



**NDSBA**  
**NORTH DAKOTA SCHOOL  
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**HB 1357**

**Testimony of KrisAn Norby-Jahner**  
**Senate Education**  
**March 5, 2025**

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 in a neutral capacity of HB 1357.

The NDSBA supports efforts to protect student data at all times, and our licensed attorneys field a number of questions and provide routine information and legal counsel to school districts related to the protection of student data throughout each year. Current federal laws provide appropriate safeguards over student data and educational records and identifies the proper methods that legally allow for the sharing of student data, including with other state and federal agencies. These federal laws include the Family Educational Rights and Privacy Act (FERPA), the Child Abuse Prevention and Treatment Act (CAPTA), the Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Act (IDEA), and Section 504 of the Rehabilitation Act. Amendments that have been adopted into the current version of HB 1357 do limit the type of data that a school would be permitted to share and does require a data sharing agreement. That data sharing agreement would need to be created and executed in accordance with FERPA regulations.

For the Committee's understanding of FERPA regulations, students or parents/guardians must typically provide consent for the release of educational records prior to release, except in narrow circumstances such as a health or safety emergency (34 CFR 99.31 (10)); when the disclosure is in compliance with a judicial order or lawfully issued subpoena (34 CFR 99.31 (9)); when the disclosure is to a State and local official with authority to request the information (34 CFR 99.31 (5)); when the production of records is to a state or local educational authority with respect to federal or state-supported education programs under the "audit or evaluation" exception, under which a data sharing agreement must be created (34 CFR 99.35); etc. Even in certain exception circumstances, FERPA regulations often require that the school district make a reasonable effort to notify the parent or eligible student in advance of compliance, so that the parent or eligible student may seek protective action in a court of law.

It is the “audit and evaluation” exception under FERPA regulations that would likely apply when a school district is sharing student data with a state entity managing a student information system. This exception would require school districts to disclose educational records when an agency is auditing or evaluating a federal- or state-supported education program. However, in order to use this exception (without gaining parental consent or providing prior notification), FERPA requires the school district and the state agency to enter into a written agreement with a number of requirements safeguarding the student’s personally identifiable information (PII) from the education records. Requirements include clear identification of the authorized representative, the specific purpose of the data sharing, data limitations, confidentiality provisions, data security measures, and termination clauses in the event FERPA regulations are violated. The U.S. Department of Education monitors FERPA compliance related to the sharing of information with state-supported education programs and provides a very specific [Written Agreement Checklist](#) for school districts to follow.

Based on the foregoing reasons, NDSBA is neutral on this bill, but does ask this Committee to not remove any requirements regarding FERPA regulations. Thank you for your time.