

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

**EDUCATION FUNDING COMMITTEE**

Thursday, October 4, 2018  
Roughrider Room, State Capitol  
Bismarck, North Dakota

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

**Members present:** Senators Donald Schaible, Kyle Davison, Ralph Kilzer, Erin Oban, David S. Rust; Representatives Pat D. Heinert, Richard G. Holman, Dennis Johnson, David Monson, Mark S. Owens, Mark Sanford, Cynthia Schreiber-Beck, Denton Zubke

**Others present:** Representative Jim Schmidt, Huff, and Representative Corey Mock, Grand Forks, members of the Legislative Management

See [Appendix A](#) for additional persons present.

**It was moved by Senator Rust, seconded by Senator Davison, and carried on a voice vote that the minutes of the August 8, 2018, meeting be approved as distributed.**

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

At the request of Chairman Schaible, Ms. Maggie D. Anderson, Director, Medical Services Division, Department of Human Services, provided information ([Appendix B](#)) regarding policy changes allowing expanded reimbursement for Medicaid-covered services provided by school districts. Ms. Anderson said the coverage policy, issued in September 2018, provides direction to public school districts and special education units billing North Dakota Medicaid for health services. She said, pursuant to the federal Individuals with Disabilities Education Act, the Department of Human Services (DHS) is responsible for the payment of services for Medicaid-eligible children who receive Medicaid-covered services described in the child's Individualized Education Program (IEP). She said to be reimbursed, services must be:

- To a student who is eligible for Medicaid on the date of service;
- Part of the student's IEP and otherwise covered by Medicaid;
- Provided by school personnel or by providers contracted by the school district who are enrolled Medicaid providers; and
- Submitted by the school district or special education unit for reimbursement. She said services must be billed by the school district or special education unit for the Department of Public Instruction (DPI) to certify the nonfederal match which is then deducted from the district's state school aid.

Ms. Anderson said covered services include various therapies, audiology, behavioral health, nursing services, transportation to and from service, and applied behavior analysis. She said with the exception of applied behavior analysis for children with an autism spectrum disorder, which was added to the state's plan in 2017, covered services have not been expanded under the new policy. She said previously all services required a written order from a physician. She said while health-related services now may be authorized by a licensed practitioner within the practitioner's scope of practice, nursing services still will require a written order from a physician, nurse practitioner, or physician assistant. She said services may be delivered via telemedicine; however, an originating site fee is not allowed. She said because school psychologist qualifications are not the same as psychologists licensed by the State Board of Psychologist Examiners, Medicaid can not register them as providers.

In response to a question from Chairman Schaible, Ms. Anderson said the policy updates have been well received and DHS is not aware of additional barriers.

In response to a question from Senator Davison, Ms. Anderson said autism services are covered by Medicaid; however, a shortage of board-certified behavior analysts and registered behavior technicians makes it difficult to access services.

In response to a question from Senator Davison, Ms. Anderson said if state plan services are not part of the student's IEP, third party payer rules apply. She said Medicaid targeted case management is for specific populations, including children in the welfare system and children with a serious emotional disturbance. She said for children with a serious emotional disturbance, only human service centers and the state's Native American tribes can be enrolled to provide services. She said expanding the provider type for these services would increase cost. She said the interim Human Services Committee has recommended a bill draft to expand targeted case management beyond human service center staff.

Mr. Adam J. Tescher, Director, School Finance and Organization, Department of Public Instruction, said school districts provide the 50 percent match for Medicaid-covered services included in a student's IEP. He said the Medicaid match does not change total foundation aid provided by the state, but reduces funding sent to school districts. He said funding for the match is withheld from the school's state aid and sent to DHS. He said Medicaid coverage should reduce special education contract costs paid by the state.

In response to a question from Chairman Schaible, Mr. Tescher said if Medicaid reimbursement is not entered into the special education contract system, there could be an overpayment. He said DPI has modified the contract system to capture Medicaid-eligible students.

At the request of Chairman Schaible, Mr. Stanley Schauer Jr., Adult Education Assistant Director, Department of Public Instruction, provided information ([Appendix C](#)) regarding a funding proposal for adult learning centers. Mr. Schauer said the Every Student Succeeds Act state plan includes the GED as a factor in graduation rates and students dropping out of traditional schools may be encouraged to complete their GED at an adult learning center. He said DPI anticipates an increase in the number of adult education students age 16 through 21. He said a committee has been formed to review the possibility of providing supplemental funding to adult learning centers through the state school aid formula. He said funding provided through the state school aid formula would be in addition to the current general fund appropriation for adult learning center grants. He said some centers are near capacity and may not be able to accept additional students. He said DPI is considering a funding model similar to those used for special education and regional education associations. He said funding could be based on a weighting factor and provided to school districts for distribution to adult learning centers. He reviewed a schedule of adult learning center expenditures, including a detailed list of expenditures by center. He said 88 percent of all federal and state funding provided to adult learning centers is used for salaries and benefits. He said funding from the general fund for adult education grants was reduced from \$4.11 million during the 2015-17 biennium to \$3.10 million during the 2017-19 biennium. He said federal funding also has decreased and some adult learning centers have closed as a result.

In response to a question from Chairman Schaible, Mr. Schauer said state funding for a student dropping out of a traditional high school is prorated for the time spent in high school and does not follow the student to an adult learning center.

In response to a question from Chairman Schaible, Mr. Schauer said under the DPI's plan, funding through the state school aid formula could range from \$700,000 to \$1.5 million per year, depending on the weighting factor, number of eligible students, and the number of hours eligible students attend class. He said the formula funding likely would be closer to \$850,000 per year, which when combined with the current appropriation would total \$2.4 million per year or \$4.8 million per biennium for adult learning centers. He said the additional funding could be used to add staff and reopen centers.

In response to a question from Representative Sanford, Mr. Schauer said teacher compensation varies by center. He said some teachers are compensated based on a teaching schedule while others are paid hourly.

In response to a question from Senator Rust, Mr. Schauer said DPI is able to identify students dropping out of traditional high school; however, privacy concerns have prevented DPI from directly contacting the student. He said more should be done to make these students aware of the adult learning center option. He said school district counselors may be in a position to refer a student.

In response to a question from Senator Davison, Mr. Schauer said some centers collect more student information than others. He said federal reporting requires certain information to be collected and centers collect information on gender, race, income, employment status, and barriers.

In response to a question from Representative Sanford, Mr. Schauer said DPI has a data system that can monitor students as they move between centers and all students are given an assessment when they arrive. He said all of the centers provide English language learner services.

At the request of Chairman Schaible, Mr. Tescher provided information ([Appendix D](#)) regarding how the ending fund balances of school districts receiving transition minimum payments compare to other school districts, the fiscal impact of exempting the portion of in lieu of revenue deposited in school district sinking and interest funds from the in lieu of revenue subject to deduction in the state school aid formula, and DPI's budget request for the 2019-21 biennium. Mr. Tescher said in addition to total state and local funding by school district, the state school aid adequacy formula report includes the district's ending fund balance for the 2016-17 school year and the percent of total expenditures represented by the ending fund balance. He said the report has been sorted in order of districts receiving the highest minimum payments resulting in more than \$9,646 per student. He said state school aid is reduced when a district's ending general fund balance exceeds 35 percent of annual expenditures plus \$50,000 (\$100,000 if the school district is part of a cooperative agreement).

Mr. Tescher reviewed a summary of fiscal year 2016-17 in lieu of property tax revenues distributed by mill levy. He said the report is sorted by school districts with the highest portion of the district mill levy deposited in a sinking and interest fund. He said school districts without a sinking and interest fund are not included in the report. He said the report includes total revenue distributed by mill levy, the amount of that revenue deducted in the state school aid formula, and the amount that would be deducted in the formula if a pro rata portion of the funding related to the school district sinking and interest funds were excluded from the formula deduction. He said statewide, if the in lieu of property tax revenues deposited into school district sinking and interest funds were excluded from the state school aid formula deduction, the cost of the state's share of foundation aid would increase approximately \$1.23 million per year or \$2.46 million per biennium. He said the cost of exempting a pro rata share of in lieu of property tax related to bonding will vary each year based on school district debt.

In response to a question from Chairman Schaible, Mr. Tescher said the county reports total in lieu of property tax distributed to school districts. He said DPI would modify its request to ask counties to omit any in lieu of property tax deposited into sinking and interest funds.

Mr. Tescher said through June 30, 2018, state school aid payments totaled \$953.1 million, \$12.7 million less than estimated, and transportation grants totaled \$26.7 million, \$1.1 million less than estimated. He said special education contract expenditures totaled \$12.5 million, \$3 million more than estimated. He said DPI anticipates state school aid during the 2<sup>nd</sup> year of the biennium will total \$965.3 million, for a total of \$1.918 billion during the 2017-19 biennium, \$17 million less than appropriated. He said transportation grants are estimated to total \$27.7 million during the 2<sup>nd</sup> year of the biennium, for a total of \$54.4 million during the 2017-19 biennium, \$1 million less than appropriated. He said special education contracts are estimated to total \$9.8 million during the 2<sup>nd</sup> year of the biennium, for a total of \$22.3 million during the 2017-19 biennium, \$3 million more than appropriated. He said general fund turnback related to state school aid and transportation grants is estimated to total \$18 million. He said, as provided by the Legislative Assembly in 2017, DPI anticipates requesting a deficiency appropriation of approximately \$3 million from the general fund for 2017-19 biennium special education contracts. He said if DPI is allowed to use excess foundation aid payment funding authority to pay special education contracts in excess of DPI's 2017-19 biennium appropriation, estimated turnback will total \$15 million and there would be no need for a deficiency appropriation.

In response to a question from Chairman Schaible, Mr. Tescher said turnback in the state school aid line item is due to fewer students than estimated.

Mr. Tescher reviewed preliminary 2019-21 biennium state school aid budget estimates. He said DPI has not finalized fall enrollment for the 2018-19 school year and the estimates presented are based on:

- A 3-year cohort survival routine with 2017-18 fall enrollment as the base year;
- Taxable valuations for school years 2019-20 and 2020-21 projected based on the change in taxable valuations from the 2016 tax year to the 2017 tax year, limited to the state average; and
- Statistical data based on the 2017-18 payment year.

Due to increased enrollment, he said, the cost-to-continue state school aid during the 2019-21 biennium will total approximately \$77.2 million. He said most of the enrollment growth is due to more students entering kindergarten than are graduating.

At the request of Chairman Schaible, Mr. Tescher distributed information ([Appendix E](#)) regarding DPI enrollment projections for fiscal years 2019 and 2020, and enrollment histories by school district, grade level, county, and state planning region. Mr. Tescher said although the September enrollment totals are not finalized, it is anticipated DPI's estimate of 111,890 students for the 2018-19 school year, an increase of 2,945 from the prior year, will be too high. He said the increase likely will be between 1,900 and 2,200 students. He said total enrollment in kindergarten, which was based on birth rates, will be less than anticipated. He said when fall enrollment is finalized, DPI will

recalculate the cost-to-continue state school aid. He said if actual 2018-19 fall enrollment is 900 students fewer than anticipated in DPI's projections, the cost-to-continue state school aid in the 2019-21 biennium will be approximately \$27 million less than previously estimated.

At the request of Chairman Schaible, Ms. Linda Leadbetter, State Supervisor of Assessments, Director, State Property Division, Tax Department, provided information regarding property tax budget deadlines for school district preliminary budgets and budget adjustments and an update on efforts to delineate new property from property growth on school district general fund maximum levy worksheets. Ms. Leadbetter said school district preliminary budgets are due by August 10 of each year and many county auditors cite North Dakota Century Code Section 40-40-02 which precludes budgets from increasing after that date. She said Section 40-40-02 lists political subdivisions that only can adjust preliminary budget mill levies downward; however, school districts are not among the political subdivisions identified. She said in September 2018, the Tax Department sent an email to county auditors indicating state statute does not prohibit school districts from increasing preliminary budgets if the adjustment is made before October 10. She said the email was also shared with school administrators by the North Dakota Council of Educational Leaders. She said after the outreach some county auditors still believe the preliminary budget can not be increased and auditors continue to work with school districts to ensure preliminary budgets are adequate.

In response to a question from Chairman Schaible, Ms. Leadbetter said the statute could be amended to provide clarity with regard to which political subdivisions are allowed to increase preliminary budgets and which are not.

In response to a question from Chairman Schaible, Ms. Leadbetter said exempting sinking and interest fund in lieu of revenue from deduction in the state school aid formula should not pose a problem for counties because the information is provided by the Tax Department.

Ms. Leadbetter reviewed calculations on the maximum levy worksheet presented to the committee in January 2018. She said more than one section of law determines the calculation of maximum general fund levy authority. She said the department's maximum levy worksheet for the school district general fund summarizes these calculations to determine which calculation provides the most dollars for the fund. She said school districts appear to properly delineate new property when calculating the maximum general fund levy; however, in most cases school districts are limited by the maximum 12 percent increase provided in Section 57-15-14.2, because it results in more levy authority. She said substantial new property would have to be added to a district for the tax on the new property to exceed the 12 percent limit on growth. She said new property includes property added to the district since the base year, including property added through annexation and local discretionary exempt property. She said property removed from a district also is delineated and deducted from the calculation.

In response to a question from Chairman Schaible, Ms. Leadbetter said certain districts believe the maximum levy authority should include the 12 percent increase plus the mill rate applied to the new property, which is not correct.

At the request of Chairman Schaible, Dr. Aimee Copas, Executive Director, North Dakota Council of Educational Leaders, provided information regarding the committee's study of state school aid and the funding formula. Dr. Copas reviewed information from various North Dakota Council of Educational Leaders subcommittees and focus groups. She said foundation aid formula training provided across the state for legislators was well received. She said some districts are levying at the maximum level and continue to struggle with the formula. She said some of the challenges with the formula are the result of school district funding levels and property tax policies prior to the implementation of the formula. She said the formula is effective, but formula concerns and other challenges that have developed since the formula was implemented include:

- How to get all school districts to a 60-mill deduction in the formula when some districts are assessing very low mill levies;
- Possible funding sources and implementation methods for the one-time cost of transitioning the state school aid formula to on-time funding, including turn back, rapid enrollment grant funding, or a weighting factor;
- Ways to mitigate the impact of a transition to on-time funding of state school aid on school districts with declining enrollment, including a 3-year rolling average or the greater of spring or fall enrollment;
- School district budget deadlines and the ability to adjust budgets;
- Inconsistencies relating to how in lieu of revenue is deposited in school district funds and the deduction from state school aid of a portion of in lieu of revenue not deposited in school districts' general fund;

- The deduction in the state school aid formula of a portion of out-of-state tuition received by school districts;
- Adult education funding for GED students;
- The cost to school districts of bus driver physicals;
- Safety and behavioral and mental health services in schools;
- The process of awarding teacher loan forgiveness grants; and
- Funding for the North Dakota Leadership and Educational Administration Development Center for an administrator mentor program.

Dr. Copas said increasing the per-pupil payment benefit is the most important funding challenge. She said all school districts benefit from a per-pupil payment increase. She said the cost-to-continue funding for anticipated enrollment increases does not include funding for inflationary increases in school district expenditures. She said the focus group also suggested a study of weighting factors in the state school aid formula during the next interim. She said there is no need to hire a consultant that may not understand how school districts in the state address different challenges.

In response to a question from Chairman Schaible, Dr. Copas said if on-time funding using the greater of spring or fall enrollment were adopted, school districts with declining enrollment would not be impacted, because the school districts could choose the higher enrollment number. She said formula provisions could be adopted to require school districts to use the spring or fall enrollment count for a number of years, instead of switching each year.

In response to a question from Representative Sanford, Dr. Copas said savings to the state generated by requiring all school districts to deduct 60 mills in the state school aid formula may provide funding for the transition to on-time funding; however, the property tax impact on taxpayers in school districts with low mill levies would be significant.

Chairman Schaible said transitioning to on-time funding would require a one-time increase in funding; however, funding is limited and the Legislative Assembly will be asked to prioritize expenditures. He said funding the transition over time is possible by using a weighting factor.

Senator Davison said using legacy fund principal for the one-time cost of the transition to on-time funding for school districts may be an appropriate use of legacy fund principal.

Senator Rust suggested funding for rapid enrollment grants could be increased while continuing to require minimum student and percentage increases.

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

**It was moved by Senator Rust, seconded by Representative Monson, 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 1:52 p.m.

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Sheila M. Sandness  
Senior Fiscal Analyst

ATTACH:5