January 24, 2023
Senate Judiciary Committee
Senator Diane Larson, Chair
SB 2260

Good afternoon, Chair Larson and members of the Senate Judiciary Committee. My name is Angela Sersha and I am an attorney living in Bismarck. Thank you for the opportunity to testify regarding SB 2260 where I am respectfully requesting that this committee issues a Do Not Pass recommendation.

I have the privilege of practicing health law and while reviewing this bill I could see a number of issues that would impact standard processes and policies both in healthcare and for schools. Specifically, the notion that suit may be raised by essentially any individual parent who believes their fundamental rights to parent their child have been violated.

Common law in North Dakota is clear that a parent's right to their child is fundamental.[1] North Dakota case law has further expanded the notion that this fundamental right exists for those who are fit parents as the government does have a right to intervene in those instances of abuse and neglect. This bill serves to codify in the law the fundamental rights to parenting. The problem, however, is the unintended consequences.

In my day-to-day job, I have the pleasure to support providers engaging in health care and improving the human condition. I started this role about six years ago and going into it I thought that healthcare was delivered as it has always been to me. Where I am a respectful patient and recipient that engages in the interactive process as it pertains to me, my parents or my children and their healthcare. My job introduced me to the reality that in the context of children, it is much more common for there to be uninterested or non-existent parents or no decision makers readily available. Or, for those uninterested parents to come use the healthcare system as a mechanism to harass their ex-spouse or ex-partner and the children they have together.

How? I've counseled on removing access to a child's chart from a parent who consistently used the access as a way to find out where/when their ex-spouse would be so they could show up and harass and cause a distraction at clinics. I have counseled on removing parents that show up unable to follow the rules of appropriateness in a hospital setting that disrupts not only their child's care, but the entire unit of children and their parents. I have advised providers dealing with parents that disagree on healthcare for their child. One parent is collaborating with the child's provider on a course of action and consents as to what is the best interest of the child's health condition. The other parent will then call and revoke consent despite not participating in the appointments or plan of care. Sometimes it is fair because the other parent is legitimately interested, in other instances, the other parent is not involved in the day-to-day care of the child and sadly it is using the opportunity to revoke consent to cause disruption for their ex-partner. Unless it is an emergent situation, that child is going to be rescheduled for a future date unless there is an existing court order that indicates who has the sole decision-making authority for the medical treatment at hand. This gives the parents the opportunity

[1] Hoff v. Berg, 1999 ND 115, ¶ 10, 595 N.W.2d 285; In the Interest of G.L., 915 N.W.2d 685, 688+, N.D.

to mediate as necessary the healthcare contemplated and if not mediated, it already involves a court action.

My point here is that under this current draft legislation, these legitimate actions to block a certain parent from their child's physical or mental health care decision or access and/or the review of a health or medial record based on the individual factors at hand would give these same parents using the healthcare system as a weapon of abuse the ability to file suit for a violation of their fundamental rights to parent[2]. Arguably, in the instances I have mentioned, granting by statute the ability to file a direct claim without any standard to the frivolous nature of the underlying facts will still require having that determined by a court. Knowing what I do about the number of parents that lodge complaints that fall into the category of examples that I outlined, it would translate into litigation. Even to move to dismissal on summary judgment requires an extraordinary burden on resources and disrupts business with respect to depositions, affidavits and fact witnesses to testify to the facts that warranted the potential "obstruction or interference" of the parent's fundamental rights.

I've heard others testimony on similar modifications of informed consent as it pertains to children and healthcare and would echo those comments (provided)[3]. Obtaining a written consent in all instances of children's healthcare is unduly burdensome on families. More often than not, I will receive a call about a step-parent or a grandparent that brought a child to an appointment and whether they can consent. Absent a power of attorney listing them as a decision maker or a court order indicating that power has been granted to the individual, we would not assume that the parent has consented. Instead, per policy we would do a quick call to the parent or guardian of record in order to verify consent and document it in the child's medical record. This is a fix for working parents and individuals who may not be able to take their child to a healthcare visit. These calls are also made in the event there is an alleged abuse and neglect case, and temporary custody is placed with the state. Staff verifies this with the state case worker by receiving the court order that the state is the decision maker or until a foster parent is awarded decision making rights to consent for the duration of the ongoing court proceedings. There are also children that come for healthcare that have no parent or guardian in their lives and still need medical treatment or an exam even though it is not emergent. We've seen it in human trafficking situations, children who have run away, parents that are incarcerated or just unavailable because of lack of access to a phone or don't answer the phone despite repeated attempts to call while a child is on site but should be examined. This legislation does not provide the flexibility to work through real life situations without triggering the risk of a parent filing suit.

As a citizen and a mom, I wanted to further address the impact this law would have on schools and provide a parent's perspective because I would be remiss if I did not provide my experience with the public schools and urge a Do Not Pass. I reviewed SB 2260 from the perspective of a school and this law creates duplicative, unnecessary, and unduly burdensome requirements that currently exist in other

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[2] Senate Bill 2260; p. 1 lines 20-22; P. 2 lines 8-10; P. 3 lines 8-13

[3] Senate Bill 2188; Testimony Dr. Danielle Thurtle https://ndlegis.gov/assembly/68-2023/testimony/SJUD-2188-20230117-13789-A-THURTLE_DANIELLE.pdf;
NDHA General Counsel Melissa Hauer https://ndlegis.gov/assembly/68-2023/testimony/SJUD-2188-20230117-13675-A-HAUER_MELISSA.pdf;

formats. To the point as to why would it be harmful if this was passed if schools are already doing it, I would respond with why duplicate?

Duplication causes confusion when laws do not match and creates the potential for an honest mistake. As I understand it, the timelines and expectations vary from those requirements that already apply to schools, which causes confusion in responding. For example, there is an easy-to-follow chain of command in the current code of conduct for my children's school. The chain of command logically starts with the teacher and provides elevation all the way to the school board. You are not mandated to start with the teacher and always have the option to start at whatever level is appropriate commensurate with the issue at hand. In this bill, request for information goes to the principal or superintendent and requires a ten-day turnaround time. Current applicable law allows for 45 days and SB 2260 doesn't take into account whether the request logically should go directly to the principal or superintendent or whether other options in the chain of command make sense.

I would defer to the school representatives expertise[4], but I see this draft law and its requirements as giving a particular parent the opportunity to change the entirety based on their individual view through the ability for filing suit as an infringement of their fundamental rights rather than following the proper channels that apply to all parents and potentially ignoring the voice of the majority of parents. We could have individual parents with vastly different views of what curriculum should be while proffering that their fundamental rights are infringed, battling it out in a courtroom leaving the school district to defend itself in these "suits" at great expense to school, or more accurately, taxpayers. Instead, the resource allocation would be better served in diverting more funds into the students, behavioral health programs and overall support of the teaching staff and student body. In egregious situations, litigation against a school district already exists, but the idea that a suit could be filed because an individual claims their fundamental rights as a parent are being violated is a very low threshold for suit based on the draft of this law.

As a mom with kids in elementary school, I went to the web site to refresh my recollection of the stakeholder commitments[5](provided with my testimony). In my experience with the schools, I have had every opportunity and invitation to review curriculum, join the parent teacher organization, participate in surveys on direction of the district, volunteer and have always received more than enough notice regarding the plan for the week ahead. A specific recent example is the fact I had to sign a permission slip to allow my child to do a fire safety program in conjunction with the Bismarck Fire Department and the Optimist club. It made very clear on that document what the learning opportunity entailed and that failure to return would result in not being allowed to participate. This permission slip makes sense because it had a smoke simulation, so if my child had asthma, I could opt out. On the other hand, signing a permission slip to allow the teacher to call my son Alexander, AJ, is something that seems much better suited for a conversation without such formality. Every teacher I have experienced so far are open to have conversations and are responsive to inquiries. They are kind, smart and interested in their students' learning and overall success. All the information related

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[4] Senate Bill 2188; Testimony Amy DeKok; https://ndlegis.gov/assembly/68-2023/testimony/SJUD-2188-20230117-13840-A-DE%20KOK_AMY.pdf

[5] Bismarck Public Schools website, last accessed Jan. 23, 2023;
https://www.bismarckschools.org/cms/lib/ND02203833/Centricity/Domain/4/4_11_22%20Code.pdf

to the schools that a parent could ever need is very accessible in a number of ways. I would recommend always starting with your child's teacher or the school's web site.

Finally, I have a strong preference for local control and that is the reason we have school boards. Ultimately, if a community feels that their school board is not listening to them or addressing the education of our youth properly, we all have the option of running for the school board or just voting for someone who is closely aligned with our ideals. Our school boards are reflective of the local community and the local community needs, demands and preferences. What works for Bismarck may not work for Watford City and what works in Bottineau may not work for Fargo. Any time you level up in government, that local community voice gets lost, much like the state vs the federal government. Local control and autonomy of our school boards must continue to determine what each respective community needs must continue.

Based on SB2260's duplication of requirements, potential for taxpayer waste, potential for favoring of individual's claiming their fundamental rights are violated over the majority, the overall burden on schools to comply with yet another layer of stringent requirements that vary from those stringent requirements that already exist, and the unintended consequences this legislation presents, I respectfully request a Do Not Pass.

Thank you. I would be happy to stand for any questions.

SANFORD HEALTH

Senate Judiciary Committee
Sen. Diane Larson, Chair
Jan. 17, 2023
SB 2188

Good morning, Chair Larson and members of the Senate Judiciary Committee. I am Dr. Danielle Thurtle, a board certified pediatrician and pediatric hospitalist with Sanford Health Bismarck. I serve as Sanford Bismarck's chief of pediatric medicine and patient safety officer and chair the physician executive committee.

We ask that you give this bill a **Do Not Pass** recommendation.

While the bill on its surface seems well intended, there are numerous situations when parental consent is not possible and/or may serve as a barrier to a minor receiving medical care in a timely manner:

- Medical emergencies: In emergency situations when reasonable attempts to contact a parent fail, consent to provide life-saving services is implied.
- Prenatal care: I have had minors seek pregnancy prevention or disclose sexual abuse without parental consent. If I were unable to even see minors without a parent's consent they would have no way to disclose abuse going on in the home.
- Substance use disorder: North Dakota law provides that minors 14 and older may receive examination and care without parental consent. I have had many, many minors disclose substance use to me only after I inform them that it's confidential. Once they disclose I always convince them that their parent is an ally so have never had to prescribe medications or other therapies without a parent's knowledge. The confidentiality is essential to building trust in the first place.
- Sexually transmitted disease: As with SUDs, North Dakota law specifically provides for minors ages 14 and older to receive examination and care for sexually transmitted disease. As with pregnancy and SUDs, confidentiality is essential to help ensure STDs do not go unchecked, potentially leading to infertility, disease and increased risk for organ failure.

From a purely operational standpoint, requiring consent for every commonplace treatment will bring an unnecessary layer of paperwork and workforce challenge to an already highly regulated industry.

Further, there are numerous times when a minor is accompanied by someone other than a parent, e.g. a grandparent.

While it's understandable to think minors all have parents that are actively involved in their lives, this simply is not the case. There are extenuating circumstances when it is critically important to provide care even when a parent is not present to provide written consent.

Thank you for your consideration.

I would be happy to answer any questions.

Danielle Thurtle, M.D.
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NDHA
North Dakota Hospital Association Est. 1934

2023 Senate Bill no. 2188

Senate Judiciary Committee

Senator Diane Larson, Chairman

January 17, 2023

Chairman Larson and members of the Senate Judiciary Committee, I am Melissa Hauer, General Counsel/Vice President, of the North Dakota Hospital Association (NDHA). I testify in opposition to Senate Bill 2188. We ask that you give the bill a **Do Not Pass** recommendation.

It is a long-established principle that before treating a patient a health care provider must obtain the consent of that patient. What is a simple rule becomes less so when treating minors. The idea that parents should have the right and responsibility to make health care decisions for their children seems eminently reasonable. In most states, age 18 is the age of majority and so, before treating a patient under that age, consent must be obtained from the patient's parent or legal guardian. This seems straightforward but some provisions of the bill would change longstanding North Dakota law regarding minors' ability to consent to their own treatment in certain circumstances and other provisions of the bill are simply unworkable.

First, the bill would require prior, written consent of a parent before any health care provider could prescribe drugs or provide medical services or procedures to a minor. We feel this requirement is unworkable. For example, what if a minor needs emergency surgery and the parent cannot be reached in time? Currently, hospitals are required to attempt to contact a parent in that situation but would not delay life-saving treatment in the meantime. The bill has no exception for emergencies. The bill would also mandate prior, written consent for routine services that are performed every day without such paperwork, such as when a health care provider takes a child's temperature, looks in her ears, and listens to her heart as part of a routine well check visit or when seeing a child for

a minor illness. Do we really want every single health care service, treatment and prescription for a minor to require a parent's written consent?

There is also a long history of the legislature acknowledging that, in certain circumstances, it may be more important for a young person to have access to confidential medical services than it is to require that parents be informed of the situation. For example, current North Dakota law gives minors the right to consent to treatment in a few specific situations:

1. N.D.C.C. § 14-10-17, which provides that any person 14 years or older may receive examination, care, or treatment for sexually transmitted disease, alcoholism, or drug abuse without permission, authority, or consent of a parent or guardian.

2. N.D.C.C. § 14-10-17.1, which provides that a minor may contract for and receive emergency examination, care, or treatment in a life-threatening situation without the consent of the minor's parent or guardian. If a minor has an emergency medical condition or the potential for an emergency medical condition, consent to emergency examination, care, or treatment of the minor is implied if reasonable steps to contact the minor's parent or guardian are unsuccessful. It also provides that a health care provider may provide emergency medical care or forensic services to a minor who is a victim of sexual assault without the consent of the minor's parent or guardian. Reasonable steps must be taken to notify the minor's parent or guardian of the care provided.

3. N.D.C.C. § 14-10-18.1, which provides that an individual who is at least 16 years of age may donate blood on a voluntary and noncompensatory basis without obtaining the consent of the individual's parent or guardian.

4. N.D.C.C. § 14-10-19, which provides limited prenatal care, pregnancy testing, and pain management related to pregnancy for a minor without a parent's consent. A health care provider may provide prenatal care beyond the first trimester of pregnancy or in addition to the single prenatal care visit in the second or third trimester if, after a good-faith effort, the health care provider is unable to contact the minor's parent or guardian. The law requires that if a minor requests confidential services, the health care provider shall encourage the minor to involve her parents or guardian. The health care provider may inform the parent or guardian of any pregnancy care services in certain circumstances.

5. N.D.C.C. § 14-10-20, which just passed last session, allows an unaccompanied homeless minor to consent to health care (other than an abortion).

If SB 2188 passes, would it override these longstanding laws allowing minors to consent to their own health care in these limited circumstances? This bill is simply unworkable in the burden it would place on health care providers to secure prior written consent to all health care services, even routine examinations or prescriptions. In emergency circumstances this bill's requirements would be dangerous and impede life-saving care. And while health care providers agree that parental involvement is desirable and ideally parents and teenagers would work together to make well thought out health care decisions, the reality is that if we take away access to confidential health care in certain situations teenagers simply will stop seeking the care they need.

For these reasons, we ask that you give the bill a **Do Not Pass** recommendation.

I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/Vice President
North Dakota Hospital Association

NDSBA
NORTH DAKOTA SCHOOL BOARDS ASSOCIATION

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.

Bismarck Public Schools
806 N Washington St
Bismarck, ND 58501
Bismarckschools.org

bps
BISMARCK
PUBLIC SCHOOLS

Code of Conduct & Stakeholder Commitments

Approved by Bismarck School Board 4/11/2022

BPS is fortunate to have supportive and friendly parents and community members who help model appropriate behavior for all children. It is important for students to see adults work together so they too can learn to be productive contributing community members. In addition, it is essential that BPS continues to be transparent and collaborative with all stakeholders. Creating a safe, caring, and respectful school environment is the work of all staff, students, parents, and our community.

Code of Conduct - as caring adults, we should:

- Respect school staff and what they do to help our children learn
- Ask the school for help if we have questions or want more detail
- Respect teaching time by not disrupting class or areas of the school during school hours
- Ask the school for their view on an incident prior to taking matters further (ask before you act)
- Work to resolve issues and conflicts in a constructive manner:
  - open dialogue and respectful language
  - appropriate behavior, moderate tone and even temper
  - avoid the use of social media as a tool to address conflict
- Follow the proper "chain of command" which follow:
  - Teacher
  - Assistant Principal or Principal
  - Assistant Superintendent
  - Superintendent
  - Then finally the School Board
- Voice concerns with school decisions in the appropriate forum, such as a meeting with the relevant level of leadership following the chain of command referenced above.

Stakeholder Commitments – Bismarck Public Schools will ensure Parents/Guardians Access to:

- Timely notification of safety issues related to their child
- Information on guest lecturers and outside presenters prior to addressing students (Policy GBBA)
- Opt-in and opt-out opportunities (Policy FGA and yearly opt-in and opt-out opportunities)
- School visits during school hours (Policy KAAA-AR)
- A parent/guardian/eligible student's right to inspect educational records (Policy FGA-BR)
- Information regarding who receives Bismarck Public School contracts (Policy HCAA)
- Grades that outline easy to understand Standards and student progress on academic learning and work completed (Policy GCBA/GCBB)
- Bismarck Public Schools encourages and recognizes as important the active participation of citizens in the process of public education. Any resident or employee of the school district may review instructional or library materials (Policy GAAC)

Bismarck Public School's priority is to ensure the safety and security of our students, the security of their educational records, and all personal data. (Policy FC, FG and the entirety of all FGA policies including but not limited to FGA - E through FGA - E8 and FGA – BR through FGA - BR2)