



SB 2188
Testimony of Amy De Kok
Senate Judiciary Committee
January 17, 2023

Chair Larson 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 2188.

NDSBA's opposition centers on Sections 3 and 4 of the Act. Section 3 requires each public school district in North Dakota to adopt a policy to promote parental involvement in the school system and then contains a extensive list of items the policy must contain. NDSBA opposes Section 3 because is it unnecessary. Public school districts already have school policies addressing most of these matters. Public school districts in North Dakota have long supported and encouraged parental involvement and engagement in their student's education, and school boards have adopted school policies reinforcing this idea. Indeed, school districts are already required to adopt a parental and family engagement policy under federal law, namely the Every Student Succeeds Act (ESSA). This policy is very detailed to achieve parent and family engagement on a district-wide level, as well as in each school within the district. It requires, among other things, joint development between the district, parents and families of a district-wide plan detailing the actions the district will take to ensure involvement of parents and families in school programs. The policy requires annual evaluation of the district plan to ensure effectiveness and addresses how to build the capacity of parents and families with training and resources. These are just a few things the policy covers. In addition to the parent and family engagement policy, school boards also adopt policies addressing:

- Curriculum design and adoption, including a complaint procedure available to parents and patrons to challenge curriculum adopted by the board and instructional materials used by teachers in the school system.
- Immunizations required to attend school in North Dakota and the process required to be exempt from those requirements.
- Student retention, promotion, acceleration, and graduation requirements.
- Enrollment in gifted and special education programs, including procedures to identify such students.
- Student attendance.
- Grading procedures.
- Access to student records and information and the limits of disclosure of such information absent parental consent.

In addition to policies, school districts already have most of the information referenced in Section 3 of the bill available on their website or available upon request. In other words, parents already have the ability to access all of this information. All they need to do is check their district's website or contact the school and request the information. Requiring public schools to adopt another policy addressing all of these issues will be duplicative and may cause confusion as to policies already in place.

Section 3 of the bill is also unnecessary because the open records laws in North Dakota already provide a means and method to request this information from public school districts. This includes school board policies, regulations, procedures, instructional materials, and information on student clubs and parent organizations, to name a few. Under the open records laws, anyone from anywhere may, in pretty much any manner, request records from a public school district, including electronically stored records. These records must be provided within a reasonable amount of time. Reasonableness will depend on the circumstances, including the breadth of the request and the type of records requested; however, what is reasonable is usually measured in a few days, not weeks. As for student specific information, the federal Family Educational Rights and Privacy Act (a.k.a., FERPA) provides parents the right to access their student's education records within 45 days of request. This would include such things as attendance records, grades/report cards, student conduct and discipline records, assessments, and related materials, essentially anything directly related to their student and maintained by the district.

Section 3 also includes a provision, starting on page 5, line 20, which allows a parent to make a written request for information from the school superintendent. The superintendent must then respond with the requested information within 10 days. This is regardless of the breadth of the request or the volume of information requested. If this bill is passed in its current form and a superintendent, for example, receives a request for copies of all instruction materials used by 3rd grade teachers, the superintendent would be required to drop everything and devote all of their time and attention to fulfill the request within the 10-day period. This doesn't even factor in other school staff who may need to assist in responding to the request. We believe this 10-day response period could prove problematic in many circumstances. Again, NDSBA believes the open records laws already provide a means of requesting information from a public entity and is better suited to cover these types of requests.

Finally, NDSBA has concerns with Section 4 of the bill. Section 4 prohibits a school district from collecting any "district-wide" data on a student that is not required to be collected by law. First, it is unclear to what is meant by "district-wide" data. Information and records gathered and maintained by public schools are not separated in such a way, at least for the most part. Also, is this meant to cover any and all data of a student? While it is true that federal and state law require certain student data to be collected, most data collected and maintained by schools is not collected because it is required by law. Rather, it is collected for various other reasons. For example,

data regarding athletic accomplishments and statistics are kept on a student-by-student basis. This is not information required to be collected and kept by law. If this bill passes, such data would not be able to be collected or maintained. Another example is a student's permanent record. For the most part, the law does not define what particular information should be included in a student's permanent record. This is usually dictated by school board policy, a document retention schedule, and/or best/common practices. These are just a few examples of the type of data collected that is not required by law.

For these reasons, NDSBA urges a Do Not Pass recommendation on SB 2188, and I am happy to stand for any questions. Thank you for your time.