

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### NO CHILD LEFT BEHIND COMMITTEE

Monday, October 4, 2004

Brynhild Haugland Room, State Capitol  
Bismarck, North Dakota

Representative RaeAnn G. Kelsch, Chairman, called the meeting to order at 1:00 p.m.

**Members present:** Representatives RaeAnn G. Kelsch, Bob Hunsakor, Lisa Meier, David Monson, Margaret Sitte, Clark Williams; Senators Dwight Cook, Layton Freborg, Gary A. Lee, Ryan M. Taylor, Rich Wardner

**Others present:** Wayne Sanstead, Greg Gallagher, Gary Gronberg, Laurie Matzke; Department of Public Instruction, Bismarck

Doug Johnson, North Dakota Council of Educational Leaders, Bismarck

Jon Martinson, North Dakota School Boards Association, Bismarck

Joseph A. Westby, North Dakota Education Association, Bismarck

**It was moved by Representative Monson, seconded by Senator Freborg, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.**

At the request of Chairman Kelsch, Dr. Wayne Sanstead, Superintendent of Public Instruction, presented testimony regarding how he would respond to legislation directing that he amend the state accountability plan. He said the August 2004 issue of the *State Government News* contains an article regarding the No Child Left Behind (NCLB) Act. He said the article provides that since passage of the NCLB Act, state officials and the federal government have at times clashed over its intent and funding levels. However, he said, the article goes on to note the growing compromise that is occurring. He said the article provides that the NCLB Act remains controversial and poses many questions for government officials, school administrators, teachers, parents, and students.

Dr. Sanstead said the state constitution charges the Superintendent of Public Instruction with overall supervision of elementary and secondary education in the state. He said that role is, however, clearly to be spelled out by the Legislative Assembly. He said during his tenure in the Legislative Assembly he was very mindful of that. He said over the past 100 years the Legislative Assembly has passed numerous laws that are intended to fulfill its role of providing a uniform system of free public education. He said as of the last meeting he believed that what the committee wanted

to know was how he as the Superintendent of Public Instruction would respond regarding future efforts to amend the state's accountability plan.

Dr. Sanstead said he will consider any amendments to the state's accountability plan, according to certain principles. He said his principles are consistent with the state's current accountability plan and the provisions of both federal and state laws.

Dr. Sanstead said he has made it consistently clear to the school district administrators of this state that the Department of Public Instruction (DPI) will adhere to all mandatory requirements of the NCLB Act and that he will consider any amendments to the state accountability plan that are permissible under the purview of that Act. He said he will reject any efforts to amend the state accountability plan if those efforts include the reversal or negation of any of the mandatory provisions in the Act. He said an example of this would be any effort to remove subgroups from the accountability plan. However, he said, how we determine the role of the subgroups is open to question and certainly input.

Dr. Sanstead said with regard to state legislation, he believes that DPI must adhere to and implement any state law enacted by the Legislative Assembly, provided the law expresses an acceptable provision of flexibility and is not superseded by federal law. He said DPI will work with the Legislative Assembly, as it always has in the past, to ensure the proper articulation of proposed legislation. He said if the Legislative Assembly enacts legislation that conflicts with federal law, the state would place itself in jeopardy of losing its federal funding under the NCLB Act. He said that might even impact our receipt of other federal funds. He said DPI would then stand in conflict with administering a troublesome state law and adhering to the requirements of federal law.

Dr. Sanstead said with respect to advisory committee recommendations, DPI will proceed with the use of the state accountability advisory committee as set forth in the state's accountability plan and as presented in earlier testimony to the No Child Left Behind Committee. He said he will consider all recommendations that are presented to him by the state accountability advisory committee. He said if, following a thorough review of all legal considerations, research of best practices, discussions with federal

officials, and consideration of all impact data on school districts, a proposed amendment is placed before him, he will carefully consider it. He said he will respect and place great weight on the work of any committee in its advisory role. He said if no outstanding objection exists and if the state will be well-served by the amendment, he will approve the amendment and seek a formal change in the state accountability plan with the United States Department of Education. He said DPI will report all such proposed changes or activities to the Legislative Council and to this committee.

Dr. Sanstead said there is another special consideration that caught his attention when he prepared this presentation. He said North Dakota Century Code (NDCC) Section 15.1-02-05 allows the Superintendent of Public Instruction to negotiate directly with the federal government in all areas and to write plans and make applications in order to receive federal funds. He said DPI does this in a number of areas, including food and nutrition and special education. He said frequently those do have strings attached and those are matters for negotiation. He said that responsibility is already in the law.

Dr. Sanstead said we have some very good news in terms of our state assessment scores. He said unfortunately such things do not make the headlines. He said there is evidence of real tangible growth as shown by the assessment process. He said our testing scores at every grade level and in every subgroup have demonstrated growth. He said sometimes that growth has even been remarkable and profound, such as the progress shown by our students with disabilities. He said their reading scores improved by 60 percent over the previous year. He said he believes this happened because the spotlight was so prominently placed on our subgroups. He said this is both commendable and amazing. He said the credit lies with the teachers and administrators and with the communities that supported and really put the spotlight on reading. He said there was also about \$1 million for reading grants.

Dr. Sanstead said *Education Week* magazine just published an article indicating that when compared to all the other states, North Dakota ranked with Wyoming at the top of the country in overall achievement reporting. He said only Wyoming at 8 percent had a lower rate of identifying schools not making adequate yearly progress than we did at 9 percent.

Senator Cook said he believed Dr. Sanstead indicated that any legislation passed by the Legislative Assembly would be subjected to Dr. Sanstead's opinion with respect to whether or not it meets the requirements of the NCLB Act.

Dr. Sanstead said that would be from the perspective of changes to the state plan and only after considerable deliberation and certainly input. He said he

would make his staff available to deliberate those changes at any time.

Senator Cook said he wondered what would happen if the Legislative Assembly decided to allow teachers to teach in their minors.

Dr. Sanstead said he would first discuss the matter with those responsible for issues of teacher certification--the Education Standards and Practices Board (ESPB). He said he would ask for its advice and counsel. He said he would consider if it would make things easier for some of our rural schools. He said the United States Department of Education already provided flexibility in terms of composite science. He said he would have to weigh some of those kinds of decisions.

Senator Cook said ESPB basically does what the legislation instructs them to do. He said if, however, Dr. Sanstead determines that such a move could not be undertaken without losing funds, he wants to understand what Dr. Sanstead would do if the Legislative Assembly enacted legislation allowing teachers to teach in their minors.

Dr. Sanstead said ESPB received a \$6 million grant to make portfolio options available to teachers. He said the issue raised by Senator Cook is open to deliberation. He said DPI could request such an amendment. He said some states will no doubt be doing that. He said there are 24 sets of amendments moving forward now and they are proposed by state departments all across the country.

Senator Cook said the Legislative Assembly, with the responsibility and authority it has constitutionally, can pass any law having to do with education in the state. He said if it came to legislation that would jeopardize funding under the NCLB Act or if Dr. Sanstead determined that it did not meet the parameters of the NCLB Act, he wonders how Dr. Sanstead would stop schools from following the law passed by the Legislative Assembly. He said he wondered if Dr. Sanstead would try to stop the schools or if he would tell the schools that they do not have to follow the state law. He said he wants to know if Dr. Sanstead would follow the wishes of the Legislative Assembly.

Dr. Sanstead said he would certainly take into consideration the fact that the bill might make things better for the schools even if it might jeopardize millions of dollars of federal funding. He said he would not recommend flying in the face of the law.

Representative Sitte said she is aghast that Dr. Sanstead would presume to second-guess the Legislative Assembly's authority. She said the constitution clearly states that the education of our students is in the purview of the state and the Legislative Assembly sets that policy. She said we could talk to the Attorney General about Dr. Sanstead's responsibility to uphold state law.

In response to a question from Representative Sitte, Dr. Sanstead said he believes he now has the federal flexibility to assist Bismarck High School, even

though it is not a Title I school. He said there will be additional technical assistance and financial support.

In response to a question from Representative Sitte, Dr. Sanstead said the only imposition of sanctions is the ability of parents to move their students to another school, which could happen in Bismarck, or the provision of supplemental services. He said he believes he has had only two parental requests to change schools.

Representative Kelsch said over the course of the last 18 months, there has been a lot of discussion about the NCLB Act. She said there is a lot of frustration and anxiety on the part of school districts. She said a lot of people are ready to throw their hands up in the air and give up because no matter how hard they try, they feel like they are not going to be able to comply with the Act. She said she believes there is hope to work on the details and ultimately make the NCLB Act work. She said that has been the goal of the No Child Left Behind Committee. She said she is concerned about the fact that there has not been a lot of involvement from the outside, including the Legislative Assembly. She said she wants to know whether DPI is willing to work with the Legislative Assembly as well as with the citizens of North Dakota to ensure that the state plan is not developed in a vacuum but that it is developed based on participation, input, and information from all parties involved. She said the Legislative Assembly is the body that constitutionally is charged with providing education. She said the members of the Legislative Assembly want to ensure that they are doing the best they can and that DPI is doing the best it can in following guidance from the Legislative Assembly.

Dr. Sanstead said it is a steep hill to climb. He said the end result in 2014 is 100 percent proficiency by all students. He said some goals of the Act will continue to be subject to controversy and debate. He said after the election we will see a number of federal efforts to amend the Act, and he anticipates that these will involve a letting up on some of the most pressing aspects of the Act and its funding. He said there is a lot of pressure regarding the difference between the amount of funding that has been authorized and the amount that has been appropriated.

Dr. Sanstead said the environment we find ourselves in today is one of bringing this Act to everyone's attention and making certain that everyone has a strong input both personally and professionally. He said he commits himself and his staff to develop the trust and respect and good working relationships that are necessary to implementing the NCLB Act. He said there will be at least two formal reauthorizations of the Elementary and Secondary Education Act in the coming years. He said the NCLB Act is the law. He said it may be troublesome for some schools and all schools are facing challenges in meeting the law. He said some schools may be struggling but the uniform high-quality education goal of the Act is totally

commendable. He said he and the DPI staff will work with everyone they can work with to make sure that that happens. He said that is particularly applicable to members of the Legislative Assembly. He said the 2005 session will make that a prime consideration. He said he and the DPI staff will be at the table, and he asks everyone else to be there too.

Representative Hunskor said if the NCLB Act is to do the very best for the students and the schools of this state, it is awfully important that DPI, the schools, and the boards all work together. He said he is getting mixed messages. He said he hears Dr. Sanstead say that he is doing his very best to work with and communicate with school districts and yet when he is out visiting with superintendents and board members, they are indicating that is not happening. He said if we continue down that road, there is a gap and we are not working together. He said he is not pointing fingers, but he is saying if that gap does not close, we will continue to remain apart and the job is not going to get done as it should for the schools of this state.

Dr. Sanstead said he is in contact with the various education and constituency groups. He said the required advisory committee will look at every line and element of the NCLB Act and of the state accountability plan. He said both will be receiving constant scrutiny. He said he believes there will be a great many recommendations for change. He said some of the current provisions just do not jive with a rural environment. He said that has been one of our concerns all along.

Dr. Sanstead said the NCLB Act is a big challenge for North Dakota as it is for all states. He said he was in Maryland recently and many of the concerns raised here were also raised there. He said the timetable for implementation of the NCLB Act has been challenging for departments that must implement the law with a shortage of staff. He said the advisory committee recommendations will address the very topic raised by Representative Hunskor.

In response to a question from Representative Hunskor, Dr. Sanstead said the advisory committee includes representation of all the groups that have a stake in the law. He said DPI is committed to listening to the groups and to their recommendations and evaluating those recommendations. He said there do need to be some changes.

In response to a question from Representative Hunskor, Dr. Sanstead said he is open to continuing dialogue with the school districts of this state. He said DPI tries to do this on a daily basis. He said he believes he and his staff have been at the districts' doors regularly and the districts have gotten back to DPI. He said North Dakota is in the top third of all states with respect to its implementation efforts.

Representative Kelsch said she wants Dr. Sanstead to understand that there is a difference between our state being a leader in implementation

and being a leader in what we feel is best for education in North Dakota. She said she wants to impress on Dr. Sanstead that the legislators want to see input from all parties as things move forward. She said she does not want this to be a matter of having input from only one side. She said there would not be the problems, the issues, and the criticisms if there would have been more input from the school districts, the teachers, the parents, and the Legislative Assembly on the formulation of the state plan.

Senator Cook asked that Dr. Sanstead provide a copy of his prepared statement to the committee. That statement is attached as an appendix.

Representative Williams said he has a lot of respect for the position Dr. Sanstead holds and for the people who have to implement policies. He said we rely on them for guidance. He said if the Legislative Assembly would pass a law providing that teachers could teach in their minors, he wants to know how Dr. Sanstead would handle that.

Dr. Sanstead said he would speak with those who have expertise in the area regarding whether or not the minor is strong enough to carry forward the requirements of the NCLB Act. He said if he felt comfortable that a minor could do that, then he would accept that and seek that kind of consideration from the federal government.

Representative Williams said he assumes that if the Legislative Assembly would pass such a measure, then Dr. Sanstead would be bound to carry that out. He said Dr. Sanstead could seek an Attorney General's opinion on that. However, he said, the albatross, if there were errors, would be on the neck of the Legislative Assembly, not around Dr. Sanstead's, but Dr. Sanstead would have to carry out the wishes of the Legislative Assembly. He said the comment is not a personal one but is rather directed toward Dr. Sanstead's position.

Dr. Sanstead said he took an oath to support the constitution of this state and the federal constitution. He said the relevant role of the Legislative Assembly in giving advice and direction to DPI would be acknowledged.

At the request of Chairman Kelsch, committee counsel presented a bill draft [50175.0100] relating to the creation of an NCLB advisory commission. She said at the last meeting of the No Child Left Behind Committee, a motion was made to request a bill draft creating an advisory committee. She said the details were sketchy and we were told to follow the pattern of the Advisory Commission on Intergovernmental Relations. She said the bill draft creates a commission consisting of 17 members--two from the North Dakota Council of Educational Leaders, two from the North Dakota Education Association, two from the North Dakota School Boards Association, two from DPI, one from the Indian Affairs Commission, one from the Education Standards and Practices Board, one from the Governor's office, and six legislators.

Committee counsel said after the September meeting of the No Child Left Behind Committee, Chairman Kelsch met with the interest groups and discussed which of their suggestions should be given to the advisory commission for further study and which were ripe for a resolution urging congressional action. She said this bill draft sets out the functions and duties the group believed should be assigned to the advisory commission.

Committee counsel said the bill draft also contains a repeal of the language that created the No Child Left Behind Committee because that committee's duty was limited to reporting to the 59th Legislative Assembly.

Senator Cook said he thought the list of duties would have been a lot simpler. He said at the last meeting the coalition asked for a committee that would simply monitor progress and facilitate needed changes to the state accountability plan. He said the size of the advisory commission is quite a bit bigger than he had envisioned.

**It was moved by Senator Cook and seconded by Senator Freborg that the bill draft be amended to remove the expiration date set forth in Section 7.**

Senator Cook said if we get to a point when the legislation is no longer needed, the language can be removed at that time. He said there is no need to include a sunset now.

**The motion carried on a roll call vote.** Representatives Kelsch, Hunskor, and Williams and Senators Cook, Freborg, Lee, Taylor, and Wardner voted "aye." Representatives Meier and Sitte voted "nay."

**It was moved by Senator Cook, seconded by Senator Freborg, and carried on a roll call vote that the bill draft be amended to remove the repeal of the current No Child Left Behind Committee and that that committee be directed to report to the 60th Legislative Assembly in the same manner as a regular interim committee and to further amend by removing the current directive that the committee report only if the state is in violation of the NCLB Act.** Representatives Kelsch, Hunskor, Meier, Sitte, and Williams and Senators Cook, Freborg, Lee, Taylor, and Wardner voted "aye." No negative votes were cast.

Representative Sitte said the 17-member commission will be an unwieldy group. She said regardless of how many people we have on the commission, we have to look at their purpose and at what we will be achieving. She said the North Dakota Council of Educational Leaders does not include every principal and superintendent in this state. She said the North Dakota Education Association does not represent every teacher in this state. She said we do not have any parents or taxpayers. She said we do not have many teachers and administrators represented. She said we are once again establishing a consensus group that would make recommendations to the

Legislative Assembly. She said when the commission comes to the Legislative Assembly with its recommendations, it would probably do so with a lot of clout and without the ability to have a lot of debate. She said the roots of our freedom and of our constitutional process require debate and require us to air each one of the particulars laid out in the bill draft with a great deal of discussion, insight, and background information. She said in appointing a group of people who are not responsible for taxpayer money and who are not elected and who do not have to respond to the people of this state, we are actually implementing something that is antidemocratic. She said she opposes the whole concept of this advisory commission.

**It was moved by Senator Freborg and seconded by Senator Cook, that the advisory commission include only one individual appointed by the North Dakota Council of Educational Leaders, only one individual appointed by the North Dakota Education Association, only one individual appointed by the North Dakota School Boards Association, and only one individual appointed by the Superintendent of Public Instruction.**

Senator Freborg said any time you get over 12 members on a committee, it impacts the accomplishments. He said everyone is still represented. He said he almost included a reduction in the number of legislators. However, he said, he decided that since we are getting involved so late, we should keep the legislators involved and informed.

Senator Wardner said this is just an advisory commission. He said it is not making policy. He said the Legislative Assembly will debate these issues very carefully. He said he does think the commission is too big and would not have a problem with four legislators.

Representative Sitte said at the last meeting Chairman Kelsch thanked the coalition for getting together and making recommendations. She said she agrees wholeheartedly with some of those recommendations. She said when an advisory group comes to the Legislative Assembly as a united front and says this is what we want, there is a whole lot of pressure on the legislators. She said she wonders if this group will have open meetings. She said she wonders if it will schedule hearings and let individuals testify. She said this group will carry a lot of weight and it will circumvent the legislative process.

Senator Wardner said even when groups get together on issues and present them to the process, it is still very difficult to get things passed. He said he is willing to give the legislators enough credit and has faith in their ability to sort through the ideas.

**Chairman Kelsch called for a roll call vote on Senator Freborg's motion.** Representatives Kelsch, Hunskor, Meier, Sitte, and Williams and Senators Cook, Freborg, Lee, Taylor, and Wardner voted "aye." No negative votes were cast.

In response to a question from Senator Cook, committee counsel said as drafted this commission would be treated like an interim committee and it would operate under the rules of the Legislative Council, complete with notices, agendas, and public testimony. She said the Legislative Council would appoint both the chairman and vice chairman of the commission and they would be responsible for giving the commission direction, just as in the interim process.

Representative Kelsch said at the last meeting the coalition came up with its proposals and the members of this committee agreed that the proposals had merit. She said when she sat down with the coalition, it became clear that many of those issues needed to have more study and that additional data needed to be considered. She said that is why the bill draft lays out the topics in greater detail than perhaps Senator Cook had first envisioned. She said we wanted to make sure that this commission did look at all of the issues' details.

Senator Cook said he wondered if we were tying the hand of this commission or limiting the scope of what the commission could do to only the functions and duties listed in the bill draft.

Committee counsel said during the interim process a great deal of flexibility is given to the chairman and vice chairman of a committee in setting up the agenda. However, she said, when there is a desire to expand the scope of a committee's study, the rules require approval of the chairman of the Legislative Council.

Senator Cook said he is supportive of the bill draft as amended. However, he said, the scope of the commission's duties is something we might wish to look at during the session.

Representative Kelsch said some of these issues may be addressed by the time the legislative session nears completion next spring and therefore we will have to monitor the appropriateness of the functions and duties assigned to the commission.

**It was moved by Senator Cook, seconded by Representative Hunskor, and carried on a roll call vote that the bill draft relating to the creation of an advisory commission, as amended, be approved and recommended to the Legislative Council.** Representatives Kelsch, Hunskor, and Williams and Senators Cook, Freborg, Lee, Taylor, and Wardner voted "aye." Representatives Meier and Sitte voted "nay."

At the request of Chairman Kelsch, committee counsel presented a resolution draft [53007.0100] urging Congress to standardize subgroup accountability, provide greater flexibility in determining high school graduation rates, address issues of high quality with respect to certain special education teachers, and provide adequate funding of the NCLB Act.

In response to a question from Senator Freborg, committee counsel said the content of the whereas sections comes from the NCLB web site.

In response to a question from Representative Sitte, committee counsel said when drafting this resolution, there was no guidance as to the tenor that this committee would like to have in the whereas sections and therefore factual information from the NCLB web page was used.

**It was moved by Representative Sitte and seconded by Representative Meier that the resolution draft be amended to remove the statement that administrators, teachers, school board members, parents, and other citizens of this state have expressed "unequivocal support for the concept that no child should be left behind" and simply state that such individuals have expressed concern regarding the Act.**

Chairman Kelsch said we are expressing support for the concept that no child should be left behind.

Representative Sitte said all of us want every child to achieve the maximum that he or she can achieve. She said, however, she views such verbiage as being a political statement.

Representative Williams said the amendment does not change anything.

Representative Kelsch said it takes out the statement of support for the concept that no child should be left behind.

Senator Freborg said he wondered what prompted the resolution.

Representative Kelsch said during her discussion with the coalition and DPI, it was felt that there were some changes to the NCLB Act that needed to come from Congress. She said the changes recommended in this resolution are not state-level changes. She said they would require congressional action.

Representative Hunsakor said it is important for us to say that we support the concept of the NCLB Act with some concerns. He said perhaps the word "unequivocal" does not have to be there but it is important that the concept is supported.

Representative Sitte said we could just keep the first whereas and remove lines 4 through 16. She said we are urging Congress to amend the NCLB Act and we follow that with a whole list of how much Congress has already spent. She said our real concerns are buried on page 2 of the resolution. She said we should just get to the point.

**Representative Sitte, with the consent of the second, moved to substitute her earlier motion**

**with one that would remove lines 4 through 16 and remove from lines 18 and 19 the phrase "have expressed unequivocal support for the concept that no child should be left behind but they also."**

Representative Williams said every resolution of this nature has a rationale for what it is seeking. He said this is standard resolution language and we should not amend it.

Senator Taylor said the "whereas" clauses address all the great increases in education funding and then we resolve that the funding is insufficient. He said the two positions do not agree.

Senator Freborg said there is a great huge shredder in Washington, D.C., and all we are doing is spending our time trying to decide what to send to the shredder.

**Chairman Kelsch called for a roll call vote on the substitute motion.** Representatives Kelsch, Meier, Monson, and Sitte and Senators, Lee, Taylor, and Wardner voted "aye." Representatives Hunsakor and Williams and Senators Cook and Freborg voted "nay."

**It was moved by Representative Monson, seconded by Senator Freborg, and carried on a roll call vote that the resolution draft, as amended, not be recommended to the Legislative Council.** Representatives Hunsakor, Monson, and Sitte and Senators Freborg, Lee, and Wardner voted "aye." Representatives Kelsch, Meier, and Williams and Senators Cook and Taylor voted "nay."

Chairman Kelsch said the resolution draft will not be recommended to the Legislative Council.

**It was moved by Representative Monson, seconded by Senator Wardner, and carried on a voice vote that the chairman and staff of the Legislative Council be requested to prepare a report and the bill draft recommended by the committee and to present the report and the recommended bill draft to the Legislative Council.**

**It was moved by Senator Cook, seconded by Senator Lee, and carried on a voice vote that the meeting be adjourned sine die.**

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L. Anita Thomas  
Committee Counsel

ATTACH:1