



SB 2343
Testimony of Amy De Kok
Senate Education Committee
January 31, 2023

Chairman Elkin and members of the committee, my name is Amy De Kok. I am General Counsel for the North Dakota School Boards Association. NDSBA represents all North Dakota public school districts and their boards. NDSBA stands in opposition to SB 2343.

NDSBA's opposition relates to the language in Section 3 of the bill. Section 3 prohibits a governing body of a public entity, including a school board, from denying a member of the governing body access to a closed, exempt, confidential or other record if the record was created by or for the current or prior governing body. The language does not take into account situations where it would be necessary or required for the governing body to deny access to one of its members. For example, the Family Educational Rights and Privacy Act (FERPA) prohibits the disclosure of student education records to third-parties without parental consent. This includes to school board members unless those individuals have a legitimate educational interest in having access and are designated as school officials for this purpose. There will rarely be a circumstance where a board member has a legitimate educational interest in having access to a student's records relating to a past experience. NDSBA recommends that the bill be amended to include language such as "Except as prohibit under title 34, Code of Federal Regulations, part 99" as the beginning of the paragraph referenced in Section 3.

In addition, the language in Section 2 does not take into account circumstances where a board member or member of the governing body may have a conflict of interest. If there is a conflict of interest, the governing body should have the ability to prohibit the board member with the conflict from accessing certain records relating to that conflict. Therefore, we recommend language be added to allow for this. For example, Section 2 could be amended to include the following language: "except when the member has a conflict of interest pursuant to section 15.1-07-17 or section 44-04-22."

For these reasons, NDSBA urges a Do Not Pass recommendation on SB 2343, and I am happy to stand for any questions. Thank you for your time.