

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### NO CHILD LEFT BEHIND COMMITTEE

Monday, December 12, 2005  
Harvest 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 Hunskor, Joe Kroeber, Darrell D. Nottestad, Margaret Sitte, John Wall; Senators Dwight Cook, Tim Flakoll, Gary A. Lee, Ryan M. Taylor

**Member absent:** Senator Layton W. Freborg

**Others present:** See Appendix A

Chairman Kelsch welcomed the members of the No Child Left Behind (NCLB) Committee and recognized Representative Lois Delmore who is a member of the Legislative Council.

At the request of Chairman Kelsch, Mr. John D. Olsrud, Director, Legislative Council, reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council](#).

In response to a question from Senator Cook, Mr. Olsrud said although states are sovereign under the federal system, the supremacy clause of the United States Constitution provides that once Congress acts with respect to a particular area in which Congress has the constitutional authority to act, the federal law is supreme and prevails over state law. He said the NCLB Committee operates under the rules of the Legislative Council, except that it is given specific statutory authority to communicate directly with the United States Secretary of Education, employees of the United States Department of Education, and any other federal officials, both elected and appointed, regarding implementation of the Act.

In response to a question from Representative Kelsch, Mr. Olsrud said it appears that the statutorily authorized communications would include letters to members of Congress.

At the request of Chairman Kelsch, committee counsel presented a memorandum entitled [No Child Left Behind Act of 2001](#). She said this committee is charged with studying the NCLB Act, amendments to the Act, changes to federal regulations implementing the Act, and any policy changes and letters of guidance issued by the United States Secretary of Education. She said the Act had its inception in the mid-1960s when then President Lyndon B. Johnson signed into law the Elementary and Secondary Education Act. She said that Act has been reauthorized every six or seven years since that time. She said many of the provisions in the NCLB Act were also found in the 1994 reauthorization, which is known as the Improving America's Schools Act.

### STUDENT ASSESSMENTS AND ADEQUATE YEARLY PROGRESS

Chairman Kelsch called on Mr. Greg Gallagher, Director of Standards and Assessments, Department of Public Instruction (DPI), who presented testimony regarding the NCLB Act. His testimony is attached as Appendix B. He said much of this information has been presented in the past and he wished to stipulate that, to the best of his knowledge, the information is accurate.

Mr. Gallagher said the NCLB Act establishes an accountability system to demonstrate the overall progress of students against standards in a fashion that is consistent and reliable. He said the standards must meet certain criteria. He said they must clearly specify what a student should know and be able to do. He said they must be rigorous in content and they must encourage the teaching of advanced skills. He said the standards must also describe proficiency levels that determine mastery.

Mr. Gallagher said the standards for North Dakota have been established according to protocol and facilitated by independent expert consultants from outside the state. He said the standards are drafted by North Dakota teachers. He said the teachers are selected for membership on the committee through a process of nomination by their supervisors and their peers.

Mr. Gallagher said the NCLB Act requires that each state develop and implement high quality assessments that are aligned to the state standards. In addition, he said, the assessments must be valid and reliable and consistent with nationally recognized professional and technical standards. He said the NCLB Act requires that the state assessments provide reasonable accommodations for students with disabilities and that there be alternate assessments. He said the NCLB Act also requires that there be individual reports which are interpretive and which can be used for diagnostic purposes. He said the assessments must be disaggregated according to subgroups. He said the assessments must protect privacy and family values and they must allow for itemized score analysis, again for the purpose of understanding the progress of students.

Mr. Gallagher said in the last several years, the state has assessed students in grades 4, 8, and 11. He said beginning with the 2004-05 school year, students were assessed in grades 3 through 8 and

grade 11. He said these assessments were developed according to industry standards, validated for content alignment, calibrated to the state achievement standards by state teachers, and peer-reviewed by the United States Department of Education.

Mr. Gallagher said during the 2004-05 school year, the state conducted an extensive standards-setting process. He said 325 educators and community leaders were brought in to deliberate what the standards of achievement should be. He said statewide alternate assessments for students with disabilities were also implemented. He said various accountability rules govern the assessment of such students.

Mr. Gallagher said the assessments are generally conducted from mid-October through early November. He said the 2004-05 assessments were given to 53,000 students. He said alternate assessments were administered to 825 students with significant cognitive disabilities.

Mr. Gallagher said the NCLB Act requires each state to demonstrate that adequate yearly progress (AYP) is determined on the basis of state assessments, that progress is defined in a manner that applies academic standards as the basis for determining proficiency, that the assessments are statistically valid and reliable, that the assessments result in continuous and substantial improvements for students, that the assessments measure progress of public schools toward proficiency, and that the assessments measure improvements of all students according to subgroups.

Mr. Gallagher said the rules used to determine AYP are defined in the state's accountability plan, which is dated July 1, 2005. He said the plan is on DPI's web site. He said DPI has conducted a mandatory review of the correction and appeals process for any questions concerning AYP. He said this gets right to the core of ensuring that a valid and reliable system is in place. He said whatever data is used to determine AYP must be transparent and capable of being validated by the originating sources, which are the schools.

Mr. Gallagher said the process includes a review of the initial entry of unsubmitted data. He said that data is then validated and confirmed with the submitting school. He said the data is then updated and corrected information is released for review. He said there is then a reconfirmation of the updated data. He said this precedes the certification and release of data governing AYP.

Mr. Gallagher said in 2004-05, 419 schools made AYP, 43 schools did not make AYP, and 24 schools had insufficient data. He said the state accountability plan provides for appropriate appeals by schools based on the application of data. He said DPI does not accept appeals based on rules negotiated with the United States Department of Education. He said DPI's web site includes an instructional guide governing the manner in which AYP is determined.

Mr. Gallagher said DPI also makes AYP determinations based on school districts. He said in 2004-05, 168 school districts made AYP, 21 districts did not, and 13 districts had insufficient data.

Mr. Gallagher said in accordance with the rules governing reliability, three years of data are required for a determination of AYP. He said in 2004-05 approximately 23,000 students were included in the overall calculation of AYP.

In response to a question from Representative Delmore, Mr. Gallagher said the category known as "other" is a self-selected category.

In response to a question from Representative Delmore, Mr. Gallagher said current rules governing the determination of AYP do not allow for the tracking of a student's progress from one grade level to the next. He said beginning with the 2006-07 school year, grades 3 through 8 and grade 11 will be used to determine AYP. He said a school can examine its historical data as well. He said the NCLB Act looks at the systemic or institutional capacity of a school, not of the individual student.

Mr. Gallagher said by looking at the charts beginning on page 10 of Appendix B, one can see the impact that cut scores have on the identification of student proficiency. He said reading scores are steady from grade to grade. He said the mathematics scores show steady increases in the number of novice students, steady increases in the number of partially proficient students, and a narrowing in the number of proficient and advanced students.

In response to a question from Representative Nottestad, Mr. Gallagher said all students are included regardless of the subgroup to which they belong. He said the report includes the performance of the various subgroups.

Representative Sitte said students who have special needs have several modification options. She said they can have the test read to them. She said they can have the test paraphrased. She said there are a lot of explanations that go along with the test for those who have special needs, even though they are taking the regular test. She said during the 2005 legislative session when legislators were looking at the reading level of the 11th grade assessment, they found that nothing was really tougher than 8th or 9th grade reading levels. She said the average was a 7th or 8th grade reading level. She said 70 percent of our 11th grade students are proficient at an 8th or 9th grade reading level.

Mr. Gallagher said the vast majority of students are able to take the standard test without any accommodations. He said if a student's individualized education program (IEP) identifies special accommodations on assessments, those accommodations will be included. He said there are various ways in which accommodations can be made and they can vary greatly depending on the student. He said it would be an oversimplification to state that this is what accommodations look like. He said the alternate assessment is an entirely different portfolio-

based approach to assessing the student. He said the teacher identifies the standards that need to be addressed. He said the teacher puts forth recommendations for a variety of different activities and determines how the student did. He said that is what is used for scoring. He said it is a way of balancing out what a student with a disability can do. Generally, he said, the students that take the alternate assessments are those with the most significant cognitive disabilities.

Mr. Gallagher said the reading level that is presented in the state assessment is deliberated based on the state standards and the definition of proficiency. He said it is always legitimate to offer alternative tools that can give guidance governing what one believes the reading level to be. He said those tools are not always universally accepted. He said the way that we identify reading levels is by using the proficiency level that is defined by state standards, by using test items that are aligned to the state standards, and by using cut scores that North Dakota teachers have determined to represent proficiency. He said any other outside measures to determine reading levels are not official and do not have a bearing on how proficiency is defined in the state assessments.

Mr. Gallagher said in the past four years we have seen steady improvement in the reading scores at the 4th grade level. He said in mathematics we have seen steady improvement during the first three years and then remarkable improvement in the fourth year. He said this 15 percent improvement is largely a result of redrawn mathematics cut scores. He said 325 North Dakota teachers participated in the redrawing of the cut scores. He said the redrawn cut scores were a product of much deliberation and debate. He said the cut scores reflect the median score of all the participating teachers.

Mr. Gallagher said similar general improvement is seen in the 8th grade. He said remarkable improvement is seen in the mathematics results for this past year and is again attributable to the redrawn cut scores. Generally speaking, he said, there is about a 2 percent annual improvement in mathematics scores.

Representative Sitte said she is intrigued that our mathematics scores are improving by 2 percent each year. She said four or five years ago our National Assessment of Educational Progress (NAEP) mathematics scores placed us at No. 1 in the nation.

In response to a question from Representative Sitte, Mr. Gallagher said the most recent data was that we were making advances in mathematics on the NAEP as well. He said the progress that we see on the state assessments involves the state standards. He said NAEP establishes its own standards and presents its own data accordingly. He said NAEP data is not as transparent as state assessment data. He said there is much more of a closed-shop approach to NAEP and how NAEP data is devised

and presented. He said NAEP data includes student performance from across the country.

Representative Sitte said she would like to see NAEP data over the last decade so that we can see how our students perform compared to those in other states.

Mr. Gallagher said NAEP allows us to see ourselves against the nation as a whole. He said NAEP is the only tool we have to look at nationwide student performance. He said the benchmarking is only for the purposes of deliberating and reaching one's own determination regarding what one believes achievement should be in one's own state.

In response to a question from Senator Taylor, Mr. Gallagher said the way that the NCLB Act is written, in 2014 one can still be defined as having made AYP without having reached 100 percent proficiency because of the rule called "safe harbor." He said in accordance with safe harbor, even if one is below an expected achievement level one could still make AYP by showing a 10 percent improvement from the previous year.

Representative Kelsch said at a recent meeting, the participants were told that Congress meant there would be 100 percent proficiency by 2014 with no exceptions.

Mr. Gallagher said DPI asked the same question of United States Department of Education personnel and was told that while the law states a definitive goal, the safe harbor component is allowed in achieving the 2014 objective.

Representative Delmore said we will never be able to use the NCLB test results to compare ourselves against other states because each state has its own standards and assessments.

Mr. Gallagher said every state establishes its own standards and assessments. He said it is possible to calibrate the overall standing of one's state in relationship to another state. He said what one would have to do is to measure the variances from NAEP. He said one will be able to see the variances in rather straightforward measurable terms. He said the purpose of NAEP is to offer a reference point that can be used by states for their own purposes. He said NAEP is not the definitive model. He said it is just the national benchmark.

Mr. Gallagher said 11 North Dakota schools did not make AYP in reading because their overall reading scores did not reach the required achievement level. He said 13 schools did not make AYP due to the test scores of their native population, 27 did not make AYP due to the test scores of their students with disabilities, and 17 did not make AYP due to the test scores of their students with limited income.

Mr. Gallagher said there is a six-step review to determine whether or not a school made AYP. He said the first step involves a review of current data. He said if that does not allow for a determination that the school made AYP, the second step is to combine current data with that of the previous year. He said if that does not allow for a determination that the school

made AYP, the third step is to review three years of data. He said if that does not allow for a determination of AYP, the fourth step involves the application of safe harbor. He said that requires a school to show a 10 percent improvement. He said if that does not allow for a determination of AYP, the fifth step is to examine only the progress of the Title I students. He said if that does not allow for a determination of AYP, the sixth level involves looking only at the special needs students. He said if a school is determined not to have made AYP because of its special needs students, then according to rules of the United States Department of Education, 15 percent can be added to the scores of the special education students. He said there is a lot to a determination of AYP. He said with respect to reading proficiency, 301 schools made AYP because they met or exceeded their objective. He said 98 did not meet the objective but were protected by the statistical reliability test and therefore were determined to have met AYP. He said two made AYP because of multiple-year averaging. He said five made AYP because of safe harbor. He said no schools were deemed to have made AYP based on their Title I students. He said in the end only 11 schools did not make AYP after applying all possible steps. He said this shows us that the steps in the rules are working according to their design. He said the statistical checks for reliability have protected a number of schools.

In response to a question from Representative Delmore, Mr. Gallagher said if there was a single instance in which a school or district did not make AYP, the school or district is identified as not making AYP. He said all six steps are applied to all schools and districts to ensure that a bad identification is not made.

Representative Delmore said she has heard through the grapevine that some students are asked not to show up on testing day.

Mr. Gallagher said North Dakota does very well on participation rates. He said the percentages that are identified may not yet be 100 percent accurate, in part because of how a student is identified. He said the schools are working hard to ensure accuracy. He said the United States Department of Education has noted North Dakota's very high participation rates. He said the ethics of assessments are becoming a concern. He said the letter and the spirit of the assessment laws must be adhered to by all entities being tested.

Mr. Gallagher said 91 percent of North Dakota schools made AYP. He said there are just a handful of other states' schools in the 90 percent range. He said this can be impacted by how a state identifies its assessment and accountability system. He said in state comparisons, one must ask whether the data indicates that a state is being aggressive in advancing achievement or whether the data is reflective of the state's assessment system and accountability rules. He said one must ask whether a state's accountability system serves the purpose of the law, which is to issue reports that are valid and reliable. He said a

system needs to have good data that is consistently applied so that nothing is done to harm an institution.

Representative Sitte said page 30 of Mr. Gallagher's appendix shows that 4th grade mathematics scores jumped 14 percent in one year and that the 8th grade scores jumped 19 percent in one year. She said that has been attributed to the change in cut scores. She said Mr. Gallagher consistently states that test data must be statistically valid and reliable. She said those sorts of jumps do not make tests or cut scores look valid or reliable. She said she wonders how Mr. Gallagher could have been so far off in setting the cut scores correctly for all the previous years.

Mr. Gallagher said the determination of cut scores goes to the heart of how one defines achievement. He said what matters most in the establishment of cut scores is the adherence to protocol. He said the protocol that was used in determining the latest cut scores is exactly the same as what was used in determining the earlier cut scores. He said in the time between the cut score determinations there has been discussion regarding what constitutes proficiency in the area of mathematics. He said the protocol is set forth in a rather lengthy document. He said it essentially states that parties must be brought together, that they must deliberate, and that they must go through a series of four votes. He said this is how the cut scores are established.

Mr. Gallagher said we cannot say that the 2002 cut scores were invalid. He said they were determined according to an established protocol. He said we do not say that a prior state law was invalid just because it was changed by a later amendment. He said the 2002 cut scores were based on the value and understanding of that time. He said "valid" and "reliable" are terms that ask whether something is doing what it is supposed to do and whether it can be reported out based on the protocol, i.e., on the rules that have been established. He said the 2002 and the 2005 rules meet those definitions of "valid" and "reliable." He said there will be variances in the future. He said standards-setting is a process and part of an ongoing discussion. He said we may see variations from generation to generation and changes from one year to the next. He said that is inherent in the discussion. He said what matters is that the changes are implemented according to very clear rules.

Representative Sitte said most of us are aware enough of the political process to know that when 56 percent of students are not at a proficient level, something has to be done. She said there was probably a bit of pressure applied to those teachers so they would work on changing the cut scores.

Representative Sitte said she wondered if we are more concerned about the convoluted process of making AYP to satisfy the federal government or whether we are more concerned about what our students are actually learning. She said she for one is more concerned about actual learning and that is why

she keeps looking for an outside benchmark. She said traditionally the NAEP has been the outside benchmark. She said another benchmark that could be looked at is ACT scores. She said if our students are learning so much more according to the state assessment, we should see the state ACT scores rising and yet we do not. She said the ACT scores decreased in 2004 from what they were in 2002 and 2003. She said we should have a correlation of data to show that our students really are learning more.

Mr. Gallagher said when one starts to compare various assessment vehicles, there must be a recognition that not all the vehicles are designed to do the same thing nor are they based on the same reference points. He said the ACT has no reference point in North Dakota state standards. He said we have seen stability in the area of reading and an increase in the area of mathematics based on what people discern it to be at the high school level. He said the ACT is not transparent in that regard. He said the ACT does not go through a standards-setting process like we have in North Dakota. He said the ACT is based on the rules that it has established for itself. He said it does not have the transparency nor the process of evolution that one can find in the state assessment.

Mr. Gallagher said one cannot put all the eggs in one basket. He said one should try to compare using the different tools that are available. He said not all of the tools are going to follow the same procedures. He said because the law requires clear standards, alignment of test items to those standards, and the establishment of standards governing achievement, one will find the kind of transparency that causes things to move up and down accordingly. He said if the transparency is not there, anyone can declare oneself to be the definitive reference point without regard to anything else.

Representative Sitte said she disagrees with Mr. Gallagher. She said she had a chart on her wall that said in order to get a perfect score on the ACT, a student had to be able to read and analyze critically and there were other points. She said the ACT standards have been clearly delineated. She said they are available for every teacher and every student to see if they care to see them. She said for Mr. Gallagher to say that there is no transparency is just ludicrous.

Mr. Gallagher said the transparency is in who is establishing the standards. He said if the ACT is setting the standards, no one else is involved. He said the state assessment goes through the political process of bringing people together, having them sort through the material, having them define what students should be able to do, and having them define the level they feel students need to attain. He said that is a transparent process that we do not see with an ACT.

In response to a question from Representative Hunskor, Mr. Gallagher said as we add more grades to be tested, we will have a much better sense of what

is truly happening in a school. He said the way AYP is determined, schools with a small population can roll up three years of data. He said some of our schools are so small that their data cannot be reported out even after three years. He said the rules are designed to optimize the protection of schools by building up sufficient numbers over three years of aggregated data. He said schools do not go through wild gyrations. He said under the rules, schools are given credit at every opportunity. He said the protection point is the three-year averaging. He said that allows for the combination of data for the purpose of not doing the school any harm. He said when we bring in grades 3 through 8 and grade 11, we will be able to show stability at the elementary and middle school level. He said because the high school level will have only one touch point, the three-year data rollup will become even more important.

## TEACHER QUALIFICATIONS AND LICENSURE

Chairman Kelsch called on Ms. Janet Welk, Executive Director, Education Standards and Practices Board (ESPB), who presented testimony regarding teacher qualifications and licensure. Ms. Welk's testimony is attached as Appendix C. She said the ESPB has been working to help all teachers become highly qualified by July 1, 2006.

Ms. Welk said since May 2005 the ESPB has been issuing complimentary duplicate licenses. She said about 24 teachers are now going through the National Board Certification. She said the ESPB has voted to pursue the additional flexibility option offered by the United States Department of Education in its October 21, 2005, letter.

She said the ESPB is also working on a P-16 initiative. In September 2005, she said, the ESPB, the State Board for Career and Technical Education, the State Board of Public School Education, and the State Board of Higher Education met as required by law. She said speakers included a representative from the Education Trust and a panel of employers. She said a steering committee has been formed and a consultant was hired. She said nominations are being accepted for a larger P-16 Education Task Force. She said she is hoping to have this task force funded by the Governor's teacher quality grant. She said the task force will research and study the standards alignment process for students leaving the kindergarten through grade 12 schools and entering the workforce or postsecondary schools.

In response to a question from Representative Hunskor, Ms. Welk said approximately 45 percent of the teachers opted for the portfolio as the means by which to become highly qualified. She said many teachers also used multiple routes to prove that they are highly qualified in large part because many teachers are trying to be highly qualified in more than one subject.

In response to a question from Senator Cook, Ms. Welk said the teachers are more accountable today than prior to the highly qualified requirement. She said any time one has to go back and reflect on a process and see what was done correctly and incorrectly, one has bettered oneself. She said that is nonquantifiable.

In response to a question from Representative Kroeber, Ms. Welk said there are no areas that are more problematic than others. She said to do the portfolio, a teacher must have had a minor or a minor equivalency and have been teaching in the content area. She said the teacher then has to have 100 points for one content area. She said those points can be accumulated by coursework, continuing education, committee work, awards, and years of experience in the classroom.

Representative Sitte said she is very concerned that we would have Kati Haycock from the Education Trust who worked with Ira Magaziner and Hillary Clinton to devise a whole seamless system of school-to-work. She said Oregon was the state that put it all in place and now Oregon has thrown it all out. She said it floors her for Ms. Welk to stand there and tell this committee that all of a sudden we are looking at implementing a P-16 Education Task Force without any legislative discussion. She said she wonders how all of these boards are circumventing legislative authority by doing this.

Ms. Welk said there is no circumvention of legislative authority. She said the P-16 Education Task Force will have legislators sitting on it. She said she does not know if they are going to pursue P-16. She said they are going to look at the data. She said about 33 percent of our students go on to college in remedial programs. She said that is a concern and that is one of the first things they will consider. She said she does not know where they will go from there.

Representative Kelsch said she is a member of the task force. She said legislators are not left out of the process at this point.

Representative Hunsakor said there are two teachers in his district who have taught for 20 to 25 years and they have decided to quit teaching. He said he wondered if school boards or school district superintendents were finding it hard to retain teachers as a result of the NCLB requirements regarding highly qualified teachers.

Ms. Welk said there have been one or two instances in which teachers have decided that they did not want to go through the process to demonstrate that they are highly qualified. She said there has been nothing close to the masses of teachers that some said might resign. She said a few have asked for additional time due to illness or similar things. She said the additional flexibility that the ESPB will be pursuing should help as well.

Representative Hunsakor said he was wondering if the additional flexibility would include an individual who intended to work only one more year before retiring.

In response to a question from Representative Hunsakor, Ms. Welk said if the United States Department of Education gives teachers additional time before having to demonstrate that they are highly qualified, that might address Representative Hunsakor's issue. She said we may not know whether we will receive the flexibility until the end of May 2006. She said if a teacher is planning to teach only one more year prior to retirement, she hopes that that teacher will not base a decision not to demonstrate that he or she is highly qualified on the assumption that the added flexibility will be permitted. She said she does not believe that the two deadlines are going to coincide.

In response to a question from Senator Flakoll, Ms. Welk said the Consensus Council has been hired as the consultant. She said a contract has not yet been signed. She said if the United States Department of Education authorizes use of the teacher quality grant to pay for the consultant, that will be the source of the payment. She said an agreement as to the payment and the level of services has been reached. She said she believes that the top figure was \$100,000 and the bottom figure was \$65,000.

In response to a question from Senator Flakoll, Ms. Welk said because of the standards alignment goal and the teacher quality grant, dollars were written into the original grant. She said not all of those dollars have been spent. She said because it was known that this process had not been started prior to the extension, they wanted to receive the blessing of the United States Department of Education prior to beginning the work.

In response to a question from Senator Flakoll, Ms. Welk said no request for proposal was developed.

In response to a question from Representative Kelsch, Ms. Welk said the ESPB asked for the reaction of DPI to the pursuit of rural flexibility. She said she also visited with 11 of the 19 school districts that do not qualify for the rural flexibility. She said the process began with a meeting that included Dr. Gary Gronberg and Mr. Bill Peterson, the ESPB's assistant attorney general. She said Mr. Peterson has assured the ESPB that they do have the authority to pursue the flexibility. She said 11 of the 19 larger school districts all said it was not going to be a huge reaction but they might all have one to two teachers that it would affect. She said all but two of the districts told her to pursue the rural flexibility. She said Dr. Wayne Sanstead, Superintendent of Public Instruction, also felt that the flexibility should be pursued. She said the process will require that the information goes into the consolidated report in January 2006. She said if the criteria are met, the United States Department of Education may ask for additional information in May 2006.

Chairman Kelsch called on Mr. Gallagher who said in November 2005 the United States Secretary of Education issued a letter indicating that 10 states would be allowed to pilot a growth model. He said

North Dakota is not in a position, given the data that we have available, to pilot a growth model. He said the state assessment is determined on AYP rules as they currently exist. He said the growth model would be allowed to be a factor in the determination. He said the United States Department of Education has been very clear that the growth model cannot be a replacement for the current rules regarding AYP. He said the growth model is to be simply a supplement, which may be used to build support for it and the United States Department of Education may then consider it. He said the United States Department of Education does not have the authority to permit use of the growth model as a replacement for those mechanisms that are currently in the law. He said North Dakota is 6 to 12 months away from being able to take its current year data and roll it into data for purposes of such a study.

In response to a question from Representative Kelsch, Mr. Gallagher said the United States Department of Education is looking at gathering data to see if there is any merit to incorporating a growth model in the reauthorization of the NCLB Act. He said the growth model would have to be used in a fashion that is parallel to the current method and the results would be used just for research purposes.

In response to a question from Representative Hunsdor, Mr. Gallagher said there are about 15 different models that address what growth means. He said growth implies that a student shows actual growth from year to year and we see that within our own state assessment. He said the novice line moves up in a rhythmic fashion. He said the expectation is that if this were the expected growth level for novice, one would have to add value on top of that to show that there is growth in addition to what one would normally expect. He said it is not enough to say that one made a scale score move from a 510 to a 520 on the state assessment if that is still below the cutoff point for any category.

Mr. Gallagher said there are many voices out there and they are talking in different directions. He said it is going to take a good solid series of plans to conduct a review. He said it will take at least two years of data with which to do a comparison. He said that is why we need to have the data in front of us before we can move forward with a study.

### COMMENTS BY OTHERS

Chairman Kelsch called on Ms. Bev Nielson, North Dakota School Boards Association, who presented testimony regarding the NCLB Act. Ms. Nielson said she appreciated the fact that Mr. Gallagher talked about the growth models. She said that was one of the issues that the coalition brought to the NCLB Committee during the last interim. She said the coalition would be happy if DPI would look at using the growth model down the road. She said other states have asked the United States Department of Education for things and received them. She said North Dakota might be in a position to meet some of

the criteria in order to do these things either now or perhaps in the future. She said unless the things are brought to the attention of the committee and DPI, no one would know that we want to proceed with them. She said the Illinois Board of Education received confirmation from the federal government regarding several changes to its state plan. She said they were allowed to raise their subgroup size to 45. She said schools will be permitted to add 14 percent to the test scores of students with disabilities. She said the school districts will not make AYP if specific grade spans do not meet proficiency. She said, in other words, the grade spans of 3 to 5, 6 to 8, and 9 to 12 would have to make AYP rather than each individual grade. She said they also received a waiver governing late enrolling students. She said if a student has not enrolled by May 1 rather than September 30, that student's test score can be eliminated. She said test results from students who enroll by May 1 but who move from school to school within that district between May 1 and the testing date will be counted only on the district's report card, not on the individual school's report card.

Ms. Nielson said the Illinois Board of Education discussed these measures on its own and then approached the United States Department of Education for these particular waivers. She said during the last interim, the coalition had hoped that something similar would be done by means of an advisory council. She said the advisory council concept did not become law.

Ms. Nielson said the Chicago school district was given a waiver so that it could provide its own tutoring. She said it was determined that in the urban areas they were not able to reach all of the students who needed to be reached and that private tutoring was very expensive. She said in rural areas where there are very few private providers and students would have to go 50 to 100 miles to get to a private provider, it would make more sense to provide the tutoring within a student's own district. She said that too was in the coalition's proposal last year and she would like to see our state plan changed to make that possible.

Ms. Nielson said some people believe that if a grade level is not proficient, the teacher is not good enough to teach. She said private tutoring services do not have a magic bullet. She said what they do have is one-on-one time with a student. She said any highly qualified teacher who has one-on-one time with a student will make progress. She said it makes much more sense for each district to provide its own afterschool tutoring.

Ms. Nielson said Virginia asked for permission to provide the supplementary services before students are given the option of school choice. She said it makes sense to give the students one-on-one time and see if their scores can be brought up before they are offered the ability to go to school elsewhere. She said that is disruptive for the students, their parents, and the staff.

Ms. Nielson said DPI was supposed to have set up a No Child Left Behind Committee. She said neither the North Dakota School Boards Association nor the North Dakota Council of Educational Leaders has been contacted about it.

Representative Kelsch said there may be an opportunity to have educational associations governed by joint powers agreements (JPAs) to provide the supplemental tutoring.

Ms. Nielson said she believes that the state would have to get approval for an entity other than the private tutoring services to provide the supplemental services. She said if that approval could be obtained, the educational associations governed by JPAs could be involved in providing such services. She said that would keep student travel down to a minimum. She said if a good teacher is paid extra to spend some time after school with students, that teacher could do the job without the student having to travel anywhere.

Chairman Kelsch called on Ms. Gloria Lokken, President, North Dakota Education Association, who said the provision of supplemental services is very important and we need a waiver. Ms. Lokken said our people are doing a good job in their schools. She said they need more time with the students. She said if there were a waiver, the teachers could provide the supplemental services. She said they know the students and could bring them up to a higher level because they have the additional time and effort to put forth.

Ms. Lokken said the Elementary and Secondary Education Act is to be reauthorized in 2007. She said they are working hard to capitalize on its strengths and to change its weaknesses. She said everybody wants our students to do the very best they can in school. She said some of what teachers are being asked to do is simply absurd. She said one such thing involves testing purely on age. She said if a student is 10 years old, that student should be doing 4th grade work no matter what the student's IEP is. She said they cannot reach 100 percent proficiency on that kind of test. She said we are spending a lot of money on testing. She said testing is important. She said we have always had it and always will. However, she said, we need to ensure that the resources are used to their best advantage. She said one can say that we have so much more for education. She said we need to ask where the funding is going.

Chairman Kelsch called on Mr. Doug Johnson, Executive Director, North Dakota Council of Educational Leaders, who said his association would also like to see the schools be able to tutor their own students. Mr. Johnson said while he believes that it is important for teachers to be highly qualified, he is also pleased that the ESPB is going to seek flexibility. For the most part, he said, the secondary principals have indicated that most teachers will meet the highly qualified requirements this coming year. He said they are concerned about teachers who resign a month or two before a new school year begins. He said this

flexibility would be helpful if no one who is highly qualified could be found on such short notice.

Chairman Kelsch called on Ms. Laurie Matzke, Department of Public Instruction, who said there is much miscommunication regarding who can and cannot apply to provide supplemental services. Ms. Matzke said educational associations governed by JPAs can currently apply. She said individual schools can apply. She said the only schools that cannot apply at this time are those in program improvement. She said that means only 11 schools could not apply. She said she is having a hard time getting people to apply.

Representative Kelsch said she recently attended a conference that focused on the NCLB Act. She said it was a bipartisan working group. She said the insiders on Capitol Hill have said the NCLB Act is not going away. She said how legislators react is the issue. She said people from both sides of the aisle are having some concerns. She said some believe that AYP needs a definition more along the line of "measurable progress." She said if Congress wants us to achieve proficiency by 2014, it should block grant the money and then get out of the way. She said Congress should let the states figure out how to get there. She said they also looked at incentives rather than looming sanctions.

Senator Cook said if the DPI committee was up and coming there might be less miscommunication.

With the permission of Chairman Kelsch, Mr. Gallagher said the purpose of the NCLB Accountability Committee is to review the NCLB accountability plan. He said the committee will come together to examine the whole academic year and to examine which students go into the determination regarding AYP. He said the committee members have been identified. He said the accountability committee is expected to meet in February 2006.

Senator Cook said he thought it was an advisory committee, not an accountability committee. He said the key stakeholders need to be sitting down and communicating on a regular basis. He said if they met on a quarterly basis it would probably eliminate the need for this committee.

Representative Sitte said she has heard from teachers and principals that some snooty questions are being asked on state assessments. She said she would like to see the questions. She said she also wants to see a comparison on a district-by-district basis of the NAEP, ACT, SAT, and state assessment scores. She said this would allow us to see which districts have the best learning going on, which districts are falling behind, and which districts are best preparing their students for college.

Chairman Kelsch said individual committee members have the ability to go to DPI and see the test privately. She said DPI cannot show the test to the committee as a whole. She said she cannot close a hearing of this committee. She said if members wish to go to DPI and see the test, there probably could be a discussion regarding the appropriateness of the

questions, without delving into what exactly the questions are.

Representative Sitte said for each member to go to DPI and sign the confidentiality statement promising never to discuss the test does not do any of us any good. She said there is a need to address this.

Chairman Kelsch called on Mr. John Val Emter, retired laborer, who said he has no education and is considered a child left behind. He said he cannot write a letter or do anything like that. He said this committee is setting standards and if one does not meet those standards, one is a child left behind. He said that person then becomes a second-class citizen and he wants to know what will happen to these people. He said we are setting the standards too high and students are falling off the bottom. He said pretty soon we will not have any kids but the smart kids.

Representative Sitte said we do offer adult education services.

Mr. Emter said he went to the adult training center and passed but he still cannot write. He said that is why he is a second-class citizen.

### **COMMITTEE DISCUSSION AND STAFF DIRECTIVES**

Senator Flakoll said the P-16 Education Task Force needs a consultant, not a facilitator. He said there may be some turf issues. He said perhaps the task force should have a chairman who is not identified as being from either kindergarten through grade 12 or higher education.

Senator Flakoll said we could test all 11th graders for \$200,000. He said he is curious to compare that with the costs of our state assessment.

Senator Flakoll said we were told that only 18 schools did not make APY. He said he wants to know how many students attend those 18 schools. For some, he said, reaching "partially proficient" may require 95 percent of their capacity. He said for others, being "proficient" may require only 45 percent of their capacity. He said it would be helpful if we could identify how a student is doing in relation to what the student is capable of doing.

Representative Kelsch said it would be helpful to look at the cost of requiring the ACT. She said some students who might otherwise not take the ACT would have to take the ACT.

Senator Flakoll said some students might get their ACT tests back and decide that their test scores were pretty good and that perhaps they should go on to something else. He said it might push a few more students toward higher education.

Representative Sitte said during the 2005 legislative session she introduced a bill to make the ACT the state assessment. She said Colorado is doing that and it is very effective.

Chairman Kelsch adjourned the meeting at 3:50 p.m.

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L. Anita Thomas  
Committee Counsel

[ATTACH:3](#)