NDSBA
NORTH DAKOTA SCHOOL BOARDS ASSOCIATION
P.O. Box 7128
Bismarck ND 58507-7128
1-800-932-8791 • (701)255-4127
www.ndsba.org

SB 2392

Testimony of KrisAn Norby-Jahner
Senate Education
February 11, 2025

Chair Beard and members of the Senate 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 submitting this testimony in opposition to SB 2392.

SB 2392 seeks to add a new chapter to title 15 of the ND Century Code that appears to be modeled after other state laws (which have been swiftly challenged as unconstitutional), including Florida's Individual Freedom Act. The proffered intended purpose of these types of proposed laws is to protect individual freedoms and prevent discrimination in the workplace and in public schools. However, individual freedoms are already protected under the U.S. and State Consitutions. Likewise, discrimination based on protected class statuses is already prohibited in both workplaces and in public schools under a number of of state and federal laws, including (but not limited to):

- **North Dakota Human Rights Act**, N.D.C.C. ch. 14-02.4, prohibiting discrimination based on race, color, religion, sex, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer.

- **Title VI of the Civil Rights Act of 1964**, 42 U.S.C. 2000d, et. seq, prohibiting discrimination based on race, color, or national origin in programs that receive federal funding.

- **Title VII of the Civil Rights Act of 1964,** 42 U.S.C. §§ 2000e-2000e17, prohibiting employment discrimination based on race, color, religion, sex, and national origin.

- **Title IX of the Education Amendments of 1972**, 20 U.S.C. § 1681, et. seq., prohibiting sex discrimination in education programs that receive federal funding.

- **Age Discrimination in Employment Act of 1967**, 29 U.S.C. §§ 621-634, prohibiting employment discrimination against individuals based on age (40 years or older).

- **Americans with Disabilities Act (ADA)**, 42 U.S.C. § 12101, et. seq., prohibiting discrimination against individuals with disabilities in both employment and schools.

Overall, the proposed SB 2392 is confusing, difficult to navigate, and unnecessary. SB 2392 uses the term "personal identity characteristic" to mean an "individual's race, color, ethnicity, sex, sexual orientation, national origin, religions, or gender identity." However, all of these "personal identity characteristics" are already properly classified under state and federal employment and education laws as "protected classes," meaning that any individual who falls into one of those classes cannot be discriminated against on the basis of that class. Yet, this new proposed law adds confusion to the equation by indicating that "no policy, procedure, practice program, office, initiative, or required training" can assert that one of these characteristics is "inherently superior or inferior to another personal identity characteristic," nor can an assertion be made that "an individual, by virtue of the individual's personal identity characteristics, is inherently privileged, oppressed, racist, sexist, oppressive, or a victim, whether consciously or unconsciously." This language is convoluted, confusing, and in direct contrast and contradiction to current protections provided under state and federal laws based on protected class statuses.

Under SB 2392, it appears that a school could not provide historical-based instruction about important events in the world, including slavery, the Holocaust, or even the fall of the Roman Empire. Nor could a school provide proper training and professional development that educates employees and students about the context, background, reasoning, and philosophy of our state and federal laws that provide protections and prohibit discrimination based on protected class statuses. In one breath under SB 2392, a school must uphold Title VI, Title VII, and Title IX, but yet in another breath a school cannot provide robust, example-based training and instruction on preventing and addressing discrimination in its schools. SB 2392 is contradictory.

The language of SB 2392 also provides a content-based regulation of speech that is in violation of the First Amendment of the U.S. Constitution. Other state laws, similar to SB 2392, have been swiftly challenged and upheld as unconstitutional on these grounds. For example, employers and diversity, equity, and inclusion consultants quickly brought legal action based on First Amendment violations in Florida's Individual Freedom Act (a law that banned mandatory workplace trainings that endorsed certain viewpoints). In 2024, the federal appellate court out of the 11th Circuit held that Florida's law imposed content-based regulations of speech that are protected by the First Amendment when it mandated the types of speech and trainings that could be/ could not be conducted. When the government targets not just a subject matter, but "particular views taken by speakers" on that subject matter, then such restrictions are "an egregious form of content discrimination" in violation of the First Amendment. *Honeyfund.com Inc. v. Governor*, 94 F. 4th 1272 (11th Cir. 2024). Overall, the court found that laws that discriminate between lawful and unlawful conduct based on the content of the

messages expressed are content-based restrictions in violation of the Constitution. This is exactly what SB 2392 does. This bill places content-based restrictions on the types of speech and conduct that may or may not be allowed in schools.

Based on the foregoing reasons, NDSBA asks this Committee to issue a **do not pass** recommendation on SB 2392. Thank you for your time.