

SOUTH DAKOTA BOARD OF EDUCATION MINUTES

Date: Monday, June 20, 2016—9:00 a.m. Central Time

Location: MacKay Building, Library Commons
800 Governors Drive, Pierre, South Dakota

Public telephonic access:
1-866-410-8397/conference code: 8381998525

Present in person: Sue Aguilar, Member
Glenna Fouberg, Member
Scott Herman, Member (joined meeting at 9:13 a.m. CT)
Marilyn Hoyt, Member
Donald Kirkegaard, President

Present via Phone: Kelly Duncan, Member
Terry Sabers, Vice-president
Deb Shephard, Member

DOE Staff in attendance: Dr. Melody Schopp, Mary Stadick Smith, Tami Darnall, Abby Javurek Humig, Becky Nelson, Tiffany Sanderson, Bobbi Rank, Ferne Haddock, and Holly Farris.

Others in attendance: Anne Plooster (South Dakota Education Association), Kent Alberty (Southeast Technical Institute), Mark Wilson (Mitchell Technical Institute), Rich Klein (Southeast Technical Institute), Mike Cartney (Lake Area Technical Institute), Ann Bolman (Western Dakota Technical Institute), Representative Lee Schoenbeck (via phone), and other members of the public present both personally and via telephone.

Call to Order, Pledge of Allegiance, and Roll Call:

President Kirkegaard called the meeting to order at approximately 9:03 a.m. CT.

Adoption of Agenda:

Motion by Hoyt, second by Fouberg, to adopt the June 20, 2016, agenda. Roll call vote, all present voted in favor. Motion carried.

Approval of Minutes:

Motion by Aguilar, second by Fouberg, to approve the May 16, 2016, minutes. Roll call vote, all present voted in favor. Motion carried.

Public Hearing—Rules:

The Board of Education convened a public hearing at approximately 9:06 a.m. Central Time, on Monday, June 20, 2016, on proposed rules 24:10:42:27 (postsecondary technical institute (PTI) facility fund set-aside), 24:10:42:28 (PTI per student allocation), chapter 24:10:45 (PTI credential), chapter 24:10:49 (PTI instructor salary support), 24:17:03:10 (education structure data submission requirement), and chapter 24:56:03 (shared services grant) at the MacKay Building, Library Commons, 800 Governors Drive, Pierre, South Dakota, 57501.

24:10:42:27 (PTI facility fund set-aside)

Public Comment

No public comments were received.

Proponent testimony

Tiffany Sanderson, DOE director of career and technical education, testified in favor of the proposed rules. The purpose of the rules is to update the State's obligation to the technical institutes' bond debt service, and the rule results from legislation passed during the 2016 session. The proposed rule puts the set-aside at an amount equal or greater to 27 percent of the projected state fees charged to students pledged for the payment of lease purchase agreements. The State's obligation for bond debt service lessened with the buy-down of two outstanding bonds. The savings from those bond payments is being diverted to the tuition buy-down.

Opponent testimony

There was no opponent testimony.

Motion by Aguilar, second by Sabers, to approve the PTI facility fund set-aside rules as proposed. Roll call vote, all present voted in favor. Motion carried.

24:10:42:28 (PTI per student allocation)

Public Comment

No public comments were received.

Proponent testimony

Sanderson testified in favor of the proposed rules. The purpose of the proposed rules is to update the technical institute's funding formula to reflect the per student allocation passed by the Legislature during the 2016 session. The legislature passed changes to National Guard

tuition support, wherein the technical schools will receive the tuition support funds directly. The technical schools previously received the funds through the Department of the Military. The funds will now be distributed through the per student allocation and folded into the Postsecondary Vocational Education line item of the state budget.

Sanderson proposed an amendment to the rules because the draft did not include the National Guard tuition portion of the allocation. The amendment corrected the per student allocation amount to \$3,514.67.

In response to Board questions, Sanderson stated that the proposed rules and amendment change only the amount of the per student allocation to match the amount appropriated.

Opponent testimony

There was no opponent testimony.

Motion by Duncan, second by Aguilar, to amend the rules as proposed. Roll call vote, all present voted in favor. Motion carried.

Motion by Aguilar, second by Hoyt, to approve the rules as amended. Roll call vote, all present voted in favor. Motion carried.

Chapter 24:10:45 (PTI credential)

Public Comment

No public comments were received.

Proponent testimony

Sanderson testified in favor of the proposed rules. The purpose of the proposed rules is to transition the credentialing of postsecondary technical institute instructors from the State to the local technical institutes and is consistent with Legislation passed during the 2016 session. This is appropriate and in line with higher education accreditation standards.

The technical institutes have met to discuss the transition and standards for a common credentialing process and related expectations. A state instructor credentialing standards committee, consisting of administrators and faculty from the TIs, will be created and ensure consistency and appropriate processes are implemented locally.

All credentialing rules will be repealed with the exception of § 24:10:45:13, which addresses existing credentials and lays out the transition process.

Opponent testimony

There was no opponent testimony.

Motion by Aguilar, second by Sabers, to approve the rules as proposed. Roll call vote, all present voted in favor. Motion carried.

Chapter 24:10:49 (PTI instructor salary support)

Public Comment

One written public comment was received into the record of the hearing.

Proponent testimony

Sanderson testified in favor of the proposed rules. The proposed rules implement legislation intending to provide funds for postsecondary technical institute (PTI) instructor salary support. In addition, the Joint Appropriations committee provided a letter of intent regarding the funds, and the proposed rules follow those requirements.

Several new definitions were added to section 24:10:48:01 to accommodate necessary terms within the funding model for PTI instructor salary support. The rules state the purpose of instructor salary support, as well as the requirements for determining instructor wage ranges and market values. The proposed rules also implement certain data reporting requirements related to instructor salary support and how need for instructor support funds will be calculated. Distribution of the instructor salary support funds is also established, as are rules regulating adjustments to instructor salaries.

Sanderson further discussed the information and consultants utilized to establish the PTI instructor wage ranges, as well as how the market values and maximum rates will be established, under the proposed rules. Sanderson also provided further information on the distribution of funds, with example scenarios on how need per PTI may be calculated. In response to Board questions, Sanderson stated that the year-to-year salary support funds will depend on the new sales tax revenue, as the support funds are set at three percent of the new sales tax revenue. If the sales tax revenue increases, the support funds will increase and vice versa. Sanderson also addressed how PTIs determine who constitutes a full-time instructor and funding changes in the event of re-categorization. The rules were drafted according to the intent of the legislation, and the DOE has worked with the Joint Appropriations letter and with Representative Schoenbeck to ensure intent was followed.

Sanderson and Bobbi Rank, Board legal counsel, addressed the written public comment, submitted by Anne Plooster of the South Dakota Education Association (SDEA). The comment requested that the rules not prohibit negotiation as there is nothing in the associated legislation that exempted these salaries from negotiations. The proposed amendment addresses the concern while keeping with legislative intent of the funds, providing that if

salaries are subject to negotiation, the negotiation must be consistent with the requirements of the rules.

Representative Lee Schoenbeck testified in favor of the proposed rules. Schoenbeck stated that it is important to apply the funds where they were intended to be spent and that he is in agreement with the letter issued by the Joint Appropriations Committee.

Mike Cartney, Lake Area Technical Institute, testified in favor of the proposed rules on behalf of all PTI presidents and stated that the workforce shortage is becoming critical. This funding is an important part of addressing the mission of the PTIs and sets good requirements for the PTIs to follow.

Sanderson presented written proposed amendments for the proposed rules which had been posted on the Board's website prior to the meeting.

Motion by Hoyt, second by Fouberg, to amend 24:10:48:01(1) as proposed. Roll call vote, all present voted in favor. Motion carried.

Motion by Aguilar, second by Herman, to amend 24:10:48:01 as proposed. Roll call vote, all present voted in favor. Motion carried.

Motion by Duncan, second by Sabers, to amend 24:10:49:04 as proposed. Roll call vote, all present voted in favor. Motion carried.

Motion by Fouberg, second by Shephard, to amend 24:10:49:05 as proposed. Roll call vote, all present voted in favor. Motion carried.

Motion by Aguilar, second by Hoyt, to amend 24:10:49:06 as proposed. Roll call vote, all present voted in favor. Motion carried.

Motion by Herman, second by Sabers, to amend 24:10:49:07 as proposed. Roll call vote, all present voted in favor. Motion carried.

Opponent testimony

There was no opponent testimony.

Motion by Sabers, second by Hoyt, to approve the rules as amended. Roll call vote, all present voted in favor. Motion carried.

24:17:03:10 (education structure data submission requirement)

Public Comment

No public comments were received.

Proponent testimony

Abby Javurek Humig, DOE director of assessment and accountability, testified in favor of the proposed rules. Javurek Humig stated that this is a new rule setting an official deadline for schools to report educational structure data in the upcoming school year by March 1 of every year. This proposed rules sets up a system that allows the DOE to input the information on structures into the pertinent databases in order to correctly implement programming.

Opponent testimony

There was no opponent testimony.

Motion by Fouberg, second by Duncan, to approve the rules as proposed. Roll call vote, all present voted in favor. Motion carried.

Chapter 24:56:03 (shared services grant)

Public Comment

No public comments were received into the record of the hearing.

Proponent testimony

Becky Nelson, DOE director of Learning and Instruction, testified in favor of the proposed rules. The purpose of the rules is to implement SB 133 from the 2016 legislative session, which allocated funds for this grant program. The grant program provides for shared services between schools that share employees and are accredited and public and demonstrate need and sustainability. The DOE will annually give applications based on available funding. The grant will have a competitive review process and priority will be given to applications that address sparsity, increasing opportunities for student services, and increasing efficiency. The funds may be used for salaries, travel, and certain purchases. Grant funding may be awarded for up to three years, with a 50 percent reduction in funding the second year and a 75 percent reduction in the third year. Applicants may request funds for up to three shared service employees. Awarded districts must report in the state staffing database and provide midyear and annual reports to the Department.

In response to Board questions, Nelson stated that after the appropriation was received for shared services, a survey was conducted to obtain information about what kind of services schools wanted and needed. The DOE will examine that data and determine how the funds will be split to go to the necessary services.

Opponent testimony

There was no opponent testimony.

Motion by Duncan, second by Aguilar, to approve the rules as proposed. Roll call vote, all present voted in favor. Motion carried.

Rules hearing concluded at approximately 10:26 a.m. CT.

President Kirkegaard declared a recess at approximately 10:26 a.m. CT.

President Kirkegaard declared the Board back in session at approximately 10:35 a.m. CT.

HB 1214 Waivers:

Bobbi Rank, Board legal counsel, presented information on HB 1214 and associated waiver requests and requirements. Rank discussed written guidance and a decision matrix document which had been received from the administration. The purpose of these documents is to help board members understand the law and provide a framework for members to work through to determine necessary disclosures and waivers. Each of the 22 boards listed in the bill will handle the waivers for their respective boards, and subject matter as referenced in the bill will be different for each board.

Sue Aguilar requested a waiver on two contracts between Lutheran Social Services (LSS) and the Department of Labor. Aguilar's husband sits on the board of LSS and these contracts could fall within the subject matter of the Board because they deal with college readiness and specifically GED, and the Board has general rulemaking authority regarding GED. Aguilar and her husband had nothing to do with the award of the contracts, her household derives no benefit, financial or otherwise, from the contracts, and the contracts serve the public interest. More information is in the written waiver request and attachments.

Motion by Hoyt, second by Fouberg, to approve the waiver as requested and to authorize the Board president to sign the waiver reflecting the discussion. Roll call vote, all present voted in favor (Aguilar abstained). Motion approved.

Kelly Duncan requested a waiver on her employment contract with Northern State University (NSU), where she serves as the dean of the School of Education. The contract is a standard BOR contract, and she does not approve or enter into any contract on behalf of NSU. More information is in the written waiver request.

Motion by Aguilar, second by Shephard, to approve the waiver as requested and to authorize the Board president to sign the waiver reflecting the discussion. Roll call vote, all present voted in favor (Duncan abstained). Motion approved.

Glenna Fouberg requested a waiver of her occasional work for NSU proctoring PRAXIS exams offered at NSU. NSU contracts for the Praxis exams themselves with ETS, and Fouberg is not part of that contract. Because the Board does have some jurisdiction over PRAXIS cut scores generally, Fouberg is requesting a waiver. More information is in the written waiver request.

Motion by Hoyt, second by Herman, to approve the waiver as requested and to authorize the Board president to sign the waiver reflecting the discussion. Roll call vote, all present voted in favor (Fouberg abstained). Motion approved.

Kirkegaard turned the gavel over to Vice-President Sabers to preside over the next waiver requests.

Kirkegaard requested a waiver regarding the application of Meade School District to the Department for funds associated with Title I Part A, Title II Part A, IDEA Parts A and B and Perkins. Kirkegaard receives no direct compensation from the funds, as all funds are provided to the district, and all amounts are publicly available on the Department's website every year. More information is in the written waiver request.

Motion by Fouberg, second by Aguilar, to approve the waiver as requested, and to authorize the Vice-president to sign the waiver reflecting the discussion. Roll call vote, all present voted in favor (Kirkegaard abstained). Motion approved.

Kirkegaard requested a waiver on his employment contract with the Meade School District as Superintendent. Kirkegaard noted that the contract is a standard employment contract with the school district. More information is in the written waiver request.

Motion by Aguilar, second by Hoyt, to approve the waiver as requested, with Kirkegaard's explanation adopted as the Board's rationale for the waiver and to authorize the Vice-president to sign the waiver reflecting the discussion. Roll call vote, all present voted in favor (Kirkegaard abstained). Motion approved.

***Mauricio v. Daugaard* Decision:**

Bobbi Rank, Board legal counsel, provided the Board with a copy of the decision in favor of the State in *Mauricio v. Daugaard* because the Board was named in the case.

It is unknown at this time if the plaintiffs will appeal.

Executive Session—1-25-2(3):

No executive session was held.

Adjournment:

Motion by Fouberg, second by Sabers, to adjourn the meeting. Voice vote, all present voted in favor. Motion carried.

The meeting was adjourned at 11:18 a.m. CT.

Ferne G. Haddock 7/19/2016
Ferne G. Haddock Date