

STATE BOARD OF PUBLIC SCHOOL EDUCATION

MINUTES OF MEETING

June 26, 2023

State Board of Public School Education members met in the CTE 15th Floor Conference Room at the State Capitol and via Teams on Monday, June 26, 2023. The meeting was called to order by Chairwoman Sonia Meehl at 1:00 p.m.

State Board members in attendance:

Chairwoman Sonia Meehl
Lyndsi Engstrom
Burdell Johnson
Eric Nelson
Mike McHugh

State Board members absent:

Josh Johnson
Superintendent Kirsten Baesler

Others Present: Administrative Law Judge Timothy Dawson, Allyson Hicks, Shauna Marchus, and Donna Fishbeck. There were 14 guests present for the first hearing and 5 guests present for the second hearing, some of whom testified.

Others Present Virtually: Brenda Blazer, Melissa Hamilton, Robert LaFavor, Adam Tescher

1. APPROVAL OF MINUTES

Burdell Johnson moved to approve the minutes from the April 24, 2023 - regular meeting and May 22, 2023 - special meeting. Mike McHugh seconded the motion. The motion carried unanimously.

2. HOLD A HEARING, DISCUSS, AND TAKE ACTION ON THE APPEAL OF A DENIAL OF ANNEXATION FROM THE BURLEIGH COUNTY REGORGANIZATION COMMITTEE REGARDING THE ANNEXATION OF PROPERTY FROM THE APPLE CREEK PUBLIC SCHOOL DISTRICT NO. 39 OF BURLEIGH COUNTY TO BISMARCK PUBLIC SCHOOL DISTRICT NO. 1 OF BURLEIGH COUNTY (JACOBSON APPEAL)

The hearing was held Monday, June 26, 2023, beginning at 1:02 p.m. and was conducted by Administrative Law Judge Timothy Dawson from the Office of Administrative Hearings, pursuant to North Dakota Century Code Chapter 15.1-12. This was an evidentiary hearing for the board to hear testimony and consider other evidence as presented on issues as outlined in the annexation packet. The annexation packet was entered into evidence and marked as Exhibit 1. Judge Dawson explained the rules and procedures of the hearing as well as the penalties for perjury. He noted that the board wished to waive the rules of evidence per North Dakota Century Code Section 28-32-24. Only relevant evidence will be admitted at the

hearing. He explained that at the close of testimonies, the State Board of Public School Education will make the final decision. If any party does not agree with the final decision, they may appeal under North Dakota Century Code Chapter 28-32, the Administrative Agencies Practices Act. The proceedings were recorded, and persons testifying were sworn in by Administrative Law Judge Timothy Dawson.

Brandt Dick, County Superintendent.

Mr. Brandt Dick reviewed the information in the annexation packet from the county meeting held on April 17, 2023, in the County building in Bismarck regarding the Jacobson petition. He stated that at the county hearing the committee unanimously denied the petition. He stated that the county committee felt the land should stay in the Apple Creek School District because it would affect the Apple Creek School District due to the taxable valuation of that partition of land in comparison to the small portion that would affect the Bismarck School District.

Chair Meehl asked Brandt Dick if the petitioners could open enroll their children in the school districts. Brandt Dick answered that open enrollment was not an option in the two schools involved.

Judge Dawson confirmed there were no other questions from the board, and Brandt Dick was dismissed.

In Support:

Levi Jacobson, petitioner.

Mr. Levi Jacobson noted that his wife was present with him in the room. He testified to reasons why he submitted the petition stating that Apple Creek School District could not provide the services his family needs, which included the following factors:

- a. Apple Creek School does not provide any transportation. Levi Jacobson stated that both he and his wife work full-time jobs. The lack of transportation is a hardship for the family now and will continue once the children are required to attend Bismarck Public Schools after grade 5.
- b. Facilities at Apple Creek School lack a gymnasium. Levi Jacobson detailed the importance of physical education with statistics about the positive effects of exercise for children.
- c. Levi Jacobson stated that his child wants to participate in park board girls' basketball and Apple Creek school does not have a team. He described the negative factors to include the lack of openings to be added to Bismarck teams, the difficulty for the family to provide transportation to practices, and that his child would play with kids unfamiliar to her.
- d. Apple Creek School does not have a kitchen on campus. Levi Jacobson stated this is a burden to his family due to higher costs for catered school lunches compared to the Bismarck lunch fees.
- e. Staff recruitment and retention. Levi Johnson was concerned that retention of quality staff would be a problem with a small school compared to the larger Bismarck school.

Levi Jacobson also addressed findings from the county reorganization hearing regarding their concerns about a zig-zag pattern in the boundary lines. He showed a map explaining that the pattern was drawn to exclude a private lot whose owner did not want to be included in the annexation. Levi Jacobson also responded to the county hearing statements that he should have researched the school district boundaries before building on that lot. He stated he followed the Apple Creek Township board meetings regularly, and at those meetings, it was stated that the children who lived in the areas under Bismarck control would attend Bismarck Public Schools, so that was his understanding when he moved to that location. Levi Jacobson addressed other findings including the finances, capacity issues, and class sizes discussed at the county hearing.

Lyndsi Engstrom asked Levi Jacobson if his tax statement listed his taxes being payable to the Apple Creek District. Levi Jacobson answered that he did not have a tax statement when he purchased the lot but found out that his taxes would go to Apple Creek District from the Apple Creek Township meeting minutes.

Chair Meehl asked where the children would go after grade 5. Levi Jacobson answered that it was the family's choice to attend Bismarck Public Schools or Hazelton School.

Chair Meehl asked for clarification on why the specific amount of land was included in the petition. Levi Jacobson answered that he did not want to take the opportunity away from other families in the subdivision to send their children to the school district they wanted. He included the land necessary for his family and the other families that supported the annexation. He stated he was instructed to exclude the lot of the family who did not want to be included in the annexation.

Allyson Hicks asked if there were any other small children that currently live on the petitioned properties. Levi Jacobson answered no.

Lyndsi Engstrom asked if Levi Jacobson understood his taxes would increase due to the annexation. Levi Jacobson responded that he did understand, and he listed the total amounts.

Chair Meehl asked about the commercial zoning listed in the packet and stated that the packet did not list a residential land or building value. Levi Jacobson stated that the lots may have been commercial when owned by the builder. He clarified that he lived in the township since 2014, and he acquired the property in October 2020. He built the house and just moved into the house in October 2022.

Judge Dawson confirmed there were no other questions from the board, and Levi Jacobson was dismissed.

Jeff Sattler, with Sattler Homes, developer of the property.

Mr. Jeff Sattler stated he desired to move the entire subdivision into the Bismarck Public School district early on but was not able to until there was a school-age child affected by the zoning. He stated that different lot owners wanted different school districts.

Chair Meehl asked Jeff Sattler if the lots were zoned commercial. Jeff Sattler answered that they are all residential. He stated the lots were previously zoned ag land. He did not know why the lots were listed as commercial. He developed the lots as residential, stating commercial was not allowed.

Chair Meehl asked Allyson Hicks if the people on the list on pages 6 and 7 of the petition were qualified electors if they do not live on the lots. Allyson Hicks clarified that to be a qualified elector, a person has to reside on the property, so technically even though many people signed to show their support, qualified electors would only be residents on the property. Chair Meehl asked if the two-thirds threshold was met.

Lyndsi Engstrom asked Allyson Hicks to review the two-thirds requirement. Allyson Hicks explained that in order for a petition to be valid in the county committee and then the State Board, two-thirds of the qualified electors residing on the petitioned property must sign the petition. If the homes are owned by a development company, they are not qualified electors.

Chair Meehl asked Jeff Sattler if the Jacobsons were the only family that currently live on the lots. Jeff Sattler answered that there are other families that live in the area, but the Jacobsons are the only ones who reside in the boundary area of the petitioned property.

Discussion was held about the signatures on the petition and if those people who signed reside on the lots included in the petition. Allyson Hicks determined that since only Levi and Julie Jacobson live on the petitioned property at this time, and only Levi Jacobson signed the petition there are only signatures of 50 percent of the qualified electors, which disqualifies the petition. Allyson Hicks explained that the petition should have never been heard by the county committee and she explained two options for how to proceed: the State Board could deny the petition, and the petitioners would have to wait three months before they can resubmit the petition for annexation or the petitioners could choose to withdraw the annexation today, then they can immediately begin the process again.

Chair Meehl called for a recess, and Judge Dawson confirmed the recess at 1:35 p.m. The hearing was reconvened at 1:40 p.m.

Chair Meehl asked Allyson Hicks if it is improper for the board to continue to hear this case because it has been determined that it is not a valid petition. Allyson Hicks explained that if the State Board continues, it will have to be a denial. She stated there is no circumstance that the State Board can approve it. Chair Meehl confirmed that due to the deadline, there is no condition that this annexation could be effective by July 1, 2023, for the upcoming school year.

Judge Dawson asked the petitioner, Levi Jacobson, to come forward to testify about how he would like to proceed. Levi Jacobson stated that he chose to withdraw the petition.

There being no further testimony, Judge Dawson concluded the hearing at approximately 1:43 p.m. and returned the meeting to Chair Meehl.

3. HOLD A HEARING, DISCUSS, AND TAKE ACTION ON THE ANNEXATION OF PROPERTY FROM THE FLASHER PUBLIC SCHOOL DISTRICT NO. 39 OF MORTON COUNTY TO THE LITTLE HEART PUBLIC SCHOOL DISTRICT NO. 4 OF MORTON COUNTY (FISHER PETITION)

The hearing was held Monday, June 26, 2023, beginning at 1:44 p.m. and was conducted by Administrative Law Judge Timothy Dawson from the Office of Administrative Hearings, pursuant to North Dakota Century Code Chapter 15.1-12. This was an evidentiary hearing for the board to hear testimony and consider other evidence as presented on issues as outlined in the annexation packet. The annexation packet was entered into evidence and marked as Exhibit 1. Judge Dawson explained the rules and procedures of the hearing as well as the penalties for perjury. He noted that the board wished to waive the rules of evidence per North Dakota Century Code Section 28-32-24. Only relevant evidence will be admitted at the hearing. He explained that at the close of testimonies, the State Board of Public School Education will make the final decision. If any party does not agree with the final decision, they may appeal under North Dakota Century Code Chapter 28-32, the Administrative Agencies Practices Act. The proceedings were recorded, and persons testifying were sworn in by Administrative Law Judge Dawson.

Mike Heilman, County Superintendent

Mr. Mike Heilman summarized the petition stating the petition was filed for 40 acres from Flasher School District to Little Heart School District. The county hearing was held on May 17, 2023. Kelly and Courtney Fisher currently live on the 40 acres of land, which is owned by their parents. Kelly and Courtney Fisher currently open enroll their daughter in the Little Heart School District. There are two younger siblings, and the intention is to also open enroll them in the Little Heart School District. Mike Heilman added that Kelly Fisher would like to serve on the Little Heart School Board, but learned he lived in the Flasher District, therefore preventing him from serving on the Little Heart School Board. During the county hearing, there was testimony in support of this annexation primarily for the purpose of allowing Kelly Fisher to run and serve on the school board. Mike Heilman explained that their parcel is unique in that the house is on the property line and the home is in the Flasher District, but their garage is in the Little Heart District. Mike Heilman also noted that there was also opposition from the Flasher School District. Mike Heilman stated that the opposition was not about the dollar amount or taxation since that is minimal in this case. He explained that the Flasher School District's opposition was primarily a concern about starting precedence of other annexations in the area. Mike Heilman stated he did not believe this was setting precedence because the qualifying factors that go into the process of annexation would need to be followed. He noted that the petitioners have stated they are willing to continue to pay the sinking and interest to the Flasher District. Mike Heilman reported that the Little Heart County Board voted unanimously to approve the petition.

Chair Meehl verified that 100 percent of the qualified electors who live on the property signed the petition. Chair Meehl asked Allyson Hicks to verify that it is ok that the non-resident owners are listed as the petitioners. Allyson Hicks confirmed that there just needs to be a child living on the property, it does not have to be the petitioner's child, it just usually is.

In Support:

Kelly Fisher, petitioner.

Mr. Kelly Fisher stated that the main reason for the annexation petition is that he did not realize the district line runs through his house. If he knew that, he would have built his house on the Little Heart side. He intends for all his kids to go to Little Heart School District. He explained that the Little Heart School offers kindergarten through eighth grade, and only has 27 students and 5 school board members. It is hard for the school board to keep a minimum of five board members. Kelly Fisher stated he would like to run for the school board and having 3 kids in the school, he would stay on the board a long time. He discussed that his family lives 8.8 miles from St. Anthony School, but 20 miles away from the Flasher School. There is bussing provided to the Flasher School, but they would rather provide transportation to the St. Anthony School, and their work schedule easily allows for that. Kelly Fisher also discussed how he volunteers with the school often. Kelly Fisher stated that he and his siblings also went to the St. Anthony School, and he wants his kids to go there. He stated that money is not an issue in this annexation.

Chair Meehl asked where Kelly Fisher went to high school. Kelly Fisher stated he attended Mandan high school, and he intends for his children to attend Mandan High School. Chair Meehl also clarified that Kelly Fisher is not asking for his tax dollars to be removed from the Flasher School District. Kelly Fisher stated that he is willing to pay his taxes to Flasher. Chair Meehl also asked Kelly Fisher if he was aware of any other residents intending to petition for annexation of their land away from the Flasher School District. Kelly Fisher stated that he was not aware of anyone else wanting to annex their property.

Burdell Johnson stated that he did not see any evidence of annexations being a common request of residents in this area.

Allyson Hicks asked Kelly Fisher if he is aware that the county committee assigned that he would continue paying for the Flasher sinking and interest funds, and asked if he was ok with that. Kelly Fisher stated he agrees to that.

Opponents: None

There being no further testimony, Judge Dawson closed the evidentiary hearing at approximately 2:20 p.m. and returned the meeting to Chair Meehl.

Discussion and Decision:

Chair Meehl read the Finding of Facts from the Fisher annexation packet. Allyson Hicks read the current per-student valuation.

Chair Meehl reviewed the other relevant factors listed in the county findings which included the parent would like to run for the Little Heart School Board and must reside in the district to run for that school board, the 45.12 mills for sinking and interest paid to Flasher District will stay with the property, the domino effect is unlikely as there must be a school-aged child on

the land to be annexed, the petitioner has additional land in the Flasher district and does not intend to petition to annex that property, there is a limited financial impact on either district, and the unique location of the residence near or on the school district boundary lines.

Chair Meehl noted that the motion to approve the annexation carried unanimously with the Morton County Reorganization Board. Lyndsi Engstrom added that the petitioner is aware that they will remain responsible for the bonded indebtedness to the Flasher School District at the rate of 45.12 mills until 2036. Lyndsi Engstrom added that there was no opposition at the state level. A discussion was held about the amount of land included. It was determined that the least amount of land possible was annexed without survey work. Allyson Hicks added that the per-student taxable valuation of the petitioned property is reasonable.

Burdell Johnson moved to approve the petition based on all the factors discussed.

Chair Meehl summarized the final findings of fact as:

1. The petitioner is aware that they will remain responsible for the bonded indebtedness to the Flasher School District at the rate of 45.12 mills until 2036.
2. There was no opposition at the state level.
3. The motion was unanimous at the county level.
4. The least amount of land was annexed, one family one lot
5. The per student valuation is reasonable.
6. The petitioner would like to run for the Little Heart School Board.

Mike McHugh seconded the motion.

NAME	VOTE (Yes/ No)
Burdell Johnson	Yes
Mike McHugh	Yes
Lyndsi Engstrom	Yes
Eric Nelson	Yes
Chair Meehl	Yes
Superintendent Baesler	Absent – Not Voting
Josh Johnson	Absent – Not Voting

Motion passed 5-0. Chair Meehl stated the petition is approved and shall be effective July 1, 2023.

Chair Meehl called for a short recess at 2:22 p.m. The meeting resumed at 2:24 p.m.

4. REVIEW THE RECORD, DISCUSS, AND TAKE ACTION ON THE ANNEXATION OF PROPERTY FROM THE GACKLE-STREETER PUBLIC SCHOOL DISTRICT NO. 56 OF LOGAN COUNTY TO THE KULM PUBLIC SCHOOL DISTRICT NO. 7 OF LAMOURE COUNTY (BOWMAN PETITION)

Chair Meehl read the annexation petition. Allyson Hicks confirmed that this is a regular annexation, no hearing is required, and no there was not any opposition.

Chair Meehl asked Allyson Hicks to comment on the fact that the child who lives in the petitioned property is not a school-aged child. Allyson Hicks explained that this child is not school-aged, but what the law actually states is not that they have to be school-aged, but the parent has the intention to send the child to a public school in the district of the receiving property during the school year following the effective date. Allyson Hicks stated that this child has a disability, and the Kulm School District has services, so the parents will have their child enrolled in the Kulm School District to receive those services.

Chair Meehl noted section I2, conditions affecting the welfare of students residing on the property to be annexed, and suggested adding a finding to section O that the child requires special education services. Discussion was held regarding the details of the disability and where that information came from. It was determined that the county minutes stated the child has a disability.

Allyson Hicks read the current per-student valuation. She noted there is one child in the area sought to be annexed, but zero children of whom are ages 4-17, which changes all of the factors in sub-M2. She will recalculate when she completes the final findings of fact.

Discussion was held regarding the verification of the child's disability. Allyson Hicks explained that the board has never asked for verification beyond the parent's word. Allyson Hicks stated the petition meets the bare requirements, but there is no specific verification of the child being enrolled or requiring services. If that is something the board wishes, it can be requested, but that delay would cause the annexation to not be effective for the next school year. Allyson Hicks explained that the information regarding the child's disability is required to be included to make the petition valid.

Review, discussion, and consideration of the information contained in the annexation packet included: no opposition at the county level, both counties voted unanimously to approve, the county minutes stated that due to the disability status, the child does meet the criteria for early intervention in school.

Lyndsi Engstrom moved to approve the Bowman petition from Gackle-Streeter to Kulm based on the facts that have been presented including:

1. There was no opposition at the county level.
2. Both counties voted unanimously.
3. County minutes state that the disability status of the student qualifies the petition.

Eric Nelson seconded the motion.

NAME	VOTE (Yes/ No)
Eric Nelson	Yes
Lyndsi Engstrom	Yes
Burdell Johnson	Yes
Mike McHugh	Yes
Chair Meehl	Yes
Superintendent Baesler	Absent – Not Voting
Josh Johnson	Absent – Not Voting

Motion passed 5-0.

5. FINAL APPROVAL OF THE FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER FOR THE DISSOLUTION OF HALLIDAY SCHOOL DISTRICT NO. 19 OF DUNN COUNTY AND ITS ATTACHMENT TO BEULAH SCHOOL DISTRICT NO. 27 OF MERCER COUNTY, KILLDEER SCHOOL DISTRICT NO. 16 OF DUNN COUNTY AND RICHARDTON-TAYLOR SCHOOL DISTRICT NO. 34 OF STARK AND DUNN COUNTIES.

Mike McHugh motioned to approve the final findings of fact of the Halliday School District dissolution. Burdell Johnson seconded the motion. No discussion.

NAME	VOTE (Yes/ No)
Eric Nelson	Yes
Mike McHugh	Yes
Burdell Johnson	Yes
Lyndsi Engstrom	Yes
Chair Meehl	Yes
Superintendent Baesler	Absent – Not Voting
Josh Johnson	Absent – Not Voting

Motion passed 5-0.

6. FINAL APPROVAL OF THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR THE ANNEXATION OF PROPERTY FROM VALLEY CITY PUBLIC SCHOOL DISTRICT NO. 2 OF BARNES COUNTY TO BARNES COUNTY NORTH PUBLIC SCHOOL DISTRICT NO. 7 OF BARNES COUNTY (LOVELL PETITION)

Lyndsi Engstrom moved to approve the final findings of fact and conclusions of law and order for the annexation known as the Lovell Petition. Mike McHugh seconded the motion. No discussion.

NAME	VOTE (Yes/ No)
Mike McHugh Lyndsi Engstrom	Yes
Lyndsi Engstrom Eric Nelson	Yes
Burdell Johnson	Yes
Eric Nelson	Yes
Chair Meehl	Yes
Superintendent Baesler	Absent – Not Voting
Josh Johnson	Absent – Not Voting

Motion passed 5-0.

7. LEGISLATIVE UPDATES – ALLYSON HICKS

Allyson Hicks reported the bills that were affecting this board, ended up getting taken out. She stated there was a lot of discussion about what the county superintendents do. Their roles were not defined clearly.

Lyndsi Engstrom stated one role is clearly to support the families with annexations. She asked if there is guidance on how to do annexations. She noted that there are vast variants in the annexation packets. Allyson Hicks stated that there are supposed to be a lot of variants to fit a lot of needs, but the law is clear that the procedure should all be uniform. It was noted that the county superintendent is not a full-time job, and they often sit on many boards.

8. BUDGET REPORT: May 2023

Chair Meehl reviewed the budget. She stated that the board was over budget.

Allyson Hicks asked how they were over budget on salaries. Donna Fishbeck answered that she believes the budget was based on what was budgeted for the last biennium for salaries. She explained that twenty-five percent of the salary for the administrative assistant who supports the State Board comes out of the State Board budget. Donna stated she requested to increase it from \$30,000 per biennium to \$34,000 to account for equity increases and an increase in travel expenses.

9. JOINT BOARDS 2023

Chair Meehl stated that the State Board of Public School Education is hosting the Joint Boards meeting this year. She noted that the Joint Board is required by state law to meet annually with the State Board of Public School Education, the State Board of Education Standards and Practices, the State Board of Higher Education, and the State Board of Career and Technical Education.

Chair Meehl suggested the topic of changing landscape in higher education, with fewer students seeking a four-year degree and going into the workforce. She stated that if anyone has agenda suggestions, submit them to Supt. Baesler.

Donna Fishbeck reported that Supt. Baesler, Chancellor Hagerott, Lisa Johnson, and Rebecca Pitkin have set the date for the Joint Board Meeting for September 26, 2023. It is planned for 9:00 a.m. to 2:00 p.m.

There being no other business before the Board, the meeting was adjourned at 3:01 p.m.

NEXT MEETING

The next meeting is scheduled for September 25, 2023, at 1:00 p.m.

Minutes taken and prepared by Shauna Marchus

Respectfully submitted,

ATTEST:

Sonia Meehl
Chairwoman

Kirsten Baesler
Executive Director & Secretary