under an individualized education plan or a 504 plan, but she would attempt to determine an answer to that question.

In response to a question from Chairman Schaible, Dr. A. Martin said all incidents should be reported. She said the United States Department of Education required as of 2009 that all school districts report the number of incidents every two years.

In response to questions from Representative Wallman, Dr. A. Martin said she thinks it would be useful to have a model policy that all school districts should follow in developing restraint and seclusion policies. She said there was a model policy released to school districts in 2012, however, not all school districts have chosen to follow it. She said the North Dakota School Boards Association policy on restraint and seclusion is based on recommendations that restraint and seclusion only be used to protect students from incidents of harm. She said the methods should not be used for disciplinary purposes.

## **PUBLIC COMMENTS ON RESTRAINT AND SECLUSION**

Ms. Christine Hogan, Attorney, North Dakota Protection & Advocacy Project, said the project would like to bring together a stakeholder group or task force in order to obtain different perspectives and knowledge, from various educational entities and personnel, on restraint and seclusion. She said it would be beneficial to give these entities a voice in order to give input on potential legislation to be recommended regarding restraint and seclusion policies. She said the project would be willing to organize a stakeholder group or task force to accomplish these goals. She said the project would also recommend that North Dakota look to other states that have enacted legislation on restraint and seclusion as models for legislation to be enacted in North Dakota.

Chairman Schaible said creating a task force on restraint and seclusion is beyond the scope of this committee's powers. He said the committee is charged only with studying restraint and seclusion. He said the committee has no power to give authority to create such a task force. He said stakeholders can organize meetings and share knowledge and information if they choose, but the committee cannot give a directive for them to do so.

Representative Zubke said there is nothing preventing the project from organizing a stakeholder group, but it is not something that the committee can order.

Senator Heckaman said a task force may be a good idea in order to develop reports and recommendations on legislation for restraint and seclusion policies in the future.

Ms. Valerie Bakken, Department of Public Instruction, said she would like to apologize and retract her testimony from the last committee meeting regarding restraint and seclusion being used as a method of discipline for students. She said the intent was not to indicate that it is the department's position that restraint and seclusion be used for disciplinary tactics.

## **NORTH DAKOTA DEPARTMENT OF PUBLIC INSTRUCTION**

Chairman Schaible called on Ms. Baesler for testimony ([Appendices N](#) and [O](#)) regarding allocation of educational administrative powers in North Dakota and interest groups with a focus on education issues in North Dakota. She said a bill introduced during the 2015 legislative session created a reporting committee. She said the reporting committee looks at the reports and requirements that have been required of school districts to report to the Department of Public Instruction. She said there are other educational agencies and entities within the state that impact education.

Ms. Baesler said there is a division of educational powers within the state of North Dakota. She said the only constitutionally created entity is the Department of Public Instruction, which is regulated by North Dakota Century Code Chapter 15.1-02. She said there are multiple units and divisions that fall under the authority of the

Department of Public Instruction. She said there are also Governor-controlled entities, legislatively mandated and controlled entities, and nongovernment entities. She said the organizational structure of these entities can be found on the presentation. She said the multitude of government and nongovernment agencies that impact education in the state of North Dakota are required to have collaboration and cooperation in order to build relationships and achieve goals. She said the structure used in North Dakota is not the normal structure used by other states around the nation. She said most states house the majority of their educational entities under one single umbrella.

Ms. Baesler said there is an Executive Educational Leadership Committee that consists of the executive directors and presidents of the various entities. She said the committee meets monthly to communicate and share strategic goals and desired outcomes. She said the committee is also attempting to develop a single set of cohesive goals and objectives for the state of North Dakota in K-12 education.

Ms. Baesler said in regards to a previous question, the federal Elementary and Secondary Education Act reauthorization is a significant piece of legislation that will change the educational landscape. She said the last time the federal Elementary and Secondary Education Act was amended was in 2001. She said it was first passed in the 1960s. She said it was meant to be reauthorized by Congress with improvements and changes every 3 to 7 years. She said it was reauthorized from the 1960s through 2001. However, she said, it has not been reauthorized since 2001 when the federal No Child Left Behind Act became relevant. She said at that point the nation turned towards assessments and adequate yearly progress. She said the reauthorized 2001 bill expired in 2007 and Congress has not been able to reauthorize it since that time. She said the 2001 bill has continued under yearly resolutions from Congress with no changes or improvements. She said as of 2015, the latest version of the reauthorization bill passed the United States House of Representatives. She said if the bill passes both the House of Representatives and the Senate, the President could sign the reauthorized bill by Christmas of this year.

Ms. Baesler said for the state of North Dakota, this means that control would be turned back over to the states. She said North Dakota would be required to maintain college and career readiness standards, annual grade level assessments of mathematics, science, and English language arts for grades 3 through 8, and once in high school. However, she said, states will be able to determine their own accountability indexes. She said the state will get to decide what it wants to measure and how much weight will be placed on each area of education assessed.

Senator Flakoll said upon conferring with North Dakota United and Anita Thomas it would be in the state's best interest to make technical corrections in Century Code and the Constitution of North Dakota on the name change from North Dakota Education Association to "North Dakota United or their successors."

Chairman Schaible directed the Legislative Council staff to create a bill draft to make technical correction changes to Century Code and the Constitution of North Dakota on the name change from the North Dakota Education Association to "North Dakota United or their successors."

In response to a question from Representative Nathe, Ms. Baesler said the secretarial prohibitions on page four of the memorandum regarding assessments, including Common Core, references the fact that the Secretary of Education is prohibited from prescribing specific academic assessments or assessment items, including Common Core. She said in order to apply for Race to the Top Grants or to be eligible for a waiver, states were required to have adopted college and career readiness standards. She said essentially the Secretary of Education is no longer able to offer a waiver.

## **NORTH DAKOTA DEPARTMENT OF CAREER AND TECHNICAL EDUCATION**

Chairman Schaible called on Mr. Wayne Kutzer, Director and Executive Officer, North Dakota Department of Career and Technical Education, for testimony ([Appendix P](#)) regarding the role of career advisors in career and technical education. He said a Career and Technical Education concentrator is a student who has taken two or more credits in career and technical education in a particular pathway.

## **BISMARCK CAREER AND TECHNICAL EDUCATION CENTER - CAREER ACADEMY TOUR**

No further business appearing, Chairman Schaible recessed the meeting to reconvene for a tour at the Bismarck Career and Technical Education Center at the Career Academy on the campus of Bismarck State College. The tour was hosted by Mr. Dale Hoerauf, Director, Career Academy, Mr. Brian Beehler, Assistant Principal, Career Academy, and Dr. Larry Skogen, President, Bismarck State College.

Mr. Hoerauf stated that three sessions ago the legislature approved an appropriation to renovate the Career and Technical Education Center. He said the purpose was to bring high school and college courses together in one building under one roof. Today, he said, the center offers 60 percent college coursework and 40 percent high school coursework. He said the center offers coursework in many areas, including robotics, aviation, engineering, electronics, telecommunications, horticulture, medical careers, design, information technology networking, and

agriculture. Mr. Hoerauf led a tour through the facility.

Following the tour, Chairman Schaible adjourned the meeting at 4:00 p.m.

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Dustin Assel  
Counsel

ATTACH: 16