



NDSBA

**NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION**

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HB 1247

Testimony of KrisAn Norby-Jahner

House Education

January 22, 2025

Chair Heinert and members of the House 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 with neutral testimony on HB 1247 if amendments are incorporated to ensure compliance with other intersecting state and federal laws that may apply.

The NDSBA supports efforts to guide school districts in complying with court orders and ensuring the safety and well-being of all students. However, requiring the permanent removal (or separation) of a convicted student who resides within a school district raises a number of intersecting legal challenges.

The first recommended amendment we present begins on page 1, line 14 (in proposed N.D.C.C. § 15.1-19 (2)), where the language states, "A convicted student may not attend the same school as the victim of sexual assault committed by the convicted student." This language would provide a challenge for public school districts where the law requires school districts to educate all students residing in-district. School districts cannot legally require students to open enroll in other school districts (as governed by N.D.C.C. ch. 15.1-31), nor can they require non-resident school districts to accept and enter into nonresident tuition agreements (as governed by N.D.C.C. ch. 15.1-29). Many public school districts throughout North Dakota also do not have other "schools" or buildings to which convicted students may be transferred. Therefore, our first amendment recommends a requirement that school districts develop a safety plan that provides for no contact with the victim and proper separation in school buildings and educational activities as identified in the next subsection.

Our second recommended amendments on pages 1-2, lines 16 and following (in proposed N.D.C.C. § 15.1-19 (3)) would outline the requirements of that safety plan. In subsection (a), a school district can be required to hold an expulsion hearing in compliance with due process procedures when timelines under the law allow, but a school district cannot lawfully be required to expel a student without constitutional due process. Under federal and state law, a student cannot be suspended or removed from school for more than 10 days without holding a due process hearing, which requires advanced notice and a fair and impartial hearing

at which the student must be allowed representation and an opportunity to confront evidence before a hearing officer makes a decision regarding expulsion. This means that the window to hold an expulsion hearing is very small. There would be additional considerations and legal requirements if a convicted student were receiving services under federal special education laws. Therefore, this amendment includes language to ensure legal compliance with those expulsion hearing requirements.

In subsection (c), a school district could be required to transfer a convicted student to another school if there were another school available within the school district. However, our amendment would provide flexibility for a school district to also transfer a convicted student to another “building” within a school district that may not be identified as a traditional “school,” but where alternative instruction and supports could be provided.

Finally, we would recommend an additional subsection (d) to address circumstances where a school district only has one school building for K-12 education and instruction. Those schools should be afforded the flexibility to develop no-contact separation and safety plans, using the resources that are available within their district.

Based on the foregoing reasons, NDSBA asks this Committee to work on HB 1247 to incorporate amendments that will ensure state and federal law compliance. Thank you for your time.

Introduced by

Representatives D. Johnston, Bolinske, Frelich, Heilman, K. Anderson, Steiner, Wolff,
VanWinkle

Senators Myrdal, Wobbema, Paulson, Cory

1 A BILL for an Act to create and enact a new section to chapter 15.1-19 of the North Dakota
2 Century Code, relating to protection of a student victim of sexual assault.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 15.1-19 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Student sexual assault - Victim protection.**

7 1. As used in this section:

8 a. "Convicted student" means a student enrolled in a school who is adjudicated or
9 convicted of committing sexual assault upon another student enrolled in the
10 same school.

11 b. "Sexual assault" means a nonconsensual offense under chapter 12.1-20 for
12 which "sexual act" or "sexual contact", as defined in section 12.1-20-02, is an
13 element.

14 2. A convicted student ~~may not attend~~enrolled in the same school as the victim of sexual
assault committed by the convicted student ~~must adhere to a safety plan developed by~~
the school district that provides for no contact with the victim and proper separation in
school buildings and educational activities as identified in this section.

15 3. A school shall ensure a safety plan is developed for a convicted student that includes,
but is not limited to: ~~is not present at the school by:~~

16 a. ~~Expelling-Holding an expulsion hearing for~~ a convicted student in compliance with -
due process procedures when timelines under the law allow and for a time
period not to exceed those allowed under N.D.C.C. § 15.1-19-09;

17 b. Transferring a convicted student to an alternative education program, which may
18 include virtual education; ~~or~~

19 c. Transferring a convicted student to another school ~~or building within the school~~
district; or

- 20 d. Separating the convicted student from the victim at all times in school buildings and
 educational activities when transferring the convicted student is not possible.
- 21 4. Upon adjudication or conviction of a convicted student, a court shall provide the school
22 in which the convicted student is enrolled with notice of the court's findings that are
23 relevant under this section.