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SB 2284
House Education | March 13, 2023
Testimony of Alexis Baxley

Good morning, Chairman Heinert, and members of the House Education Committee. My name is Alexis Baxley, and I serve as the executive director of the North Dakota School Boards Association. NDSBA represents the elected school boards of all 170 public school districts and several special education units in North Dakota.

The North Dakota School Boards Association stands in support of SB 2284. I will walk my testimony through the bill section by section in an attempt to be clear and succinct.

NDSBA is supportive of the changes to the state board of public school education composition in Section 1. We believe it is incredibly important to maintain a base level of school board and educator experience on the board due to the increased work load and educational focus of the board. While the board's work used to be largely annexations, we have added a significant number of duties and oversight authority to the board in recent sessions. The board benefits greatly from having experienced board members and administrators among its membership when completing these duties. Additionally, adding the option of the designee to the committee will provide our organizations with some appreciated flexibility. Limiting the list to three names will ensure the committee forwards only the most qualified candidates to the Governor for consideration and that only those names forwarded will be considered.

The clarifying language regarding probationary teachers in Section 2 is appreciated and ensures that legislative intent is clear. The intent of this chapter was challenged before the ND Supreme Court over the past biennium, so the addition of this language will help mirror the ruling of the court as well.

Section 3 includes the definition of a dangerous weapon according to the NDCC § 62.1-01-01. NDSBA asked that dangerous weapon be defined in chapter 15.1 in order to provide clarity to school districts who are tasked with disciplining students who bring weapons to school. Currently, that section of code requires that school districts adopt a policy governing the possession of dangerous weapons and firearms on school property or at school functions. I think we are all pretty clear as to what a firearm is, but what a weapon is according to this section has been less clear. The bill as written uses North Dakota's definition, but I would like to respectfully request that the committee consider amending the bill to use the federal definition provided in 18 USC § 930. I have included in my online testimony the proposed amendment. The federal definition reads as follows:

“...a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.”

The biggest difference between the two definitions is two and a half inches of knife blade. Currently, students under IDEA who bring a weapon to school would be subject to the federal definition. Aligning the definition in this section of code to the federal definition provides clarity to districts no matter which students are involved.

If you are looking at the provided amendment, you have likely more changes than the definition. In subsection 2 of NDCC § 15.1-19-10 we are asking that current language be clarified to state that the policy of school district must include that suspension and expulsion MAY be a punishment for possession of a dangerous weapon. Federal law requires that an expulsion of one year occur as a result of a student possessing a firearm. It does not have the same requirement for a dangerous weapon. This change would codify what is currently happening in school districts. Current law is unclear as to whether the policy must include suspension and expulsion OR that the *punishment* must be suspension or expulsion. This becomes problematic when students, usually quite young, innocently bring the cool pocket knife gifted to them by grandpa to school for example. Administrators and school boards know that expulsion in these scenarios is overkill and detrimental to the student. Most of the time they use good judgement and allow the student to stay, but without this amendment it isn't clear whether or not that is a legal decision. I ask that you consider this amendment and confirm what we believe the initial legislative intent to be. I have worked with Robin Lang at NDDPI to ensure that the amendment and resulting language is in compliance with the federal Gun Free Schools Act as well.

Next, NDSBA is supportive of the increased per pupil payment and continued commitment to on-time funding in Sections 4, 5, 6, and 7. The per pupil payment in this bill is a great starting point to ensure our districts are able to continue to serve their students over the next biennium despite record inflation.

We are also supportive in the increased maximum school construction loan in Section 8 and the transfer in section 12. These dollars are a great investment in the future of North Dakota.

Finally, the transportation study included in Section 9 will provide valuable insight regarding school transportation funding as we look to continue to serve students across North Dakota.

I respectfully ask that the committee give SB 2284 a do-pass recommendation and consider the amendment provided. I would be happy to stand for any questions.

SECTION 3. AMENDMENT. Subsection 6 of section 15.1-19-10 of the North Dakota Century Code is amended and reenacted as follows:

2. The policy must:
 - a. prohibit the possession of a dangerous weapon or a firearm by a student on school property and at school functions and provide for the punishment of any student found to be in violation. ~~Punishment must include immediate suspension from school and expulsion.~~
 - b. require a student who possesses a firearm in violation of this section ~~must~~ be expelled for at least one year.
 - c. ~~The school district firearms policy must~~ authorize the school district superintendent or the school principal, if the school district does not have a superintendent, to modify an expulsion for firearms possession under this section on a case-by-case basis in accordance with criteria established by the board. Before expelling a student, a school board or its designated hearing officer, within ten days of the student's suspension, shall provide the student with a hearing at which time the school board or its designated hearing officer shall take testimony and consider evidence, including the existence of mitigating circumstances. If a designated hearing officer orders that a student be expelled, the student may seek a review of the decision by the school board, based on the record of the expulsion hearing.
 - d. Include referral to criminal justice or juvenile delinquency system for students who possess a firearm in violation of this section.
3. If a school district expels a student under this section, the district may authorize the provision of educational services to the student in an alternative setting.
4. Actions under this section may not conflict with state special education laws or with the Individuals With Disabilities Education Act [Pub. L. 91-230; 84 Stat. 121; 20 U.S.C. 1400 et seq.].
5. This section does not apply to any student participating in a school-sponsored shooting sport, provided the student informs the school principal of the student's participation and the student complies with all requirements set by the principal regarding the safe handling and storage of the firearm.
6. For purposes of this section:
 - a. "Firearm" has the meaning provided in Public Law No. 90-351 [82 Stat. 197; 18 U.S.C. 921].
 - b. "School property" includes all land within the perimeter of the school site and all school buildings, structures, facilities, and school vehicles, whether owned or leased by a school district, and the site of any school-sponsored event or activity.
 - c. ~~"Dangerous Wweapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance. The term does not include a spray or aerosol containing CS, also known as ortho-chlorobenzamalonitrile; CN, also known as alphachloroacetophenone; or other irritating agent intended for use in the defense of an individual, nor does the term include a device that uses voltage for the defense of an individual, unless the device uses a projectile and voltage or the device uses a projectile and may be used to~~

~~apply multiple applications of voltage during a single incident, then the term includes the device for an individual who is prohibited from possessing a firearm under this title.~~ has the meaning provided in 18 U.S.C 930.