

2009 SENATE EDUCATION

SB 2289

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2289

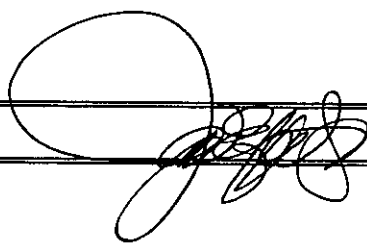
Senate Education Committee

Check here for Conference Committee

Hearing Date: February 11, 2009

Recorder Job Number: 9160

Committee Clerk Signature



Minutes:

Chairman Freborg opened the hearing on SB 2289. All members were present.

Senator Flakoll introduced the bill. See written testimony. The constituent that prompted the introduction of this bill could not join us today, she fell and broke her hip. Her husband intended to testify in her place but the weather prevented him from making it to Bismarck.

Senator Judy Lee will read her testimony.

Senator Taylor asked how long the definition of corporal punishment has been in law.

Senator Flakoll said he is not aware of when it became a part of law. He thinks we made changes in 2001.

Senator Taylor asked if the definition of the phrase "preservation of order", is up to the school board.

Senator Flakoll said it is the responsibility of the school board or administration, he is not looking at changing those words.

Senator Judy Lee testified in favor of the bill. She distributed and read the testimony of Mavis Tjon (attached). It is important to have uniformity in the corporal punishment issue.

Senator Taylor said the changes seem reasonable. Is there more to the story? He cannot imagine a teacher being dismissed on this basis, without something else underlying it, without something in the prior relationship between teacher and administration.

Senator Judy Lee said there is way more to it than just this and there are varying opinions and court cases and hearings all kinds of things that apply which she could review at a later date.

The incident itself raises the question about what is appropriate. In the Fargo Moorhead area, after this case was resolved, there was an incident in Hawley, MN, where a student misbehaved and said a disrespectful thing and a teacher slapped him. The teacher got a letter of reprimand in his file. In Ms. Tjon's case, she tapped a student to get his attention and it resulted in dismissal without even an opportunity for the teacher and parents and principal to discuss it. It is appropriate to have different levels of definitions for different ages of children.

There is a challenge when a teacher moves among multiple schools or when students move between schools. There needs to be consistency of policy.

Bev Nielson, North Dakota School Boards Association, said they have some concerns. They understand the "willful" part of the bill. It says you cannot go beyond the law for purposes of discharge of a teacher where corporal punishment is concerned. "Willful" is an interesting term and probably requires a finding of fact, they understand it is the state law and don't have as much problem with that being the policy. The investigation would show whether it was willful or not. Their larger concern is with the phrase "consistently applied". They want to be sure if their policy is worded like the law that would be considered consistently applied. If consistently applied means if even one teacher is discharged for striking a child that every teacher would have to be discharged, regardless of the circumstances surrounding the situations, then they have a problem with it. They are afraid the way it is worded right now would not allow individual investigation of instance.

Senator Taylor said if the policy is consistent, the application should be left to the administrator of the district.

Bev Nielson said if part of the policy says the administrator will investigate and that is done consistently, then they are ok with it.

Senator Flakoll asked what is the Love and Logic plan.

Bev Nielson said she doesn't know. She does know the Respect and Protect program. Those things don't define district policy, they are building level programs to avoid bullying.

Doug Johnson, North Dakota Council of Educational Leaders, said they have no position on the bill. Love and Logic is a program that is offered through the North Dakota League Center, specifically designed to work more with the upper levels but also with elementary students, a process of looking at the needs of the child and consistently applying a logical solution that will help the child through the difficulties of the disciplinary action. He also has concerns with the consistently applied portion on page 2 line 4 of the bill. That becomes a difficult situation for administrators for them to make a determination of what actually happened. As a principal when he has such situations, he would call Social Services and describe the situation to them and ask if the situation would be child abuse. If they said probably not, he continued the investigation. If they said yes, he would file a report for abuse and social services would investigate and file a report. That would be part of the decision making process. That is how most administrators would handle it.

Senator Bakke said it is only fair that there be consistent, step by step procedure, for example, talk to the child, talk to the teacher and talk to other children in the room before it progresses to the point where it goes to a dismissal at the district level. Consistently applied to her means an administrator setting up a step by step process to investigate a report. Is that in place in schools?

Doug Johnson said he assumes it is. Most administrators go through training for it.

Senator Bakke said we are an at will state. If it is consistently applied that would mean everything is fair and is putting responsibility on the administrator to follow the appropriate procedures.

Doug Johnson said he agrees it needs to be consistent. There are always going to be extenuating circumstances may not make it absolutely consistent.

Senator Bakke said she is reading it to say within a district, does he think it should be consistent across the state?

Doug Johnson said he thinks it's a district decision. The state sets it in Century Code, the districts apply it.

Senator Flakoll asked if he agrees the page 2 intent is it is uniform across each district.

Doug Johnson said that is his interpretation, his question is if this is for all policies or just this one policy.

Gary Thune, attorney for the North Dakota School Boards Association, testified against the bill. He is against the bill because of the word "consistently". The word is subject to interpretation. If they discharge Mr. Smith for doing something must they now discharge any teacher who does what Mr. Smith did? It could be a fire one, fire all sort of thing that would be adverse to teachers. On the other side of the coin, defense at hearings could say 5 years ago you did not take this kind of action against Mrs. Jones so you cannot take this action today. Teachers are not "at will" employees, they have not only a contract for the year, which takes them out of the employment at will status, they also have continuing contract rights. If the statute says consistently investigated, a procedure could be developed. If it says consistently applied, that is not the investigation, that is the actions taken. He has no problems for the policies to be a little different for elementary and secondary students.

Senator Lee said to fix that would we need to drop "consistently applied", would it still say the schools have consistent policies.

Gary Thune said he believes that would remove the concern.

Senator Taylor said this bill is about the policy for corporal punishment, not about dismissal.

Gary Thune said the next bill will deal with the procedures for discharging the teacher or principal. It will show very clearly that teachers are not "at will". At will means "tomorrow you are not working here".

Chairman Freborg closed the hearing on SB 2289.

Chairman Freborg opened the discussion on SB 2289. All members were present.

Senator Bakke said she will be drafting amendments for the bill.

Senator Flakoll said he will visit with Senator Bakke since he also wants to amend the bill.

Both will have their amendments later in the day.

In the afternoon, Chairman Freborg reconvened the meeting of the Senate Education Committee and opened discussion of SB 2289.

Senator Bakke distributed amendment .0201 and reviewed it. Section a adds that guidelines must be in place as to how to investigate, section b says the procedures must be the same in all elementary schools within a school district, all middle schools in a school district and all high schools in a school district. She added section c, she would prefer a may rather than a shall, pursue the administrator's discharge for cause.

Senator Flakoll asked Senator Bakke about the change to page 2 line 6, if the administrator fails to follow the board's guidelines, the board shall pursue the administrator's discharge for cause.

Senator Bakke said that is where she would like it changed to “may”. In the incident that prompted the bill, if a proper investigation had been followed and procedures had been done correctly, perhaps that discharge would not have occurred.

Senator Lee said it seems like this is making the policies more stringent with this bill and it doesn't mean that they were not followed before, it just means they had written their own policies different than what we had thought they should be, hence the bill. If that is the reason for this last section, he is not in favor of it.

Senator Flakoll said he would rather not have the last section, it would encumber the bill.

Senator Taylor said if we changed
shall to may would it really need to be there?

Senator Flakoll asked if they can do that without it being in law.

Senator Bakke she supposes they could but this sends a pretty clear message that you don't interpret the law to your benefit unless you want to put your own neck on the line. When she met with Anita Thomas, they tried to look at the consequences when an administrator fails to follow the Century Code and that is not a reason for discharge and that is why they discussed this. Maybe the committee could look at the amendment in two parts.

Senator Bakke moved part A of the amendment .0201, all but section c, seconded by Senator Taylor. The motion passed 4 – 1.

Senator Bakke moved part B of the amendment .0201, section c with may instead of shall, seconded by Senator Taylor. The motion failed 2 – 3.

Senator Bakke moved a Do Pass As Amended on SB 2289, seconded by Senator Flakoll. The motion passed 4 – 1. Senator Flakoll will carry the bill.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2289

div
A

Page 2, line 1, after "4." insert "a."

Page 2, line 2, overstrike "and" and insert immediately thereafter an underscored comma, after "met" insert ", and guidelines detailing how all incidents are to be investigated", and after the period insert:

"b."

Page 2, line 3, replace "governing" with ", procedures, and guidelines applicable to"

Page 2, line 4, remove "and consistently applied" and replace "governing" with ", procedures, and guidelines applicable to"

Page 2, line 5, remove "and consistently applied" and replace "governing" with ", procedures, and guidelines applicable to"

Page 2, line 6, remove "and consistently applied"

Page 2, after line 6, insert:

part
B

"c. If an administrator fails to follow the board's guidelines for investigating incidents under this section, the board ~~shall~~ pursue the administrator's discharge for cause." *may*

Renumber accordingly

Date: 2/11/09 :
 Roll Call Vote #: 1 :

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2289

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendment 90533.0201 - Division A

Motion Made By Sen. Bakke Seconded By Sen. Taylor

Senators	Yes	No	Senators	Yes	No
Senator Freborg		✓	Senator Taylor	✓	
Senator Gary Lee	✓		Senator Bakke	✓	
Senator Flakoll	✓				

Total (Yes) 4 No 1

Absent 0

Floor Assignment _____

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

Date: 2/11/09
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2289

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendment 90533.0201 - Part B with may instead of shall.

Motion Made By _____ Seconded By _____

Senators	Yes	No	Senators	Yes	No
Senator Freborg		✓	Senator Taylor	✓	
Senator Gary Lee		✓	Senator Bakke	✓	
Senator Flakoll		✓			

Total (Yes) 2 No 3

Absent 0

Floor Assignment _____

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

Failed

Date: 2/11/09 :
Roll Call Vote #: 3 :

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2289

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Sen Bakke Seconded By Sen Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Freborg		✓	Senator Taylor	✓	
Senator Gary Lee	✓		Senator Bakke	✓	
Senator Flakoll	✓				

Total (Yes) 4 No 1

Absent 0

Floor Assignment Sen. Flakoll

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

REPORT OF STANDING COMMITTEE

SB 2289: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (4 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2289 was placed on the Sixth order on the calendar.

Page 2, line 1, after "4." insert "a."

Page 2, line 2, overstrike "and" and insert immediately thereafter an underscored comma, after "met" insert ", and guidelines detailing how all incidents are to be investigated", and after the period insert:

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Page 2, line 6, remove "and consistently applied"

Re-number accordingly

2009 HOUSE EDUCATION

SB 2289

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2289

House Education Committee

Check here for Conference Committee

Hearing Date: March 16, 2009

Recorder Job Number: 10972

Committee Clerk Signature

Carmen Hart

Minutes:

Senator Tim Flakoll, District 44, Fargo appeared. (See Attachment 1.)

Rep. Bob Hunsakor: Athletic teams that are traveling and putting in a late game and an incident comes up that could involve what we are talking about. How would that be covered?

Senator Flakoll: Depending upon the situation, because there are some on page 1, Lines 18-19 different stipulations with respect to athletics because of corporal punishment definition. Some of that would be allowed or some differentiation because it supports are permitted. Corporal punishment in terms of the willfully do it would be uniform across the state which I think is an added benefit. I believe that individual student would be subject to the rules, regulations, and requirements of that local school district that they come from.

Chairman Kelsch: The current statute says that is not corporal punishment if you suffer an injury in an athletic ...

Senator Flakoll: If the chair and I are playing catch and she throws in a fast ball and hurts my hand, that is not corporal punishment.

Chairman Kelsch: Or if we were playing football and I nail your nose or something like that.

Greg Burns, Executive Director, NDEA, appeared in support. (See Attachment 2.)

Rep. Phillip Mueller: Are you aware of any incidents that come to mind where this would be particularly helpful?

Greg Burns: This may have been helpful in an incident that I can't discuss fully because criminal charges were filed subsequently dismissed. That case indicates how serious some of this can become. If somebody alleges a violation of the corporal punishment statute, it is a criminal matter. Having policies that are clear at least in relationship to the statute would be a great help in that regard. Special education especially is an area where there are adventures every day, and it is very difficult to maintain order sometimes. This bill would help that in having clearly an unstated policy about what to do in difficult situations. It would be a great help not only to educators but to students and parents alike.

Rep. Mike Schatz: The federal law—I know when I first started teaching there was a ruling about spanking and it was okay to spank—and now, of course, that has changed a lot. Has that changed federally or have there been more rulings in a federal circumstance?

Greg Burns: Fortunately, that has changed. Spanking is not allowed. Especially in special education is where the federal laws became important. It used to be that any behavior that was manifested by a special education student that was directly related to the IEP, you could not discipline them. This led to tremendous amounts of chaos. That has subsequently been changed, and people since learned that discipline has a strong relationship to preparing people to be especially job ready, and it is not appropriate for schools to allow behavior on the part of students that employers wouldn't tolerate. Federal laws are pertinent.

Vice Chair Lisa Meier: You mention in your testimony that some school districts and even some buildings within school districts have adapted standards that exceed the requirements in the statutes. Can you explain to us what is going on through the state other than just West Fargo?

Greg Burns: It is not widespread fortunately. We do have instances where even though it is not a formal adoption of a different policy within a building in the school district, some

administrators will treat the policy differently. Part of that is human nature. Part of it is not having consistent policies that are enforced throughout the district.

Rep. Bob Hunsakor: I understand athletic competition is contained in here, but we do have some coaches who following a tough loss can get quite upset and supposedly in the locker room cause physical harm. I have seen that happen over the years where the kid is jerked around. At a away game if that happens, since the students are under the supervision of the coach, does that same thing apply as if it would be a school building within that town?

Greg Burns: Yes, it would. This applies to students that are in the care of an employee of the school district. Very fortunately, I think this would cover some incidents that happen in the heat of the battle. This bill clearly says that when students are in a charge of a licensed professional that corporal punishment is to be avoided and there are consequences for it.

Chairman Kelsch: I think the current law is fairly clear. It says caused by an athletic competition or other recreational activities voluntarily engaged in by a student. What it is saying there is that it is the student that is suffering the pain or discomfort from the engagement of the sports activity. Anything that happens in the locker room is not the engagement of that activity. That is under the direct supervision of that individual.

Greg Burns: That is our understanding.

Rep. Jerry Kelsh: Let us say in a wrestling match somebody beat somebody and then in the hall or someplace, the loser was very aggressive and did some bodily harm to the other person, what is the punishment for them? Are they under anything in law?

Greg Burns: The high school league has rules for that. The official in charge of the event--if it was a wrestling match, team points would be deducted. The player would be expelled from the meet. There would be subsequent sanctions both by the school and the high school league for behavior like that.

Chairman Kelsch: Potentially, there could be criminal charges filed against one or both.

Greg Burns: Potentially. You are dealing with minors so it would be interesting to see how that worked.

Bev Nielson, NDSBA, appeared. We worked with the senate side and got this bill in a form that we now support. I am also speaking for **Doug Johnson, NDCEL,** and they support this as amended in the senate as well.

Rep. Mike Schatz: In here it talks about physical pain. Is there such a thing as verbal punishment that goes on in some of our school districts?

Bev Nielson: If it came under the categories harassment or unbecoming or inappropriate behavior, it wouldn't be considered corporal punishment because by definition that is physical.

Rep. Phillip Mueller: On the second page, line 3, the guidelines stating how things are being investigated, a couple of questions. Are we to assume that those aren't in place in all instances now? Was that particular wordage motivated or consideration of SB 2357 which was the dismissal bill?

Bev Nielson: Schools do have, I believe, guidelines, but they need to be really clear, and they need to be where everybody knows them. By the guidelines, we mean who reports to whom, at which time, and how you investigate and how you come to a conclusion. This was put in the senate as part of their amendments that we asked for. The way the bill was originally written, it just said they had to be identically applied and it didn't talk about guidelines. Our concern was that administrators still have the ability to investigate and treat cases based on the circumstances of that case. That is why they said okay, but at least we want to know what the guidelines are going to be, and we agreed to that as opposed to just saying if you ever fired a teacher for letting a hand on, you have to always fire a teacher for a hand on. They need to be investigated and treated according to the circumstances.

There was no opposition.

The hearing was closed.

Rep. John Wall moved a **Do Pass**. **Rep. Phillip Mueller** seconded the motion.

Rep. Mike Schatz: I am a little curious about a lot of these things. If a student was screaming profanities or something and I went up and put my hand over his mouth, would that be corporal punishment?

Chairman Kelsch: That could be potentially be construed as corporal punishment according to some of the school districts. It shouldn't be but potentially that can be.

Bev Nielson: The key comes in with the willfully inflicting pain. You have two findings of fact there. Number one was it willful, and number two was there really pain inflicted? If a disturbance is bad and looks like it could escalate, but what they really mean is that you can forcibly separate people, clear them out.

Chairman Kelsch: Even so, depending on whose side of the story. If you put your hand over a student's mouth and did you do it like this or did you do like this (demonstrated)? Do they have any red marks? Is the kid going to say they had pain? That is where it becomes one of those he said she said. How much of Mommy and Daddy pushing you from behind to say this is what happened? It puts people into a really difficult situation. Quite frankly, I think there are some of those high school kids that are a heck of lot bigger than a lot of us, and I would hate to be in the middle of a situation where they were aggressive toward each other.

Rep. David Rust: Almost every year when I did a fall teacher in service—one year I had them all raise their hand and swear after me I will not strike a child. I tell them you take three careers into your hands when you do those things—yours, the principal's, and mine. I tell people that you need to get yourself away and the student away. If you are at that point, you just need to separate yourself, because you don't want to have some kind of 25-30 year career

go down the tube in moments of anger. I think this is probably a pretty good bill. I like the idea of not expanding the definition. I think maybe a number of school districts probably have policies on corporal punishment. However, enough of them probably might lack guidelines detailing investigations. This may cause them to put into the policies maybe a procedure so that when something happens, that everybody is doing the same thing on each occasion that it happens.

The hearing was reopened.

Senator Judy Lee, District 13, West Fargo, appeared and provided the written testimony of Mavis Tjon. **(See Attachment 3.)** It is obviously important that there be some consistency and that it would be differing in elementary, middle school, and high school. What might be appropriate for a basketball or football coach for a high school student is not necessarily going to be the same thing as appropriate for a second grade teacher.

Vice Chair Lisa Meier: What was the age of the child?

Senator Lee: Third grader, I believe it was.

Vice Chair Lisa Meier: Had there been any documented behavioral problems with this third grader presented from the school that you know of?

Senator Lee: This would have to be informal. Obviously, the privacy of the student is important, too. I heard from many different sources who know the family and who have children in the school that this child has significant reputation for being disruptive. The thing is in this whole game they were playing, the children were all in a circle and they were passing stones in rhythm. This is a music class. He took great delight in stopping it when it got to him and not passing the stones off. She asked him several times if he wanted to step out of the circle and let the other children continue to play. That would be fine. Otherwise, if he was going to stay in the circle, he needed to play too. He chose to stay in the circle. Every time

the stones came around to him again, he would stop it again which meant that all the other students were interrupted in the rhythm learning experience that they were having as well.

She took two fingers and tapped him alongside the back of the head because she was walking around the back of the circle, and that was it, and he was startled. He did it just right, and he decided to stay in the circle. He went on his way and everything seemed fine. She felt it was important to report. I think it is really important to note also that she had self reported. That willful word really is important.

Rep. David Rust: Since this bill probably came as a result of a single incident, just out of curiosity, the instructor who lost her job as a result of this incident, are you aware if that person had been talked to or maybe even something in a file about previously doing similar things that may have caused the decision that was rendered as opposed to maybe something of a lesser order?

Senator Lee: As is true of every public record, her employment record is available. In fact the night that this was brought to her attention, on the six o'clock news there is a reporter holding her personnel file. I think that is another discussion we ought to have at another time. Anyway there was nothing in her file about any kind of behavior issue or inappropriate interaction with a student with her being a heavy disciplinarian or striking a child.

Rep. David Rust: I understand that, as a practicing administrator, sometimes, though, you don't put things in the file and yet you may have talked to somebody more than one or two times. Part of the reason why you don't many times put it in their file is because like you said it could be on the six o'clock news. Are you aware if she had ever been approached by someone about maybe those kinds of activities?

Senator Lee: I am absolutely confident that nothing of that sort had ever happened. We have a change in administration that has led to a lot of changes in policies in the last couple of

years. It is sometimes challenging because of that. This is a teacher with years of experience and only two or three years away from retiring. I think if one visited with earlier administrators, one would have found that the record was clear.

Rep. Jerry Kelsh: Have we put the teachers in such a position that they really can't discipline students and if they do, even breaking up two kids, are they going to be accused of using too much force? In your research have we gone too far?

Senator Lee: I guess it is hard to say we have gone too far. I do really think that you make a very good point, Rep. Kelsh. I think that we need to be terribly careful that we are not slamming a kid against the locker and having him slide to the floor. That is inappropriate or hitting a student or something like this. When they can't do anything, there are kids who are really challenging to the teachers as well especially as they get a little older. Now this third grader wasn't certainly threatening Mrs. Tjon, but it is very difficult to do some of these things when you can't touch the child. I don't mean hit the kid. We really want them to focus their attention. We really have tied the hands of our teachers in some ways here as far as the strictness with which some districts such as the one in which I live have established this policy which is why consistency in a corporal punishment policy would be important. I think the word willful is just extremely important. If I intended to hurt you, that is way different than if I bumped into you or there are any number of things that would involve physical contact but not the intent to injure. It is not your problem what our district's issue is. The administrator's position was that it was the board's responsibility to support their administrators and not to undermine their authority and the board swallowed that. A couple of the incumbents lost in the following election. This isn't the only reason why. In a district that has been a wonderful district and continues to be and that passed the last building bond issue by 85%, we are struggling now with public resistance to some of the things that are taking place in the schools

because of some changes that are being made without a lot of community involvement. Most of us would agree that it may take a little longer to have members of the public involved in a decision whether it is in the city or a school board, but if you have the buy in from the community and some ownership by those people in what the project is that's moving ahead, it is much more likely to succeed. It is not the North Dakota way.

Rep. Bob Hunsakor: I am going to paint a scenario. West Fargo apparently has had a policy with the words willful and willfully not in their policy. Wahpeton is playing West Fargo in basketball. In the midst of the game the player off of each team gets in a fist fight on the floor. The Wahpeton coach rushes out to separate them, and in the fling of arms somehow his hand gives a West Fargo boy a black eye and it may be bleeding. Whose board policy would that coach fall under? It is on the West Fargo's floor. He is a Wahpeton coach.

Senator Lee: I am kind of thinking that would be the High School Activities Association rules that would prevail in a case like that.

Chairman Kelsch: That would be correct. First of all students sign a release that they are under the North Dakota High School Activities Association rules and guidelines. When they are on the court and when they are playing in that venue, they are under their rules and guidelines.

Rep. Bob Hunsakor: I understand that. What if the parents of that boy sue? It still would work through High School Activities?

Chairman Kelsch: Yes. The way that I understand it, it would still work through the North Dakota High School Activities Association.

Senator Lee: I think that is good through the High School Activities Association so that you don't end up with one district fighting against another in court on a situation where you know the kids needed to be separated in an altercation like that.

Chairman Kelsch: That is why you have the referees. That is one of the risks of being a referee. Typically it is not the coach that is banging them up against the boards.

Senator Lee told a hockey story.

Rep. David Rust: I suspect, Rep. Hunskor, that this local school district would also be talking to that individual about those incidents.

Chairman Kelsch: They probably would talk to them but the responsibility lies on the North Dakota High School Activities Association.

Rep. Bob Hunskor: My question had to do with if they went to a lawyer, the parents and boy and come at from that attitude. Who would they charge?

Chairman Kelsch: A parent can probably try to sue anybody or anything.

Rep. Phillip Mueller: I wonder if on page 2, line 3 of the bill the added amended language had not ought to reflect reported and investigated? It seems like the recording process here ended up very important in all circumstances.

Chairman Kelsch: I think when they are talking about how they are investigated, they have to be reported before they can be investigated. The way I read it, it could go to B, you insure that the policies, procedures, and guidelines are the same. Probably in the procedures, you would outline if an incident occurred, how it needs to be reported to the chain of command. Greg, is that typically how it is done?

Greg Burns: I think if there is an investigation, there would have to be a report that triggers the investigation. Somebody would have to report, but it is a problem where sometimes it is not reported the right way. If districts develop policies on this, everything will become clear.

Chairman Kelsch: If they have the policy and then they have the procedure for how it suppose to go, then that would be the reporting process. One of them, the policies or the procedures would be the reporting process.

Greg Burns: What should normally take place is there is a clear delineation of who reports an incident to whom and then how the investigation would commence from there. For example, many policies it is incumbent upon the building administrator to first talk to the accused about what happened before proceeding with an investigation. Unfortunately, too many policies there is not definition of that so this is why this is a good thing. People will sit down and talk about how this was suppose to happen. Again, it would be clearer if we report an investigation, but I think one could conclude that if there is an investigation, something was reported.

Chairman Kelsch asked Rep. Mueller if he would be more comfortable adding you know..

Rep. Phillip Mueller: It is not a big issue but it seemed to me that it ended up certainly being a big part of the discussion that went on. If we are comfortable in procedures and guidelines

actually reference reporting, I am fine with that too.

Rep. Bob Hunsakor: Doesn't the sentence before that cover—procedures to be followed if the standards are not met? Does that cover reporting?

Rep. Phillip Mueller: It could.

Chairman Kelsch: I am guessing that is what they are going to have to do, because they are going to have to say the teacher is going to report it—I tell you what I certainly wouldn't have reported it to the administrative assistant any longer because I think that could have been part of the problem. I think it got blown out of proportion by the time it actually got to the administrator.

Greg Burns: I spent considerable time with Mavis Tjon. The problem here was not only was the word willfully struck from the school district policy, they adopted a zero tolerance policy of

touching any student for any reason which is completely unenforceable for many of the reasons we just discussed. This is why it is good that we are looking at legislation that

prevents other districts from doing this. You just can't imagine the situations that people get into when we see one student assaulting another. A teacher can't sit and decide too long whether or not he or she should intervene if somebody's life is potentially at risk. This happens all too often and with more and more frequency. He told about a situation with a student buying a ticket from his wife at a school activity. We are dealing with explosive children these days. That is why zero tolerance—you can't do that because you are putting other kids at risk.

Rep. Jerry Kelsh: I did not ask the question about if we are going too far because I feel kids should be sliding off the wall. I don't agree with that either.

DO PASS. 14 YEAS, 0 NAYS. Rep. Lee Myxter is the carrier of this bill.

Rep. Bob Hunsakor shared a story about girls fighting at least once a week in a school he taught at in California. We have it pretty good here in North Dakota.

Date: 3-16-09
Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2289

House Education Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Rep Wall Seconded By Rep. Mueller

Representatives	Yes	No	Representatives	Yes	No
Chairman RaeAnn Kelsch	✓		Rep. Lyle Hanson	✓	
Vice Chairman Lisa Meier	✓		Rep. Bob Hunsakor	✓	
Rep. Brenda Heller	✓		Rep. Jerry Kelsh	✓	
Rep. Dennis Johnson	✓		Rep. Corey Mock	✓	
Rep. Karen Karls	✓		Rep. Phillip Mueller	✓	
Rep. Mike Schatz	✓		Rep. Lee Myxter	✓	
Rep. John D. Wall	✓				
Rep. David Rust	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep Myxter

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

REPORT OF STANDING COMMITTEE

SB 2289, as engrossed: Education Committee (Rep. R. Kelsch, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2289 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2289

SB 2289

2/11/09

Senator Tim Flakoll

District 44- Fargo

For the record I am Senator Tim Flakoll from District 44 of Fargo.

SB 2289 is a constituent bill that has been introduced on behalf of a long-time teacher in my district. It has its genesis as a result of discussions with this constituent who was personally involved in an employment situation in the West Fargo School District. During our discussions I learned of a couple of two problems which are addressed in SB 2289.

The first issue is the definition of corporal punishment.

Section 1, subsection 3 deals with the definition of corporal punishment. The bill simply asks to change the law such that a district may not expand through policy the definition of corporal punishment beyond the state's definition. In one situation I am aware of the local school district changed the definition of "willfully" cause the infliction of pain on a student. (page 1 lines 18 and 19) to overstrike the word "willfully." As such their policy read to cause any type of infliction of pain on a student.

Examples:

Also see page 1 lines 20-22

The state statute should be the defining interpretation in making the judgment (citation of City of Fargo v. Sauby – relating to traffic fines where the Supreme Court ruled that the state statute overrules home rule charter).

A statewide legal uniformity seems only appropriate in this area. If REAs become more prevalent this uniformity will become even more important. Plus one could argue that it has basis in the Constitution on North Dakota which requires us to have a uniform system of education.

The second issue that the bill deals with is different rules, regulations and policies regarding the classroom environment.


Section 1, subsection 4 - (page 2)

In the case that I am most familiar with, the person was employed by the district and their job required them to go from building to building within the district to teach music classes.

The problem that I learned of was that many of the school buildings (note physical sites not districts) in the district had different rules, regulations and policies regarding the handling of the classroom environment and dealing with students who do not follow policies and standards of student behavior.

With the changes proposed on page two, we require that the school board of each district shall ensure that the policies governing a district are **“identical and consistently applied by the district.”**

As a result there is **uniformity within the district** regarding its policies for student behavior and how they are handled. That way every sixth grader is subject to the same policies within a district regardless which building they happen to be in.



The bill also recognizes that 6th graders might need to be treated differently than high school seniors so it allows for districts to have different policies and standards for student behavior and procedures for different grades.

It seems logical that something that is acceptable in one building in the district would not, if put into practice result in the employee getting written up or have other more severe sanctions brought against them.

It seems in the best interest of students, parents and district employees that we have greater consistency. SB 2289 provides that greater uniformity.

Again I feel that the changes proposed in this section of the bill not only make sense but set a district on firmer legal footing.



END



Senate Bill No. 2289
Wednesday, February 11, 2009

Chairman Freborg and members of this committee, my name is Mavis Tjon from Fargo. I want to thank you for the opportunity to testify before you today in support of this bill. I want to state clearly that I personally will receive no benefit from the passage of this bill. My sole purpose is to prevent other teachers from having the experience I had in West Fargo.

In regards to Section 1, #3: In November, 2006 I was dismissed from my teaching position in West Fargo after an incident in my classroom. I tapped a child on the head, startling him, and asked him what he was doing, after he repeatedly disrupted a musical game in which the class was participating. He cried briefly, and then chose to continue the game, and played it correctly.

At the beginning of each school year, we are told that unusual incidents in our classrooms should be reported to the Administrator so they would be informed in the event of a parental call. I reported the incident to Administrative Assistant Ronda Rheault before I left the school and asked her to relay the information to Principal Zent. I told her that I could talk directly with Principal Zent the next morning when I returned to the school. I never was given the opportunity to do so, as I was summoned to the District Office the next morning. The incident as I reported it had become something much greater when passed on to the Administration. I reported that I tapped the child, and demonstrated it. When she remembered the next morning to report it, she said I slapped him on the back of the head. When Carol Zent reported to the Administration, she said I hit him.

The West Fargo School District policy on corporal punishment defines it as "physical pain inflicted on a student." The State Statute includes the words "willful intent"; West Fargo has removed those words. By their definition, my report of tapping this child on the head became corporal punishment because the child said it hurt, and this became the impetus for my dismissal. If the school board had been required to prove intent as required by the state statute, it is questionable whether I would have been dismissed.

This bill would require that all school districts in the state judge teachers by the same criteria regarding the corporal punishment policy, just as the state sets the requirements and standards for teacher licensing and continuing

Judee Lee - 2289 2/11/09

education. The statute as now written gives the school boards freedom to implement their own policy, and disregard the requirement of proving "willful intent", as is found in the state definition.

The parents never called to report anything, the classroom teacher did not notice anything wrong. When it was released to the media, Dr. Wallace said that I had committed corporal punishment by striking the child in the head, yet none of them had been present or witnessed the event.

In regards to Section 1, #4: It is important to carry through the same discipline plan within the schools of a school district. When a child moves from one school to another within the same district, which does happen especially in larger districts like West Fargo, it is important that the child knows discipline policies are the same, just as the student can expect to follow the same curriculum. This makes changing schools within a district as seamless as possible for the child.

It is also important for those teachers who may travel between schools or transfer to other schools within the district to have the same plan. Presently in West Fargo, the policy is that the Administrator of each school may choose his/her own discipline policy, with its resulting consequences, and paperwork. What is done in one school is not the same as the other schools. While I was teaching in West Fargo, I traveled between 3 schools. One school used the Boys' Town Plan, another school used the Respect and Protect Plan, and the third school used the Above and Below the Line Plan. Now a fourth plan called Love and Logic is used in one of the schools. This lack of consistency between schools is confusing to students and teachers alike.

Thank you for listening to my testimony. I believe that passage of this bill will guarantee that all teachers will be judged by the same criteria—the state statute-- rather than the policies of individual school boards.

4. a. 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, and guidelines detailing how all incidents are to be investigated.

b. The board shall ensure that the policies, procedures, and guidelines applicable to all elementary schools in the district are identical, that the policies, procedures, and guidelines applicable to all middle schools in the district are identical, and that the policies, procedures, and guidelines applicable to all high schools in the district are identical.

c. If an administrator fails to follow the board's guidelines for investigating incidents under this section, the board shall pursue the administrator's discharge for cause.

2289

Step 2359 2/9/09

SB 2289

3/16/09

Senator Tim Flakoll

District 44- Fargo

Chairman Kelsch,

For the record I am Senator Tim Flakoll from District 44 of Fargo.

SB 2289 is a constituent bill that has been introduced on behalf of a long-time teacher in my district. It has its genesis as a result of discussions with this constituent who was personally involved in an employment situation in the West Fargo School District. During our discussions I learned of a couple of two problems which are addressed in SB 2289.

The first issue is the definition of corporal punishment.

Page 1 - Section 1, subsection 3 deals with the definition of corporal punishment. The bill simply asks to change the law such that a district may not expand through policy the definition of corporal punishment beyond the state's definition. In one situation I am aware of the local school district changed the definition of "willfully" cause the infliction of pain on a student. (page 1 lines 18 and 19) to overstrike the word "willfully." As such their policy read to cause any type of infliction of pain on a student.

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A statewide legal uniformity seems only appropriate in this area. If REAs become more prevalent this uniformity will become even more important. Plus one could argue that it has basis in the Constitution on North Dakota which requires us to have a uniform system of education.

The second issue that the bill deals with is different rules, regulations and policies regarding the classroom environment.

Page 2 - Section 1, subsection 4

In the case that I am most familiar with, the person was employed by the district and their job required them to go from building to building within the district to teach music classes.

The problem that I learned of was that many of the school buildings (note physical sites not districts) in the district had different rules, regulations and policies regarding the handling of the classroom environment and dealing with students who do not follow policies and standards of student behavior.

With the changes proposed on page two, we require that the school board of each district shall ensure that the policies, procedures and guidelines governing a district are “**identical**” with respect to student behavior.

As a result there is **uniformity within the district** regarding its policies for student behavior and how they are handled. That way every sixth grader is subject to the same policies within a district regardless which building they happen to be in.

The bill also recognizes that 6th graders might need to be treated differently than high school seniors, so it allows for districts to have different policies and standards for student behavior and procedures for different grades.

It seems logical that something that is acceptable in one building in the district would not, if put into practice result in the employee getting written up or have other more severe sanctions brought against them.

It seems in the best interest of students, parents and district employees that we have greater consistency. SB 2289 provides that greater uniformity.

Again I feel that the changes proposed in this section of the bill not only make sense but set a district on firmer legal footing.

END

Testimony re:

Senate Bill 2289

House Education Committee 3/16/09

On behalf of the North Dakota Education Association

Greg Burns, Executive Director

Madame Chair, members of the House Education Committee, on behalf of the North Dakota Education Association I would like to express our support of this proposed legislation. Anything that makes the rules easier to follow in difficult situations is helpful to educators in North Dakota.

Our members do not support corporal punishment. They believe in a respectful but firm approach to dealing with student discipline. The current law is clear in 15.1-19-02, Part 2, letters a – e when physical force becomes necessary.

However, some school districts and even some buildings within school districts have adopted standards that exceed the requirements in the statute, and we believe that this bill does a good job of addressing that problem. The bill also requires districts to draft “guidelines detailing how all incidents are to be investigated.” It is our sincere hope that districts will consult with their employees as these guidelines are developed. Our members face these issues every day and to ignore their input would border on malfeasance. Clear and easy to follow policies regarding corporal punishment will also be a benefit to students and parents.

The NDEA urges a “Do Pass” recommendation on SB 2289.

House Bill No. 2289
Monday, March 16, 2009

Chairman Kelsch and members of this committee, my name is Mavis Tjon from Fargo. I want to thank you for the opportunity to testify before you today in support of this amendment. I want to state clearly that I personally will receive no benefit from the passage of this amendment. My sole purpose is to prevent other teachers from having the experience I had in West Fargo.

With regard to Section 1, #3: In November 2006 I was dismissed from my teaching position in West Fargo after an incident in my classroom. I tapped a child on the head, startling him, and asked him what he was doing, after he repeatedly disrupted a musical game in which the class was participating. He cried briefly, and then chose to continue the game, and played it correctly.

At the beginning of each school year, we are told that unusual incidents in our classrooms should be reported to the Administrator so they would be informed in the event of a parental call. I reported the incident to Administrative Assistant Ronda Rheault before I left to teach at Berger Elementary for the afternoon, and asked her to relay the information to Principal Zent. I told her that I could talk directly with Principal Zent the next morning when I returned to Westside after beginning the day at Berger. I never was given the opportunity to do so, as I was summoned to the District Office the next morning while teaching a class at Berger. The incident as I reported it had become something much greater when passed on to the Administration.

The West Fargo School District policy on corporal punishment defines it as "physical pain inflicted on a student". The State Statute includes the words "willful intent"; West Fargo has removed those words. By their definition, my report of tapping this child on the head became corporal punishment because the child said it hurt, and this became the impetus for my dismissal. If the school board had been required to prove intent as required by the state statute, it is questionable whether I would have been dismissed.

This amendment would require that all school districts in the state judge teachers by the same criteria regarding the corporal punishment policy, just as the state sets the requirements and standards for teacher licensing and continuing education. The statute as now written gives the school boards freedom to implement their own policy, and disregard the requirement of proving "willful intent", as is found in the state definition.

I believe that passage of this amendment will be of great benefit to school district employees.

With regard to Section 1, #4: It is important to carry through the same discipline plan within the schools of the school districts. When a child moves from one school to another within the same district, which does happen especially in larger districts like West Fargo, it is important that the child knows discipline policies are the same, just as the student can expect to follow the same curriculum. This makes changing schools within a district as seamless as possible for the child.

It is also important for those teachers who may travel between schools or transfer to other schools within the district to have the same plan. Presently in West Fargo, the policy is that the administrator of each school may choose his/her own discipline policy, with its resulting consequences, and paperwork. What is done in one school is not the same as the other schools. While I was teaching in West Fargo I traveled between 3 schools. One school used the Boys' Town plan, another school used the Respect and Protect plan, and the third school used the Above and Below the Line plan. Now a fourth plan called Love and Logic is used in one of the schools. This lack of consistency between schools is confusing to students and teachers alike.

Thank you for the opportunity to present this testimony.