

House Education Committee
SB 2343

Testimony in support by Jeffry Volk, a SBHE member NOT representing the board.

March 15, 2023

Chairman Heinert and Committee Members

My name is Jeffry Volk, a member of the ND State Board of Higher Education (SBHE). My term as a member of the ND State Board of Higher Education began on July 1, 2021. I want to make it very clear I am here on my own behalf as a member of a board for a public entity. I do not represent the SBHE on this matter.

It seems ironic that during National Sunshine Week, as the nation celebrates years of progress with transparency and accountability of public entities by improved access to records for the public, today we're discussing challenges board members of public entities in North Dakota are having with gaining access to records and documents created for the public entity on which the board member serves. The challenges I have experienced may not be unique to the SBHE as Chapter 44 pertains to all public entities.

SB 2343 simply asks to add language to Chapters 15-10 and 44-04 of the NDCC making it clear that a member of the board of a public entity does not need to ask permission of the board of that public entity to gain access to the records of the public entity, whether those records were created before or while the individual requesting access to records is a member of the public entity.

A board member of a public entity has the responsibility to be knowledgeable and have access to all information surrounding any matter brought to a board before they are asked to vote on that matter. Not having access to the same information as other board members, simply because they have not served on the board as long, is a disservice to the new member, and ultimately to the full board and to the public. Limiting access to information and records to any board member of a public entity smacks in the face of transparency and accountability.

I do not want to go deep in the weeds with my requests for records that have been denied, so I will briefly describe the first and latest incidents. There are several others.

My first request for a record was the very first day I became a member of the SBHE. I requested, and was ultimately denied, access to the recording of an SBHE executive session that occurred just two days before I became a member. Currently NDCC 44-04-19.2 (5) states in part – ‘The recording may be disclosed upon majority vote of the governing body unless the executive session was required to be confidential.’ In this instance the attorney for the SBHE opined this section of the NDCC pertains to everyone – the public, the press as well as to current board members.

Interestingly, in addition to the SBHE members, the Chancellor and several NDSO staff were invited to attend the June 2021 executive session while both the newly appointed student member and I drove to Minot to observe this SBHE meeting and had requested to be able to attend the executive session. We were not allowed to attend the executive session. Ultimately, after multiple attempts over three months to have my request to listen to the tape of the executive session be placed on a SBHE meeting agenda, I needed to add the item to the SBHE agenda myself. With very limited board discussion I was denied the right to listen to the recording. Coincidentally, both the student member and I were invited to attend the May 2021 SBHE executive session.

My latest experience relates to a request I made to NDSO staff four months ago to receive more detailed enrollment data than what is published in the annual enrollment reports. After waiting for the data for several months, which of itself is not the issue as I was told it would take several hours of time to compile the data, I later received a call from the SBHE chair when he advised me going forward I was only allowed to ask the NDUS staff for information that could be compiled in 5 minutes or less. Further I was also recently advised that my now 4-month-old campus enrollment data request is not on staffs list of things to do.

As I mentioned earlier, this is a transparency and an accountability matter. Board members need to be held accountable for their decisions while public entities need to be transparent to the public. As a member of the SBHE I take this responsibility seriously. Gaining access

to critical records and data is an important part of preparing and discharging my duty to the public.

Newer board members of any public entity need to have equal access to the same records as any board member who may have served longer. Further, any board member who receives a record prepared for a prior board must hold that record in the same regard as when that record was made available to the prior board.

I ask for your do-pass recommendation for SB 2343 as it moves to the House floor.

I am more than willing to stand for questions from the committee.

Thank you for your consideration and support.

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