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2003 HOUSE EDUCATION

HB 1237

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10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES
BILL/RESOLUTION NO. HB1237
House Education Committee

☐ Conference Committee

Hearing Date January 27, 2003

Tape Number	Side A	Side B	Meter #
1	x		3100- end
1		x	00-1132
Committee Clerk Signature <i>Linda Fiechter</i>			

Minutes: Chairman Kelsch opened the hearing on HB 1237

Rep. Nottestad, District 33, SW side of Grand Forks

Hog House amendment. passed out.

Loop hole in the law, pertaining to the expulsion policy practiced by some school districts. The original bill hit a problem, I met with Mr. Gary Thune and we felt it would be easier to put a hog house amendment and correct it entirely then to tray to make amendments on to it.

Gary Thune, Legal Counsel to the ND SBA

I urge your support as amended on this bill. Change it from 4 sections to 2 sections. Thune went through the amendments as passed out by Rep. Nottestad.

(4004) Rep. Williams In Section 2, 'shall' How many school districts have this policy?

Thune: This has been in law for some time, School boards and districts must adopt their own policy. I'm not aware of anyone not having a policy in place.

Rep. Herbel For my information, What is the federal policy?

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Date

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House Education Committee
Bill/Resolution Number HB1237
Hearing Date January 27, 2003

Thune: I don't have a copy of it, it has been in our law for quite some time now. Sub section 6 of the second page of this bill, says firearms have a meaning provided in public law 90-351.

And it does involve a weapon that discharges. Weapons are defined by the local district. There is a problem that if you don't have in your policy and your student handbook a fairly clear definition of what a weapon is, that is maybe subject to challenge in court.

Chairman Kelsch Gave an example of sending a knife to school with her son to cut a baked good that she sent.

Rep. Mueller This issue has been with us. What is your sense on the enforcement of this policy on school grounds? Intent of the law and practicality.

Thune: No major problem in North Dakota. But knives and small weapons has a 12 month suspension, which may be too much of a penalty. To have the flexibility, in nature, to deal with the problem.

Rep. Hunsaker If a student has possession of a weapon in May, they could start school in September then, with the firearms you would have to wait the full 12 months?

Thune: That is correct. The weapons offense if that student is expelled for bringing the knife, it could be until the end of the calendar year. It could be for 12 months and also depending on the circumstances of the event. For a more severe penalty if it is more than the first offense. Lesser for the first offense.

Rep. Haas 19.10 subsection 2, modify the expulsion which would make it less than a year. But on the condition that it be done with some predetermined criteria. Is that not a little bit ambiguous?

Thune: That is the language in the current law

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House Education Committee
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Rep. Haas I know it is,

Thune: and I think it is very workable as I would see it. School board/ principal has the authority to modify that mandatory year, case by case.

Rep. Jon Nelson Indian reservation, do they comply to this or the federal law?

Thune: If the school received state funds, yes if not no, then it rolls to the federal.

Chairman Kelsch Definition of firearm, read from law.

Rep. Herbel Are BB guns and pellet guns included?

Chairman Kelsch school district defines weapon.

Rep. Aarsvold: District 20, rural area between Grand Forks and Fargo

Support of the HB 1237. The is deals with how school districts deal with weapons violations. I helped draft this legislation. by amending it we are critiquing our work.

Bruce Murry, Neutral Employee of Protection and Advocate

Very narrow subsection page 4, line 2 discusses the possibility of a school 'shall' provide education. The hog house page 2, sub 3 top of page says 'may' authorize services.

END OF TAPE

(90) Linda Johnson, Director of School Health Programs, Department of Public Instruction

See Attached Testimony

Rep. Mueller School district does allow for education, 'may' or 'shall', you would prefer it to be shall?.

Johnson: Correct, every child needs an education.

Rep. Herbel Do you want to go to the home where firearms are legal?

Johnson: I would have to be faced with the situation before I could comment.

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Bill/Resolution Number HB1237
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Gloria Lokken, President of the ND Education Association. support of bill as amended.

Safety issue, modifications so that they have flexibility to deal with the situation. Situations do come up and we need to be flexible. In home education will need to be addressed. If it is dangerous in the school, and we have to send teacher to the home, it will still be dangerous.

Rep. Jon Nelson Does your organization prefer 'may' or 'shall'?

Lokken: Certainly we want every child to be educated, but we want the district to make that decision as they see fit. We are comfortable with 'May'.

(850) Rep. Hunsakor (of Johnson) On page 2 of your chart, 11% or is that 11 out of 100 student in ND were had some kind of physical fight.

Johnson: yes in grades 9-12., national data, we are within the National average.

OPPOSITION - none

(1132) Closed hearing on HB 1237.

Rep. Haas assigned to review the amendments

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Dannan Holbrook
Operator's Signature

10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES
BILL/RESOLUTION NO. HB 1237
House Education Committee

☐ Conference Committee

Hearing Date January 28, 2003

Tape Number	Side A	Side B	Meter #
1		x	3151-4050
Committee Clerk Signature <i>Linda Fiechter</i>			

Minutes: Chairman Kelsch opened committee work on HB 1237

Rep. Haas reviewed the bill and amendments. The amendments were introduced by Gary Thune. On page two of the amendment, section 2, "may" and "Shall"

Rep. Sitte :If someone is expelled from a Bismarck high school will they be able to have their alternative education at South Central Adult

Rep. Haas If that is the decision of the district yes, but it is not automatically done.

The language is good the way it is with this amendment.

Rep. Haas moved to adopt the amendment, Vice Chair Johnson seconded voice vote, passed

Rep. Mueller DO PASS as Amended, Rep. Jon Nelson second

Roll vote: 14-0-0 , Rep. Hunsaker will carry the bill.

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Dan Hall
Operator's Signature

10/2/03
Date

VR
1/28/03
1052

HOUSE AMENDMENTS TO HOUSE BILL NO. 1237 EDU. 1-29-03

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 15.1-19-09 and 15.1-19-10 of the North Dakota Century Code, relating to the suspension and expulsion of students and school district weapons policies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-19-09 of the North Dakota Century Code is amended and reenacted as follows:

15.1-19-09. Students - Suspension and expulsion - Rules.

1. The board of a school district shall adopt rules regarding the suspension and expulsion of a student. The rules for expulsion must provide for a procedural due process hearing in the manner provided for in subsection 2 of section 15.1-19-10, before the determination to expel a student is made. A student's parent or representative must be allowed to participate in the expulsion hearing.
2. A student may be suspended for up to ten days for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy.
3. A student enrolled in an alternative education program for which state per student payments are available may be suspended for up to twenty days for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy.
4. A student, including one enrolled in an alternative education program, may be expelled from school for insubordination, habitual indolence, or disorderly conduct; provided the expulsion does not last beyond the termination of the current school year. A student who violates the school district's weapons policy may be expelled for up to twelve months.

SECTION 2. AMENDMENT. Section 15.1-19-10 of the North Dakota Century Code is amended and reenacted as follows:

15.1-19-10. Possession of a weapon - Policy - Expulsion from school.

1. The board of each school district shall adopt a policy governing the possession of weapons and firearms on school property or at a school function and provide for the punishment of any student found to be in violation of the policy.
2. The ~~weapons~~ policy must prohibit the possession of a weapon or a firearm by a student on school property and at school functions and provide for the punishment of any student found to be in violation. Punishment must include immediate suspension from school and expulsion. A student who possesses a firearm in violation of this section must be expelled for at least one year. The school district firearms policy must authorize the school district superintendent or the school principal, if the school district does not have a superintendent, to modify an expulsion for firearms possession under this section on a case-by-case basis in accordance with criteria

established by the board. Before expelling a student, a school board or its designated hearing officer, within ten days of the student's suspension, shall provide the student with a hearing ~~before the school board~~ at which time the school board or its designated hearing officer shall take testimony and consider evidence, including the existence of mitigating circumstances. If a designated hearing officer orders that a student be expelled, the student may seek a review of the decision by the school board, based on the record of the expulsion hearing.

3. If a ~~board~~ school district expels a student under this section, the ~~board~~ district may authorize the provision of educational services to the student in an alternative setting.
4. Actions under this section may not conflict with state special education laws or with the Individuals With Disabilities Education Act [Pub. L. 91-230; 84 Stat. 121; 20 U.S.C. 1400 et seq.].
5. This section does not apply to any student participating in a school-sponsored shooting sport, provided the student informs the school principal of the student's participation and the student complies with all requirements set by the principal regarding the safe handling and storage of the firearm.
6. For purposes of this section:
 - a. "Firearm" has the meaning provided in Public Law No. 90-351 [82 Stat. 197; 18 U.S.C. 921].
 - b. "School property" includes all land within the perimeter of the school site and all school buildings, structures, facilities, and school vehicles, whether owned or leased by a school district, and the site of any school-sponsored event or activity."

Renumber accordingly

Date: 1/28/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1237

House HOUSE EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By

Seconded By

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch					
Rep. Johnson					
Rep. Nelson					
Rep. Haas					
Rep. Hawken					
Rep. Herbel					
Rep. Meier					
Rep. Norland					
Rep. Sitte					
Rep. Hanson					
Rep. Hunsakor					
Rep. Mueller					
Rep. Solberg					
Rep. Williams					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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Dennie Baller
Operator's Signature

10/2/03
Date

Date: 1/28/03
Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1237

House HOUSE EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30221-0102

Action Taken Do pass as Amended

Motion Made By Mueller Seconded By Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓				
Rep. Johnson	✓				
Rep. Nelson	✓				
Rep. Haas	✓				
Rep. Hawken	✓				
Rep. Herbel	✓				
Rep. Meier	✓				
Rep. Norland	✓				
Rep. Sitte	✓				
Rep. Hanson	✓				
Rep. Hunsakor	✓				
Rep. Mueller	✓				
Rep. Solberg	✓				
Rep. Williams	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Hunsakor

If the vote is on an amendment, briefly indicate intent:

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Deanna Ballbach 10/2/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
January 30, 2003 10:11 a.m.

Module No: HR-18-1327
Carrier: Hunsdor
Insert LC: 30221.0102 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1237: Education Committee (Rep. R. Kelsch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1237 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 15.1-19-09 and 15.1-19-10 of the North Dakota Century Code, relating to the suspension and expulsion of students and school district weapons policies.

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3. A student enrolled in an alternative education program for which state per student payments are available may be suspended for up to twenty days for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy.
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2. The ~~weapons~~ policy must prohibit the possession of a weapon or a firearm by a student on school property and at school functions and provide for the punishment of any student found to be in violation. Punishment must include immediate suspension from school and expulsion. A student who possesses a firearm in violation of this section must be expelled for at least one year. The school district firearms policy must authorize the school district superintendent or the school principal, if the school district

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10/2/03
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REPORT OF STANDING COMMITTEE (410)
January 30, 2003 10:11 a.m.

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Carrier: Hunsdor
Insert LC: 30221.0102 Title: .0200

does not have a superintendent, to modify an expulsion for firearms possession under this section on a case-by-case basis in accordance with criteria established by the board. Before expelling a student, a school board or its designated hearing officer, within ten days of the student's suspension, shall provide the student with a hearing ~~before the school board~~ at which time the school board or its designated hearing officer shall take testimony and consider evidence, including the existence of mitigating circumstances. If a designated hearing officer orders that a student be expelled, the student may seek a review of the decision by the school board, based on the record of the expulsion hearing.

3. If a ~~board~~ school district expels a student under this section, the ~~board~~ district may authorize the provision of educational services to the student in an alternative setting.
4. Actions under this section may not conflict with state special education laws or with the Individuals With Disabilities Education Act [Pub. L. 91-230; 84 Stat. 121; 20 U.S.C. 1400 et seq.].
5. This section does not apply to any student participating in a school-sponsored shooting sport, provided the student informs the school principal of the student's participation and the student complies with all requirements set by the principal regarding the safe handling and storage of the firearm.
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Renumber accordingly

2003 SENATE EDUCATION

HB 1237

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Dennis G. Hall
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10/2/03
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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. Engrossed HB 1237

Senate Education Committee

☐ Conference Committee

Hearing Date 3-10-03

Tape Number	Side A	Side B	Meter #
1	x		30.0 - end
1		x	0 - 30.9
Committee Clerk Signature <i>Andrea Johnson</i>			

Minutes: CHAIRMAN FREBORG called the committee to order. Roll call was taken with all (6) members present.

CHAIRMAN FREBORG opened the hearing on Engrossed HB 1237 relating to the suspension and expulsion of students and school district weapons policies.

Testimony in support of Eng. HB 1237:

REPRESENTATIVE DARRELL NOTTESTAD, Dist 43, stated the bill was introduced to fill a loophole in the expulsion process. The engrossed version of the bill is acceptable to all concerned. Under today's law, if a student is attacked on school property with something other than a firearm, and is injured, the attacker can be expelled, but only for the remainder of the school year. If a firearm is involved, than the perpetrator is expelled for one year. Deterred further questions to Gary Thune, legal council for the School Board Assn.

REPRESENTATIVE OLE AARSVOLD, Dist. 30, stated there is a need to refine the procedure relating to suspension and expulsion of students. This bill also allows for a "hearing officer".

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Donna Baller
Operator's Signature

10/2/03
Date

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Senate Education Committee

Bill/Resolution Number Eng. HB 1237

Hearing Date 3-10-03

GARY THUNE, legal council for the ND School Boards Assn., appears in support of the bill.

This bill deals with issues other than firearms. Under current law, there are three forms of discipline provided for by statute:

1. suspension; up to 10 days, 20 days at an alternative school, due process is very minimal
2. expulsion; authorized by a school boards under state law, formal due process hearing
 - a. general expellable offenses, to the end of the school term
 - b. if it is a firearms offense, the student if expellable for 12 months from date of occurrence
3. for weapons that are not firearms, the penalty is up to twelve months expulsion from date of occurrence (This is the new part of the statute.)

Some districts have hearing officers, but the school board is the ultimate decision maker. It is in current statute that a designated hearing officer can be used, and then that person can make a recommendation to the board. The parents and student can still appeal and the board can convene and review the record of the designated hearing officer. This bill continues the option to provide alternative education for students if there is expulsion. It is still local control of the situation.

SENATOR LEE asked if a student inadvertently brings a knife or weapon to school, what is the process. MR. THUNE stated the process would not change, but with this bill, the penalty could be up to 12 months (one day to 12 months). There is no mandatory discipline for bringing a weapon to school, only for firearms.

SENATOR FLAKOLL has a concern with students in rural areas who carry firearms to school for hunting. MR. THUNE stated the way this is dealt with, both federally and by state, is the

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Date

10/2/03

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Senate Education Committee
Bill/Resolution Number Eng. HB 1237
Hearing Date 3-10-03

superintendent could recommend a lesser amount of suspension or expulsion. (page 2, lines 11-15). He feels school districts are careful to educate their students about the policy with firearms and weapons. The ultimate goal is to have safe schools. SENATOR FLAKOLL asked if there is a safeguard preventing a student who has been expelled for 12 months from open enrolling in another district. MR. THUNE stated there is nothing in statute, but the practice is the expulsion goes on the student's education record. In accordance with the federal law on privacy, education records are sent from one school district to another as soon as the district has reason to believe it may be receiving a student. SENATOR FLAKOLL asked if there is anything in statute about hazard materials. MR. THUNE said some materials could be considered a weapon and could be in a school's weapons policy.

SENATOR FREBORG asked about the language pertaining to "modifying an expulsion" by the superintendent, if it is recent language. MR. THUNE stated the language on modification is taken directly from federal law. He again stressed the purpose of the bill is "safety" in our schools.

SENATOR COOK stated there is nothing in the bill addressing the adults or faculty who may have a weapon in their car. MR. THUNE stated there is nothing in the bill addressing adults. This bill and the federal laws are a result of students in schools and the crises they have faced. C.T.MARHULA, Grand Forks, presented testimony. (see attached, blue binder, Exhibit A). He would ask that the bill be amended to mandate that students and their families will have the right to a hearing before the school board. He then presented further testimony (see attached, white binder, Exhibit B) as a rebuttal to the proponents of the bill.

Deanna Holbrook
Operator's Signature

10/2/03
Date

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Senate Education Committee
Bill/Resolution Number Eng. HB 1237
Hearing Date 3-10-03

SENATOR FLAKOLL asked if a student's expulsion could be taken to district court. MR.

MARHULA's concern is if the hearing officer recommends expulsion, the student has no recourse but to go before the elected officials (the school board).

MR. THUNE stated the a school board, if they so choose, can designate a "hearing officer".

Many times the superintendent is the hearing officer unless he is one of the witnesses. He stated the courts can be used as a back up. The advantage of a hearing officer would be the board would not have to meet within the 10 days required by law. The legislature leaves the question of using a hearing officer or the school board up to the local district. He addressed some of the costs involved if a student goes through the appeal process with the hearing officer, the school board and then the courts. These would be the costs for both the student and parents and the school board. He feels one full due process hearing is what is needed. The proposed amendments by C. T. Marhula include additional costs and he feels we always have the courts as a back up.

BEN NIELSON, ND School Boards Assn., supports the bill as amended.

Testimony in opposition to Eng. HB 1237:

LINDA JOHNSON, Director of School Health Programs, DPI, presented prepared testimony.

(see attached).

There was no further testimony on Eng. HB 1237.

The hearing was closed on Eng. HB 1237.

Doreen Hall
Operator's Signature

10/2/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. Engrossed HB 1237

Senate Education Committee

☐ Conference Committee

Hearing Date 3-12-03

Tape Number	Side A	Side B	Meter #
2	x		18.7 - 32.0
Committee Clerk Signature <i>Andrea Johnson</i>			

Minutes: CHAIRMAN FREBORG called the committee to order with all members present.

SENATOR COOK asked about a student's record for a weapons violation being wiped clean at the age of 18. Other juvenile records are and he doesn't feel it is fair that a violation on a high school transcript should follow a person when their juvenile court records are closed. He wonders if there could be language put into the bill to address that issue. He has a problem with a violation staying on a student's record forever.

SENATOR CHRISTENSON stated teachers can sometimes intuitively see where a child will be a problem. She understands the concern with the violation staying on the record of a student.

SENATOR COOK would like the opinion of the AG concerning this. He will get an opinion.

Committee Adjourned.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. Engrossed HB 1237

Senate Education Committee

☐ Conference Committee

Hearing Date 3-17-03

Tape Number	Side A	Side B	Meter #
2	x		5.5 - 8.9
2	x		30.6 - 31.8
Committee Clerk Signature <i>Andrea Johnson</i>			

Minutes: CHAIRMAN FREBORG called the committee to order with all members present.

SENATOR COOK feels there is a double standard in the bill with the juvenile records being available or not with a weapons violation on it. Court records are destroyed, and why aren't the school's.

SENATOR FLAKOLL talked to an attorney and he feels the juvenile records may be destroyed after a certain time. Could we address some of this with a time element to expunge the records.

SENATOR FREBORG does not think the school's records are destroyed.

The committee will ask GARY THUNE to answer their questions at a later time.

30.6 - 31.8

SENATOR FLAKOLL would like to investigate whether the juvenile records are destroyed and other information on their records, both school and criminal.

Committee Adjourned.

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Donna Hollenbeck
Operator's Signature

10/2/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. Engrossed HB 1237

Senate Education Committee

☐ Conference Committee

Hearing Date 3-18-03

Tape Number	Side A	Side B	Meter #
2		x	10.3 - 32.9
Committee Clerk Signature <i>Andrea Johnson</i>			

Minutes: CHAIRMAN FREBORG called the committee to order with all members present.

GARY THUNE, DPI, came to the committee to answer questions.

SENATOR COOK asked if a student has a weapon violation expulsion, is it on record through adulthood. MR. THUNE stated yes it is. However, once the student is 18, the record can't be shared unless the student says it is okay. Also, the expulsion days would show up on the transcript as unexcused even if it did not say why. MR. THUNE stated he feels there is a significant difference between a criminal record of a juvenile and an expulsion on their high school transcript. The expulsion is protected by FERPA, Family Education Rights and Privacy Act. It cannot be shared without consent of the student once they are 18. It is similar to a juvenile court record in that it cannot be shared.

SENATOR FLAKOLL asked if there is a policy with transfer students. MR. THUNE stated yes there is a policy. The accepting school can request the transcript without the consent of the student.

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Deanna Hall
Operator's Signature

10/2/03
Date

Page 2
Senate Education Committee
Bill/Resolution Number Eng. 1237
Hearing Date 3-18-03

SENATOR FREBORG asked how long a school keeps records. MR. THUNE stated 4 - 6 years.

He recommends 6 years. The attendance and grades (cumulative records) are kept forever.

SENATOR FLAKOLL asked if there is an advantage for a school to perhaps expunge records as per set policy. MR. THUNE stated the under FERPA, schools are to protect records. He doesn't feel there needs to be anything in statute on expunging records.

SENATOR COOK moved a DO PASS. Seconded by SENATOR FLAKOLL.

Roll Call Vote: 6 Yes. 0 No. 0 Absent. Motion Carried.

CARRIER: SENATOR FLAKOLL

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Dan Hall
Operator's Signature

10/2/03
Date

Date: 3/18/03
Roll Call Vote #: /

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. *Eng. HB1237*

Senate EDUCATION Committee

☐ Check here for Conference Committee**Legislative Council Amendment Number**

Action Taken

Motion Made By

Seconded By

[illegible]

Total (Yes)

No

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

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Operator's Signature

Date _____

REPORT OF STANDING COMMITTEE (410)
March 18, 2003 4:37 p.m.

Module No: SR-48-5138
Carrier: Flakoll
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1237, as engrossed: Education Committee (Sen. Freborg, Chairman) recommends
DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1237
was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-48-5138

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Deanna Hall
Operator's Signature

10/2/03
Date

2003 TESTIMONY

HB 1237

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Dennis G. Bell
Operator's Signature

10/2/03
Date

TESTIMONY ON HB 1237

HOUSE EDUCATION COMMITTEE

January 27, 2003

by Linda L. Johnson, Director of School Health Programs
(701) 328-4138

Department of Public Instruction

Madam Chair Kelsch and members of the committee:

My name is Linda Johnson and I am the Director of School Health Programs including Safe and Drug Free Schools for the Department of Public Instruction. I am here to speak in favor of HB 1237 and provide information regarding the current data gathered from the firearms legislation.

The federal government collects data from states annually on the implementations of the firearms statute. "Firearms" are described as "a projectile expelled by the action of any explosive." This does not include air guns, bb guns or any other type of weapon. Districts are given a chance to modify the one-year expulsion and as you will notice on the chart, many of them do for various reasons. All districts report they have firearms policy.

SUMMARY OF FIREARMS VIOLATIONS BY NORTH DAKOTA SCHOOL DISTRICTS

YEARS	VIOLATIONS	MODIFICATIONS
1995- 1996	2	0
1996- 1997	1	1
1997- 1998	1	1
1998- 1999	3	3
1999- 2000	0	0
2000- 2001	3	3
2001- 2002	4	3
Total	14	
Average per year	2	

A clarifying amendment for HB 1237 on modifications is suggested, as this language was omitted. It is implied but not stated. This amendment is attached.

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Operator's Signature

Date

The addition on page 4, lines 1, 2, and 3 "...the board shall provide educational services to the student in an alternative setting" is extremely critical to the success of this bill. Law enforcement has an issue with students not in school and creating further negative issues in a community. In addition, to be productive citizens, all our youth need an education.

Under the No Child Left Behind (NCLB) legislation, in 2003-2004, DPI will collect from districts the numbers of firearm expulsions and other suspensions and expulsions for violent and drug related offenses. Therefore, DPI will be able to collect data on the implementation of this bill.

Another part of "No Child Left Behind" provides money for the support of community service programs for suspended and expelled students. These programs will begin in March. Data will also be collected on the use of these dollars. A possible problem with this program is that it may be short term.

According to the ND Youth Risk Behavior Survey 1999 and 2001, students in North Dakota feel the safest in school of all the states and cities participating in the survey. Our students do, however, carry weapons to school at the national average rate.

Questions from YRBS	ND 1999	ND 2001	US
Felt too unsafe to go to school on 1 or more of the past 30 days	2.9%	3%	6.6%
Carried a weapon (knife, gun or club) on school property in the past 30 days	7.5%	6.4%	6.4%
Threatened or injured with a weapon on school property	8.0%	8.9%	8.9%
Engaged in a physical fight on school property in the past 12 months	10.0%	11.1%	12.5%

In conclusion, passage of HB 1237 will further assure the safety of our children in school and give perpetrators a chance to get their education and become productive citizens.

Are there any questions?

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Donna Hallmark
Operator's Signature

10/2/03
Date

AMENDMENT PROPOSED BY DPI

Page 3, line 31, add at the end of the sentence,

"that may warrant modification of the expulsion."

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Deanna G. G. G.
Operator's Signature

10/2/03
Date

TESTIMONY ON HB 1237

SENATE EDUCATION COMMITTEE

March 10, 2003

**by Linda L. Johnson, Director of School Health Programs
(701) 328-4138**

Department of Public Instruction

Chairman Freborg and members of the committee:

My name is Linda Johnson and I am the Director of School Health Programs including Safe and Drug Free Schools for the Department of Public Instruction. I am here to speak in opposition of engrossed HB 1237 and provide information regarding the current data gathered from the firearms legislation.

Expulsion is a very serious act and needs to be a last resort for students. The current law lets this matter rest with the school board hearings and decision. Delegating this matter to the school board designees, then leaving it to the student to seek the review will almost certainly result in a higher level of students not graduating in North Dakota.

This statute should also offer educational services to these students in an alternative setting. This is extremely critical for this individual to become a contributing member of society. *pg 2 line 23 "may"*

For your information, the No Child Left Behind legislation provided North Dakota \$250,000 annually for community service for suspended and expelled youth. This program began just two weeks ago. We do not know how this will play out with expelled youth. We will also be collecting data on suspensions and expulsions from each school site under the No Child Left Behind legislation.

The DPI currently collects data for the federal government on the implementations of the firearms statute. "Firearms" are described as "a

does include bombs
projectile expelled by the action of any explosive." This does not include air guns, bb guns or any other type of weapon. School Boards are given a chance to modify the one-year expulsion and as you will notice on the chart, many of them do for various reasons. All districts report they have firearms policy.

SUMMARY OF FIREARMS VIOLATIONS BY NORTH DAKOTA SCHOOL DISTRICTS

YEARS	VIOLATIONS	MODIFICATIONS
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1998- 1999	3	3
1999- 2000	0	0
2000- 2001	3	3
2001- 2002	4	3
Total	14	
Average per year	2	

According to the ND Youth Risk Behavior Survey 1999 and 2001, students in North Dakota feel the safest in school of all the states and cities participating in the survey. Our students do, however, carry weapons to school at the national average rate.

Have you carried a weapon (other than for hunting)

Questions from YRBS	ND 1999	ND 2001	US
Felt too unsafe to go to school on 1 or more of the past 30 days	2.9%	3%	6.6%
Carried a weapon (knife, gun or club) on school property in the past 30 days	7.5%	6.4%	6.4%
Threatened or injured with a weapon on school property	8.0%	8.9%	8.9%
Engaged in a physical fight on school property in the past 12 months	10.0%	11.1%	12.5%

Are there any questions?

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Donna Haldrup
Operator's Signature

10/2/03
Date

#B 1237

Testimony

C. T. Marhula

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Deanna Hall
Operator's Signature

10/2/03
Date

GF Herald
Feb 4, 2003
1A

WEST FARGO SHOOTING

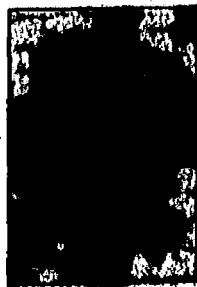
Man led troubled, short life

■ Friends, family
say former
Northwood man
shot by Fargo
police had
a good side

By Stephen J. Lee
Herald Staff Writer

He led a troubled life that included a stint in prison, but Jesse Ellingson's life should not have ended the way it did, say family and friends.

Ellingson was shot to death early Sunday by a Fargo police officer after a domestic assault and a chase that ended as Ellingson charged police waving a machete.



**A prayer
service for
Jesse
Ellingson will
be held from
4 to 8 p.m.
Wednesday
in Bilden
Funeral
Home in
Northwood,
N.D.**

It was a sad end to the life of a man who grew up in Northwood, N.D., and seemed to get labeled a troublemaker early on, but who also had a lot of good in him, say his family and friends.

Early Sunday, Ellingson, 25, had fled the home where the mother of his young daughter told police he had assaulted and beaten her.

The woman's nose was broken and there were other visible signs she had been assaulted, police

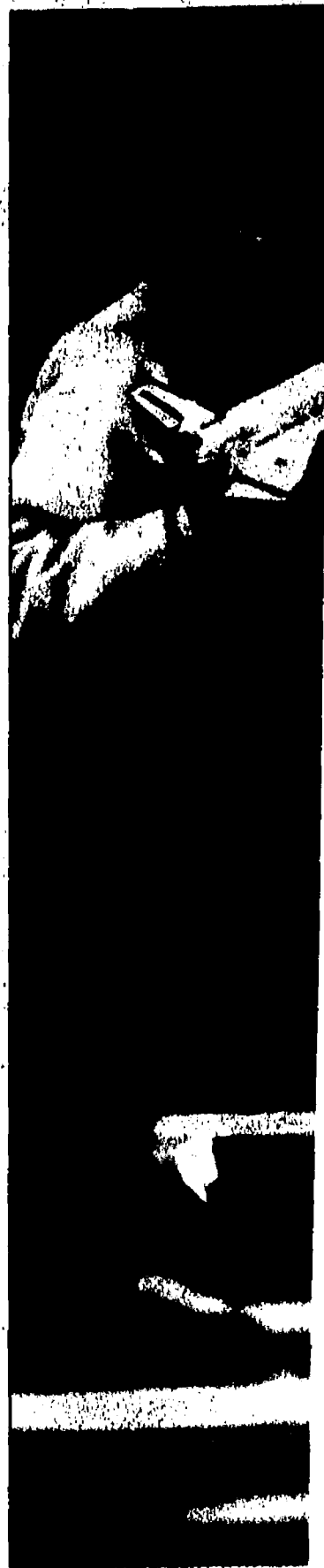
said.

After a chase that ended on a West Fargo, N.D., street, Fargo police officer Brad Zieska shot Ellingson about 2:50 a.m. Sunday with his .40 caliber Glock pistol. Ellingson came at him with the machete and disregarded repeated instructions to stop and put down the weapon, Sgt. Dean Mueller said.

Ellingson later died at a Fargo hospital.

MAN: See Page 6A

Ques



**▲ UND Space Studies Ins
while explaining to her stu
thirsting for knowledge at
board. Family and friends
Houston.**

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Operator's Signature

Date

MAN/ He slipped through cracks

Continued from Page 1A

Ellingson had a long history of trouble with the law.

In spring 2000, Ellingson was stopped by Fargo police and had to be subdued with pepper spray. A few weeks later, he was convicted of selling 4 ounces of marijuana.

In June 2000, Ellingson got in a tussle with corrections officers in the Grand Forks jail and had to spend the night in a holding cell. He was waiting to be transferred to the state prison in Bismarck to serve two years for violating probation on a 1997 burglary conviction.

During his school years, Ellingson also spent time at the state's juvenile correctional facility in Mandan, N.D., his family and friends said.

Ellingson attended school in Northwood from kindergarten until he was kicked out more than a year before graduating, said a classmate, Lori Solheim.

"He was not some crazed, machete-wielding psycho," Solheim said. "He had kids, a family and friends."

He had roots, too. For a time in high school, he lived with his grandparents, Cheryl and Benny Ellingson, in a rural home on the Goose River west of Northwood. The farm is the original site of the town 120 years ago, founded by one of Ellingson's ancestors.

Last April, he was released from the state prison, and he visited his grandparents in Northwood in May. Both his parents still live in Northwood, and he lived with both of them at times while growing up.

Turning around

His life seemed on the mend, with a good job, living with a girlfriend and their young child, said Cheryl Ellingson. "He loved his little girl so much," she said.

But the trouble that found him early seemed to find him again.

Ellingson got kicked out of school about his junior year.

"I think Jesse's life ended there," said Cheryl Ellingson,

stopping to weep a little. "He's my grandson, and we loved him. We saw his faults, but he had great potential. He just slipped through the cracks."

He had been diagnosed early with Tourette's syndrome, attention deficit disorder (ADD) and attention deficit hyperactivity disorder (ADHD), his family members said.

"If he was on his medications, and supervised, he was fine," his grandmother said.

"He wanted so much to turn his life around," said Ellingson's great-grandmother, Doris Johnson, of Northwood. "But I'm afraid without his medications, he couldn't."

His great-grandmother worries, too, about the police officer who shot him.

"I have a lot of compassion for the police officer for what he had to do, too," Johnson said. "That wasn't easy."

Why the shooting?

Ellingson's friends and family wonder why he had to be shot.

But police say Zieska acted properly.

Zieska, who had five years of law enforcement experience, including three in the Fargo Police Department, was put on routine administrative leave while the state's Bureau of Criminal Investigation looks at the incident.

State law and Fargo police policy allow officers to use deadly force if someone's life or safety is threatened by an assailant, Mueller said.

"It's one thing shooting at a standing target. But when a person is moving at you in a threatening manner, you don't have a lot of time to think and much less time to try to pick an area to shoot at, before you are assaulted. Our training is, you aim for the largest part of the body, and that's the middle of the chest. The chance of missing an arm or a leg is greater, and once the bullet is past, it might hit an innocent bystander, too. It's just not feasible to expect a person to hit a smaller portion of the body."

Ellingson's friends and family were mourning the loss

Monday of someone who couldn't seem to stay out of trouble, as hard as he tried.

"Once he started getting in trouble, nobody took him seriously," Solheim said. "It was easier to be bad than be good."

Kayse Sondreal went to school with Ellingson in Northwood.

"Honestly, I wasn't one of the popular kids in school," Sondreal said. "I was overweight and one of the quiet kids, and he befriended me. From the time we were 4 years old."

"Anyone who knew him just says how sad it is. It's tragic 'cause they did all see this better side of him. He was extremely intelligent, very personable. He was the first to admit it when he made a mistake."

Ellingson talked to her about how he felt he couldn't shake his image in his hometown, Sondreal said.

"In a small town, I really feel it's kind of hard to recover from mistakes you make when you are younger," Sondreal said. "When he was younger, he kept trying to change people's minds. As he got older, it was like he got tired of trying."

Sondreal emphasized, "I'm not trying to make him out as a martyr or anything. If he did those things, that's horrible. But it's just trying to understand why it happened. When you know someone and know the back story, it's not as easy to categorize, and not as black and white."

Solheim saw Ellingson last summer, when he visited his mother in Northwood. "He was just sick of being a bad guy. He wanted his kids to be proud of their daddy. But nobody gave him a chance because of his record," Solheim said. "He made horrible choices. On the outside he was hard, but on the inside he was just a little boy."

A prayer service for Ellingson will be held from 4 to 8 p.m. Wednesday in the Bilden Funeral Home in Northwood. His funeral will be at 2 p.m. Thursday in Northwood Evangelical Lutheran Church, family members said.

Reach Lee at (701) 780-1237; (800) 477-6572, extension 237; or e-mail slee@gherald.com.

Ellingson got kicked out of school about his junior year.

"I think Jesse's life ended there," said Cheryl Ellingson,

stopping to weep a little. "He's my grandson, and we loved him. We saw his faults, but he had great potential. He just slipped through the cracks."

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Doreen Ballantyne
Operator's Signature

10/2/03
Date

Feb 4, 2003
6 B

■ A student's sandwich
knife or a hunting rifle stowed
in a pickup rack in the
school parking lot should not
be grounds for a long suspen-
sion, the North Dakota
House concluded Monday.

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Dorena G. Smith
Operator's Signature

10/2/03
Date

GRAND FORKS PUBLIC SCHOOL DISTRICT #1, GRAND FORKS, NORTH DAKOTA

#27856

LAST NAME	FIRST NAME	M	DATE OF BIRTH	BIRTHPLACE	GENDER	CHECKS WITH BIRTH CERT.
Marhula	Anne	M	4/24/92	GrandForks, ND	F	BC ✓ / IM qk
FATHER'S NAME: C.T. Marhula			MOTHER'S NAME: Cindy L. Marhula			
RESIDENT ADDRESS	TELEPHONE	ENTRANCE RECORD			WITHDRAWAL RECORD	
5124 Belmont Road	746-1569	Date Entered:	8/25/97		Date Withdrawal/Reason:	
		G.F. School:	Kelly			
		From: (City)				
		School:				
		Dist. Name/ID:				
		Date Re-Entered:				

ACADEMIC RECORD

GRADE	K	1	2	3	4	5	6	GRADE	K	1	2	3	4	5	6
SCHOOL YEAR								SCHOOL YEAR							
READING								ATTITUDE & SELF CONTR							
WRITING								WORK-STUDY SKILLS							
SPELLING								DAYS PRESENT							
LISTENING/SPKNG								DAYS ABSENT							
ART								DAYS MEMBERSHIP							
PHYSICAL EDUCATION								TIMES TARDY							
MUSIC								PASS/FAIL (L/R)							
MATHEMATICS								SCHOOL							
SOCIAL STUDIES								DATE DROPPED							
SCIENCE															
BAND															
ORCHESTRA															

Case 1

Comment: Expelled 3 weeks, inappropriate behavior

Interviewer: "What did you in H.S. to get expelled?"

has been ~~discontinued~~ the boy's B.B. team and ~~expelled~~ it."

Interviewer thinks — "I glad its not an issue"

MARKING SYSTEM

Grades K-3	Grades 4-5	Grades 6-8
1 Exceeds standards—goes beyond the criteria	A Superior	A Superior
2 Meets standards satisfactorily	B Above average	B Above Average
3 Standards partially met—needs more time	C Average	C Average
4 Not meeting standards at this time	D Below average	D Below Average
5 Not succeed at this time	N Not meeting minimum standards	F Failure
6 Adjusted curriculum	I Incomplete	

GRAND FORKS PUBLIC SCHOOLS
P.O. Box 6000
Grand Forks, ND 58206-6000
Ph: (701) 746-2200 Fax: (701) 772-7739

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Donna Holbrook
Operator's Signature

10/2/03
Date

GRAND FORKS PUBLIC SCHOOL DISTRICT #1, GRAND FORKS, NORTH DAKOTA

#27856

LAST NAME	FIRST NAME	M	DATE OF BIRTH	BIRTHPLACE	GENDER	CHECKS WITH BIRTH CERT.
Marhula	Anne	M	4/24/92	GrandForks,ND	F	BC ✓ / IM OK
FATHER'S NAME: C.T. Marhula			MOTHER'S NAME: Cindy L. Marhula			
RESIDENT ADDRESS		TELEPHONE	ENTRANCE RECORD		WITHDRAWAL RECORD	
5124 Belmont Road		746-1569	Date Entered: 8/25/97		Date Withdrawal/Reason:	
			G.F. School: Kelly			
			From: (City)			
			School:			
			Dist. Name/Id:			
			Date Re-Entered:			

ACADEMIC RECORD

GRADE	K	1	2	3	4	5	6	GRADE	K	1	2	3	4	5	6
SCHOOL YEAR								SCHOOL YEAR							
READING								ATTITUDE & SELF CONTR							
WRITING								WORK-STUDY SKILLS							
SPELLING								DAYS PRESENT							
LISTENING/PEAKIN								DAYS ABSENT							
ART								DAYS MEMBERSHIP							
PHYSICAL EDUCATION								TIMES TARDY							
MUSIC								PASS/FAIL (L/H)							
MATHEMATICS								SCHOOL							
SOCIAL STUDIES								DATE DROPPED							
SCIENCE															
BAND															
ORCHESTRA															

Case #2

Comment: Expelled 30 days, brought alcohol to school

Interview: "What caused your school expulsion?"

Answer: Ten years ago I came to school drunk
~~was~~ went into treatment and I ~~was~~ not
~~had~~ an alcohol drink since.

Interviewer thinks: "I glad its not an issue"

MARKING SYSTEM		
Grades K-3	Grades 4-5	Grades 6-8
4 Exceeds standards—goes beyond the criteria	A Superior	A Superior
3 Meets standards satisfactorily	B Above average	B Above Average
2 Standards partially met—needs more time	C Average	C Average
1 Not meeting standards at this time	D Below average	D Below Average
Not assessed at this time	N Not meeting minimum standards	F Failure
Adjusted curriculum	I Incomplete	

GRAND FORKS PUBLIC SCHOOLS
P.O. Box 6000
Grand Forks, ND 58206-6000
Ph: (701) 746-2200 Fax: (701) 772-7730

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GRAND FORKS PUBLIC SCHOOL DISTRICT #1, GRAND FORKS, NORTH DAKOTA

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		G.F. School:	Kelly			
		From: (City)				
		School:				
		Dist. Name/ID:				
		Date Re-Entered:				

ACADEMIC RECORD															
GRADE	K	1	2	3	4	5	6	GRADE	K	1	2	3	4	5	6
SCHOOL YEAR								SCHOOL YEAR							
READING								ATTITUDE & SELF CONTR							
WRITING								WORK-STUDY SKILLS							
SPELLING								DAYS PRESENT							
LISTENING/SPKNG								DAYS ABSENT							
ART								DAYS MEMBERSHIP							
PHYSICAL EDUCATION								TIMES TARDY							
MUSIC								PASS/FAIL (Let)							
MATHEMATICS								SCHOOL							
SOCIAL STUDIES								DATE DROPPED							
SCIENCE															
SAVO															
ORCHESTRA															

Case 3

Comment: Weapons violation, expelled remainder of year, reduced to 6 week by school board.

Interviewer: "What kind of weapon did you bring to school."

Answer: "I forgot a ~~gun~~ in my pocket. I used a ~~gun~~ paper knife."

Interviewer thinks: "Yeah right, no school in N.D. would ever do that. Not only does he bring weapons to school, he lies. No. K Do Not Hire."

MARKING SYSTEM

Grades K-3	Grades 4-5	Grades 6-8
4 Exceeds standards—goes beyond the criteria	A Superior	A Superior
3 Meets standards satisfactorily	B Above average	B Above Average
2 Standards partially met—needs more time	C Average	C Average
1 Not meeting standards at this time	D Below average	D Below Average
Not assessed at this time	N Not meeting minimum standards	F Failure
Adjusted curriculum	I Incomplete	

GRAND FORKS PUBLIC SCHOOLS
P.O. Box 6000
Grand Forks, ND 58206-6000
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TESTIMONY OF C.T. MARHULA

"Extremism in the defense of liberty is no vice." Barry Goldwater

Mr. Chairman, Senators, I am here to beg you to make a minor amendment to this bill. I personally know three of the sponsors. I have a great deal of respect for these people. When this bill was introduced it had two purposes:

1. To insure a person who violated a weapons policy at the end of a school year would have a serious consequence.
2. To change the current requirement of mandating a school board hearing for expulsion to allowing the initial hearing to be delegated.

I fully support both of these goals.

Once introduced the "Law of Unintended Consequences" came into play. For some reason an organization persuaded the sponsors to amend the bill to allow school boards to limit an appeal "to the record." Despite repeated requests, no one has given me a reason for this change.

If passed as currently amended the reality is listed below:

1. A student will be charged with a violation. If they have inadequate financial resources they will attend a hearing without legal representation.
2. Once expelled they may or may not find an attorney to take the case for no fee.
3. When they appeal to the school board they will be told the appeal is "on the record" and they will not be allowed to cross-examine or make statements.

The hearing officer may not even be in attendance at the appeal. Additional evidence may not be allowed.

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4. The student will bear the burden of "expelled for weapons violation" on their record for the rest of their life.

EXPULSION IS THE ULTIMATE CONSEQUENCE FOR A HIGH SCHOOL STUDENT. EDUCATION IS A FUNDAMENTAL RIGHT UNDER THE NORTH DAKOTA CONSTITUTION. THIS PENALTY SHOULD NEVER BE IMPOSED WITHOUT THE RIGHT OF THE STUDENT/FAMILY TO TELL THEIR STORY TO ELECTED OFFICIALS, THEIR LOCAL SCHOOL BOARD.

Mr. Chairman, Senators, I want to briefly touch on an incident in Fargo that is somewhat related to my testimony. I do not want you think the story I tell you is the typical consequence of expulsion. The February 4 issue of the Grand Forks Herald had an article about a young man who was shot to death by the police in Fargo. The circumstance of the shooting are not relevant to my argument, the comments by friends and relatives are. I quote from the article, which is attached to my testimony:

"Ellingson attended school in Northwood from kindergarten until he was kicked out more than a year before graduating said classmate Lori Solheim. He was not some crazed, machete-wielding psycho, Solheim said. He had kids, a family and friends. ...Ellingson got kicked out of school about his junior year. I think his life ended there said Cheryl Ellingson," who is his grandmother. Please reflect on these statements when you make your decision, "He was not some crazed psycho," and "I think his life ended there," after he was expelled from school.

Mr. Chairman, part of my job is to hire people. I require every applicant to submit their high school record. I do not think I would every hire someone who had "Expelled for Weapons Violation" on their record. This designation will affect the career

of the student the rest of their life. It should not be added to their record unless they have been given every opportunity to give their side of the incident. Unless further amended this bill may lead to great injustice.

I want to share with the committee one incident I am familiar with. A young student came to a school in Eastern North Dakota on one of the first cold days of this winter. The cold weather caused this high school student to wear his winter jacket for the first time of the season. This student forgot his jacket in the cafeteria. It was turned into the office. The office found something that was called a knife. Within several days the hearing officer had a 3-4 minute hearing and ruled the student should be expelled for the remainder of the school year. The student and his mother appealed to the school board. The board was told they could only consider the record. Despite several attempts to gain additional information by one board member, (not me), these requests were denied. The expulsion was reduced to about 6 weeks. However; on this students record for the rest of his life will be the notation, "Expelled for Weapons Violation."

Now, let me tell you the rest of the story. On a cold late fall, early winter day a young man woke up at his normal time, 6:00 a.m. This student, who lives with his mother, noted the cold and put on his warmer jacket before proceeding to his normal routine. What causes this student to get up at this hour? He rises to deliver newspapers to provide income for himself and his single mother. After completing his deliveries the young man goes to school. During the school day he is summoned to the principal's office. He is asked if what he is shown is his jacket. He replies it is. He is told he is in serious trouble for what was in the jacket. What caused this student, who awakes at 6:00 a.m. to provide income for the family unit, to be expelled? Did he have a history of

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violence? No. Did he threaten anyone with the alleged weapon? No. Did he even realize he had brought the alleged "weapon" to school? No.

This young man, working to provide extra income for his family, forgot a tool of the trade in his pocket. It was not a knife. It was the tool I now display to you. I am now going to place the tool in my jacket pocket. Do any of you feel threatened? Have you pushed any panic buttons? Will the Capital Police rush in here and cuff me? Mr. Chairman, I hope Senator Christenson will vouch that you are all safe from attack by me with this deadly weapon. The irony is Orwellian in nature. In this great free enterprise system of ours many an entrepreneur's first job was delivering newspapers. To insure the freedom of future generations the founding fathers insisted on a Bill of Rights. How ironic that a child's first job of delivering a part of that Constitutionally guaranteed free press should have a serious negative consequence that will follow him the rest of his life like the infamous "Scarlet Letter A" branded certain women years ago.

Please do not allow paid lobbyists to interfere with common sense. Mr. Chairman, you have served on a school board. I also believe Senator ^{Lee} ~~XXXX~~ has served on a school board. If the administration came to you and said here is my report on project X, but you are not allowed any additional questions, accept it, what would you say. This bill, as amended greatly reduces the power of elected officials.

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Senator Christenson knows me, and I readily admit one of my faults is pride. It is not easy for me to come to you and say, I am begging you, stop the insanity, bring back common sense, amend this bill to provide all students the full benefit of our nation's and our state's constitution. Because I started with Senator Goldwater it is only fair that I end with a quote from President Kennedy, "An error does not become a mistake until you refuse to correct it." Only you have the power to prevent this mistake.

Thank-you.

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30221.0200 **FIRST ENGROSSMENT**

Fifty-eighth

Legislative Assembly **ENGROSSED HOUSE BILL NO. 1237**
of North Dakota

Introduced by Representatives Nottestad, Aarsvoid, Haas

Senator Espegard

A BILL for an Act to amend and reenact sections 15.1-19-09 and 15.1-19-10 of the North Dakota Century Code, relating to the suspension and expulsion of students and school district weapons policies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-19-09 of the North Dakota Century Code is amended and reenacted as follows:

15.1-19-09. Students - Suspension and expulsion - Rules.

1. The board of a school district shall adopt rules regarding the suspension and expulsion of a student. The rules for expulsion must provide for a procedural due process hearing in the manner provided for in subsection 2 of section 15.1-19-10, before the determination to expel a student is made. A student's parent or representative must be allowed to participate in the expulsion hearing.
2. A student may be suspended for up to ten days for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy.
3. A student enrolled in an alternative education program for which state per student payments are available may be suspended for up to twenty days for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy.
4. A student, including one enrolled in an alternative education program, may be

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expelled from school for insubordination, habitual indolence, or disorderly conduct; provided the expulsion does not last beyond the termination of the current school year. A student who violates the school district's weapons policy may be expelled for up to twelve months.

Fifty-eighth
Legislative Assembly

SECTION 2. AMENDMENT. Section 15.1-19-10 of the North Dakota Century Code is amended and reenacted as follows:

15.1-19-10. Possession of a weapon - Policy - Expulsion from school.

1. The board of each school district shall adopt a policy governing the possession of weapons and firearms on school property or at a school function and provide for the punishment of any student found to be in violation of the policy.
2. The weapons policy must prohibit the possession of a weapon or a firearm by a student on school property and at school functions and provide for the punishment of any student found to be in violation. Punishment must include immediate suspension from school and expulsion. A student who possesses a firearm in violation of this section must be expelled for at least one year. The school district firearms policy must authorize the school district superintendent or the school principal, if the school district does not have a superintendent, to modify an expulsion for firearms possession under this section on a case-by-case basis in accordance with criteria established by the board. Before expelling a student, a school board or its designated hearing officer, within ten days of the student's suspension, shall provide the student with a hearing before the school board at which time the school board or its designated hearing officer shall take testimony and consider evidence, including the existence of mitigating circumstances. If a designated hearing officer orders that a student be expelled, the student may seek

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a review of the decision by the school board, based on the record of the expulsion hearing and the board shall take testimony, consider new evidence, and consider the existence of any mitigating circumstances. Any student expelled for a weapons violation in the 2002-03 school year by a hearing officer and who appealed to the school board and did not have these rights is entitled to another hearing before the school board with the above mentioned rights. The school board cannot impose a greater punishment than previously imposed.

3. If a board school district expels a student under this section, the board district may authorize the provision of educational services to the student in an alternative setting.

4. Actions under this section may not conflict with state special education laws or with the Individuals With Disabilities Education Act [Pub. L. 91-230; 84 Stat. 121; 20 U.S.C. 1400 et seq.].

5. This section does not apply to any student participating in a school-sponsored shooting sport, provided the student informs the school principal of the student's

**Fifty-eighth
Legislative Assembly**

participation and the student complies with all requirements set by the principal regarding the safe handling and storage of the firearm.

6. For purposes of this section:

a. "Firearm" has the meaning provided in Public Law No. 90-351 [82 Stat. 197; 18 U.S.C. 921].

b. "School property" includes all land within the perimeter of the school site and all school buildings, structures, facilities, and school vehicles, whether owned or leased by a school district, and the site of any school-sponsored event or activity.

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Rebuttal Testimony

C. T. Marhula

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WEAPONS VIOLATION POLICY
EXPULSION HEARING

<u>School</u>	<u>Hearing Officer</u>	<u>Appeal to School Board</u>
Bismarck	No	
Cavalier	If suspension	Full Hearing
Devil's Lake	Yes	Full Hearing
Dickenson	Yes	No policy-have not had an appeal
Fargo	I think yes	No policy-have not had an appeal
Grafton	Supt. or Principal	Unsure, no data
Grand Forks	Yes	Full Hearing
Jamestown	Recommendation	Limited to the record
Minot	Recommendation	Full Hearing
Valley City	Recommendation	Full Hearing
West Fargo	No	Full Hearing
Williston	Yes	Full Hearing

Above answers based on phone interviews with Superintendents, Principals, Executive Aides, and review of written policies.

**SCHOOL BOARD PROCEDURE FOR STUDENT
APPEAL OF EXPULSION**

1. Board in open meeting convenes and announces that it is going to go to executive session for the purpose of hearing an appeal on a student expulsion. (Do not name student)

2. Chairman opens executive session and announces that it is for the purpose of hearing a student's (name student) appeal from a hearing officer's imposition of expulsion based upon an allegation that the student had a knife in his possession on the school premises. Chairman states: Board members have received and listened to the tape of the hearing held by the hearing officer. The attorney for the student was provided with a copy of the tape. This hearing is not for the purpose of presenting new evidence. This appeal to the board is for the purpose of reviewing the evidence presented to the hearing officer as recorded on the tape and reviewing his decision.

3. Chairman invites spokesman for student/parent to state reasons to the board why the mandatory expulsion provided for in Policy 5355 should be modified based upon the criteria provided in Policy 5355 or other reasons why the expulsion is not warranted by the evidence on the tape.

4. Student/parent or representative make statement to the board.

5. Student/parents and representative are excused from the room and board begins private deliberation to determine whether hearing officer's determination of expulsion should be upheld, reversed, or a lesser penalty imposed.

6. Board deliberates. Member moves that board

1. uphold hearing officer;
2. reverse hearing officer and imposes no expulsion; or
3. reverse hearing officer and impose a lesser (specify in motion) penalty.

7. Call in student/parent representative and announce decision.

8. Adjourn executive session. Go into public session and announce that board completed its hearing on student (do not name) appeal. (Do not disclose outcome)

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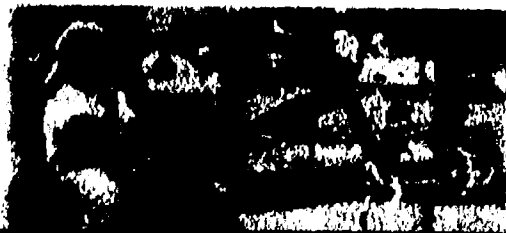
Dan H. Hall

12/21/03
Date



**NORTH DAKOTA
SCHOOL BOARDS
ASSOCIATION**

Excellence in North Dakota public education through local school board governance



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EDUCATION:

Bill #	Position and Description
<u>1020</u>	Monitor - Vo-tech budget
<u>1022</u>	Support - ConnectND Tech funding
<u>1033</u>	Support - home schoolers-21 credits for graduation
<u>1034</u>	Monitor - require long-term plans from districts
<u>1058</u>	Support - relevy for taxes omitted by error
<u>1068</u>	Support - penalty for falsified academic credentials
<u>1079</u>	Monitor - DPI rulemaking authority
<u>1080</u>	Monitor - students +18 years old w/disabilities incarcerated in adult correction facility
<u>1086</u>	Monitor - transfer of students for "identified schools" as per NCLB
<u>1124</u>	Support - permission for colleges to charge room & meal fees to students for summer programs offering credit
<u>1155</u>	Monitor - residency determination of students placed for noneducational purposes
<u>1166</u>	Monitor - reports made to DPI for foundation aid & transportation purposes
<u>1183</u>	Monitor - vocational ed sections rewrite
<u>1237</u>	Monitor - relating to suspension and expulsion
<u>1258</u>	Support - relating to issuance of teacher contracts in newly organized districts
<u>1259</u>	Support - removes cap on school board member compensation
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<u>1294</u>	Support - relating to alternative configuration of days
<u>1295</u>	Support - greatly simplifies the FTE compensation reports
<u>1296</u>	Support - repeals required reporting of professional development funds and expenditures
<u>1305</u>	Monitor - restricts actions at public meetings held outside the boundaries of the district
<u>1312</u>	Monitor - relates to readjusting mill levies which were adjusted earlier because of a taxing error
<u>1325</u>	Monitor - permitting displays of "In God We Trust" in schools
<u>1331</u>	Support - allows selective busing

<http://ndsba.org/legislation/billtracking.asp>

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NO CHILD (OR SENATOR) LEFT BEHIND QUIZ

Listed below is a partial excerpt of 15.1-19-10. Possession of a weapon - Policy - Expulsion from school.

"Before expelling a student, a school board, within ten days of the student's suspension, shall provide the student with a hearing before the school board at which time the school board shall take testimony and consider evidence, including the existence of mitigating circumstance."

Based on common sense and your understanding of the English language please answer the following 5 questions True or False. Chairman Freborg will determine extra duties if anyone does not pass the test.

- _____ 1. A school board may delegate the hearing to the administration or a hearing officer.
- _____ 2. The school board may delegate the hearing to administration if it provides for an appeal to the school board.
- _____ 3. Assume number 2 is true, the law permits the board to restrict the appeal to the record, to prohibit testimony, to prohibit new evidence, and to prohibit introduction of mitigating circumstances.
- _____ 4. The statement is unclear and ambiguous. A reasonable person could conclude statements 1, 2, and 3 are all true.
- _____ 5. The statement is clear and unambiguous. Before a student may be expelled on a weapons violation the student is entitled to all listed below:
 - a. A hearing within ten days.
 - b. A hearing before the school board.
 - c. The right to give testimony and provide evidence to the school board.
 - d. The right to present mitigating circumstances to the school board.

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15-29-03

EDUCATION

time the newly elected members shall assume the duties of their offices. The board shall meet for the transaction of business as often as once in each calendar month thereafter, and may adjourn for a shorter time. Special meetings may be called by the president, or, in his absence, by any two members of the board. Personal notice of a special meeting shall be given to each member of the board, or a written or printed notice shall be left at his place of residence at least forty-eight hours before the time of the meeting.

Source: S. L. 1890, ch. 62, § 177; R. C. 1895, § 793; R. C. 1899, § 793; R. C. 1905, § 956; S. L. 1911, ch. 266, § 140; C. L. 1913, § 1247; R. C. 1943, § 15-2902.

Notice of Special Meetings.

Where no legal notice of a special meeting of a school board is given, and all of the members are not present, the action of the board at such a meeting will be a nullity. State ex rel. School Dist. No. 94 v. Tucker, 39 ND 106, 166 NW 820.

15-29-03. Board of education—Organization, election of president, appointment of clerk and treasurer.—At the annual meeting, the board of education shall elect a president from among its members who shall serve for one year, and shall appoint a clerk and a treasurer, not of its number, who shall hold their offices during the pleasure of the board and receive such compensation for their services as shall be fixed by the board.

Source: S. L. 1890, ch. 62, § 178; R. C. 1895, § 794; R. C. 1899, § 794; R. C. 1905, § 957; S. L. 1911, ch. 266, § 141; 1913, ch. 256, § 1; C. L. 1913, § 1248; R. C. 1943, § 15-2903.

School Treasurer.

The office of school treasurer in a special school district lying partly without an incorporated village, is appointive. State ex rel. Agneberg v. Peterson, 52 ND 120, 201 NW 356.

15-29-04. Duties of president.—The president shall preside at all meetings of the board, appoint all committees except as otherwise provided by law, sign all warrants ordered by the board to be drawn upon the treasurer for school moneys, and perform other acts required by law. In the absence of the president at any meeting, a president pro tempore may be elected by the board.

Source: S. L. 1890, ch. 62, § 179; R. C. 1895, § 795; R. C. 1899, § 795; R. C. 1905, § 958; S. L. 1911, ch. 266, § 142; C. L. 1913, § 1249; R. C. 1943, § 15-2904.

S. L. 1890, ch. 62, § 178; R. C. 1895, § 794; R. C. 1899, § 794; R. C. 1905, § 957; S. L. 1911, ch. 266, § 141; 1913, ch. 256, § 1; C. L. 1913, § 1248; R. C. 1943, § 15-2904.

15-29-05. Compensation of board members.—Each member of the board of education shall receive as compensation five dollars for each meeting of the board actually attended by him, but no compensation shall be allowed for more than one meeting in each calendar month.

Source: S. L. 1890, ch. 62, § 176; R. C. 1895, § 792; R. C. 1899, § 792; R. C. 1905, § 955; S. L. 1909, ch. 101, § 1; 1911, ch. 266, § 139; C. L. 1913, § 1246; R. C. 1943, § 15-2905; S. L. 1949, ch. 140, § 2; 1957 Supp., § 15-2905; S. L. 1959, ch. 167, § 1.

SPECIAL SCHOOL DISTRICT OFFICERS

15-29-08

15-29-06. Vacancies on board of education—How filled.—The board of education shall have power to fill by appointment any vacancy which may occur in the board. An appointee shall hold his office until the next annual school election, at which time a member shall be elected to serve for the unexpired term. If the vacancy occurs within ten days before an annual election, the appointee shall hold office until the annual election in the following year. When any such appointment is made, the clerk shall certify the same to the county superintendent of schools.

Source: S. L. 1890, ch. 62, § 198; R. C. 1905, § 977; S. L. 1911, ch. 266, § 162; 1895, § 814; R. C. 1899, § 814; R. C. C. L. 1913, § 1271; R. C. 1943, § 15-2906.

15-29-07. Schools—Supervision.—The schools of a special school district shall be under the immediate supervision of the board of education or of the school superintendent appointed by the board. When no superintendent is appointed by the board, the schools of the district shall be under supervision of the county superintendent of schools in the same manner as are the schools of a common school district.

Source: S. L. 1890, ch. 62, § 183; R. C. 1895, § 799; R. C. 1899, § 799; R. C. 1905, § 962; S. L. 1911, ch. 266, § 145; C. L. 1913, § 1252; S. L. 1915, ch. 136, § 1; 1925 Supp., § 1252; R. C. 1943, § 15-2907. Supervision of Special District Schools. The schools in a special school district are not under the supervision of the county superintendent and are not included in computing the superintendent's salary. Dickey County v. Denning, 14 ND 77, 103 NW 422.

15-29-08. General powers and duties of board of education.—The powers and duties of the board of education shall be as follows:

1. To establish a system of graded schools which shall be free to all children of legal school age residing within such district, and such schools shall provide at least one hundred seventy-five days of classroom instruction each year; provided that any day in which classes cannot be held because of Acts of God, epidemic or failure of physical facilities shall be included in the one hundred seventy-five days provided for in this section;
2. To establish and maintain such schools in its district as it shall deem requisite or expedient, and to change or discontinue the same in accordance with the provisions of law; and to acquire sites, construct buildings, and operate schools, to discontinue such schools and liquidate the assets thereof, outside its district boundaries, as authorized by the state board of public school education;
3. To establish and maintain a high school when, in its opinion, the educational interests of the district demand the same, in which such courses of study shall be pursued as shall be prescribed or approved by the superintendent of public instruction, together with such additional courses as the board of education may establish;

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EDUCATION

4. To purchase, sell, exchange, and hire schoolhouses and rooms, lots, or sites for schoolhouses, and to fence and otherwise improve them as it deems proper;
5. To build, alter, enlarge, improve, and repair such schoolhouses, outhouses, and appurtenances as it may deem advisable upon lots and sites owned by the district;
6. To purchase, sell, exchange, improve, and repair school apparatus, textbooks for the use of the pupils, furniture, and appendages, and to provide fuel for the schools;
7. To have custody of all school property of every kind, and to see that the ordinances and bylaws of the city or village in relation thereto are observed;
8. To contract with, employ, and pay all teachers in the schools and to dismiss and remove for cause any teacher when the interests of the school may require it. Every teacher shall be required to hold a certificate to teach, issued by the superintendent of public instruction, and if any teacher holds only an elementary certificate, the board may impose such further requirements as the best interests of the several grades may require. No person who is related to any member of the board by blood or marriage shall be employed as a teacher without the concurrence of the entire board;
9. To employ, should it deem it expedient, a competent, and discreet person as superintendent of schools for a period not to exceed three years, and to pay such person a reasonable salary. The superintendent may be required to act as principal or teacher in the school system of the district;
10. To defray the necessary and contingent expenses of the board, including the compensation of its clerk;
11. To adopt, alter, and repeal, when it deems it expedient, rules and regulations for the reception, organization, grading, government, and instruction of pupils, and for their suspension, expulsion, or transfer from one school to another. No pupil shall be suspended or expelled except for insubordination, habitual indolence, or disorderly conduct, and a suspension shall not be for a longer period than ten days, nor shall an expulsion be in effect beyond the end of the current term of school;
12. Each member shall visit, at least twice in each year, all of the public schools in the district;
13. To make a report on July first of each year, or as soon thereafter as practicable, of the progress and financial and educational condition of all the schools under its charge. A copy of such report, together with such further information as shall be required by the superintendent of public instruction, shall be forwarded to the county superintendent of schools. The report of financial condition and such other portions as the board of education shall consider advantageous to the public, shall be published in the official newspaper of the city or village.

SPECIAL SCHOOL DISTRICT OFFICERS

15-29-08

- or if no newspaper is published in the district, in a newspaper to be designated by the board, and in cities of over eight hundred inhabitants, it may be published in pamphlet form;
14. Repealed by omission from this code;
15. To cause an enumeration to be made, between the first and twentieth days of June in each odd numbered year, of the children of school age within the special district, as provided for other school districts, and to return the same to the county superintendent of schools;
16. To levy a tax upon the property in the district for school purposes as provided in title 57, Taxation.

Source: S. L. 1890, ch. 62, § 181; R. C. 1895, § 797; S. L. 1897, ch. 75; R. C. 1899, § 797; R. C. 1905, § 960; S. L. 1911, ch. 266, § 144; C. L. 1913, § 1251; S. L. 1929, ch. 212, § 1; R. C. 1943, § 15-2908; S. L. 1949, ch. 143, § 1; 1957, ch. 130, § 3; 1957 Supp., § 15-2908; S. L. 1959, ch. 155, § 2; 1959, ch. 175, § 4. S. L. 1890, ch. 62, § 185; R. C. 1895, § 801; R. C. 1899, § 801; R. C. 1905, § 964; S. L. 1911, ch. 266, § 151; C. L. 1913, § 1258; S. L. 1915, ch. 144, § 1; 1925 Supp., § 1258; S. L. 1937, ch. 223, § 1; R. C. 1943, § 15-2908. S. L. 1890, ch. 62, § 184; R. C. 1895, § 800; R. C. 1899, § 800; R. C. 1905, § 963; S. L. 1911, ch. 266, § 150; C. L. 1913, § 1257; R. C. 1943, § 15-2908.

Note.

Subsection 14 is omitted because of the decision at 87 NW 2d 743.

Cross-References.

Bonds of school district, see ch. 21-03.
Budget submitted to budget review board for examination, see § 40-41-04.
Lease land for oil and gas development, see § 38-09-02.
Power of state board of public school education, see § 15-21-19.
Tax levy, see §§ 57-15-13 to 57-15-18.
Validation of oil and gas leases adopted by governing body of school district, see § 1-04-17.

Constitutionality.

This section, as amended, does not violate section 61 of the state constitution. Kessler v. Board of Education of City of Fessenden, 87 NW 2d 743.

Admission of Nonresident Pupils.

Nonresident pupils from districts not affording high school facilities must be admitted into high school when the facilities for seating and instruction will

warrant. Todd v. Board of Education of City of Williston, 54 ND 235, 209 NW 369.

Chapter 134, S. L. 1957 (section 15-29-08.2) and former subsection 14 of this section, being inconsistent one with the other as to the discretion given to the board of education for the admission of nonresident pupils, the 1957 law prevails. Kessler v. Board of Education of City of Fessenden, 87 NW 2d 743.

Under subsection 14 of this section, as amended by implication in 1957, the board's discretion to admit or refuse privileges of school attendance to a nonresident pupil is limited to a determination whether the admission would injure or overcrowd the school. Kessler v. Board of Education of City of Fessenden, 87 NW 2d 743.

Dress of Pupils.

A special school district board of education may forbid pupils to wear metal heel plates. Stromberg v. French, 60 ND 750, 236 NW 477.

Eminent Domain.

A special school district may acquire a school site and grounds by eminent domain. Board of Education of City of Minot v. Park District of City of Minot, 70 NW 2d 899.

Removal of Teachers.

Removal of teacher for cause was invalid where the action was taken without any notice to the teacher and with no opportunity given her to answer the charges. Clark v. Wild Rose Special School Dist. No. 90, 47 ND 297, 182 NW 307, distinguished in 60 ND 223, 233 NW 644; 60 ND 741, 236 NW 358.

Subsection 8 of this section authorizes only removal for cause as distinguished from removal at the pleasure of the

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15-38-02

EDUCATION

pension or revocation of any person's teacher's certificate as set forth in subsection 3 of section 15-36-15, shall conduct proceedings in accordance with chapter 28-32. Upon the completion of such proceedings, if the superintendent of public instruction shall find that grounds to annul, revoke, or suspend for a period of time do exist, the superintendent shall issue an order in the manner provided in chapter 28-32 to annul, revoke, or suspend for a period of time the teacher's certificate of such person as provided in section 15-36-15.

Source: S.L. 1911, ch. 266, § 264; C.L. 1913, § 1375; R.C. 1943, § 15-3616; S.L. 1965, ch. 139, § 6; 1987, ch. 219, § 2.

CHAPTER 15-38 TEACHERS' DUTIES

Section	Section
15-38-02. Opening and closing of schools — Notice.	15-38-13.2. Alternative education program — Expulsion of students.
15-38-13.1. Approved alternative education programs — Suspension of students.	15-38-15. Repealed.
	15-38-18. Duties of commission and superintendent of public instruction.
	15-38-19. Complaints against teachers.

15-38-02. Opening and closing of schools — Notice. Each teacher under the supervision of the county superintendent, on beginning a term of school, shall give written notice to the county superintendent of schools of the time and place of opening the school and the time when it probably will close. If the school is to be suspended for one week or more in the term, the teacher shall notify the county superintendent of such suspension.

Source: S.L. 1890, ch. 62, § 126; R.C. § 267; C.L. 1913, § 1379; R.C. 1943, § 746; R.C. 1899, § 746; R.C. 1905, § 15-3802; S.L. 1983, ch. 206, § 9. § 879; S.L. 1907, ch. 95, § 7; 1911, ch. 266.

15-38-13.1. Approved alternative education programs — Suspension of students.

1. A student enrolled in an approved alternative education program, for which state aid payments must be made as described in section 15-40.1-07.2, may be suspended for not more than twenty days for insubordination, habitual disobedience, or disorderly conduct.
2. The administrator of an approved alternative education program shall give immediate notice of the suspension and the reason for the suspension of a student to the student's parents or guardian.

Source: S.L. 1985, ch. 215, § 1.

TEACHERS' DUTIES

15-38-18

15-38-13.2. Alternative education program — Expulsion of students. A student enrolled in an approved alternative education program may be expelled for a period not to exceed the remainder of the current school term. A student may be expelled if the student is found to be habitually insubordinate or disobedient or if the student habitually displays disorderly conduct. Prior to the expulsion of a student under this section, the school administrator must find at a hearing which provides procedural due process that:

1. The student's continued presence in the classroom or on the school campus presents a clear, present, and continuing danger of physical harm to the student or to other individuals; or
2. The student has engaged in serious or persistent misbehavior that threatens to impair the educational efficiency of the school and the misbehavior violates specific, published standards of student conduct for the school.

The student's parents or a representative of the student is entitled to notice of and to participate in a disciplinary proceeding under this section.

Source: S.L. 1985, ch. 215, § 2.

15-38-15. Duty to attend teachers' institutes and training schools — Notice — Penalty for failure to attend. Repealed by S.L. 1983, ch. 204, § 1.

15-38-18. Duties of commission and superintendent of public instruction. It is the duty of the commission to develop and revise, consistent with state law, professional codes or standards relating to ethics, conduct, and professional performance and practices and to provide recommendations for in-service education of persons engaged in the profession of teaching in the public schools. In the development of such professional codes and standards, the commission shall solicit the assistance of members of the teaching profession and representatives of school administrators, school board members, teacher education professors, and other interested citizens. The commission shall recommend such professional codes and standards as it may approve to the superintendent of public instruction, who after a hearing thereon may, consistent with state law, concur or veto and return to the commission for further study the revision of such codes and standards as the superintendent of public instruction deems proper and in the best interest of the public and the profession, and thereafter shall adopt such approved or revised codes and standards as rules in accordance with chapter 28-32. The commission shall advise the superintendent of public instruction regarding rules and regulations and procedures to be followed related to the issuance of teachers' certificates.

15-49-12

EDUCATION

CHAPTER 15-49

PENALTIES, FINES, AND FORFEITURES

Section

15-49-12. Definitions.

15-49-13. Weapons policies — Possession of a

firearm — Prohibitions — Ex-
ceptions.

15-49-12. Definitions. As used in section 15-49-13:

1. "Firearm" has the meaning given in 18 U.S.C. 921 [Pub. L. 90-351; 82 Stat. 197].
2. "School property" includes all school land, buildings, structures, facilities, and school vehicles whether owned or leased by a school district, and the site of any school-sponsored event or activity.

Source: S.L. 1995, ch. 203, § 1.

Effective Date.

This section became effective August 1, 1995.

15-49-13. Weapons policies — Possession of a firearm — Prohibitions — Exceptions.

1. Each school board shall by resolution implement a policy governing the possession of weapons on school property and at school functions and provide for the punishment of any student found to be in violation.
2. The weapons policy must prohibit the possession of a firearm by a student on school property and at school functions and provide for the punishment of any student found to be in violation. Punishment must include immediate suspension from school and expulsion for at least one year. The policy must authorize the school district superintendent or the school principal if the school district does not have a superintendent to modify an expulsion under this section on a case-by-case basis in accordance with criteria established by the board. Before expelling a student, a school board shall, within ten days of the student's suspension, provide the student with a hearing before the school board at which time the school board must take testimony and consider evidence, including the existence of mitigating circumstances. A school board that expels a student under this subsection may provide educational services to the student in an alternative setting.
3. Actions taken under this section must be in accordance with chapter 15-59 and the Individuals With Disabilities Education Act [Pub. L. 91-230; 84 Stat. 121; 20 U.S.C. 1400 et seq.].
4. This section does not apply to any student participating in a school-sponsored shooting sport, provided the student informs the school principal of the student's participation and the student complies with all requirements set by the principal regarding the safe handling and storage of the firearm.

Source: S.L. 1995, ch. 203, § 2.

Effective Date.

This section became effective August 1, 1995.

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STATE MEDIC

CHAPTER

STATE MEDIC

Section

15-52-03. Medical center advisory council —
Members, terms, meetings.

15-52-03. Medical center advisory council. In order to assure the proper functioning of the North Dakota state medical center within the state, a permanent medical center advisory council shall be established to advise, consult, and assist the state administration, and to the several agencies concerning the program of the North Dakota state medical center and its facilities of the several agencies involved in the state medical center and its political subdivisions of the state and its political subdivisions. The council shall consist of fourteen members: two to be named by the governor and from the membership of each of the following departments or agencies: the state board of human services; the state board of health; the state department of health; the North Dakota hospital association; the North Dakota medical society; the North Dakota dental society; the North Dakota nursing association; the North Dakota osteopathic association; the North Dakota podiatric association; the North Dakota chiropractic association; the North Dakota naturopathic association; the North Dakota osteopodiatric association; the North Dakota osteopodiatric association; the North Dakota osteopodiatric association. One member from each quadrant with a three-year term with a two-term limit staggered.

The representatives named by the governor must be selected to serve on the advisory council for periods of at least one year, but they may serve longer than their term of office. Representatives from the North Dakota hospital association shall serve on the advisory council. Successors are named and qualified by the governor shall serve for three-year terms.

The council shall name its own secretary. The council shall meet not less than once a year, on its own motion or on the motion of the state medical center and make its recommendations to the state and its political subdivisions.

Source: S.L. 1945, ch. 172, § 3; R.C. 1943, 1957 Supp., § 15-5203; S.L. 1965, ch. 203, § 41; 1971, ch. 193, § 1; 1975, ch. 168, § 1; 1981, ch. 214, § 1; 1983, ch. 82, § 34; 1987, ch. 234, § 2; 1995, ch. 243, § 2.

2
Education
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Education

Chapter 203

1995
Page 9
CHAPTER 203

HOUSE BILL NO. 1178
(Representatives Carlisle, Skarphol, Austin)
(Senators Kinnoin, O'Connell)

STUDENT EXPULSION FOR FIREARM POSSESSION
ON SCHOOL PROPERTY

AN ACT relating to the implementation of weapons policies and the expulsion of a student for possessing a firearm on school property; and to amend and reenact subsection 13 of section 15-29-08 of the North Dakota Century Code, relating to the suspension or expulsion of a student from school.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 and 2 of this Act:

1. "Firearm" has the meaning given in 18 U.S.C. 921 (Pub. L. 90-351; 82 Stat. 1971).
2. "School property" includes all school land, buildings, structures, facilities, and school vehicles whether owned or leased by a school district, and the site of any school-sponsored event or activity.

SECTION 2. Weapons policies - Possession of a firearm - Prohibitions - Exceptions.

1. Each school board shall by resolution implement a policy governing the possession of weapons on school property and at school functions and provide for the punishment of any student found to be in violation.
2. The weapons policy must prohibit the possession of a firearm by a student on school property and at school functions and provide for the punishment of any student found to be in violation. Punishment must include immediate suspension from school and expulsion for at least one year. The policy must authorize the school district superintendent or the school principal if the school district does not have a superintendent to modify an expulsion under this section on a case-by-case basis in accordance with criteria established by the board. Before expelling a student, a school board shall, within ten days of the student's suspension, provide the student with a hearing before the school board at which time the school board must take testimony and consider evidence, including the existence of mitigating circumstances. A school board that expels a student under this subsection may provide educational services to the student in an alternative setting.
3. Actions taken under this section must be in accordance with chapter 15-59 and the Individuals with Disabilities Education Act (Pub. L. 91-230; 84 Stat. 121; 20 U.S.C. 1400 et seq.).
4. This section does not apply to any student participating in a school-sponsored shooting sport, provided the student informs the school principal of the student's participation and the student complies with all

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Operator's Signature

Date

requirements set by the principal regarding the safe handling and storage of the firearm.

¹⁸² SECTION 3. AMENDMENT. Subsection 13 of section 15-29-08 of the North Dakota Century Code is amended and reenacted as follows:

13. To adopt, alter, and repeal, when it deems it expedient, rules and regulations for the reception, organization, grading, government, and instruction of pupils ~~students~~, and for their suspension, expulsion, or transfer from one school to another. ~~No pupil shall~~ Students may be suspended or expelled ~~except for insubordination, habitual indolence, or disorderly conduct, and or under section 2 of this Act. Except as provided in section 2 of this Act and section 15-38-13.1, a suspension shall not be for a longer period than ten days except as provided in section 15-38-13.1, nor shall an expulsion be in effect beyond the end of the current term of school year.~~

Approved April 17, 1995
Filed April 18, 1995

¹⁸² Section 15-29-08 was also amended by section 1 of Senate Bill No. 2491, chapter 186.

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Chap

CHAP

HOUSE B)
(Representative)

SCHOOL CONSTRUCTION

AN ACT to amend and reenact section 15-60-10, North Dakota Century Code, relating to school construction.
BE IT ENACTED BY THE LEGISLATURE:

¹⁸³ SECTION 1. AMENDMENT.
Section 15-60-10, North Dakota Century Code is amended and reenacted as follows:

15-60-10. Loans.

1. The board may make loans to school districts from monies in the fund established pursuant to section 15-60-10, North Dakota Century Code, and shall consider an application for a loan submitted under this section by a superintendent principal balance chapter may not exceed ten percent of the amount of the loan.
2. An application for a loan may be issued under this section before or after the application for a loan is submitted to the board of school directors. If an application for a loan is submitted to the board of school directors from the date it is received, the application shall contain information concerning the construction or improvement of the school, the amount and a percent of the amount of a loan, the amount of the project and the fee for a loan, the school district shall include outstanding debt as determined by section 21-03-07 but not more than the amount of the loan.

¹⁸³ Section 15-60-10 was also amended by section 1 of Senate Bill No. 2491, chapter 186.

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12/10/93
Date

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Chapter 195

Education

CHAPTER 195

SENATE BILL NO. 2138

(Education Committee)

(At the request of the Bank of North Dakota)

LOAN GUARANTEE RESERVE FUNDS

AN ACT to amend and reenact section 15-62.1-05 of the North Dakota Century Code, relating to adequate federal loan guarantee reserve funds; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-62.1-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-62.1-05. Establishment and maintenance of adequate guarantee funds - Appropriation. The agency may enter into an agreement with the federal government for the coinsurance of loans guaranteed under this program. The agency shall establish and at all times maintain from funds appropriated under this chapter adequate guarantee reserve funds in special accounts in the Bank of North Dakota unless required by title IV, part B, of the Higher Education Act of 1965 [Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353; Pub. L. 105-244; 112 Stat. 1581] 20 U.S.C. 1001 et seq., as amended through December 31, 1998, to be invested elsewhere. The fund for loans which are coinsured by the federal government must be maintained at a minimum amount equal to two percent of the unpaid principal amount of the loans the requirements set forth in title IV, part B, of the Higher Education Act of 1965 [Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353; Pub. L. 105-244; 112 Stat. 1581] 20 U.S.C. 1001 et seq., as amended through December 31, 1998. The fund for loans which are not coinsured by the federal government may not be less than one-tenth of the dollar value of the total portion unpaid principal balance of such the loans. Funds appropriated under this chapter and designated as guarantee agency reserve funds for loans that are not coinsured by the federal government must be administered separately and segregated from reserve funds for loans that are coinsured by the federal government. The agency is authorized to enter into an agreement with the federal government for the coinsurance of loans guaranteed under this program. The securities in which the moneys in the reserve funds may be invested must meet the same requirements as those authorized for investment under the state investment board. The income from such investments must be made available for the costs of administering the respective guarantee loan programs and income in excess of that required to pay the cost of administering the programs must be deposited in the respective reserve fund that corresponds to the source of the initial invested funds. The proceeds of such reserve funds received from federal, state, or private sources for the purpose of guaranteeing loans made to students as provided in this chapter are hereby appropriated as a continuing appropriation for the payment of defaulted loans guaranteed by each respective fund.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 5, 1999
Filed March 5, 1999

Education

Chapter 196

845

CHAPTER 196

HOUSE BILL NO. 1034

(Legislative Council)

(Education Services Committee)

EDUCATION TITLE REVISION

AN ACT to create and enact title 15.1 of the North Dakota Century Code, relating to elementary and secondary education; to repeal chapter 15-21, sections 15-21.1-01, 15-21.1-02, 15-21.1-03, 15-21.1-04, 15-21.1-05, 15-21.1-06, 15-21.1-07, 15-21.1-09, chapters 15-21.2, 15-22, 15-27.1, 15-27.2, 15-27.3, 15-27.4, 15-27.5, 15-27.6, 15-27.7, 15-28, sections 15-29-01, 15-29-01.1, 15-29-02, 15-29-03, 15-29-03.1, 15-29-04, 15-29-05, 15-29-06, 15-29-07, 15-29-08, 15-29-08.4, 15-29-09, 15-29-10, 15-29-11, 15-29-13, 15-29-14, 15-34.2-12, 15-34.2-13, 15-34.2-14, 15-34.2-17, 15-34.2-18, 15-35-01.2, 15-35-09, 15-35-11, 15-35-12, 15-35-14, 15-38-04.1, 15-38-06, 15-38-13, 15-38-13.1, 15-38-13.2, 15-41-01, 15-41-02, 15-41-03, 15-41-04, 15-41-05, 15-41-07, 15-41-08, 15-41-27, chapter 15-41.1, sections 15-43-11.1, 15-43-11.2, 15-43-11.3, 15-43-11.4, 15-44-06, 15-44-09, 15-44-10, 15-44-11, chapter 15-46, sections 15-47-01, 15-47-01.1, 15-47-02.1, 15-47-04, 15-47-05, 15-47-06, 15-47-07, 15-47-08, 15-47-09, 15-47-10, 15-47-11, 15-47-12, 15-47-13, 15-47-14, 15-47-15, 15-47-16, 15-47-21, 15-47-22, 15-47-24, 15-47-25, 15-47-29, 15-47-30, 15-47-30.1, 15-47-31, 15-47-32, 15-47-33, 15-47-33.1, 15-47-36, 15-47-37, 15-47-39, 15-47-40, 15-47-40.1, 15-47-41, 15-47-43, 15-47-44.1, 15-47-44.2, 15-47-47, 15-47-48, 15-47-49, 15-47-50, 15-47-51, chapters 15-48, 15-49, 15-51, 15-64, and 15-65 of the North Dakota Century Code, relating to elementary and secondary education provisions addressed in the creation of North Dakota Century Code title 15.1; to provide penalties; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 15.1-01 of the North Dakota Century Code is created and enacted as follows:

15.1-01-01. State board of public school education - Composition.

1. The state board of public school education consists of the superintendent of public instruction and:
 - a. An individual representing Barnes, Cass, Grand Forks, Griggs, Nelson, Steele, and Traill counties;
 - b. An individual representing Benson, Bottineau, Cavalier, McHenry, Pembina, Pierce, Ramsey, Renville, Rolette, Towner, and Walsh counties;

Section 15.1-01-02 was amended by section 47 of House Bill No. 1188, chapter 162.

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valuation of the individual's property bears to the total taxable valuation of the dissolved district's property at the time of the attachment order.

2. Upon approval of the board of county commissioners, any school district required to provide a tax credit under subsection 1 may provide a cash refund in lieu of the tax credit. At the request of the county auditor, the school district holding the unobligated cash balance shall pay to the county treasurer the amount to be paid to those who own real property within the dissolved district. The treasurer shall issue the refund to the owner of the property as shown on the county's assessment list at the time of payment. If there is a lien for unpaid taxes against the property, the treasurer shall first apply the property owner's tax credit toward any outstanding balance. Any amount remaining may then be paid to the property owner. The cash refunds must be calculated proportionately to the total taxable value of the dissolved district during the last year taxes were levied.

¹² SECTION 13. Chapter 15.1-19 of the North Dakota Century Code is created and enacted as follows:

15.1-19-01. Legal surname - Use. Personnel in a public school district, a nonpublic school, a preschool program, and a child care facility shall use a student's legal surname for registration, for the maintenance of all records regarding the student, and in all communications requiring the use of a surname.

15.1-19-02. Corporal punishment - Prohibition.

1. A school district employee may not inflict, cause to be inflicted, or threaten to inflict corporal punishment on a student.
2. This section does not prohibit a school district employee from using the degree of force necessary:
 - a. To quell a physical disturbance that threatens physical injury to an individual or damage to property;
 - b. To quell a verbal disturbance;
 - c. For self-defense;
 - d. For the preservation of order; or
 - e. To obtain possession of a weapon or other dangerous object within the control of a student.
3. For purposes of this section, corporal punishment means the willful infliction of physical pain on a student; willfully causing the infliction of physical pain on a student; or willfully allowing the infliction of physical pain on a student. Physical pain or discomfort caused by athletic

¹³ Section 15.1-19-11 was amended by section 2 of House Bill No. 1349, chapter 189.

competition or other recreational activities voluntarily engaged in by a student is not corporal punishment.

4. The board of each school district shall develop policies setting forth standards for student behavior and procedures to be followed if the standards are not met.

15.1-19-03. Period of silence. A classroom teacher may require that the students observe a period of silence for meditation or prayer for up to one minute at the beginning of each schoolday. A school board may require that students observe a period of silence for up to one minute at the beginning of each schoolday.

15.1-19-04. Religious instruction - Excuse of student. At the request of a student's parent or guardian, the student's school principal shall permit a student to be excused for up to one hour each week in order to obtain religious instruction.

15.1-19-05. Birth control device - Distribution - Restriction. No person while acting in an official capacity as an employee or agent of a school district may distribute a birth control device to a student. This section does not apply to the distribution of a birth control device by an employee or agent to a child of that employee or agent.

15.1-19-06. Abortion referrals. No person while acting in an official capacity as an employee or agent of a school district may refer a student to another person, agency, or entity for the purpose of obtaining an abortion. This provision does not extend to private communications between the employee or agent and a child of the employee or agent.

15.1-19-07. Communicable parasites - Detection and eradication. The board of a school district may contract with licensed health care personnel to assist in the detection and eradication of communicable parasites.

15.1-19-08. Homeless child - Education.

1. A homeless child is entitled to a free public school education, in the same manner as that provided to other public school students, in accordance with the Stewart B. McKinney Homeless Assistance Act [Pub. L. 100-77; 101 Stat. 525; 42 U.S.C. 11431 et seq.].
2. A school district shall allow a nonresident homeless child to attend school.
3. For the purposes of this section, "homeless child" means a homeless individual as described in the Stewart B. McKinney Homeless Assistance Act [Pub. L. 100-77, section 103(a); 101 Stat. 485; 42 U.S.C. 11402] and as defined in rules adopted by the superintendent of public instruction.
4. The superintendent of public instruction shall adopt rules to implement this section. The rules must provide for the educational placement of homeless children according to the child's best interest.

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15.1-19-09. Students - Suspension and expulsion - Rules.

1. The board of a school district shall adopt rules regarding the suspension and expulsion of a student. The rules must provide for a procedural due process hearing that allows a student's parent or representative to participate in the hearing.
2. A student may be suspended for up to ten days for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy.
3. A student enrolled in an alternative education program for which state per student payments are available may be suspended for up to twenty days for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy.
4. A student, including one enrolled in an alternative education program, may be expelled from school for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy; provided the expulsion does not last beyond the termination of the current school year.

15.1-19-10. Possession of a weapon - Policy - Expulsion from school.

1. The board of each school district shall adopt a policy governing the possession of weapons on school property or at a school function and provide for the punishment of any student found to be in violation of the policy.
2. The weapons policy must prohibit the possession of a firearm by a student on school property and at school functions and provide for the punishment of any student found to be in violation. Punishment must include immediate suspension from school and expulsion for at least one year. The policy must authorize the school district superintendent or the school principal, if the school district does not have a superintendent, to modify an expulsion under this section on a case-by-case basis in accordance with criteria established by the board. Before expelling a student, a school board, within ten days of the student's suspension, shall provide the student with a hearing before the school board at which time the school board shall take testimony and consider evidence, including the existence of mitigating circumstances.
3. If a board expels a student under this section, the board may authorize the provision of educational services to the student in an alternative setting.
4. Actions under this section may not conflict with state special education laws or with the Individuals With Disabilities Education Act [Pub. L. 91-230; 84 Stat. 121; 20 U.S.C. 1400 et seq.].
5. This section does not apply to any student participating in a school-sponsored shooting sport, provided the student informs the school principal of the student's participation and the student complies with all requirements set by the principal regarding the safe handling and storage of the firearm.

6. For purposes of this section:

- a. "Firearm" has the meaning provided in Public Law No. 90-351 [82 Stat. 197; 18 U.S.C. 921].
- b. "School property" includes all land within the perimeter of the school site and all school buildings, structures, facilities, and school vehicles, whether owned or leased by a school district, and the site of any school-sponsored event or activity.

15.1-19-11. School safety patrols - Establishment - Adoption of rules. The board of a school district or the governing body of a nonpublic school may authorize a school principal or administrator to establish a safety patrol and to appoint students to the safety patrol. Any student age eleven or older is eligible for appointment to a safety patrol, provided the student's parent has filed written permission with the school principal or administrator. The superintendent of public instruction shall adopt rules to guide safety patrol members in the conduct of their duties and shall specify the identification to be worn and the signals to be used by safety patrol members while on duty.

15.1-19-12. School safety patrols - Immunity from liability. The superintendent of public instruction, schools, school boards and individual school board members, governing boards and individual governing board members, administrators, principals, teachers, safety patrol members whether students or adults, and parents of safety patrol student members are immune from any liability that might otherwise be incurred as a result of an injury to a safety patrol member or as a result of an injury caused by an act or omission on the part of a safety patrol member while on duty, provided that the persons substantially complied with the rules to guide safety patrol members, as adopted by the superintendent of public instruction.

SECTION 14. Chapter 15.1-24 of the North Dakota Century Code is created and enacted as follows:

15.1-24-01. Chemical abuse prevention program - Rules.

1. The superintendent of public instruction shall adopt rules regarding the implementation of chemical abuse prevention programs in this state's schools. The rules may include:
 - a. Community involvement through a citizens' advisory committee.
 - b. An assessment of services and resources available locally.
 - c. An assessment of student and staff needs.
 - d. The coordination of activities with public and private entities.
 - e. The development of an implementation plan.
 - f. An evaluation mechanism.
 - g. The development of a budget to fund the program.
2. If funds are appropriated or otherwise become available, the superintendent shall call for and review school district applications for

Page 10c

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12/10/03
Date

EDUCATION

CHAPTER 15-27.4
DISSOLUTION OF SCHOOL DISTRICTS
[Repealed by S.L. 1999, ch. 196, § 17]

Note.
Section 17 of chapter 196, S.L. 1999, repealed this chapter effective July 1, 1999.

CHAPTER 15-27.5
MILITARY INSTALLATION SCHOOL DISTRICT
[Repealed by S.L. 1999, ch. 196, § 17]

Note.
Section 17 of chapter 196, S.L. 1999, repealed this chapter effective July 1, 1999.

CHAPTER 15-27.6
SCHOOL DISTRICT BOUNDARY RESTRUCTURING
[Repealed by S.L. 1999, ch. 196, § 17]

Note.
Section 17 of chapter 196, S.L. 1999, repealed this chapter effective July 1, 1999.

CHAPTER 15-27.7
SCHOOL DISTRICT COOPERATIVE ARRANGEMENT
[Repealed by S.L. 1999, ch. 196, § 17]

Note.
Section 17 of chapter 196, S.L. 1999, repealed this chapter effective July 1, 1999.

CHAPTER 15-28
PUBLIC SCHOOL DISTRICT ELECTIONS
[Repealed by S.L. 1999, ch. 196, § 17]

Note.
Section 17 of chapter 196, S.L. 1999, repealed this chapter effective July 1, 1999.

CHAPTER 15-29
POWERS AND DUTIES OF PUBLIC SCHOOL DISTRICT OFFICERS
[Repealed by S.L. 2001, ch. 181, § 21]

Note.
The repeal of this chapter by S.L. 2001, ch. 181, § 21, became effective July 1, 2001.

CHAPTER 15-34.1
COMPULSORY SCHOOL ATTENDANCE
[Repealed by S.L. 2001, ch. 181, § 21]

Note.
The repeal of this chapter by S.L. 2001, ch. 181, § 21, became effective July 1, 2001.
Section 15-34.1-02 was amended by section 6 of chapter 257, S.L. 2001, and chapter 15-34.1 was repealed by section 21 of chapter 181, S.L. 2001. Pursuant to section 1-02-09, the chapter is treated as repealed.

TEACHERS' PERSONNEL FILES

CHAPTER 15-34.2
TRANSPORTATION OF STUDENTS
[Repealed by S.L. 2001, ch. 181, § 21]

Note.
The repeal of this chapter by S.L. 2001, ch. 181, § 21, became effective July 1, 2001.

CHAPTER 15-35
SCHOOL BUILDINGS
[Repealed by S.L. 2001, ch. 181, § 21]

Note.
The repeal of this chapter by S.L. 2001, ch. 181, § 21, became effective July 1, 2001.

CHAPTER 15-36
TEACHERS' CERTIFICATION
[Repealed by S.L. 2001, ch. 181, § 21]

Note.
The repeal of this chapter by S.L. 2001, ch. 181, § 21, became effective July 1, 2001.

CHAPTER 15-37
TEACHERS' OATHS
[Repealed by S.L. 2001, ch. 181, § 21]

Note.
The repeal of this chapter by S.L. 2001, ch. 181, § 21, became effective July 1, 2001.

CHAPTER 15-38
TEACHERS' DUTIES
[Repealed by S.L. 2001, ch. 181, § 21]

Note.
The repeal of this chapter by S.L. 2001, ch. 181, § 21, became effective July 1, 2001.

CHAPTER 15-38.1
TEACHERS' REPRESENTATION AND NEGOTIATION
[Repealed by S.L. 2001, ch. 181, § 21]

Note.
The repeal of this chapter by S.L. 2001, ch. 181, § 21, became effective July 1, 2001.

CHAPTER 15-38.2
TEACHERS' PERSONNEL FILES
[Repealed by S.L. 2001, ch. 181, § 21]

Note.
The repeal of this chapter by S.L. 2001, ch. 181, § 21, became effective July 1, 2001.

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Date

tion of physical pain on a student; or willfully allowing the infliction of physical pain or discomfort caused by athletic competition or other recreational activities voluntarily engaged in by a student is not corporal punishment.

4. The board of each school district shall develop policies setting forth standards for student behavior and procedures to be followed if the standards are not met.

Source: S.L. 1999, ch. 196, § 13.

15.1-19-03. Period of silence. Repealed by S.L. 2001, ch. 187, § 2.

15.1-19-03.1. Recitation of prayer — Period of silence — Pledge of allegiance.

1. A student may voluntarily pray aloud or participate in religious speech at any time before, during, or after the schoolday to the same extent a student may voluntarily speak or participate in secular speech.
2. A school board, school administrator, or teacher may not impose any restriction on the time, place, manner, or location of any student-initiated religious speech or prayer which exceeds the restriction imposed on students' secular speech.
3. A school board may, by resolution, allow a classroom teacher to impose up to one minute of silence for meditation, reflection, or prayer at the beginning of each school day.
4. A school board may authorize the voluntary recitation of the pledge of allegiance by a teacher or one or more students at the beginning of each schoolday. A student may not be required to recite the pledge of allegiance, stand during the recitation of the pledge of allegiance, or salute the American flag.

Source: S.L. 2001, ch. 187, § 1.

Effective Date.
This section became effective August 1, 2001.

15.1-19-04. Religious instruction — Excuse of student. At the request of a student's parent or guardian, the student's school principal shall permit a student to be excused for up to one hour each week in order to obtain religious instruction.

Source: S.L. 1999, ch. 196, § 13.

15.1-19-05. Birth control device — Distribution — Restriction. No person while acting in an official capacity as an employee or agent of a school district may distribute a birth control device to a student. This section does not apply to the distribution of a birth control device by an employee or agent to a child of that employee or agent.

Source: S.L. 1999, ch. 196, § 13.

15.1-19-06. Abortion referrals. No person while acting in an official capacity as an employee or agent of a school district may refer a student to another person, agency, or entity for the purpose of obtaining an abortion.

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This provision does not extend to private communications between an employee or agent and a child of the employee or agent.

Source: S.L. 1999, ch. 196, § 13.

15.1-19-07. Communicable parasites — Detection and eradication. The board of a school district may contract with licensed health care personnel to assist in the detection and eradication of communicable parasites.

Source: S.L. 1999, ch. 196, § 13.

15.1-19-08. Homeless child — Education.

1. A homeless child is entitled to a free public school education, in the same manner as that provided to other public school students, in accordance with the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77; 101 Stat. 525; 42 U.S.C. 11431 et seq.).
2. A school district shall allow a nonresident homeless child to attend school.
3. For the purposes of this section, "homeless child" means a homeless individual as described in the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, section 103(a); 101 Stat. 485; 42 U.S.C. 11302) and as defined in rules adopted by the superintendent of public instruction.
4. The superintendent of public instruction shall adopt rules to implement this section. The rules must provide for the educational placement of homeless children according to the child's best interest.

Source: S.L. 1999, ch. 196, § 13.

15.1-19-09. Students — Suspension and expulsion — Rules.

1. The board of a school district shall adopt rules regarding the suspension and expulsion of a student. The rules must provide for a procedural due process hearing before the determination to expel a student is made. A student's parent or representative must be allowed to participate in the hearing.
2. A student may be suspended for up to ten days for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy.
3. A student enrolled in an alternative education program for which state per student payments are available may be suspended for up to twenty days for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy.
4. A student, including one enrolled in an alternative education program, may be expelled from school for insubordination, habitual indolence, or disorderly conduct; provided the expulsion does not last beyond the termination of the current school year.

Source: S.L. 1999, ch. 196, § 13; 2001, ch. 161, § 21 of chapter 161, S.L. 2001 became effective July 1, 2001.

Effective Date.
The 2001 amendment of this section by

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15.1

ELEMENTARY AND SECONDARY EDUCATION

participate in multiboard meetings in addition to, instead of, or in conjunction with the regular board meetings required by this section. Multiboard meetings must be for the purpose of pursuing joint academic or cooperative activities and must be held at the times and locations agreed to by the presidents of the participating boards. In addition to any other requirements set forth in section 44-04-20, the presidents of each school board shall ensure that notice of each multiboard meeting in which the school board will participate is published in the local newspapers of general circulation at least one week before the meeting date.

Source: S.L. 1999, ch. 196, § 9; 2001, ch. 178, § 3.

section 3 of chapter 178, S.L. 2001 became effective March 20, 2001, pursuant to an emergency clause in section 4 of chapter 178, S.L. 2001.

Effective Date.

The 2001 amendment of this section by

15.1-09-31. School board proceedings — Publication. Every two years, at the time of a school district's annual election of board members, the electors of the district shall determine whether a record of the board proceedings must be published in the official newspaper of the district. If a majority of the electors voting on the question approve the publication, the school district business manager shall provide for publication of the school board proceedings, including an itemized list of obligations approved for payment. If appropriate, the business manager shall require that the newspaper publishing the board proceedings indicate that the published proceedings are subject to review and revision by the board. The business manager shall ensure that the proceedings are published within a reasonable time after each board meeting. A vote to approve the publication is effective for a period of two years or until disapproved at a succeeding school district election.

Source: S.L. 1999, ch. 196, § 9; 2001, ch. 161, § 15.

section 15 of chapter 161, S.L. 2001 became effective July 1, 2001.

Effective Date.

The 2001 amendment of this section by

15.1-09-32. School board members — Attendance at workshop. Within one year of assuming office, each newly elected school board member shall attend an inservice training workshop hosted by the North Dakota school boards association or its designee. The workshop must include presentations on the role of a school board member, the duties of a school board, and education finance.

Source: S.L. 1999, ch. 196, § 9.

15.1-09-33. School board — Powers. The board of a school district may:

1. Establish a system of free public schools for all children of legal school age residing within the district.
2. Organize, establish, operate, and maintain elementary, middle, and high schools.
3. Have custody and control of all school district property and, in the case of the board of education of the city of Fargo, to have custody

SCHOOL BOARDS

15.1-09-34

and control of all public school property in the city and to manage and control all school matters.

4. Acquire real property and construct school buildings and other facilities.
5. Relocate or discontinue schools and liquidate the assets of the district as required by law; provided no site may be acquired or building constructed, or no school may be organized, established, operated, maintained, discontinued, or changed in location without the approval of the state board of public school education if outside the boundary of the district.
6. Purchase, sell, exchange, and improve real property.
7. Lease real property for a maximum of one year except in the case of a vocational education facility constructed in whole or in part with financing acquired under chapter 40-57, which may be leased for up to twenty years.
8. Exercise the power of eminent domain to acquire real property for school purposes.
9. Purchase, sell, exchange, and if appropriate, improve school equipment, furniture, supplies, and textbooks.
10. Recruit or contract with others to recruit homes and facilities which provide boarding care for special education students.
11. Provide dormitories for the boarding care of special education students.
12. Insure school district property.
13. Independently or jointly with other school districts, purchase telecommunications equipment or lease a telecommunications system or network.
14. Provide for the education of students by another school district.
15. Contract with federal officials for the education of students in a federal school.
16. Prescribe courses of study in addition to those prescribed by the superintendent of public instruction or by law.
17. Adopt rules regarding the instruction of students, including their admission, transfer, organization, grading, and government.
18. Join the North Dakota high school activities association and pay membership fees.
19. Adopt alternative curricula for high school seniors who require fewer than four academic units.
20. Contract with, employ, and compensate school district personnel.
21. Contract with and provide reimbursement for the provision of teaching services by an individual certified as an instructor in the areas of North Dakota American Indian languages and culture by the education standards and practices board.
22. Suspend school district personnel.
23. Dismiss school district personnel for cause.
24. Participate in group insurance plans and pay all or part of the insurance premiums.
25. Contract for the services of a district superintendent, provided that the contract, which may be renewed, does not exceed a period of three years.
26. Contract for the services of a principal.
27. Employ a school district business manager.
28. Suspend or dismiss a school district business manager for cause without prior notice.
29. Suspend or dismiss a school district business manager without cause with thirty days' written notice.

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30. Defray the necessary and contingent expenses of the board.
31. Levy a tax upon property in the district for school purposes.
32. Amend and certify budgets and tax levies, as provided in title 57.
33. Pay membership dues to county and state associations.
34. Designate, at its annual meeting, a newspaper of general circulation as the official newspaper of the district.

Source: S.L. 1999, ch. 196, § 9.

15.1-09-34. Contracts by school boards — Bids — Penalty.

1. Except as provided in this section, the board of a school district may not enter a contract involving the expenditure of an aggregate amount greater than twenty-five thousand dollars unless the school board has given ten days' notice by publication in the official newspaper of the district, received sealed bids, and accepted the bid of the lowest responsible bidder. This section does not apply to contracts for:
 - a. The personal services of district employees.
 - b. Textbooks and reference books.
 - c. Articles not sold on the open market.
 - d. Patented, copyrighted, or exclusively sold devices or features required to match articles already in use.
 - e. Patented, copyrighted, or exclusively sold articles so distinctive that only one brand can be purchased.
 - f. Building construction projects under chapters 48-01.1 and 48-02.
 - g. School transportation services purchased under section 15.1-30-11.
 - h. Vehicle fuel purchased under section 15.1-09-34.1.
 - i. Heating fuel purchased under section 15.1-09-34.1.
 - j. The purchase of a used motor vehicle, including a schoolbus, motorbus, or van, intended primarily for the transportation of students.
2. For purposes of this section, a "used motor vehicle" means a motor vehicle that has been previously owned or leased and which has an odometer reading in excess of eighteen thousand miles [28967 kilometers].
3. A board member who participates in a violation of this section is guilty of a class B misdemeanor.

Source: S.L. 1999, ch. 186, § 2; 1999, ch. 196, § 9; 2001, ch. 161, § 16.

Effective Date.

The 2001 amendment of this section by section 16 of chapter 161, S.L. 2001 became effective July 1, 2001.

The 1999 amendment of this section by section 2 of chapter 186, S.L. 1999 became effective August 1, 1999.

Note.

Section 15.1-09-34 was created and amended by the 1999 Legislative Assembly. Pursuant to section 1-02-09.1, the section is printed above to harmonize and give effect to the creation in section 9 of chapter 196, S.L. 1999, and the amendment in section 2 of chapter 186, S.L. 1999.

15.1-09-34.1. Vehicle and heating fuel — Purchases. At least once each year, the board of a school district shall publish in the official newspaper of the district information regarding the registration of vehicle fuel vendors and heating fuel vendors. Except as otherwise provided in this section, the board shall purchase vehicle fuel and heating fuel only after

seeking written quotes from all vendors who registered with the district for that school year.

Source: S.L. 2001, ch. 161, § 17.

Effective Date.

This section became effective July 1, 2001.

15.1-09-35. Reports by school boards on conditions of schools. Upon the conclusion of each school year, the board of a school district shall:

1. Prepare a report regarding the condition of all schools in the district, including their financial condition and the educational progress of students enrolled in each school;
2. Forward a copy of the report to the county superintendent of schools; and
3. Publish in the official newspaper of the school district that portion of the report which deals with the financial condition of each school.

Source: S.L. 1999, ch. 196, § 9.

15.1-09-36. School board — Authority over student fees.

1. A school board may:
 - a. Require that a student pay a security deposit for the return of textbooks, materials, supplies, or equipment.
 - b. Assess a student a use charge if a textbook or other item covered under subsection 1 has received undue wear.
 - c. Require that a student furnish personal or consumable items.
 - d. Require that a student pay an admission fee or other charges for extracurricular or noncurricular activities if the student's attendance is optional.
 - e. Require that a student pay a fee or a premium for any authorized student health and accident benefit plan.
 - f. Require that a student pay a fee for personal athletic equipment and apparel; provided the board shall allow a student to use the student's own equipment and apparel if it meets reasonable health and safety standards established by the board.
 - g. Require that a student pay a fee in any program which generates a product that becomes the personal property of the student.
 - h. Require that a student pay a fee for behind-the-wheel driver's education instruction.
 - i. Require that a student pay a fee for goods, including textbooks, and services provided in connection with any postsecondary level program or any program established outside regular elementary, middle school, or secondary school programs, including vocational and technical programs, and adult or continuing education programs.
 - j. Require that a student pay any other fees and charges permitted by statute.
2. A board may waive any fee if a student or the student's parent or guardian is unable to pay the fee.
3. A board may not deny or abridge a student's rights or privileges, including the receipt of grades and diplomas, because of the nonpayment of fees. A board, however, may withhold a student's diploma for failure to pay for costs incurred by the student's own negligence or choice, including fines for damaged textbooks and school equipment, library fines, and materials purchased from the school at the option of the student.

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15.1-19-10. Possession of a weapon - Policy - Expulsion from school.

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1. The board of each school district shall adopt a policy governing the possession of weapons on school property or at a school function and provide for the punishment of any student found to be in violation of the policy.
2. The weapons policy must prohibit the possession of a firearm by a student on school property and at school functions and provide for the punishment of any student found to be in violation. Punishment must include immediate suspension from school and expulsion for at least one year. The policy must authorize the school district superintendent or the school principal, if the school district does not have a superintendent, to modify an expulsion under this section on a case-by-case basis in accordance with criteria established by the board. Before expelling a student, a school board, within ten days of the student's suspension, shall provide the student with a hearing before the school board at which time the school board shall take testimony and consider evidence, including the existence of mitigating circumstances.
3. If a board expels a student under this section, the board may authorize the provision of educational services to the student in an alternative setting.
4. Actions under this section may not conflict with state special education laws or with the Individuals With Disabilities Education Act [Pub. L. 91-230; 84 Stat. 121; 20 U.S.C. 1400 et seq.].
5. This section does not apply to any student participating in a school-sponsored shooting sport, provided the student informs the school principal of the student's participation and the student complies with all requirements set by the principal regarding the safe handling and storage of the firearm.
6. For purposes of this section:
 - a. "Firearm" has the meaning provided in Public Law No. 90-351 [82 Stat. 197; 18 U.S.C. 921].
 - b. "School property" includes all land within the perimeter of the school site and all school buildings, structures, facilities, and school vehicles, whether owned or leased by a school district, and the site of any school-sponsored event or activity.

Note: I believe NDCC 15.1-19-10 was created to deal with possession of a weapon. The "Gun Free Schools Act" (next page) appears to have been the motivating factor for NDCC 15.1-19-10. The above language is specific and direct. It is up to the School Board to hold a hearing and expel a student.

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Operator's Signature

Donna Hallmark

Date

10/2/03

GUN-FREE SCHOOLS PROVISIONS
ELEMENTARY AND SECONDARY EDUCATION ACT OF 1994
SIGNED INTO LAW BY PRESIDENT CLINTON ON 10/20/94

TITLE XIV - GENERAL PROVISIONS

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S.L.C.

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11 **"PART F—GUN POSSESSION**

12 **"SEC. 14001. GUN-FREE REQUIREMENTS.**

13 **"(a) SHORT TITLE.—**This section may be cited as the
14 **'Gun-Free Schools Act of 1994'.**

15 **"(b) REQUIREMENTS.—**

16 **"(1) IN GENERAL.—**Except as provided in para-
17 **graph (3),** each State receiving Federal funds under
18 **this Act** shall have in effect a State law requiring
19 **local educational agencies** to expel from school for a
20 **period of not less than one year** a student who is de-
21 **termined to have brought a weapon to a school**
22 **under the jurisdiction of local educational agencies**
23 **in that State, except that such State law shall allow**
24 **the chief administering officer of such local edu-**

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Deanna Hall
Operator's Signature

10/21/03
Date

15.1-19-09. Students - Suspension and expulsion - Rules.

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1. The board of a school district shall adopt rules regarding the suspension and expulsion of a student. The rules must provide for a procedural due process hearing before the determination to expel a student is made. A student's parent or representative must be allowed to participate in the hearing.
2. A student may be suspended for up to ten days for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy.
3. A student enrolled in an alternative education program for which state per student payments are available may be suspended for up to twenty days for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy.
4. A student, including one enrolled in an alternative education program, may be expelled from school for insubordination, habitual indolence, or disorderly conduct; provided the expulsion does not last beyond the termination of the current school year.

Note: I believe NDCC 15.1-19-09 does not allow for expulsion for weapons violation. It deals with expulsion for other conduct and suspension for violating a School District weapons policy. This would be the natural flow of changing NDCC 15-38-13.1 and 15-38-13.2 to 15.1-19-09. It is important to note NDCC 15.1-19-09 does not mention a School Board being involved in the hearing or discipline process.

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10/2/03
Date

15.1-09-32. School board members - Attendance at workshop. Within one year of assuming office, each newly elected school board member shall attend an inservice training workshop hosted by the North Dakota school boards association or its designee. The workshop must include presentations on the role of a school board member, the duties of a school board, and education finance.

15.1-09-33. School board - Powers. The board of a school district may:

1. Establish a system of free public schools for all children of legal school age residing within the district.
2. Organize, establish, operate, and maintain elementary, middle, and high schools.
3. Have custody and control of all school district property and, in the case of the board of education of the city of Fargo, to have custody and control of all public school property in the city and to manage and control all school matters.
4. Acquire real property and construct school buildings and other facilities.
5. Relocate or discontinue schools and liquidate the assets of the district as required by law; provided no site may be acquired or building constructed, or no school may be organized, established, operated, maintained, discontinued, or changed in location without the approval of the state board of public school education if outside the boundary of the district.
6. Purchase, sell, exchange, and improve real property.
7. Lease real property for a maximum of one year except in the case of a vocational education facility constructed in whole or in part with financing acquired under chapter 40-57, which may be leased for up to twenty years.
8. Exercise the power of eminent domain to acquire real property for school purposes.
9. Purchase, sell, exchange, and if appropriate, improve school equipment, furniture, supplies, and textbooks.
10. Recruit or contract with others to recruit homes and facilities which provide boarding care for special education students.
11. Provide dormitories for the boarding care of special education students.
12. Insure school district property.
13. Independently or jointly with other school districts, purchase telecommunications equipment or lease a telecommunications system or network.
14. Provide for the education of students by another school district.
15. Contract with federal officials for the education of students in a federal school.
16. Prescribe courses of study in addition to those prescribed by the superintendent of public instruction or by law.
17. Adopt rules regarding the instruction of students, including their admission, transfer, organization, grading, and government.
18. Join the North Dakota high school activities association and pay membership fees.

19. Adopt alternative curricula for high school seniors who require fewer than four academic units.
20. Contract with, employ, and compensate school district personnel.
21. Contract with and provide reimbursement for the provision of teaching services by an individual certified as an instructor in the areas of North Dakota American Indian languages and culture by the education standards and practices board.
22. Suspend school district personnel.
23. Dismiss school district personnel for cause.
24. Participate in group insurance plans and pay all or part of the insurance premiums.
25. Contract for the services of a district superintendent, provided that the contract, which may be renewed, does not exceed a period of three years.
26. Contract for the services of a principal.
27. Employ a school district business manager.
28. Suspend or dismiss a school district business manager for cause without prior notice.
29. Suspend or dismiss a school district business manager without cause with thirty days' written notice.
30. Defray the necessary and contingent expenses of the board.
31. Levy a tax upon property in the district for school purposes.
32. Amend and certify budgets and tax levies, as provided in title 57.
33. Pay membership dues to county and state associations.
34. Designate, at its annual meeting, a newspaper of general circulation as the official newspaper of the district.

15.1-09-34. Contracts by school boards - Bids - Penalty.

1. Except as provided in this section, the board of a school district may not enter a contract involving the expenditure of an aggregate amount greater than twenty-five thousand dollars unless the school board has given ten days' notice by publication in the official newspaper of the district, received sealed bids, and accepted the bid of the lowest responsible bidder. This section does not apply to contracts for:
 - a. The personal services of district employees.
 - b. Textbooks and reference books.
 - c. Articles not sold on the open market.
 - d. Patented, copyrighted, or exclusively sold devices or features required to match articles already in use.
 - e. Patented, copyrighted, or exclusively sold articles so distinctive that only one brand can be purchased.

involved in *Gwin, White & Prince, Inc. v. Henneford*, 305 U. S. 434 (1939). The taxpayer was a Washington corporation, doing business there and shipping fruit from Washington to places of sale in the various States and in foreign countries. The Court held the tax, as applied, unconstitutional under the Commerce Clause.

"Here the tax, measured by the entire volume of the interstate commerce in which appellant participates, is not apportioned to its activities within the state. If Washington is free to exact such a tax, other states to which the commerce extends may, with equal right, lay a tax similarly measured for the privilege of conducting within their respective territorial limits the activities there which contribute to the service. The present tax, though nominally local, thus in its practical operation discriminates against interstate commerce, since it imposes upon it, merely because interstate commerce is being done, the risk of a multiple burden to which local commerce is not exposed." *Id.*, at 439.

In the instant case, as in *Ficklen v. Shelby County Taxing District*, 145 U. S. 1 (1892),² the tax is on the gross receipts from sales made to a local consumer, which may have some impact on commerce. Yet as we said in *Gwin, White & Prince, supra*, at 440, in describing the tax in *Ficklen*, it is "apportioned exactly to the activities taxed," all of which are intrastate.

Affirmed.

² In that case the taxpayers did business as brokers in Tennessee. They solicited local customers and sent their orders to out-of-state vendors who shipped directly to the purchaser. Tennessee levied a tax on their gross commissions. The Court, in distinguishing the "drummer" cases illustrated by *Robbins v. Shelby County Taxing District*, 120 U. S. 489 (1887), stated that in *Ficklen* Tennessee did not tax more than its own internal commerce.

GOSS ET AL. v. LOPEZ ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

No. 73-898. Argued October 16, 1974—Decided January 22, 1975

Appellee Ohio public high school students, who had been suspended from school for misconduct for up to 10 days without a hearing, brought a class action against appellant school officials seeking a declaration that the Ohio statute permitting such suspensions was unconstitutional and an order enjoining the officials to remove the references to the suspensions from the students' records. A three-judge District Court declared that appellees were denied due process of law in violation of the Fourteenth Amendment because they were "suspended without hearing prior to suspension or within a reasonable time thereafter," and that the statute and implementing regulations were unconstitutional, and granted the requested injunction. *Held*:

1. Students facing temporary suspension from a public school have property and liberty interests that qualify for protection under the Due Process Clause of the Fourteenth Amendment. Pp. 572-576.

(a) Having chosen to extend the right to an education to people of appellees' class generally, Ohio may not withdraw that right on grounds of misconduct, absent fundamentally fair procedures to determine whether the misconduct has occurred, and must recognize a student's legitimate entitlement to a public education as a property interest that is protected by the Due Process Clause, and that may not be taken away for misconduct without observing minimum procedures required by that Clause. Pp. 573-574.

(b) Since misconduct charges if sustained and recorded could seriously damage the students' reputation as well as interfere with later educational and employment opportunities, the State's claimed right to determine unilaterally and without process whether that misconduct has occurred immediately collides with the Due Process Clause's prohibition against arbitrary deprivation of liberty. Pp. 574-575.

(c) A 10-day suspension from school is not *de minimis* and may not be imposed in complete disregard of the Due Process

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Clause. Neither the property interest in educational benefits temporarily denied nor the liberty interest in reputation is so insubstantial that suspensions may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary. Pp. 575-576.

2. Due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his version. Generally, notice and hearing should precede the student's removal from school, since the hearing may almost immediately follow the misconduct, but if prior notice and hearing are not feasible, as where the student's presence endangers persons or property or threatens disruption of the academic process, thus justifying immediate removal from school, the necessary notice and hearing should follow as soon as practicable. Pp. 577-584. 372 F. Supp. 1279, affirmed.

WHITE, J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, STEWART, and MARSHALL, JJ., joined. POWELL, J., filed a dissenting opinion, in which BURGER, C. J., and BLACKMUN and REHNQUIST, JJ., joined, *post*, p. 584.

Thomas A. Bustin argued the cause for appellants. With him on the briefs were James J. Hughes, Jr., Robert A. Bell, and Patrick M. McGrath.

Peter D. Roos argued the cause for appellees. With him on the brief were Denis Murphy and Kenneth C. Curtin.*

*John F. Lewis filed a brief for the Buckeye Association of School Administrators et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed by David Bonderman, Peter Van N. Lockwood, Paul L. Tractenberg, David Rubin, and W. William Hodes for the National Committee for Citizens in Education et al.; by Alan H. Levine, Marvin L. Wulf, and Joel M. Gora for the American Civil Liberties Union; by Robert H. Kapp, R. Stephen Browning, and Nathaniel R. Jones for the National Association for the Advancement of Colored People et al.; and by Marian Wright Edelman for the Children's Defense Fund of the Washington Research Project, Inc., et al.

MR. JUSTICE WHITE delivered the opinion of the Court.

This appeal by various administrators of the Columbus, Ohio, Public School System (CPSS) challenges the judgment of a three-judge federal court, declaring that appellees—various high school students in the CPSS—were denied due process of law contrary to the command of the Fourteenth Amendment in that they were temporarily suspended from their high schools without a hearing either prior to suspension or within a reasonable time thereafter, and enjoining the administrators to remove all references to such suspensions from the students' records.

I

Ohio law, Rev. Code Ann. § 3313.64 (1972), provides for free education to all children between the ages of six and 21. Section 3313.66 of the Code empowers the principal of an Ohio public school to suspend a pupil for misconduct for up to 10 days or to expel him. In either case, he must notify the student's parents within 24 hours and state the reasons for his action. A pupil who is expelled, or his parents, may appeal the decision to the Board of Education and in connection therewith shall be permitted to be heard at the board meeting. The Board may reinstate the pupil following the hearing. No similar procedure is provided in § 3313.66 or any other provision of state law for a suspended student. Aside from a regulation tracking the statute, at the time of the imposition of the suspensions in this case the CPSS itself had not issued any written procedure applicable to suspensions.¹ Nor, so far as the record reflects, had any of

¹ At the time of the events involved in this case, the only administrative regulation on this subject was § 1010.04 of the Administrative Guide of the Columbus Public Schools which provided: "Pupils may be suspended or expelled from school in accordance with the provisions of Section 3313.66 of the Revised Code." Subsec.

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Rebuttal Testimony: C.T. Marhula

Mr. Chairman: As I go through the arguments offered by the proponents, note I said proponents, not sponsors; I am reminded of the words of Mark Twain, "It isn't what you admit you don't know that gets you into trouble, it's what you claim to know for sure that ain't so." I admit I do not have absolute certainty on my views, but I think some of the proponents certainty ain't so.

The second paragraph of the testimony offered by the Grand Forks School District "is so." In fact, as originally discussed this was to be the only issue that needed remedy.

The highlighted statement of the handout indicates large districts use a hearing officer. While this may be accurate, it does not tell the full story. We are talking today solely about expulsions for weapons violations. We are not talking about anything else that is covered in other parts of the North Dakota Century Code. I have included on page 1 the actual practice of school districts across the state. You can see there are both large and small districts that do not use a hearing officer. My research indicates every district except Grand Forks has a full hearing on the appeal if they do use a hearing officer or administration.

The second highlighted statement seems to indicate use of a hearing officer for a weapons expulsion is considered proper, yet offers no supplemental evidence to support this position. I beg to differ. I talked to Pat Fisher, the Grand Forks School Board Attorney. Because I was troubled by the process I asked him to send us a letter on his letterhead stating it was his professional opinion that a district could use a hearing officer and limit the appeal to the record on a weapons

violation case. He declined and said, "We don't know for sure what the law is. If this case is appealed a judge will tell us." He added there was a difference of opinion among school attorneys about the requirements for weapons violation hearings. I proceeded to request the sample policy from the N.D. School Board Association. I was told because of the issues I had raised they were "re-examining" the policy as they were no longer certain it complied with the law and were no longer sending it to schools. This does not give me any confidence there is a general consensus that current law allows use of a hearing officer and limiting appeals to the record complies with the law.

Statement number 3 is also true but incomplete. The law as currently crafted would allow a board to preclude taking testimony and hearing additional evidence. See a portion of the sample instructions on page 3.

Statement number 4 is true but irrelevant. The administrative hearing process such as that used by the EPA and other government agencies is covered by a formal and lengthy administrative law process. It operates under the authority of the Legislative branch. The expulsion hearings are designed to be informal. The goal is to reach the truth rather than have an adversarial, formal hearing.

Statement number 5 would have you believe I am coming from another planet and disrupting the forces of God and nature. I find it interesting that when I tried to offer my amendment I was told talk to Gary. The NDSBA employee added, "Who in heck asked Darrell to introduce this bill. This isn't something the Association supports." See page 4. This does not lead me to believe there is a

objects to this
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consensus between teachers, administrators, school board members, and those interested in preserving adequate due process for students.

Statement number 6 is a red herring that hints if the amendment I offer is accepted it will add to the cost. This is not true. There will be little if any difference in cost between a hearing which allowing testimony and one that does not. Ask the proponents to provide examples of how the cost will increase.

Mr. Chairman, I am reminded of several quotations as the opponents of the amendment I offer perform this intellectual Kabuki dance.

The first quote comes from President William Jefferson Clinton, "It depends on what the meaning of the word is, is?"

The second quote comes from Alice Through the Looking Glass, "When I use a word," Humpty Dumpty said in a rather scornful tone, "It means just what I choose it to mean—neither more nor less."

"The question is," said Alice, "whether you make words mean different things."

Let's continue our journey with Alice.

Please turn to page 5 and examine the highlighted portion. Base on the words, "a school board...shall provide the student with a hearing before the school board" would you answer questions 1 and 2 as true? Of course not, it fails the common sense test.

For the sake of argument assume number 2 is true. The law reads "the school board shall take testimony and consider evidence, including the existence of mitigating circumstances," these words actually mean the board can limit an

appeal to the record, prohibit new evidence, and prohibit introduction of mitigating circumstance. That is what the proponents would have you believe.

Mr. Chairman, make no mistake, this bill as currently written has a much broader affect than "eliminating troublesome ambiguities." It will give permission to school boards prohibit the testimony of a parent or student before the school board on a weapons violation policy. Don't be fooled. That is the change that is being advocated. This is a significant change that I do not believe was explained to the sponsors. In fact, the proponents would have you believe this is already the law. Yet, as I stated early, they privately have serious doubts. Mr. Chairman, I would like to close with a quote from Dr. Martin Luther King, "It is always the right time to do the right thing." I urge you, do what your heart tells you is the "right thing."

Thank-you.

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THE LAW

Please note I do not pretend to be a legal expert. If others offer contradicting evidence, especially the Attorney General's Office or the Legislative Council I would defer to them.

The history I was able to put together indicates at one time the authority for expulsions was derived from NDCC 15-29-08. See pages 6 and 7. I believe in 1985 the Legislature added sections to deal with expulsion and suspension of students in an alternative education program. See page 7a.

In 1995, in response to Federal Legislation, North Dakota adopted NDCC 15-49-12 and 13. See Page 8. It appears this legislation also removed the ability of a school board to delegate expulsion based on a weapons violation. See pages 9 and 10. While I believe it is very weak, an argument could be made that in 1999 NDCC 15-19-09 would allow the delegation of expulsion for weapons violations, I believe most practitioners of law would state the specificity of NDCC 15.1-19-10 would not allow this. See pages 10a, 10b, and 10c.

It appears there was renumbering and further amendments in 2001. See page 12. It is very important to note that NDCC 15.1-19-9(4) no longer includes expulsion for weapons policy violation. However; it does allow for suspension up to 10 days. See page 13. It is also important to note that 15.1-09-33 no longer even contains language about expulsions or suspensions. See page 14 and 15.

I believe the state of the law in North Dakota is clear and unambiguous:

1. NDCC 15.1-09-33 does not deal with expulsions or suspensions.
2. NDCC 15.1-19-09 does not deal with expulsions for weapons violations.
3. NDCC 15.1-19-10 deals with weapons violations and mandates a board hearing.

See page 16 through 20.

I have attached part of a Supreme Court case which supports the well accepted view that a state can make education a fundamental right and suspension or expulsion will follow a student the rest of their lives and is not a minor occurrence. I believe the North Dakota Legislature showed great wisdom because of the life long effects that any weapons violations expulsions should be reserved for the school board. Please do not take a step backwards and open the door for bureaucrats to have the final say on these decisions.

Thank-you.



GRAND FORKS PUBLIC SCHOOLS

Handout

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Ph. (701) 746-2205, Ext. 120
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GRAND FORKS PUBLIC SCHOOL DISTRICT STATEMENT OF SUPPORT OF HB1237

TO: SENATE EDUCATION COMMITTEE

The Grand Forks School District wishes to express support for the passage of HB1237. This bill introduced by Representatives Nottestad, Aarsvold and Haas and Senator Espgaard eliminates several troublesome ambiguities in the current law and provides clear and concise guidance for the suspension and expulsion process. In doing so, it is cognizant of the federal requirement concerning expulsions for possession of firearms on school property.

HB1237 provides an amendment to permit expulsion beyond the end of the current school year for violation of a school district's weapons policy. This corrects a circumstance where, under the current law, a flagrant and serious violation that occurs in May is only punishable with a very short expulsion while the same violation occurring much earlier in the school year would be punishable with a much more significant length of expulsion. The nature of the violation rather than the timing of the occurrence of the violation should be the influencing factor in the district's decision on expulsion length and this amendment provides that revision.

HB1237 amends the current law so as to specifically provide that a hearing may be held by the school board or its designated hearing officer. Large districts are currently using designated hearing officers to conduct suspension and/or expulsion hearings. While the use of a hearing officer has been regarded to be proper and within the general powers of the school board, the amendatory language of HB1237 clarifies that issue. The use of a hearing officer is not required. If the board chooses not to do so, it may hold the expulsion hearings itself. Thus, it is discretionary with the board as to whether or not it is going to designate a hearing officer. If a hearing officer is used it is implicit in the language of HB1237 that a record of the hearing must be made.

Although the proposed language gives a student whose case is heard by a hearing officer the right to have the board review the case on the record, a board would not be precluded from taking or hearing additional evidence if the circumstances warranted. The proposed language sets out the student's right in regard to appeal but it does not limit the board. This process is very similar to the judicial or administrative hearing process.

HB1237 is the result of careful and thoughtful consultation between its sponsors, school administrators and others who have a hands-on working knowledge of the suspension and expulsion process. We believe the bill in its current form assures a student of due process as required by law and does so without excessive and costly process.

We respectfully request that the Senate give this Bill favorable consideration and passage in its current form.

Sincerely,

Dr. Lyle Hall
School Board President

Dr. Mark S. Sanford
Superintendent

"A Great Place to Grow and Learn!"

AN EQUAL OPPORTUNITY EMPLOYER

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