



NDSBA
**NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION**

P.O. Box 7128
Bismarck ND 58507-7128
1-800-932-8791 • (701)255-4127
www.ndsba.org

HB 1247

**Testimony of KrisAn Norby-Jahner
Senate Education
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Chair Beard and members of the Senate Education Committee, for the record my name is KrisAnn Norby-Jahner. I am in-house legal counsel for the North Dakota School Boards Association. The NDSBA represents all 168 North Dakota public school districts and their boards. I am here today with testimony in support of this current version of HB 1247, which ensures compliance with other intersecting state and federal laws that may apply.

The NDSBA supports efforts to guide school districts in complying with court orders and ensuring the safety and well-being of all students. When testifying on this bill in the House Education Committee, we provided specific amendments to assist in navigating the intersecting legal challenges with ensuring a careful balance between victim protection and ensuring due process rights are followed for students accused or potentially convicted of criminal acts. The amendments we presented and that are currently incorporated in HB 1247, include requirements that school districts:

- Develop a “safety plan” that provides for no contact and proper separation in school buildings and educational activities.
- Hold expulsion hearings in compliance with due process procedures and legal requirements.
- Have the option to transfer convicted students to another school or building within the district.
- Separate students when transferring is not possible.

As currently drafted, HB 1247 ensures that school districts abide by state law, which requires a public education to be provided to all students residing in-district. School districts cannot legally require students to open enroll in other school districts (as governed by N.D.C.C. ch. 15.1-31), nor can they require non-resident school districts to accept and enter into nonresident tuition agreements (as governed by N.D.C.C. ch. 15.1-29). In addition, many public school districts throughout North Dakota also do not have other schools or buildings to which convicted students may be transferred. Therefore, the “safety plan” language strikes a balance by requiring “no contact”/ proper separation in school buildings and educational activities, while also ensuring that all students receive a public education.

The safety plan would also require a school district to hold an expulsion hearing for a convicted student only in compliance with due process procedures when timelines under the law allow and for a time period not to exceed those allowed under the law. This revision was important to ensure that a school district is not automatically required to expel a student without constitutional due process. A student cannot be suspended or removed from school for more than 10 days without holding a due process hearing (and a manifestation determination for students with special education services), which requires advanced notice and a fair and impartial hearing at which the student must be allowed representation and an opportunity to confront evidence before a hearing officer makes a decision regarding expulsion.

Finally, the current language of HB 1247 properly addresses circumstances in which a school district might not have multiple schools within its district. Subsection (2)(c) provides flexibility for a school district to transfer a convicted student to another “building” within a school district that may not be identified as a traditional “school,” but where alternative instruction and supports could be provided. Subsection (2)(d) addresses circumstances where a school district only has one school building for K-12 education and instruction. Those schools need flexibility to develop no-contact separation and safety plans, using the resources that are available within their district.

Our only other recommendations on HB 1247 might be to consult with entities specializing in criminal law, including the [ND Commission on Legal Counsel for Indigents](#), which provided testimony in House Education that subsection 4 could create issues under [Marsy’s Law](#) with the release victim information to schools. I would defer to those groups and attorneys who specialize in criminal law for guidance in potentially amending subsection 4, which currently would require the state’s attorney to provide the school information related to victim students and adjudicated delinquents. It may be more appropriate for information regarding no contact orders and adjudications to be provided directly by parents/ guardians or eligible students directly. The ND Commission for Legal Counsel of Indigents also pointed out that the proper term to use in this proposed law would be “adjudicated delinquent” when referring to juvenile students, rather than “convicted student.”

Overall, based on the foregoing reasons, NDSBA recommends that this Committee issue a **do pass** recommendation on HB 1247. Thank you for your time.