

**2017 HOUSE EDUCATION**

**HB 1389**

# 2017 HOUSE STANDING COMMITTEE MINUTES

Education Committee  
Coteau A Room, State Capitol

HB 1389  
1/31/2017  
Job 27660

- Subcommittee  
 Conference Committee

Committee Clerk Signature

## Explanation or reason for introduction of bill/resolution:

relating to parental directives; and to declare an emergency

## Minutes:

Attachments 1, 2, 3a, 3b, 4, and 5.

Chairman- Mark S. Owens: opens hearing on HB 1389

Representative Koppelman: see attachment 1 for testimony.

Rep. Mary Johnson: your first statement you claim that this bill would codify rights parents already have, so my question is, is there some rampant denial of parental rights across school districts, that warrant a bill like this.

Representative Koppelman: I do not know if I can define the rampant problems. I can tell you of individual problems where school districts across the state, and I am going back to 2 years ago, where we had the same concerns. Where some school districts would say it does not specifically say in law that you can do this. If you go back over the years, we have allowed parents to opt their children out of things that they find offensive or inappropriate. We have allowed them to opt out of certain parts of sex education, we have allowed whole scale opting out by allowing home schooling, but yet bring the kids in for certain subjects like biology, or physics or physical education. Subjects where maybe they do not have a science lab at home, or they do not have a gymnasium at home, so we have had different levels of participation in the public school system over the years that are all within this theme here. Most recently where some of the concerns lye was different application from district to district about opting out of some of the assessments. You heard plenty yesterday about peoples concern with common core, and vice versa. Two and four years ago that was maybe at a higher fever pitch than it is today, and one of the main concerns is something we no longer doing in the state after June which is participating in a smarter balance assessment. But at that time parents said, I do not want my children to do that, because the data, any data that they collected by contract was to be shared with the federal government at the federal government's request. Now I cannot tell you if that information really was shared or it was ever requested, but that is the way the wording went, and parents in some districts, like in my home district, I had no problem opting my child out, talk to my superintendent, said how should I do this, and we had a conversation on what my child will do at that time, and that

was it. Other districts they said absolutely not, because there is no set right in law for you to do that. That is where we were last session, this session is more just a general concept.

Rep. Pat D. Heinert: could you tell me what 15.1-217 is talking about a school districts interim assessment.

Representative Koppelman: I don't know that I am an expert on that. But in my school district the interim assessment that was used for quite a few years, probably 8 or more years. Was an assessment called the MAP assessment, that was a measure of academic progress, it was an interim assessment used. And now I believe they use an assessment called STAR which is similar in some ways of what it measures, but I am not really familiar with the exact nuances of it. Both the senate and the house bill last time would have permitted both the state, math/ science/ English assessment to be opt out of, as well as the MAP and STAR's. There were some differences on ACT, and some differences on some general terminology that created some concern. As far as those test specifically I think they were both, both sides had to agree to let those be opted out of, and school districts now, some more than others use those to measure progress in students in addition to classroom created tests, quizzes things of that nature.

Rep. Pat D. Heinert: under section 21-18, references a career interest inventory for educational and career planning, could you identify why a parent would not allow a child to take that.

Representative Koppelman: Understand that the general purpose of this bill is to respect parental directives, so when we looked at going into the section of law, that says a student must or a school district must, these are identified, and the one that specifically not listed as an opt out provision was the ACT. In the case of that career inventory, I have not contemplated opting my child out of that, so I cannot say from firsthand experience, but if I was to speculate, some parents are concerned about school practices, where a school tries to funnel their child in a certain direction, you scored this way on a test therefore you are more college material or less college material. More suitable for the physical trades or less, and I think there is some concern, that it can be used, but I do not have any individual examples of parents that have come to me about that one.

Vice Chairman- Cynthia Schreiber-Beck: I am reading from a site called the National Center for Fair and Open Testing, and is this following, this act recognizes parents right to refuse testing in states or districts of opt out laws, it requires districts to inform parents of state law in test participation, it also mandates 95% test participation, but leaves it up to each state to decide what to do if a school or district does not reach 95%, then it adds that no school or district have ever lost federal funding because of the opt outs. Would this put, and I see in the bill you have obviously no ramifications if your children opt out, that you do not want the state to withhold funding or do anything within that mechanism, but yet it could affect that 95%, so you are firm that there is no ramification if they do not meet that 95%.

Representative Koppelman: I know before the ESSA was, that was being debated I believe around the time we had our last session, and I might be fuzzy on exact timelines there. There was a discussion that they were reworking no child left behind, which had a lot worst provisions I think in terms of, if you do not do this, then this, and that sort of thing. Under the

ESSA there is more state control, and I think the intent here is that the federal guidelines are we really want students to test, and we want students to test on equitable basis so we know what the success of the school is. Another ruminant from no child left behind was they had a lot of sub group labels, different income, different nationality, gender, different things, and each of the sub groups had to meet that same 95% requirement, and so we wanted to make sure that a school was not cherry picking who they tested to say, that they will test the best and brightest kids so that our school looks better on the testing results, and I think that was the overall intent of the 95%, as to if one school district happened to have more than 5% opt out what should happen to them, I don't think the school should be punished for the parental choice to opt out, and I have not heard anybody suggest that at a state wide level we would have enough opt outs to be more than 5%, statewide. No I do not want school districts to be punished, and at the same time I want to respect the rights of parents. Does that answer your question?

Vice Chairman- Cynthia Schreiber-Beck: sort of, I just wanted to know your thoughts because it is in every student succeeds act, so I am not sure why we need to reiterate this again, that is my point.

Representative Koppelman: I think this bill is about more than just this science, reading, and math tests. I think this bill is talking about a general principal, and that just happens to be one facet where we have a specific law dictating, so I do want to insure you that the intent of this is more of a broad support of parental rights, not that specific to that test.

Chairman- Mark S. Owens: any other questions. Your reference on the new bill 15.1-2108, 15.1-2117, and 15.1-2118, and yet in the 2015 version that you refereed to the only section you are looking for this option in is 2008. Why the addition of 17-18.

Representative Koppelman: I did not print out each version, I do not recall, it may have had more included in one of the versions than just that one, and that one was the one that had most people up in arms at that time, which was the one that had to do with a smarter balance assessment. To some people involved in that effort, it was an all or nothing about that one thing, but for me it is more about a general principal that I practice myself. Since we are getting out of the smarter balance now I think it is more of a general conversation, and besides that as Vice Chairman- Cynthia Schreiber-Beck pointed out about ESSA, I think that gives us more flexibility as a state to have a bill like this, and interpret it the way we choose.

Chairman- Mark S. Owens: any other questions. Anyone else in support of HB 1389.

Linda Thorson: see attachment 2 for testimony.

Chairman- Mark S. Owens: any questions from the committee. On page 2 where you talk about the house bill addresses the ability of parents to opt out their children out of testing assessment, it does not include line 4. The bill does not include the option to opt out of writing act or the work keys, it is specifically states that, just to let you know. Seeing no questions thank you. Any additional support to HB 1389. Any opposition to HB 1389.

Russ Ziegler: see attachment 3a and 3b for testimony.

Chairman- Mark S. Owens: are there any questions from the committee. Anyone else in opposition.

Rep. Andrew Marschall: Mr. Ziegler, in your testimony I beg to wonder how many kids do you think would opt out. Or how many parents would opt their kids out of these test, and how much would that really matter.

Russ Ziegler: With the whole anti- common core that happened previously, we had numerous amount of schools that had large amount of students opt out, I was a principal at a school, and had no parents opt out. It will vary by community dynamics, what those are in the community, a definite number I cannot tell you, I do not know how many would choose to opt out, I do know no matter how many students opt out it has an effect on your date, anything less than 95% is a significant difference. If you have 5% drop out, that reduces your data's accuracy for your school, how can you tell if a school is doing what it needs to be doing, fi there are no guidelines or accountability measures that can be followed.

Chairman- Mark S. Owens: Russ you are talking about sample size. Any other questions. Anyone else in opposition

Anita Thomas: see attachment 4 for testimony.

Chairman- Mark S. Owens: any questions from the committee

Rep. Rich S. Becker: this is the kind of a bill that it would be nice to have a whole day to discuss the philosophical differences, I find myself really challenged here by wanting to protect the right of an individual parents, who do believe for various reasons that they should have the right to educate their children, they may have a good experience or a poor experience in the public schools. There is a side of me that protecting their right to raise their children the way they deem adequate, to be one that we need to take a good strong look at and defend. The other side of that coin is, I do not disagree with much of what you put forth in opposition. Your role in opposition is to educate the masses, but the one thing I would question here, and I would ask you to answer or at least comment on, we just heard from Russ Ziegler that even 5% of an opt out would taint the data for the rest of the students, I find that a bit difficult to accept on face value, but more importantly do we have reason to believe that those who are home schooling now are holding their children out, in educating them on their own, do we have enough data to support that those children are not adequately coming along, they are not adequately testing well or being prepared for life after high school. I am of the opinion from what I read and heard, that we do not have data that says that. My comment is, are we being premature with this bill on either side of it, do we have a system that the education of home schooled children in particular adequate, are we overreacting, do we need this bill right now.

Anita Thomas: I commend you on trying to look at both sides of this issue, this is not an easy one, and my point in being up here is that before anyone passes legislation, they need to have answers to those very questions that you raise, we do have somewhat of a dichotomy between parents who want to be very involved in the education of their children, and yet the need and the constitutional directive to operate a public school system, so maybe you have answered your own question, that the questions that this bill raises are far too significant to

simply suggest that it be passed in its current form. There needs to be a lot more thought given to the consequences of the words in this bill.

Chairman- Mark S. Owens: any other questions, seeing none thank you. Anyone else in opposition to 1389. Any neutral testimony for house bill 1389.

Kirsten Baesler: see attachment 5 for testimony.

Chairman- Mark S. Owens any questions

Vice Chairman- Cynthia Schreiber-Beck: statistics were done on what percentage of a child's day or school year is actually spent testing, and I do not know if you have those on the top of your head, but it is very little in comparison to what we thought, do you have any of those stats.

Kirsten Baesler: we were also concerned and wanted to be responsive, and intelligent about the conversations that we are having, so we surveyed all of our school districts in the state of North Dakota, took an average from Kindergarten through their 12<sup>th</sup> grade graduation how much time was spent on test, we did not say just state tests, but all standardized tests which would include the ACT. School districts included in the survey. The average state statistic was a student in North Dakota spends less than 1% of their overall K-12 experience taking standardized tests. Less than .94% of their entire experience taking standardized tests, and that included the assessments, ACT or state assessments, all of the standardized tests.

Vice Chairman- Cynthia Schreiber-Beck: to go one step further, I believe that excellent schools, the only way to advertise that you have excellent schools is based on test results, although this bill would allow some of the tests to be administered my thought is from an economic development standpoint in bringing people into our state, parents specifically who always looked at the education available, how important in your mind are these tests to promote excellent North Dakota schools.

Kirsten Baesler: I believe in the direction that we are going with every student succeeds act of insuring that we have transparent reporting to ensure that our students are receiving a well-rounded and balanced educational experience K-12, but when it comes to achievement, these assessments are very important to schools, and to districts in order to help them allocate their resources, to help them make decisions about staffing issues, about when they are seeing a dip in scores or consistent trend of low English scores, do they need to hire more title English teachers when they see challenges in 3<sup>rd</sup> grade that have been consistently there, do they need to do something differently. I believe it is a very important piece of the conversation as schools make decisions, I think it is going to be an increasingly more important piece as emphasized, as I am sitting in the E&E house appropriations subcommittee meetings, as I visit with our Governor, I think data is becoming in the appropriations committee that I testify in, they are wanting more and more data about what they are receiving for their investment in education, and I believe with conversations that I have had with Governor Burgum, that emphasis will be increased before we are able to ask for something in education, we are going to have to have data that will provide support and substantiate our request, that is a fair ask of our education system.

Rep. Rich S. Becker: I heard something new that I had not heard before, in any of our discussions relative to this bill is your off script comments that this could be a civil rights violation as well, speaking of a young man at Century High School who wanted to take tests and his parents did not want him to, my basic question to you is, I perceive you to be in a no win position, you have to support the 95-97% of the kids in the public school, you also have to be the person that is accessible to the 1-2% that choose alternative scheduling, and the thing that bothers me the most and this bill does not answer it, but it sure points it out, in addition to everything else you have to protect students and they have the right to do whatever, but the school districts may be held liable for things that you are not held liable for, how does that wash, this is a no win situation, and I would appreciate your comments.

Kirsten Baesler: Thank you for your comments, I think what I have learned is that when I keep our students and our children at the heart of every decision, sometimes what is best for adults is not always what is best for children, so when we keep our children and our students at the heart of that, that makes it a bit easier. We will continue to support as DPI, all of our schools with the legislation that is passed or not passed we will continue to support our parents in navigating those, we will continue to educate and provide information, and resources, and actual hard data. To help people make informed decisions, and help our schools and students to ultimately help our children, that's our task, that is our job. It's my calling to do that.

Rep. Rich S. Becker: to your understanding, has there ever been a school district ever held in contention in living up to the act, that caused problems for them but not for you.

Kirsten Baesler: There has been some schools in a single year that have not met that 95% mark, we attempt to be supportive to the school districts in our state, we have found a way to work with department of public education to use a 3-year average for our students in subgroups, and we use a three-year average to allow them some more time to work with their parents, and help their parents understand the importance of all students participating, and to allow them some more time. Yes, there have been in a single year there have been schools that have fallen below the 95%, again in our attempt to be supportive.

Chairman- Mark S. Owens: any other questions. Any neutral testimony for HB 1389. Closing the hearing on HB 1389.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Coteau A Room, State Capitol

HB 1389  
2/1/2017  
Job 27764

- Subcommittee  
 Conference Committee

Committee Clerk Signature

## Explanation or reason for introduction of bill/resolution:

Relating to parental directives; and to declare an emergency.

## Minutes:

No attachments.

Chairman- Mark S. Owens: HB 1389. Here it is.

Rep. Brandy Pyle: Mr. Speaker, or Chairman- Mark S. Owens.

Chairman- Mark S. Owens: I am sorry what did you call me, Rep. Brandy Pyle.

Rep. Brandy Pyle: at least you got my name right.

Chairman- Mark S. Owens: I remembered what your last name was today.

Rep. Brandy Pyle: I believe the prime sponsor was open to submitting an amendment, specifically toward the, in section 1, subsection 1 for the testing portion, it was brought up that if passed as currently written, a parent could opt their child out of any testing, and so at lunch today I had a good conversation with him that it would be more specific to testing that did not affect a student's grade, right?

Chairman- Mark S. Owens: understood, do you believe he is bringing something.

Rep. Brandy Pyle: I will talk to him today, and get something quick.

Chairman- Mark S. Owens: ok that's fine, I sat on this bill thinking it was like last years, and it is not like last years, the way it reads right now I would not support it, but I would still support last year's version. Personally. So, if you know there is an amendment, there is no fiscal note we can hold it with an amendment, but he is going to have to get it to us.

Rep. Brandy Pyle: ok.



# 2017 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Coteau A Room, State Capitol

HB 1389  
2/8/2017  
Job 28055

- Subcommittee  
 Conference Committee

Committee Clerk Signature

## Explanation or reason for introduction of bill/resolution:

Relating to parental directives; and to declare an emergency.

## Minutes:

Attachment 1.

Chairman- Mark S. Owens: we have an amendment, there were some issues with the bill.

Vice Chairman- Cynthia Schreiber-Beck: define activity for me'.

Chairman- Mark S. Owens: since activity, that was the big problem with the original bill, was the term activity, we can delete activity. I left activity in only that it is not part of a curriculum is the only reason activity is left in. To narrow its focus.

Vice Chairman- Cynthia Schreiber-Beck: does it state that, is the way that I read this, activity it does not say that it's not part of an activity.

Chairman- Mark S. Owens: activity, testing, or any curriculum. Yes, that is exactly the way it would read, any of those three that are not part of the curriculum. This thing has been worded 15 different ways. The amendment words it in such a way that the only thing they can opt out in, including testing if it is not part of the curriculum, and then they still wanted or any curriculum which they have moral, philosophical. I will provide you with the amendment and ask you your wishes. Attachment 1 provided.

Vice Chairman- Cynthia Schreiber-Beck: is activity defined any place in code that would be, I think that would be critical. I referenced Rep. Corey Mock to see what his comments are on this.

Chairman- Mark S. Owens: Vice Chairman- Cynthia Schreiber-Beck to my knowledge activity and the association with education is not defined anywhere in code.

Rep. Bill Oliver: how about the thing we discussed earlier about the sciences, could that activity be something about the sciences, like dissecting a pig.

Chairman- Mark S. Owens: well keep in mind it cannot be part of the curriculum, the way it is worded. Is there a motion on the amendment so we can discuss it properly?

Rep. Matthew Ruby: I recommend that we adopt the amendment

Chairman- Mark S. Owens: we have a motion to adopt the amendment, is there a second. Seconded by Rep. Andrew Marschall. Now we can discuss it.

Rep. Corey Mock: am I to read this so that the bill would read with only the amended section that we have on this document.

Chairman- Mark S. Owens: thank you for that clarification, no. All you are seeing is the replacement of section 1, section 2-4 would continue. Would stay in at this point.

Rep. Corey Mock: so subsections 2-4 and at section 2 of the bill which is the emergency clause will all remain in the bill as originally written.

Chairman- Mark S. Owens: at this point, I was going to ask the committees desire about the entire section 4 after we progressed, but now all we are talking about is changing subsection 1.

Rep. Pat D. Heinert: my question is the same.

Chairman- Mark S. Owens Vice Chairman- Cynthia Schreiber-Beck your concern is about activities, and it is a warranted concern in my opinion, it is not without notice, that was the one thing we heard loud and clear during the testimony. And that is why even leaving it in, it had to be subject, that is not part of the curriculum if it was going to stay in, I do not care whether it stays in or not, I am just presenting the amendment to you.

Vice Chairman- Cynthia Schreiber-Beck: I do, we have not defined activity, and without definition, activity, you can consider anything an activity. Studying the states, participating in multiplication tables, whatever, but because they are here, not part of a curriculum or any curriculum to which the parent has a philosophical or moral. So they can opt out of anything that is occurring within the public school setting, because they can opt out of any curriculum too. If they have a philosophical, moral, or religious objection, so if I were teaching something they do not believe in, I guess they can opt out of that too, which it is up to a parent, but the activity thing, it does not need to be in there, because they can opt out of anything they want anyways.

Chairman- Mark S. Owens: I will leave it up to the committee to decide, I actually was opting to get rid of it, the sponsor did not want to get rid of it. I tried to talk to the sponsor into getting rid of the word activity, because it was causing the most problems, and I told him as such.

Rep. Andrew Marschall: I understand how you are reading it, but when I am reading it, any activity, survey, or test that is not part of the curriculum, so the whole thing whether it is activity, survey, test, if it is anything that is not part of the curriculum they can opt out. If it is multiplication tables, that is part of the curriculum they have to do it, they cannot opt out. If it's an activity that is part of the curriculum, like going on a field trip, that is an activity, but it

is part of the curriculum, so they cannot opt out. It has to be something that is not part of the curriculum, is the only thing they can opt out. If it is part of the curriculum, no the kid has to do it, that is the way I am reading it.

Rep. Corey Mock: and actually to Rep. Andrew Marschall point, if the sentence ended there that would be correct, but the sentence continues and says or any curriculum to which the parent has a philosophical, moral, or religious objection, so which the emphasis on activity may not even be as founded, because frankly anything regardless if it was testing activity, we can debate on activity, but if our concern of activity is that it can be interpreted to mean any lesson or part of the curriculum, the amendment already allows you to opt out of any portion of the curriculum if you have a philosophical, moral, or religious objection. This amendment will allow a parent to opt their child out of any portion of public education, as they see fit, provided that they have a philosophical, moral, or religious objection.

Chairman- Mark S. Owens: any other discussion

Rep. Bill Oliver: can we remove the term activity; can we remove that word.

Chairman- Mark S. Owens: the motion was made, and if the motion was withdrawn, and the second was withdrawn, then a new motion can be made in which you stated it exactly the way the committee wanted it, keep in mind this is our bill now, it is not the sponsors, I only brought you what the sponsor was recommending, this is our bill we can do anything we want to it. We can send it out of here the way we think it should be. Then another motion can be made making the changes, the discussion so far is not only in activity, that any activity and any curriculum to which you have an objection are symbiotic in nature, that they really mean the same thing to half of the committee members, or maybe more the way you were nodding your heads. The degree in which you modify the amendment may require a little more, than just any activity, but that is up to Rep. Matthew Ruby and Rep. Andrew Marschall.

Rep. Matthew Ruby: I will withdraw my motion for the amendment.

Rep. Andrew Marschall: I will withdraw my second.

Chairman- Mark S. Owens: now we are back at the starting point. What is the committees desire.

Rep. Matthew Ruby: I think I understand the intent of what this amendment was doing, but I can see where the problem is, I have a question. If you do not want your student to learn evolution, can you opt them out, and then if evolution comes up on the semester test, can they say I did not learn that so you cannot grade me wrong on that, or anything like that. That is where the issue is, you can pull out of curriculum, but if it is on the test how do you differentiate from a student that leaned evolution, to a student that did not.

Chairman- Mark S. Owens: I cannot answer that.

Vice Chairman- Cynthia Schreiber-Beck: I don't think any of us can answer that, because it directs information about the school district, in the later part here, your amendment here, that amendment did not address this. The amendment does not address it, so that brings up a

valid point on how you handle that. If you determine that your child should be opted out of all the curriculum in a school day, for a month at a time. For the bill itself a school district has to be paid by the state, and still have that child as part of their per pupil basis. Might be good, there's no kid and you are still getting paid for it.

Rep. Matthew Ruby: It may have already been answered I lost my question.

Chairman- Mark S. Owens: any further comment. You were talking about changing the amendment earlier, now nobody is talking about anything.

Rep. Pat D. Heinert: I move that we adopt the amendment in this section 1 part one with the addition of removing the work activity on the second line of number one.

Chairman- Mark S. Owens: nothing about the "or any curriculum" which was also in contention. No? Would you read it to the committee the way you are recommending it.

Rep. Pat D. Heinert: it would read under number 1 respect and support the right of a parent to opt a child of the parent out of public school as allowed under sections 15.1-20, and 15.1-2302, and any survey or testing that is not part of a curriculum or any curriculum to which the parent has a philosophical, moral, or religious objection. This subsection does not prohibit the state from funding public education on a per pupil basis.

Chairman- Mark S. Owens: so we have a motion in front of us, is there a second. Seconded by Rep. Andrew Marschall. Did everyone hear that. What he is recommending is take out the word activity, and it would say in any survey or testing that is not part of a curriculum, or any curriculum to which the parent has philosophical, and it goes on from there. Discussion.

Rep. Longmuir: is this bill even necessary.

Chairman- Mark S. Owens: that is what we are going to decide.

Rep. Longmuir: I would be in support of a do not pass recommendation on this bill.

Chairman- Mark S. Owens: understood, but right now we are debating the amendment or discussing the amendment. Any further discussions on the amendment.

Rep. Mary Johnson: I will resist this motion. It seems ridiculous to me that you can opt them out of a curriculum, but not an activity, so if a student is engaged in orchestra, and they are going to go to the county jail to perform, and a parent does not want them going to the county jail to perform, they cannot opt them out. They would be sick that day, and that would be the response, but it seems ridiculous that we can opt them out of the most important thing which is curriculum, but not an activity.

Chairman- Mark S. Owens: any further discussion.

Rep. Pat D. Heinert: my question then would be, under activity is can they opt them out of practice, but not the event.

Chairman- Mark S. Owens: and there lies the rub.

Rep. Dennis Johnson: I did not have my hand up; I was just sitting. We are not necessarily charged with fixing a bad bill, we do not necessarily have to fix a bad bill. I am just frustrated, we have had this before, and we killed it, that was two years ago.

Chairman- Mark S. Owens: any further discussion on the amendment, seeing none we will try a voice vote on the amendment really quick, all those in favor say I, and all those oppose say I. that was close. Do a roll call vote to adopt the amendment, 5-7-2 failed. Leaving any curriculum in there bothered me. We have an un amended before us, what is the committees wishes.

Rep. Dennis Johnson: I recommend a do not pass on HB 1389.

Chairman- Mark S. Owens: we have a do not pass recommendation from Rep. Dennis Johnson, and a second from Rep. Denton Zubke. Is there possibly any more discussion you wish to have on this bill.

Vice Chairman- Cynthia Schreiber-Beck: number one, everyone should read what is allowed federally, and ESSA has a great fair test kind of deal, you can opt out of test, you can do that. So that's one thing I want to make a point of, secondly the I think the question that Rep. Matthew Ruby brought forward is, if you opt out of all curriculum, it is great for the school district because you are still receiving pay, but how do you grade a child, would you pass a child on to the next grade, they have opted out of all test, potentially they can opt out of all test and all curriculum, I am not sure what that child is going to do every day in the building, but there is the potential for that to occur, and that is totally allowable, does the school district have to hire a special aide to manage those children, because they are not being educated, it becomes a babysitting service in retrospect because they are not there to do the curriculum or they are not there to do the test. And maybe they are geniuses, well maybe that can be allowed to, I was just wondering how you handle this, if I was a school district administrator I would be tearing my hair out, that is my only comment.

Rep. Mary Johnson: I was thinking that children, what parent in their right mind would opt their kid out of all the curriculum, testing, and everything. And I know that I have gone on about parents and testing, and etc., so I will not repeat myself, but I agree with Vice Chairman- Cynthia Schreiber-Beck that, I am not worried about home schooled kids, I am not worried about kids whose kids are involved, I am worried about the kids who are lacking parenting, and those are the kids we need to try to address. I can see some of the parents saying, there was a time when parents, teachers, and administrators were all on the same side, and if you were falsely accused you sucked it up. Now it is so different, and we have to worry about those kids whose parents are not involved, and this to me is a tool for them, and I worry about those kids, and therefore I will support the do not pass.

Rep. Denton Zubke: we have this memory of utopia in the past, but I do not think it was utopia, but I do not think that parents and teachers, and educators were on the same page then either, just for the record.

Rep. Matthew Ruby: I know we have a motion on the table, but when I was going through this bill in testimony I had wrote down, if you are looking at the bill, line 9 where it says after test I crossed out activity, practice, testing, and wrote in testing that does not affect a student's grade, is that a reasonable possible amendment, or does that still put us in the same boat.

Chairman- Mark S. Owens: we can go back to amendment, but then the current motion would have to be withdrawn, because we have a motion on the table that we have to act on. That is the only way we can go back and amend it.

Rep. Matthew Ruby: I was not saying that we need to, I was curious if that alleviates some of the problems. Technically they can pull out of curriculum that deals with evolution, but they still need to take that test, and if they fail that is on them. I thought it alleviated some concerns with that, because standardized testing will not affect your overall GPA, as long as it is not affecting a student's grade, they still have to take.

Chairman- Mark S. Owens: I am not sure how much change, but this bill came through the house, and it passed the house and went to the senate. The senate added paragraph 4, and all that stuff in paragraph 4, the senate added that. When they went to conference committee they could not make a decision it dies after that. There was, no one could come to agreement, on something that had been changed. And I believe what happened was it had a bunch of this opt out of this and opt out of that, and it was taken out of the house and passed. Went back to the senate and had it added back in, and got the other stuff added, and the house did not agree with the returned bill. We are working on the do not pass motion right now.

Vice Chairman- Cynthia Schreiber-Beck: I was going to respond to Rep. Matthew Ruby, how do you grade the other children against the child, we still have to have objective results in education at some point, whether you are home schooling or in a public school, how do you grade that against other children, do you not just grade the other children then too, because you did not test them. You come into a point of how does the teacher manage all that in a public school setting, it would be beyond me how to manage that when you address that, that is my response to that and my thoughts.

Rep. Andrew Marschall: I understand where everybody is coming from, when we are talking about these issues. What if this happens, what if that happens. But I think we are doing too much of that. I think we are doing too much what if's. That is the reason I would be in favor of this bill. A parent in their right mind is not going to opt their child out of something important unless it's a philosophical, Darwin, or they believe in divine conception, and all that kind of stuff, it is a religious objection to a course standard, that is one thing. Overall they are not going to opt their student out of an entire month worth of curriculum. That is way overboard, if the parent does that they would be grounds for termination of their parental rights, and the child might be taken away from them. We are doing too much of these what ifs, and we need to get away from that, and look at what it is trying to say. I think that is pretty much a lot of these bills are, and what is aggravating a lot of people is, we are sitting here in committee doing all these what if's, and that is aggravating people so much, is that we are doing too much of that.

Chairman- Mark S. Owens: any further discussion.

Rep. Matthew Ruby: in my mind I think the parent would have to understand, if they pull themselves out of the curriculum, and that is still going to be on the test, then their student is either have to figure out some way, and I see that the parents will have a big issue with that, but that is how you grade it across the board. If it is in the standards, and every other student has to do it, just because you did not want them to learn that in the curriculum it is going to be in the test and they have to deal with it their own way, that is how I think it is, but parents are going to have big issues with that, and I can see that.

Chairman- Mark S. Owens: any further discussions.

Rep. Corey Mock: with all due respect Rep. Andrew Marschall if this committee is not the ones to ask the what if's, if we do not evaluate all possibilities with the law as written, we are tasked to make sound public policy, if we do not ask those questions, and I know it can be aggravating, and we run down rabbit holes, and who knows what stones we unturned, and what theoretical examples may emerge, but if we do not do that, if we do not do that due diligence, and we find the person who chooses to exploit the law as written, and take full advantage of any possible loop hole that may exist, we failed the public, we created a logistical nightmare, and we lose a little confidence with the public. It is frustrating to ask all the what if's, and I wish we can operate under the assumption that nobody would exploit the laws as written, with the understanding that we had a certain intent, and we want no one to take the latitude they are given to the most extreme, but if that is a concern, and if it is a possibility, then we need to put those checks, those measures in the law, we need to tighten the language to prevent that from being a possibility or else we run into a world where our public policy is written so generally and so vague that people are left to interpret it as they wish, and then the burden falls upon the courts to interpret the law, instead of reading a clearly written law, passed by the peoples house. I understand the frustration Rep. Andrew Marschall, and I think you will see in your legislative career, where the what if's become mind numbing almost, but I believe that we all agree that we were here to do the best job possible, and we must evaluate all those what if's if we are going to have the confidence that this law should be in our century code, and uphold the standards that the people expected us to serve. I would call to question on the motion.

Chairman- Mark S. Owens: I invite the clerk to call the roll for a do not pass on HB 1389, 11-1-2, and Rep. Denton Zubke will carry this bill. The last bill on the first half.

# 2017 HOUSE STANDING COMMITTEE MINUTES

Education Committee  
Coteau A Room, State Capitol

HB 1389  
2/15/2017  
Job 28415

- Subcommittee  
 Conference Committee

Committee Clerk Signature

## Explanation or reason for introduction of bill/resolution:

Relating to parental directives; and to declare an emergency.

## Minutes:

Attachment 1,

Chairman- Mark S. Owens: we need a motion to reconsider our actions.

Rep. Matthew Ruby: I move that we reconsider our actions on HB 1389.

Chairman- Mark S. Owens: ok, so let's catch up. (waiting on clerk). We have a motion to reconsider our actions on HB 1389 by Rep. Matthew Ruby, and seconded by Rep. Bill Oliver. Is there any discussion. Seeing none we will do a voice vote. All those in favor say I, all those opposed same sign. Motion was approved. What is the committees desire.

Rep. Andrew Marschall: I would like to propose an amendment to HB 1389.

Chairman- Mark S. Owens: Ok, you want to discuss your amendment. (amendment is being passed out).

Rep. Andrew Marschall: I think if somebody dropped off a copy of the original, and I got a Christmas tree version of it, with. (long silence while paperwork is being straightened out)

Chairman- Mark S. Owens: ok Rep. Andrew Marschall would you like to explain your amendment please.

Rep. Andrew Marschall: this amendment, removes public from page 1, line 8, and then on page 1, line 9 it removes schools and. Explaining amendment 17.0879.01003 which is attachment 1.

Chairman- Mark S. Owens: the Christmas tree version Rep. Andrew Marschall, still has paragraph 4 in it, and all its subsections, so that lined out according to your amendment.



Rep. Andrew Marschall: yes. I do have another amendment, that if the committee so desires we can leave section 4 in, we can offer that in its place, if the committee would like to have section 4 gone, we can do that.

Chairman- Mark S. Owens: well let's deal with one amendment at a time, which one are you making a motion on.

Rep. Andrew Marschall: we are going to deal with the first one, by removing section 4.

Chairman- Mark S. Owens: ok, we have a motion, is there a second. Seconded by Rep. Bill Oliver. Is there any discussion.

Vice Chairman- Cynthia Schreiber-Beck: survey or testing is not part of the curriculum, can you define what that would be, please. Now what are we talking about.

Rep. Andrew Marschall: survey or testing that is not part of the curriculum, there are several tests that students take from what I understand throughout the course of the year, they are not actually part of the curriculum. I am not familiar with some of those tests, I just know there are some tests that they take, that are not part of the curriculum.

Chairman- Mark S. Owens: there are some cases where they do surveys, I do not know about tests.

Vice Chairman- Cynthia Schreiber-Beck: I am asking the testing is not part of the curriculum, I would like a list of what those might be, because I am not sure what this is indicating now, before I was totally opposed, because.

Rep. Andrew Marschall: that's required in another section I believe, isn't it.

Chairman- Mark S. Owens: the ACT is another section that this bill does not address.

Rep. Bill Oliver: I think Nick can answer this question.

Nick Archuleta: the surveys that some find, every year at risk youth survey is given to find out engaged things like, alcohol use amongst students, truancy, and things like that would determine whether or not a student may be at risk, and it is typically an anonymous survey, some of the other things like a test, might be like the ASVAB test, which is like an inventory of your competencies and may be direct areas you might want to go into, in terms of future study. I will add this too, under every students succeeds act, which is not the law, there is a provision in there that parents have opt out, and the school districts have to notify parents, that they have the option of not having their kids take a test, the law still requires I believe that 95% of the kids in the district do that. I am not exactly certain what the opt out is now in North Dakota, because I think that is an option right now, and I am not exactly certain what the percentage of parents that choose to opt their children out is, but I believe it is really low in North Dakota.

Chairman- Mark S. Owens: any questions

Vice Chairman- Cynthia Schreiber-Beck: in that statement they can opt out already, would this that is listed here, are we talking about the same things they can opt out of in ESSA, that is allowed through ESSA, there is nationally there is statement where you could not opt out of whatever you wanted, required test is how its stated, so are they talking just standardized tests in that regard or are they talking additional.

Nick Archuleta : I believe the language in ESSA refers specifically to standardized tests, that the district might give. I think it is silent on the issue of surveys, but parents in North Dakota can already talk to the administrators of their schools and say I wish to have my child not take part in this.

Rep. Pat D. Heinert: I am not going to support the motion to adopt this amendment, simply because of under section 4 being totally eliminated, I think section 4 gives the school districts their direction on how to deal with parents, without that it would be unfair to have problems out there in some school districts with what policies need to be followed.

Chairman- Mark S. Owens: any other discussion.

Vice Chairman- Cynthia Schreiber-Beck: do you know with your opt out situation here, are there any problems in North Dakota schools that children have not been allowed to opt out? Can you bring forward any issues that this particular piece of legislation is needed. I am not aware of any.

Rep. Andrew Marschall: I am not familiar with that, I have not heard, not to say there isn't, I just haven't heard of any issues of parents not being able to opt out.

Vice Chairman- Cynthia Schreiber-Beck: is there anybody in the audience have any information that can reply.

Chairman- Mark S. Owens: calls on Representative Koppelman.

Representative Koppelman: since last session I have not got a lot of new reports from that, but during the last session when we had the bill that passed the house then, that dealt with this very issue, and after that bill was later defeated in the house when it came back from the senate, there were at least 3 school districts that I am aware of where the superintendent, I had a personal conversation with 2 of them and they said we want to follow the law, and it does not say in the law that parents can opt out, therefore, they were not trying to be belligerent, they were just saying we do not see that opportunity. I can tell you my home school district did allow opting out, and I think that was in my testimony on the bill.

Chairman- Mark S. Owens: we were just informed with the new federal law, it specifically says you can opt out, in the new federal law.

Representative Koppleman: I would caution the committee on always relying on the federal to govern that, just because that can change from administration to administration.

Vice Chairman- Cynthia Schreiber-Beck: that's in the ESSA, which is congressionally approved, and I doubt that it is going to change, it did not change the last one for years, yes

it is in there the parents have the right to opt their child out of the required test, I have the statements right here if you want to read them.

Chairman- Mark S. Owens: anybody else that wanted to respond to the opt out, real quick, because we are running out of time here.

Greg Gallager: for a number of years within the North Dakota state assessment opt out has been allowed, but we collect data on the incidents rates of opting out from parental preference, this last year we had 502 students who opted out of the test, it represents 0.9 percent of total student enrollment in the testing experience itself. We in the department have not received any comments within this last year about any incidents of a parent indicating an inability to opt out, so it is more of an absence of a report to us, we have not received it in the last couple of years. I cannot recall of an instance where a parent was not able to do so, but then again that is based on the kind of incident report that we had to receive within the department.

Chairman- Mark S. Owens: any questions

Rep. Bill Oliver: with these proposed amendments, I know we have not voted on this amendment yet, but with these proposed amendments we were talking about Rep. Andrew Marschall said we could leave paragraph 4 in, and all sub paragraphs. Would that make this a better amendment, better bill if we did that. I guess I am asking Rep. Pat D. Heinert, because he said he cannot support it because of those.

Rep. Pat D. Heinert: I would support it if sub 4 stayed in.

Chairman- Mark S. Owens: it up to the.

Rep. Andrew Marschall: if that is the wish of the committee, then I can go ahead and withdraw my recommendation.

Chairman- Mark S. Owens: you just want to change your motion then?

Rep. Andrew Marschall: yes.

Chairman- Mark S. Owens: and your second? Ok second was withdrawn by Rep. Bill Oliver. So the new amendment is as written minus page 1 remove line 18-22, and page 2 remove lines 1-12. Is that correct?

Rep. Andrew Marschall: we are passing out new amendments.

Chairman- Mark S. Owens: that's ok we can just do off of these, if you just delete those. That is fine too. Alright everybody, the amendment is 17.0879.01002. We have a motion from Rep. Andrew Marschall, and a second from Rep. Bill Oliver for the new amendment. Any discussion. Seeing no more discussion we will do a voice vote on the amendment, the amendment passes. We have an amended bill in front of us.

Rep. Matthew Ruby: I recommend that we move a do pass as amended on HB 1389.

Chairman- Mark S. Owens: we have a motion on HB 1389 for a do pass as amended, and a second from Rep. Andrew Marschall. Any discussion.

Rep. Corey Mock: I just want to clarify make sure that I am everybody else is understanding that HB 1389 as amended makes no substantive change to current law through the ESSA and current practice through the superintendent's office, it simply codifies a practice in state statute and requires that there is a form that needs to be used if a parent wishes to opt their child out, am I understanding this correctly,

Chairman- Mark S. Owens: it is my understanding and I have to agree with you, Rep. Corey Mock.

Rep. Corey Mock: thank you Mr. Chairman.

Chairman- Mark S. Owens: any other discussion.

Rep. Denton Zubke: I think the representative from the school board association had some concerns about line 17 on page 1, where it is actually 16 and 17, a child withheld from a test or assessment, and of course now it no longer says assessment, it says survey or testing, so there would be a little bit of a conflict there, but it also says under the sections deemed to be in attendance for all purposes under this title, and I am not sure exactly what the definition of title is and how encompassing that is, and I think that's the school board associations questions, that is unanswered for me. I would oppose this motion because of that.

Chairman- Mark S. Owens: I understand.

Rep. Andrew Marschall: in regards to section 3, the bill carrier went ahead and checked with council, legislative council on that issue indicates that subsection 3 would benefit the school districts in how they calculate student contact hours towards the ADM, it would also benefit the students for the calculations towards truancy. It would benefit the schools more to have this in there, than due to calculate funds and everything else.

Rep. Ron Guggisberg: I do think that this amendment helps a bill, I still can't vote for it, especially knowing that this is already practice, and what makes me feel even stronger against the bill was testimony that people can opt out of an at risk test, I know we all like to think of ourselves when we were in school, and things may have been rosy for us, but I hear from my kids in school that there are kids that are sleeping through class, and this is in 3<sup>rd</sup> grade, I have a friend who works in social services who has told me stories about parents that they found out they were giving their children NyQuil so they can party at night, and I think we need to keep some of these, especially that test in particular if its anonymous, we need to make sure that we are checking up on this, and I think if something needs to be changed DPI or local school district can probably change that, and we do not need to codify it.

Chairman- Mark S. Owens: any other comments.

Rep. Corey Mock: I appreciate everyone who is commenting on this, and I wanted to make sure that you know and the committee knows, I fully respect and understand and appreciate a parents ability and right to withhold their child from testing, and I am happy to know that it is current practice through the ESSA as well as through the department of public instruction, I am generally speaking not opposed to codifying that practice, I am going to resist the motion, but I am going to with a caveat, I need to know a little more, what testing specifically would be allowed, would fall into the criteria of curriculum, and I want to look a little more into this. Make sure that there are no unintended consequences if this were to be passed, so I will let you know on the record Mr. Chairman that I am going to resist the motion, if the motion prevails, regardless of the fate of that motion that I may, depending on what I find as I research this a little more, if there is no reasons to be concerned with this bill, and if we are simply codifying an existing practice and the concerns that were brought up are likely not to be realized, and I may flip my vote and support the bill on the floor. Just for the purposes of this discussion I am a little resistant and reluctant at the moment, I am going to resist the motion, but I will gladly visit with the committee between this committee's actions, and the time it comes to a vote on the floor.

Chairman- Mark S. Owens: I appreciate your point Rep. Corey Mock, I wish I can give you more time, but you know we have time restraints, outside of our pay grade. Any further discussion. We have a do pass as amended, I invite the clerk to take the role. 6-7-1, the motion failed. What is the committees wishes.

Rep. Ron Guggisberg: I move a do not pass.

Chairman- Mark S. Owens: we have a motion for a do not pass as amended, do we have a second. Seconded from Rep. Denton Zubke, any discussion. I invite the clerk to call role for a do not pass as amended for HB 1389. 8-5-1, and Rep. Denton Zubke will carry this bill.

February 8, 2017

PROPOSED AMENDMENTS TO HB 1389

Page 1, line 10, remove: practice, or testing, with no interference from the state, which parent finds unacceptable or

Page 1, line 9, after "school" insert: "as allowed under sections 15.1-20-02 and 15.1-23-02"

Page 1, line 9, after "activity," insert "survey, or testing that is not part of a curriculum; or any curriculum

**SECTION 1.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Parental directive - Administration of tests and assessments.**

The superintendent of public instruction shall:

1. Respect and support the right of a parent to opt a child of the parent out of public school, as allowed under sections 15.1-20 and 15.1-23-02, and any <sup>activity</sup> ~~activity, practice, or testing, with no interference from the state, which the parent finds unacceptable or~~ survey, or testing that is not part of a curriculum, or any curriculum to which the parent has a philosophical, moral, or religious objection. This subsection does not prohibit the state from funding public education on a per-pupil basis.

2/15/17 DF

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1389

Page 1, remove line 7

Page 1, line 8, replace "Respect" with "The superintendent of public instruction shall respect"

Page 1, line 8, remove "public"

Page 1, line 9, remove "school and"

Page 1, line 9, remove "activity, practice, or testing, with no interference from the state, which"

Page 1, line 10, replace "the parent finds unacceptable or" with "survey or testing that is not a part of a curriculum,"

Page 1, line 11, remove "This subsection does not prohibit the state from funding public"

Page 1, remove line 12

Page 2, line 15, replace "sections" with "section"

Renumber accordingly

Date: 2/8/17

Roll Call Vote # 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1389

House Education Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Heinert Seconded By Rep. Marschall

Representatives	Yes	No	Representatives	Yes	No
Chairman- Mark S. Owens		✓	Rep. Andrew Marschall	✓	
Vice Chairman- Cynthia Schreiber-Beck		✓	Rep. Bill Oliver		✓
Rep. Rich S. Becker	AB		Rep. Brandy Pyle	AB	
Rep. Pat D. Heinert	✓		Rep. Matthew Ruby	✓	
Rep. Dennis Johnson		✓	Rep. Denton Zubke		✓
Rep. Mary Johnson		✓	Rep. Ron Guggisberg		✓
Rep. Donald W. Longmuir	✓		Rep. Corey Mock	✓	
	2	4		3	3

Total (Yes) 5 No 7

Absent 2

Floor Assignment Rep.

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

*voice vote, vote failed.  
section 1. A new ~~section~~ section to chapter 15. 1-21 of the North Dakota Century Code is created and enacted as follows.*



Date: 2/8/17

Roll Call Vote # 2

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1389

House Education Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

- Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. D. Johnson Seconded By Rep. Zubke

Representatives	Yes	No	Representatives	Yes	No
Chairman- Mark S. Owens	✓		Rep. Andrew Marschall		✓
Vice Chairman- Cynthia Schreiber-Beck	✓		Rep. Bill Oliver	✓	
Rep. Rich S. Becker	AB		Rep. Brandy Pyle	AB	
Rep. Pat D. Heinert	✓		Rep. Matthew Ruby	✓	
Rep. Dennis Johnson	✓		Rep. Denton Zubke	✓	
Rep. Mary Johnson	✓		Rep. Ron Guggisberg	✓	
Rep. Donald W. Longmuir	✓		Rep. Corey Mock	✓	
	6			5	1

Total (Yes) 11 No 1

Absent 2. Rep. Becker, and Rep Pyle

Floor Assignment Rep. Zubke

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

Date: 2/15/17

Roll Call Vote # 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB#~~123~~ 1389

House Education Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

- Recommendation:
- Adopt Amendment
  - Do Pass     Do Not Pass     Without Committee Recommendation
  - As Amended     Rerefer to Appropriations
  - Place on Consent Calendar
- Other Actions:     Reconsider     \_\_\_\_\_

Motion Made By Rep. Ruby    Seconded By Rep. Oliver

Representatives	Yes	No	Representatives	Yes	No
Chairman- Mark S. Owens			Rep. Andrew Marschall		
Vice Chairman- Cynthia Schreiber-Beck			Rep. Bill Oliver		
Rep. Rich S. Becker			Rep. Brandy Pyle		
Rep. Pat D. Heinert			Rep. Matthew Ruby		
Rep. Dennis Johnson			Rep. Denton Zubke		
Rep. Mary Johnson			Rep. Ron Guggisberg		
Rep. Donald W. Longmuir			Rep. Corey Mock		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Rep. \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:  
voice vote. motion approved

Date: 2/15/17

Roll Call Vote # 2

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. ~~HB 4233~~ 1389

House Education Committee

Subcommittee

Amendment LC# or Description: 17.0879.01002

- Recommendation:  Adopt Amendment
- Do Pass     Do Not Pass     Without Committee Recommendation
- As Amended     Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Marschall Seconded By Rep. Oliver

Representatives	Yes	No	Representatives	Yes	No
Chairman- Mark S. Owens			Rep. Andrew Marschall		
Vice Chairman- Cynthia Schreiber-Beck			Rep. Bill Oliver		
Rep. Rich S. Becker			Rep. Brandy Pyle		
Rep. Pat D. Heinert			Rep. Matthew Ruby		
Rep. Dennis Johnson			Rep. Denton Zubke		
Rep. Mary Johnson			Rep. Ron Guggisberg		
Rep. Donald W. Longmuir			Rep. Corey Mock		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Rep. \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:  
amendment passed by voice vote.

Date: 2/15/17

Roll Call Vote # 3

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB ~~1388~~ 1389

House Education Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Ruby Seconded By Rep. Marschall

Representatives	Yes	No	Representatives	Yes	No
Chairman- Mark S. Owens	✓		Rep. Andrew Marschall	✓	
Vice Chairman- Cynthia Schreiber-Beck		✓	Rep. Bill Oliver	✓	
Rep. Rich S. Becker	✓		Rep. Brandy Pyle	AB	
Rep. Pat D. Heinert	✓		Rep. Matthew Ruby	✓	
Rep. Dennis Johnson		✓	Rep. Denton Zubke		✓
Rep. Mary Johnson		✓	Rep. Ron Guggisberg		✓
Rep. Donald W. Longmuir		✓	Rep. Corey Mock		✓
	3	4		3	3

Total (Yes) 6 No 7

Absent 1

Floor Assignment Rep. \_\_\_\_\_

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

Date: 2/15/17

Roll Call Vote # 4

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1389

House Education Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

- Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Guggisberg Seconded By Rep. Zubke

Representatives	Yes	No	Representatives	Yes	No
Chairman- Mark S. Owens		✓	Rep. Andrew Marschall		✓
Vice Chairman- Cynthia Schreiber-Beck	✓		Rep. Bill Oliver		✓
Rep. Rich S. Becker	✓		Rep. Brandy Pyle	AB	
Rep. Pat D. Heinert		✓	Rep. Matthew Ruby		✓
Rep. Dennis Johnson	✓		Rep. Denton Zubke	✓	
Rep. Mary Johnson	✓		Rep. Ron Guggisberg	✓	
Rep. Donald W. Longmuir	✓		Rep. Corey Mock	✓	
	5	2		3	3

Total (Yes) 8 No 5

Absent 1

Floor Assignment Rep. Zubke

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

**REPORT OF STANDING COMMITTEE**

**HB 1389: Education Committee (Rep. Owens, Chairman) recommends DO NOT PASS**  
(11 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING). HB 1389 was placed on the  
Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**HB 1389: Education Committee (Rep. Owens, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1389 was placed on the Sixth order on the calendar.

Page 1, remove line 7

Page 1, line 8, replace "Respect" with "The superintendent of public instruction shall respect"

Page 1, line 8, remove "public"

Page 1, line 9, remove "school and"

Page 1, line 9, remove "activity, practice, or testing, with no interference from the state, which"

Page 1, line 10, replace "the parent finds unacceptable or" with "survey or testing that is not a part of a curriculum,"

Page 1, line 11, remove "This subsection does not prohibit the state from funding public"

Page 1, remove line 12

Page 2, line 15, replace "sections" with "section"

Re-number accordingly

**2017 SENATE EDUCATION**

**HB 1389**



# 2017 SENATE STANDING COMMITTEE MINUTES

Education Committee  
Sheyenne River Room, State Capitol

HB 1389  
3/15/2017  
Job Number 29215

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to parental directives.

## Minutes:

#1, #2, #3

**Chairman Schaible:** Open the meeting for 1389. Roll taken: All present.

**Repr. Ben Koppelman:** District 16, West Fargo, Testimony #1. Introduced and explained bill.

**Chairman Schaible:** One of the differences the House and Senate had last session was the Senate proposed an idea that it was easier to list things you could opt out of instead of things you could not opt out of. You couldn't opt out of things required by law.

**Repr. Koppelman:** The concern on the House side is that when you have things in there required for graduation, and the school board requires that they have to take all these tests. This is the concern about the rights. We don't want them to opt out of anything curricular.

**Chairman Schaible:** In other words, you don't trust your boards to do the right thing?

**Repr. Koppelman:** I believe the parents should have the same ability to direct their child's education in these big areas in every district of the state. The standards should be the parent's rights to opt out.

**Senator Oban:** Would you support us adding the state civics test, a state mandate that we put into place?

**Repr. Koppelman:** If the committee wants to offer more abilities to stray from the state mandated graduation requirements whether it is a civics test or a substituted science computer class. I would consider anything like that. That is not the focus on my bill to say you can't ever opt out. I just want to make sure we enshrine this narrow opting out into statute.

**Senator Rust:** ESSA has a rule that if a school building, not a district, falls below 95% in test participation that school is sanctioned in that they must publically report to parents, community and legislators about not testing the students. They then must come up with a plan to improve the participation plan and report the plan to Department of Public Instruction and the public. How do you view that rule in regard if you have more parents opting out of a test and the building falls below 95%?

**Repr. Koppelman:** Statewide right now it is about 1% that opt out that we heard from Department of Public Instruction. I will let them speak about that. If it would get to 5% or more in a given building, it would be a good conversation to have. I personally would support us from getting away from a state wide test and say the districts would have to have a summative test that measures the student's abilities at certain grades. The school district would create the test and assume that it has a relationship to their curriculum as long as it meets certain benchmarks. I would say you couldn't opt our because it aligns with the curriculum. Over the years, we have had standardized assessments that haven't necessarily

positively impacted the student's education. They provide statistics for a legislative or national education policy discussions. Are they valid if we don't have a state curriculum why have a state test that measures something that may not directly align well with the individual curriculums? If we had a curriculum based test that measures and at least shows that they have proficiency in certain things and use that data, I would be less pushy in opting out. I think the 95% requirement is silly. Does it relate to curriculum? I think in the Feds process of getting us away from No Child Left Behind that lingered. Would it be a bad thing for the district to report to the legislature if they didn't meet the 95%, maybe that would be the plan to start tying something to the curriculum that they used as opposed to a test like Smarter Balanced or other vendors.

**Senator Davison:** Was the word survey included, or the career interest inventory in there?

**Repr. Koppelman:** No, it wasn't included for that purpose. Section 2 covers that by reference. The reason for the word survey in section 1 was to deal with things like the Teen Risk Behavior Survey, which technically is supposed to be optional already. I believe the parents can opt out. There are probably a number of quizzes and surveys and tests that have nothing to do with the kid's education, but somebody might think they are useful.

**Senator Davison:** Schools would have to post the surveys on line or let parents know?

**Repr. Koppelman:** Conclusion was that what the schools could live with, was they can post on the web site and print out and turn in. Do the same things with the other things they are going to do and post a list and opt out of what you want to on the list.

**Senator Davison:** Sometimes Career Interest is tied into a class, but this specifically takes that out. I don't like that part.

**Repr. Koppelman:** The goal of those 3 sections was to opt out of a state mandate for that essentially. If it is the type of thing that is part of a class, there is probably ways to leave it in the curriculum.

**Senator Oban:** Do you think there is any value to be lost if we don't take the test? We have come up with ways to have better timing of the tests so they can get the results and use that as an advantage.

**Repr. Koppelman:** Teachers I have talked to say the Standardized tests are a waste of time, others would say there would be more useful tools to use for data than the test. They also were on the same lines if a district could choose or create a test that could tie in with their curriculum that would work better to measure for data. I believe that Map and Star have greatly improved over time. The goal is if the test is curricular do it and if it is not don't do it. We specifically list those 3 because they are "thou shalls" in law.

**Senator Oban:** We were given a booklet that showed how many tests are given are required by the state and how many schools actually do their own. I think of the complaints about testing is not what the state is requiring but what some districts have required within their own schools. Some of those complains I take with a grain of salt because of that fact. I struggling with your including your Career Interest Inventory because whether we like it or not teachers are given the job to develop the kids. You included that because of what the state mandates.

**Repr. Koppelman:** That is correct. The Career Inventory is the one parents are least concerned about. Most parents that I know that want to opt out of testing are really focusing on testing that is not tied to the curriculum.

**Senator Oban:** do you believe the Civics test is true of that description?

**Repr. Koppelman:** As far as not tied to the curriculum? I don't know of people trying to opt out of that. I opt my child out of the state assessment for math, science and reading.

**Chairman Schaible:** Does this bill give you any more rights than you have right now?

**Repr. Koppelman:** My school district has decided that my activity is a refusal and not an opt out. They are reacting to me as refusing to have my child tested as opposed to me exercising my right to opt out. In some districts this would change their rights.

**Senator Rust:** I see you have a parental directive as valid only to present school board using a standardized form prepared by the superintendent of public instruction. That would be a new form that the Department of Public Instruction would develop?

**Repr. Koppelman:** It would be a new form and I believe it was brought up by the Senate last time. My intent that each school district could make a simple form, sign here and mark what to opt out of.

**Senator Rust:** Would that give some uniformity across the state with districts?

**Repr. Koppelman:** I can see that as sound logic for all districts.

**Senator Rust:** This is new directive for Department of Public Instruction to develop for the uniformity across the districts.

**Repr. Koppelman:** For me it was just a phone call to my kid's school.

**Senator Oban:** Why did you opt out of reading, science and math assessments?

**Repr. Koppelman:** I am not a fan of Smarter Balanced assessments.

**Chairman Schaible:** Other testimony?

**Russ Ziegler:** Assistance Director of ND Council of Educational Leader; Testimony #2 in opposition of HB 1389. Stand for any questions.

**Senator Rust:** In title 1, aren't parents asked to allow the school to test their child for eligibility?

**Russ Ziegler:** The parents are asked. If the parents refuse, I believe they can test and it might go into parental neglect. I know for IEP you have to have consent. If a school is a Title 1 school, all the students are title without any testing at all. It is based off of school wide.

**Senator Davison:** In my work in education I think the most important thing the teachers do is not the summative tests. It is the formative that mentor students and helps them differentiate the instruction in the classrooms. I believe that we have 40% of the schools that use the summative data. We have half of our schools that admittedly don't even use the summative data. They don't have the leadership and the buy-in. So don't you think that the formative assessments are more critical in the summative of assessments?

**Russ Ziegler:** I think they are 2 different things. If we look at individual students, I agree with you totally. But the formative assessments are there to help that student and help that student guide through their circulative process. The summative assessments help the school determine if there are any circulative changes that need to be made as a whole. They are both needed and used in two different ways. When a child is going on an IEP, it is important to know where the child is and take the initial test to show where the child is at and use the information correctly.

**Senator Davison:** You mentioned about the state scholarship. The ACT is not included in this and that is what is needed for state scholarships. They are allowed to do the Workkeys. How does that effect the state scholarships?

**Russ Ziegler:** The ACT is the state assessment for state scholarships. How come the ACT is not one to opt out because it is tied to funds but these other you can opt out? What makes an ACT a better assessment?

**Senator Davison:** We require an ACT or a compass test at a community college to enter a university. You have to have one or the other.

**Russ Ziegler:** If a student is going to a college that is correct. But for students not going on to college the ACT would not have an effect on them.

**Senator Kannianen:** Understanding the parents fear that the student's data is used inappropriately, I have never seen that mentioned. I think the issue is the curriculum versus the non-curriculum and standardized tests that does measure what specifically used in the classroom. Do you see the parents side of it?

**Russ Ziegler:** I put that in because on the House side there was fear that the data was being used inappropriately. I do see the parent's side in education where we are in the middle of a shift. In the past we had standards, but standards weren't the emphasis. The curriculum was the emphasis. Now we are

switching to we have standards and we use those standards to build our curriculum is the way it is supposed to be. Is every school doing that? No, we are kind of in the middle. We are trying to build that up and the schools are using those standards to build their curriculum instead of just buying a textbook and using that. What we are trying to do here is, if we are building standards and building our curriculum off of those standards then having a state assessment that is testing those standards is testing the curriculum. As a whole part to see if the curriculum is doing what it was intended to do. Is that curriculum teaching the student the standards that was created? I think we have to look at the whole picture if we have so many parents opting out, how is that going to effect the data? Is that data going to be accurate for instruction or curriculum building?

**Senator Kannainen:** What is more important parental right or data?

**Russ Ziegler:** I think parental rights are important. In my personal opinion, I don't see how the state assessment is effecting parental rights. I am not seeing how a child taking a standardized test is hurting that child. I wouldn't opt out any of my kids for taking a standardized test.

**Senator Kannianen:** That is you. The sponsor spoke of his reasons and said if there was something tied to the curriculum specifically he would consider having his children take the test.

**Russ Ziegler:** If we are going to opt out the schools need to be protected from those if they drop below. It was mentioned that we are at a 1% at the state level. There have been some schools the past few years that did drop below the 95%. I can find them if you are interested.

**Senator Oban:** Is there any way we could compare school to school, district to district, state to other states on less we started having a top-down created mandated curriculum? If the purpose of state wide assessments is to see a bigger picture beyond the day to day assessment of how students are doing, there is really not a way to do it unless, now as a state, we mandate this curriculum. Do you see any better way than what we are currently doing?

**Russ Ziegler:** No, I do not. Teaching is an art. I think a lot of schools have gone to the other side of that where you say curriculum, you take the art out of the teaching. The teacher needs to have the right and ability to go in and do what they feel is best for the students. However, they still need to follow the standards. Having a uniform set of standards as a state is very important and then we can compare school to school. As a nation, Common Core was tried and did not work. The intent was to be able to compare state by state because they are all teaching the same standards.

**Chairman Schaible:** Other testimony is opposition to? Any state agency? Neutral?

**Robert Bauer:** Acting Director of Assessment for Department of Public Instruction: Testimony #3 Consider the questions raised and the information provided as you study the merits of this bill.

**Senator Oban:** Do you know the number of opting out?

**Robert Bauer:** In the last year it was in the 500 range for the North Dakota State Assessment, approximately 1%. The prior year it was in the 300-400-year range. This did drive some schools below the participation because in small students one or two students makes a large difference in the percentage.

**Senator Davison:** Is the 95% a state wide or individual school?

**Robert Bauer:** It is school wide for ESSA reporting.

**Chairman Schaible:** No other testimony? We will close the hearing.

# 2017 SENATE STANDING COMMITTEE MINUTES

Education Committee  
Sheyenne River Room, State Capitol

HB 1389  
3/15/2017  
Job Number 29251

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Andy Baumgardner*

## Explanation or reason for introduction of bill/resolution:

Relating to parental directives

## Minutes:

**Chairman Schaible:** Open meeting. We will talk about a list of studies that we have on our list and we have passed one and have killed one and have 5 pending. Which studies do we want to keep and which one do we want to pass out of here as studies. We had some questions on an REA study. We have a study of in-lieu-of tax.

**Senator Davison:** The one this morning wasn't really on REA's but included REAs and a lot of other entities. I would like to reword that study and be attached to something different.

**Chairman Schaible:** We had a study this morning of a K-12 funding formula. I have in-lieu-of taxes. We already passed the open education resource study. We killed the school choice one. We killed the study of curriculum requirements of history. What is the priority we want to see go forward? We have heard with K-12 funding that now with the down-turns and I imagine with schools losing enrollment now they are feeling the pinch of that. Is that an area we need to pursue a study? Are there duplications of areas and streamlining and do we want to pursue that?

**Senator Davison:** I do agree with Repr. Schatz about duplications of organizations. As the dynamics of K-12 education change and different areas like assessment or data or integration of technology or curriculum enhancement, you start to see mission creep. They start seeing this because their mission was over and they are creeping into other areas already working. There are plenty of examples. REA's, Edu Tech, LEAD, who takes the lead on some of those and how do you prevent organizations from having the same mission. What are the strategic plan and what are your top three initiatives, and what are your goals state-wide? What is the action plan or things that you want to get done and who does them?

**Chairman Schaible:** I don't believe that studies often produce bills that have much success.

**Senator Rust:** I have information on the in-lieu-of and I got the information from the business manager of Wahpeton.

**Senator Davison:** We have studied CT and the assessments and the tests. We have studied the curriculum and Common Core. Has the governor provided anything from his office as to the direction he might have some interest in studying?

**Chairman Schaible:** He is more of a results orientated personality. He has expressed an interest in the innovative type stuff. There is interest in how do we streamline our K-Career

ideas of how that relates to higher ed. and what we looking at streamlining and educating instructors, also along with our dual credit and if we are on track for early completion and graduation.

**Senator Davison:** I would add how we fund it too. Who gets the dollars for the knowledge for dual credit?

**Chairman Schaible:** Also with class mapping to make sure the classes are mapped in correctly in K-12 and college. We did study last interim distance learning and career and tech. The problem was we studied them independently of each other. The problem is they are not under a unified mission or direction of standards. Is there duplication?

**Senator Rust:** Gave a review of school aid.

Conversation continued about the foundation aid and the in-lieu-of money.

**Chairman Schaible:** Funding is student driven. If you have more students, you get more money. Three things have happened. We are out of money as a state. We have kept the payments and land value has stopped going up. Schools are losing money on 3 things. So now they trying to manipulate the formula so it is better for them. Rural schools are going to pay more to educate the kids than urban schools, is that fair? Let's look at 1389 for a bit. It is the opt our bill we heard this morning. I would prefer something that tells what you can't opt out of and leave the rest that you can. What he is proposing is it leaves it up to some discretion and imagine some confusion at the local school level. What we offered 2 years ago is exactly what I am proposing which said you can't opt out of anything that is required for a grade, for graduation, ACT, or Workkeys which are all required by law. You can opt out of everything else. Basically the same floor mat that he is saying, a unified form be developed by the Department of Public Instruction or the local school board. His objection is that the school's changes on assessment for graduation which I am not buying.

**Senator Oban:** Does this give any rights that they don't already have?

**Chairman Schaible:** It would eliminate the possibility from the school by policy to reject that opt out. Right now the vast majority allow that. I have never heard that someone could not opt out. It would force a unified form for tracking mechanism. Right now everything that this bill proposes is already available now and whether the district doesn't allow it and if they didn't they would have a policy that says that.

**Senator Rust:** In the bill, the "superintendent shall respect and support", does that mean they aren't respecting now? That would have to be rewritten just to say, "the parent of the child may opt out".

**Senator Davison:** Mr. Bauer had made some good points. I have some concerns about the Career Interest Inventory and the word "survey". I think if it stays focused on the state assessment test I am more comfortable. Stars and Map is not even Department of Public Instruction related and are they would be expected to oversee and making sure things are happening. I would be more comfortable with it being narrower and focused on the state assessment test.

**Senator Rust:** I think we should have something about opting out. I like your idea is that you have the right to opt out of these.

**Chairman Schaible:** I would email you a copy of that amendment that was proposed 2 years ago and look at it Monday or Tuesday. That will be our basis to work on. It didn't have a reporting requirement which is probably a good idea.

**Senator Oban:** I have a problem with saying if a student is not taking a test and we have to count them as present. That is a responsibility and accountability there. I think it needs to be worked on a lot. Let's not got to the extent that the bill wants.

**Chairman Schaible:** We don't have to adopt the amendment, but it can be a starting point.

**Senator Rust:** I like it where the school district is not responsible. It is a good idea.

**Chairman Schaible:** All the good ideas came from the other one. I did that one. It is what's good policy for school districts. Closed until Monday afternoon.

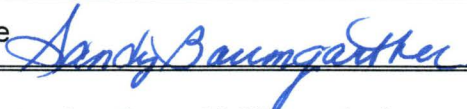
# 2017 SENATE STANDING COMMITTEE MINUTES

Education Committee  
Sheyenne River Room, State Capitol

HB 1389  
3/20/2017  
Job Number 29456

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to parental directives

## Minutes:

#1

**Chairman Schaible:** this is not a surprise either. This is the opt bill and I am proposing the amendment, that same one we had proposed two years ago.

**Senator Rust:** This is a hog-house.

**Chairman Schaible:** This is what we counter. It is basically the same thing we counter offered two years ago on the same opt-out bill. That is what I am proposing.

**Senator Rust:** Are you just trying to wear down the opposition?

**Chairman Schaible:** The other question, my objection to theirs hasn't changed. It makes more sense to tell them what they cannot opt out of then try to be subjectively to what you can and follow some certain criteria. And do that by having the one-year directive using the standardized form and then there is also some reporting requirements. I think if you are having a reporting requirement it is very nice to have standardized form so you have a basis for a reporting.

**Senator Rust:** If you look at 1389. Compared the amendment with the original. B and C are additions. The major difference is in items 1-2. Shall respect should not be put into law.

**Chairman Schaible:** It doesn't need to be put into code. The original bill intent was to allow sections that they can opt out of. I think it is cleaner to say these are the things that you cannot opt of. Everything else you can. There is no decision. What if the school board changes the requirements to graduate? I have a little more faith in our board trying to do the right thing.

**Senator Rust:** His has two different citations added. They are very close.

**Senator Davison:** If you look at the neutral testimony, the amendment satisfies some of their concerns regarding responsibility to the schools and who is liable.

**Chairman Schaible:** The School Boards Association had no issues with this.

**Senator Rust:** The map test is 15.1-21 and 15.1-18 is the career interest inventory. Both your amendment and the original keeps in the assessment of reading, science and mathematics test.

**Chairman Schaible:** The one proposed now is basically allowed in schools right now. Some didn't know how to go about it so they have been resisting that. This would give them a clear indication of what to do.

**Senator Rust:** I move for a Do Pass on 17.0879.03001.

**Senator Davison:** Second

**Chairman Schaible:** Motion and second for the 03003 amendment for HB 1389. Any other discussion?



Clerk take roll: Roll taken. 6 Yeas, 0 Nays, 0 Absent.

**Senator Rust:** I move a "Do Pass" on HB 1389 as amended.

**Senator Vedaa:** Second

**Chairman Schaible:** We have a motion for a "Do Pass on Amended" version of 1389. Is there any other discussion? No, clerk take roll. Roll taken 6 Yeas, 0 Nays, 0 Absent.

**Senator Schaible** will carry.

March 20, 2017

CS  
3/20-2017  
1622

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1389

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15.1-21 of the North Dakota Century Code, relating to parental directives; and to provide an expiration date.

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

**SECTION 1.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Parental directive - Administration of tests and assessments - Report.**

1. A student's parent may direct the school district in which the student is enrolled not to administer to the student any state test or state assessment required in accordance with section 15.1-21-08.
2. In addition to the authority granted under subsection 1, a student's parent may direct the school district in which the student is enrolled not to administer any other specific test or assessment to the student, except a parental directive under this subsection does not apply to:
  - a. Any test or assessment required by the student's school district of enrollment or this state for the completion of any grade from kindergarten through twelve;
  - b. Any test or assessment required by the student's school district of enrollment or this state for high school graduation;
  - c. The ACT; or
  - d. WorkKeys assessments.
3. a. A parental directive is valid only if it is presented to the school district using a standardized form, prepared by the superintendent of public instruction, and signed by the student's custodial parent.
  - b. A parental directive is valid only until the conclusion of the school year in which it is received by the school district.
  - c. A parental directive submitted to a school district in accordance with this section must be retained as part of the student's educational record.
4. A school district is not liable for any consequences incurred by a student as a result of a parental directive submitted in accordance with this section.
5. A school district is not required to provide instruction or activities for a student during the administration of any test or assessment referenced in the parental directive submitted by the student's parent.

CJ  
3120-2017  
2/2

6. Each school district shall post the parental directive form on its website and make the form available to a parent, upon request.
7. At the time and in the manner directed by the superintendent of public instruction, each school district shall provide a report regarding:
  - a. The number of parental directives received;
  - b. The number of parental directives applicable to students who are economically disadvantaged, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency; and
  - c. Any loss of funding stemming from the parental directives.

**SECTION 2. EXPIRATION DATE.** This Act is effective through June 30, 2019, and after that date is ineffective."

Renumber accordingly

Date: 3-20-17  
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1389

Senate Education Committee

Subcommittee

Amendment LC# or Description: 17.0879. 03001

- Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rust    Seconded By Davison

Senators	Yes	No	Senators	Yes	No
Chairman Schaible	✓		Senator Oban	✓	
Vice-Chairman Rust	✓				
Senator Davison	✓				
Senator Kannianen	✓				
Senator Vedaa	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment N/A

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

Date: 3-20-17  
Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1389

Senate Education Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rust Seconded By Vedaa

Senators	Yes	No	Senators	Yes	No
Chairman Schaible	✓		Senator Oban	✓	
Vice-Chairman Rust	✓				
Senator Davison	✓				
Senator Kannianen	✓				
Senator Vedaa	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Schaible

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

**REPORT OF STANDING COMMITTEE**

**HB 1389, as reengrossed: Education Committee (Sen. Schaible, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1389 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 create and enact a new section to chapter 15.1-21 of the North Dakota Century Code, relating to parental directives; and to provide an expiration date.

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  - d. WorkKeys assessments.
3. a. A parental directive is valid only if it is presented to the school district using a standardized form, prepared by the superintendent of public instruction, and signed by the student's custodial parent.
  - b. A parental directive is valid only until the conclusion of the school year in which it is received by the school district.
  - c. A parental directive submitted to a school district in accordance with this section must be retained as part of the student's educational record.
4. A school district is not liable for any consequences incurred by a student as a result of a parental directive submitted in accordance with this section.
5. A school district is not required to provide instruction or activities for a student during the administration of any test or assessment referenced in the parental directive submitted by the student's parent.
6. Each school district shall post the parental directive form on its website and make the form available to a parent, upon request.
7. At the time and in the manner directed by the superintendent of public instruction, each school district shall provide a report regarding:

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- c. Any loss of funding stemming from the parental directives.

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Renumber accordingly

**2017 CONFERENCE COMMITTEE**

**HB 1389**



# 2017 HOUSE STANDING COMMITTEE MINUTES

**Education Committee**  
Coteau A Room, State Capitol

HB 1389  
4/4/2017  
Job 29926

Subcommittee  
 Conference Committee

Committee Clerk Signature 

## Explanation or reason for introduction of bill/resolution:

Relating to parental directive

## Minutes:

No attachments.

Rep. Rich S. Becker: we will call the meeting to order at 10:34am. First thing I would like to do is obviously just kind of take a quick roll call vote and I have asked Joe to give us a little bit of time, after each one says who they are since this is the first meeting for us I would appreciate it if you would just add a word or two or three or four about yourself and your district, and how long you've served that district. So I will go ahead and start, I am Rep. Rich S. Becker, and this is my second session, and I represent part of district 43 in Grand Forks I share that with somebody who you know very very well, my across the pound neighbor is Lonnie Laffen, with that I think we'll go on.

Rep. Bill Oliver: I am Rep. Bill Oliver I am from district 4, Sen. Jordan Kannianen is our Senate representative, and we have been good friends for 7 years 8 years something like that. I got lassoed into this by a statement to a relative, and I can take my own advice and get my words out here. Although I am pretty quiet on the floor.

Rep. Corey Mock: representative from district 18 in downtown grand forks, it is my fifth legislative session, my fifth session on the education committee, and serve as the house minority leader.

Sen. Donald Schaible: serve district 31, district 31 goes all the way around Mandan, and goes all the way south to the South Dakota border, and goes west to Region, North Dakota. I am a farmer from Mont, North Dakota this is my 4<sup>th</sup> session, this is I have been all 4 sessions in education, and this is my first session as Chairman.

Sen. Jordan Kannianen: freshman from district 4, I live rural Stanley, New Town area. District 4 covers all of Fort Berthols, it covers up to Kenmare over Berthol, Sayer, down to Max, A little bit of Dunn County, so that's. I am a native of the Stanley area.

Rep. Rich S. Becker: are you a native of the warlow lip. There's still a milkshake dispenser that still works, wonderful.

Sen. Erin Oban: (forgot to turn mic on)

Rep. Rich S. Becker: ok, well thank you all. Because this is a get to know each other type meeting we have 30 minutes to see where we agree and disagree and what we want to do and go from here, and just as a way of starting it would appear to me that the senate so liked the house bill that came over, that you almost rewrote it in its entirety the way it was. So my first question really is relative to HB 1389, there is minor changes if you could reiterate why those changes or what your feelings are or what you like or don't like about the bill as we look at it today.

Sen. Donald Shcaible: I would be happy to express the differences that we have. First of all a little history on this, this issue was here two years ago. The amendments that the senate provided is exactly the same amendment that we offered two years ago, with the changes of a sunset, and the rationale for that is as I got through this bill, and I will relay that to you. I guess our objections to the first thing is on, I am looking at the 3000 version, which is how it came over to us I believe. Section 1 paragraph 1 line 7 through 9, the wording in here is the parents right to opt out with philosophical, moral, and religious objections. This is language I don't feel we need, I mean we have moral objections, that's kind of given and taking on that I don't think we need to reaffirm that. I think it's the DPI to respect everybody's rights, and to give. When we write laws it's not just for specific reasons, it's for everybody in the state, and we treat everybody equally, and that's the way it's supposed to be, so to reaffirm these statements I don't think is necessary. I think everybody agrees with them, but I don't feel it's necessary to put them in law, we don't need to clutter our law with statements of interest and that I don't think it's necessary that we need to do that. The real meat of the objections is in subsection 2 of section 1, as it is written it lists 3 parts of century that are what you can opt out of, and as you can see in line 12, 15.1-21.8 which is a standard section of century code, and you look at the version that we have that's listed there. So those are the same, and then with the other two sections, which is 15.1-21-17, and 15.1-21-18 which is 17 is the other interim assessment section, 18 is the career interest section, and what's interesting about that I don't have a rationale not to object to those sections, but what it does is it leaves it up to interpretation of what you are opting out of. And what is questionable about that is, as those things change, and as the way you go you look at those sections and then it is still up to interpretation. I guess the version that we submitted to the, as an amendment change is we were trying to clarify by making it simple to listing what you cannot opt out of, rather than creating things that would provide interpretation, and confusion. When somebody interpret takes that one school might interpret it different as a different school, and that's where I think where the problem is we have right now. Basically what we have right now in current law, everything that we are saying in law can, you can do right now, and we are ok with that, except what seems to be the rationale is some schools are interpreting things different than the things that other schools are. So what we thought is the rationale, and making it cleaner and much less subject to interpretation, it would be simpler just to list what you cannot opt out of, and if you look at our version which I am looking at the 3001 version which is a Christmas tree version of our amendments, as you can see in section 1 subsection 1, 14-16 is the same section 15.1-21-08 I suggested earlier that that's the same. So that's the same and we listed that, the other ones is it says the four things that you cannot opt out is the things that we suggested are required by law. A is any test assessment that is a completion of a grade, that's A. B is any test or assessment for state graduation, so basically anything

you need for a grade, anything you need for graduation and the other two is the ACT and the work keys. Those are things that we feel are required by law, and it makes it much clearer so that you say well what can you opt out of, as long as it's not one of these you can opt out of, so I don't see that's much less subject to interpretation and confusion of what you can opt out of. And as far as the rest of the bill goes, like I said this is an amendment we offer two years ago, and all those other sections onto there is things that we included in the bill two years ago, which the house rejected. And I don't know if it's, I think it's important that we have a standardized form, I think it is important that it's only for one year, and I think it's important that the school is not held liable for, or responsible for the ramifications of opting out of something that might jeopardize a scholarship or admittance to college. The only other thing that we are objected to is, of the bill that came over to us, is page 1-13, 1-14 on the 3000 version is that under the section it is deemed to be in attendance to all purposes of this title. Well if a student is not taking the test, and not in school I don't see how we can justify being in attendance. There are some real problems with that I think remembering my days in high school, which is a long time ago, but I had an opportunity to skip school legally, I think I would of took advantage of it, this certainly provides that opportunity, there again I don't think it's what school is about, opting out is a parent's right, I believe in that but I think they are required to go to school, and I don't think a person's right to opt out, we shouldn't provide tutors or periods for that, but I think they need to be in school. So Mr. Chairman I guess I listed the reasons, the rational for why we made the changes, and some of the objections to this bill, so I guess with that I would be happy to try to answer any questions.

Rep. Bill Oliver: I am not against any of this, I wrote some notes on my Christmas tree version on 3001, why the sunset clause, that's number one. I will get them all out that why you can answer them all. Why the sunset clause number one, and 3001 page 2 line 19, why couldn't we have survey in there also, add the word survey. Because there are some surveys that don't do anything, and the kids are required to take them at this point. Those are just a couple of questions, and the rest of them I am pretty much ok with everything, I just want to ask those questions.

Sen. Donald Schaible: first thing from the sunset, the sunset is on there because there is a law, a federal law that you have to have a certain percentage that participates to be in compliance with federal law, with ESSA rules, and the percentage of that, but if we go over that percentage the reason the sunset is there is because some of our small schools with that percentage could be one family, three or four kids could put them in violation of the rules, and then they are in violation of federal law, and we thought a sunset is that we are at 1 percent now if it goes up to three percent some of those are in violation. The sunset is on there so that we have an opportunity that forces us to look at this again, and that's the rational. As far as the survey I guess I haven't thought about that, I guess I don't know if I want to put it in there, I think a survey would be required by a local district, but I don't know if there is any state mandated surveys that I am unaware of, but if it's a local district, and I guess the other question about this is I believe Representative Koppelman the sponsor of this bill had relayed to me some of the issues with the way that we are wording it, is you are saying that the local school district can change the wording to make it requirements of their graduation or for a grade, and I guess my argument was that, well it is a local control issue, I tend to believe in our school boards, I think they are elected by those people to make those decisions, I served on one for 20 years, and believe me if I was a mandating something to our students and our parents. It didn't take me long to find out, and the other thing is I think that we need to trust

our school boards to do what is right, I think they are the ones at the local that know their districts, their personalities, their ideas nest, and if that district wants to require something, I think they have that right, I mean is it, it might be objectionable, I think that everything that we do, a schoolboard does offends somebody, but I think they have to make that, so that was a question for that, so.

Rep. Corey Mock: members of the senate, thank you for the explanation, and I will say as I look through this I do appreciate the structure in which you talk, addressing some of these concerns, and I will say that I am very supportive of some of the amendments you made including the elimination of the philosophical, moral, or religious objection, I feel like at what point is that even necessary. If we are objecting to a test regardless of the grounds, if under federal law you have to allow a parent to direct a school district to opt your child out of an assessment, why do we care what the reason is. I am glad that that amendment was made, and I do like how you laid this out, I truly appreciate that this is now limited to simply the assessments in 15.1-21-08 the reading maps in science tests, but also allowing for that flexibility to opt out of other assessments with few exceptions. Mr. Chairman I am into hearing the other discussion regarding some of these subsections, but I do like the limitation that it has to be renewed on an annual basis, that it is part of the student's record, that is there is any questions regarding performance that we can always look back upon that record and know that there was, that students were, that that student was not permitted to participate in certain exams. I don't know if there is any other concerns or questions regarding some of the provisions that were in our version of the bill, but at first glance I am supportive of the senate's changes.

Rep. Rich S. Becker: any other comments.

Sen. Erin Oban: with regard to the comment that Rep. Corey Mock made about the other provisions that were included, we did a back and forth comparison on pretty much everything from 3 through 7 was pretty much in Representative Koppelman's original bill, so.

Rep. Bill Oliver: are we all in agreement that these are good things, can we make a motion? Do you want one or not.

Rep. Rich S. Becker: not today necessarily. I think partially an answer to your question, today is an opportunity to get the initial views from both sides is what they like or don't like, and it would appear to me that we are reasonably close in our thinking, and I am not anticipating any major re-write of the bill at this point in time, you know maybe a minor fine tuning, but we don't have a whole lot of time, and I am hoping that we can conclude with one more meeting, and I know that the house would like to have a slight chance to get together this afternoon and review and see where we are, and I would imagine that the senate would like that opportunity as well. With that in mind, I have to thank Sen. Donald Schaible, if we have morning meeting and if you have a new chairman of a committee, I was informed that it's my chairman's duty to supply donuts. But I know we are going to be having floor sessions every morning this week, usually I think they will be through right around the 10am time frame, so I would like to ask Sen. Donald Schaible what your feelings are towards trying to get together say either late tomorrow morning or after the floor session tomorrow afternoon.

Sen. Donald Schaible: I guess anything that fits, and I think the dilemma of filling us in the schedule, I guess any opportunity that would fit for all of our schedules is fine with us.

Rep. Rich S. Becker: let me just add a quick not to that, are there any times that you know right would not work in the next 2 days.

Sen. Donald Schaible: the only thing I think we have left pending is floor session, so. Other than that, no I guess not.

Rep. Rich S. Becker: on behalf of the house, we will schedule something after the floor session this afternoon, a chance to get together and review where we are, and then watch your dashboards for tomorrow, we will try to get together at some point and time tomorrow. So I really want to thank you all for your comments, and your willingness to share with us your thinking, and unless there is any other questions. Unless you have a comment, this meeting is over, thank you all.

# 2017 HOUSE STANDING COMMITTEE MINUTES

Education Committee  
Coteau A Room, State Capitol

HB 1389  
4/5/2017  
Job 29947

- Subcommittee  
 Conference Committee

Committee Clerk Signature

## Explanation or reason for introduction of bill/resolution:

Relating to parental directives.

## Minutes:

No attachments.

Committee Clerk Vargas: house representatives late. 15 minutes after 10:30am.

Rep. Rich S. Becker: begins conference committee to order at 10:45, and with do apology for running late. You might have noticed that I haven't gotten over to you earlier about scheduling the meeting either yesterday afternoon or this morning or this afternoon. And I guess one of the reasons for that is after our first meeting it appeared to us that we were making progress and getting close to the goal line, and that we agreed on more than we disagreed. We've had time to get together and talk, and we are a little stymie on a couple of things, and so we will be trying to delve into that this morning, and then maybe hopefully continue to make some improvements and if need be have a meeting certainly within the next 24 hours. Let me lead off, one of the things that having gone back and looked at HB 1283, the bill from a session ago, and what was in that bill compared to what's in the current bill. One of the questions that I've had and I am not quite sure I totally understand is if Sen. Donald Schaible if you or somebody on the senate side could just comment a little further as to you preference, your stance on the sunset clause. Its been in some of the bill, and its been out of them, it was in 3000 or it was in the 4000 version of the bill going through now, but it is not in the 3000, where I am a little confused as to your feelings, and I want to make sure we understand them so we can discuss it more properly.

Sen. Donald Schaible: rational is ESSA rule says that, it's a federal rule that you have to be in compliance, and I think to give a factor of 3% to be in compliance, if you are less than 3% you are in compliance, but if you go over that you are not in compliance with that, and then you need to require to have an improvement plan and justify why you are not, and the rational then for the sunset is, is because we also include the reporting requirements in this bill so that we have an understanding of who's opting out, where they're coming from, what rational of what type of students these are, and we won't have that data, but in the two years we'd have that data and I guess the sunset is to force a look back at where we are going with this, are we getting close to being non in compliance, because these are per building compliance rules so that its not even a district, it's per building, so you might have a multiple buildings in

a district that could be close to not in compliance, and we thought that would force, we would have the information to look at that, and it would also provide a, you know otherwise you can say somebody will bring it back and do that, but I have been involved with a few things where they were sunsetted, and they didn't get looked at and they disappeared, and so I think sometimes it forces the issue a little bit, so that's the reason for the sunset.

Rep. Rich S. Becker: well maybe to carry it further, and my view was the one view of the looking glass Rep. Corey Mock I think you had some concerns and questions on this matter as well.

Rep. Corey Mock: I understand the sunset clause, you know because it does force our hand, but it only forces our hand in so much that we are willing to continue it forward, if no one, it still requires legislative action to remove the sunset clause or to extend it for another two years. If we are getting a report, if school districts are reporting to the superintendent, we'll, I am hoping the intent is that we get that information, and we know of any policy adjustments that need to be made. I would also hope and presume if there is a school district that is not in compliance with us, that the superintendent would bring this to our attention in 2019 without us having to initiate legislation. So the report is vital, I really appreciate the inclusion of subsection 7 of the bill, because it requires the school districts to let DPI know the statistics regarding parental directives, etc. That said, one of the questions that's come up with, that came up in the house side, that the senate did remove is regarding nonacademic surveys or tests. I know the sponsors of the measure, the house committee, it was our intent to extend the same privilege and understanding that if there was a non-academic survey, health assessment or something, something that is not required, it's not in curriculum, it is not a test, it is not required for graduation, but merely an additional survey, but that is the reason we included this in our language so that it was clear. So I don't know if I want to speak entirely for the house side, but as we've been discussing, we wanted to make that explicitly clear, why we included it in statute. We would like to see it amended back in so that it is clear that a parent may direct a school district to opt their students out of a test assessment or survey that is not part of the curriculum with the rest of your language. With those exceptions, and I also feel that we would really appreciate the removal of the sunset clause, again we will be visiting this no matter what, I don't see a reason for us to go through and debate the entire policy in two years, lets make tweaks if we need to.

Sen. Donald Schaible: I guess, there again putting things in here that suggest what we are doing, we have 4 criteria in here that list the things that you cannot opt out of, everything else I think is up to, you know is ok to, unless the school board would dictate something that would be directed, so there again we're suggesting local control, but then we are putting these what if, or you shall do these criteria on it, and putting more restrictions on that, I mean I am not, know what a survey is, I think that is a local control issue, unless it is a state mandated survey, and I don't know of a state mandated survey that is out there, so if there was a state mandated survey I would be in agreement with that, but if it is a local one, most of our testing is done locally anyways, and they justify the test, and the rational and the use of that test. I would think a survey would be the same thing, and I guess that would be up to, there again are we saying while we encourage local control, but you can only do it if you do it this way, and I guess for that reasons I think I would oppose that, because the rational that we don't have a state mandated survey, and then the other thing is do we need to dwell into other elected officials realm of duty, and I think that's what it would be.

Rep. Corey Mock: I appreciate that, and we do want to make sure that we are looking at local control, but with all due respect I actually don't know that we would be imposing too many, actually allowances I mean we wouldn't unnecessary allowances by including the word survey, again it's the unknown, it's not knowing what we don't know in this case. If there is a survey that a parent feels that they wouldn't want their child to participate in, and it is not one of the criteria, does not meet the criteria that they don't have the option to, but the school district interprets this otherwise saying well it's not a test or assessment, you can opt your child out of a survey, I think that may create more confusion. It is the reason we put it in, I would like us to consider that, it would be premature for a motion at this point, but I would like to find a way that we can provide those assurances in the bill, I do want to say senator, the senate you put together a fine amendment, and the bill is, I think all other sections with the exception of those two again I can't speak for my colleagues, but I like what you did, I just want to make sure that we are being clear, and that we are not creating or opening the door for more confusion over the next two years.

Rep. Rich S. Becker: we have been doing a bit of wordsmithing to make sure that, does one word suffice or do we need two, and relative to the survey, I would like to ask Rep. Bill Oliver to address the survey/ assessment are they the same or are they different. Does one give us a little more coverage than the other?

Rep. Bill Oliver: members of the senate committee, a survey is a test. It is an assessment, if we can get clarification on that then we can move forward from this point, for the survey part. A survey is an assessment, it is a test, so if we can agree and get it on the record, that we can agree about survey meaning assessment, then we can move on from this point. As far as that goes that would be the only thing, I just can't believe that it's one word that is separating this getting completed, you know, I really can't and that's unfortunate, but when I did go back and I did visit last session all 162 pages of it, and I have read it twice in less than 12 hours, and I studied it, and I see what went on the last session with all the testimony, and all the things that happened in the subcommittees, and everything that happened. We were set up again for failure on this bill, this bill has to go through, we have to fix it so it can go through. And I mean we as a joint subcommittee we are set up for failure with it last time, we can't do that again, we have to get this worked. We passed a bill on innovation on education, we passed a bill that helps home school parents opt out of certain tests, why are we going to give them, and without a sunset clause. Why are we going to give them the opportunity to do that, and we are not going to give our public school parents the same opportunities, that's the problem we have with what's going on with the sunset clause, so we need to try to come to an agreement to where we will be revisiting this every session, the reports are going to be filed, and I guarantee you that our teachers are going to know that this is here, and it's going to be able to help us to make this right for the kids. It's not just for the parents, it's for the kids, and if we can't get that straight we are in the wrong business, but the survey thing, if we can get an acceptance that a survey is an assessment, we don't need to include that in the language as long as we get an acceptance of that we can go on from this point. I guess that's my only thing.

Sen. Donald Schaible: I guess a couple of comments, first of all the first comment that I have is we are concerned that the school board is going to initiate something called a survey that is now an assessment, and so by changing the wording of it they're going to violate this law.



And there again I mean in that rational then so they can change the wording of anything they want to do to do that as a way to circumvent this, and I guess I think that is a solution looking for a problem, because I don't think we have a problem with surveys no, I don't believe our school board are doing anything wrong now, and I kind of trust them. I know there are some that we have parents that are sure are they're concerned with that, but they have an avenue to fix that, it can go to the school board, they can petition a complaint procedure, they can follow this rational for why we are doing a survey, and is it important to see the information that they get to rational, but there again I think those are local control issues. I mean the thing is by making this the way it was, it was simple rational easy to see clear cut, and the rest is up to local control. Now if we are going to try to think of all these things that they are going to circumvent the way we do it, I think we could add a lot of words on there, and survey is just one of them. We can make up all other kinds of ways of saying the same thing, that maybe some other tool will become an assessment, and now that also should be included, and I am guessing I am thinking that well, I think we got to trust our school boards, and our local people, they are the ones that elect them, they know their communities, if they feel that a survey is important for their district, they might try it one year, and if it's a bad tool I believe people ought to know. My phone lit up as soon as I did something in a week, so it's not that kind of thing, but that's the way it's supposed to work. I don't think we are supposed to come here, and micro manage those decisions. As far as the sunset I am not concerned about this one way or the other, I am concerned about in violation, and if the sunset goes away that's not a big issue, I guess I can live with that, but the thing is, we are going to be in violation we are certainly going to hear about that aspect too. The thing is without the sunset then you are going to say well maybe this is not working, like we have a fair amount of schools that are now in violation of our federal law, and we might have to take this policy away, I don't think that would be real popular. It's a lot easier if you are going to take something away, that it goes with a sunset, but I mean I can live without the sunset, but I think adding a survey is a step too far, I think it is unnecessary, I think we can trust our school boards to do the right thing, and if they don't they have an ability to be fired from their job.

Rep. Corey Mock: I know we are coming up on the clock here, it is hard to believe that 30 minutes has passed already. I think we can find some common ground here, we might be able to find some wiggle room, I again at the end of the day we are focusing on the clarity, we want to make sure that there are, we heard of some examples that we are concerned would not be covered by this, I think we need to go back and visit those, we are happy to hear that there is room to negotiate on the sunset, I think we can all pretty much, we can bet this morning's coffee on the fact that we will be talking about this again in two years no matter what. With that said Mr. Chairman I think we probably are going to need another meeting, and because Rep. Bill Oliver did read the entire case or legislative history on this bill twice all 165 pages, I think it's in the best interest of this committee that we provide him an assessment to insure that he did thoroughly read all 162 pages, and you will not be allowed to opt out, so we will have a survey, and an assessment, and we expect you to score high on this, no opting out.

Rep. Rich S. Becker: thank you Rep. Corey Mock, we have extra incentive to try to reach the goal line, because I don't want another 2 o'clock e-mail coming from Rep. Bill Oliver. SO we are motivated to get this done, maybe I am hoping that we can meet again this afternoon, and we will, I will talk to Mason about making sure that not only the e-mail goes out, but that there is communication so we know what time it is in advance, so one more time thank you

House Education Committee  
Conference committee on HB 1389  
April 5, 2017  
Page 5

for your efforts Sen. Donald Schaible, and hopefully somewhere between 3 and 4:30 we will figure this afternoon, meeting adjourned.

# 2017 HOUSE STANDING COMMITTEE MINUTES

Education Committee  
Coteau A Room, State Capitol

HB 1389  
4/6/2017  
Job 29966

Subcommittee  
 Conference Committee

Committee Clerk Signature 

## Explanation or reason for introduction of bill/resolution:

Relating to parental directives.

## Minutes:

No attachments.

Rep. Rich S. Becker: we will go ahead and call the conference committee meeting to order, and I will ask the clerk to call the roll. well thank you all, and I want to thank you for being so attentive, and prompt to our two previous meetings, and this morning, and for being helpful in trying to narrow this in, and something that that we can hopefully all agree on. And we have obviously met in between now and the last meeting as I am sure you folks have, and I think we've discussed enough, I think we are ready to make a motion on what we think we verbally agreed to, and see if we can live with it, and go from there so with that I would like to pass the microphone over to Rep. Corey Mock and we will go from there.

Rep. Corey Mock: I have a motion, but I just wanted to clarify and we make sure we have on the record one of the concerns that, do we have in the senate engrossed version of the bill is that we are not explicitly stating whether surveys would be included in this provision, we say any test or assessment that is not one of the four sub sections in 2a though d, I guess to the senators is it, we wanted to have that language in there, but I think we would be comfortable if we just acknowledged that there is, we are not wanting to create an opening that if you call something a survey, that you can no longer opt out, that if there is a survey that is not academic, or not specific for graduation that requires graduation that if that is offered by the district, it's state mandated, that the parents at least have the opportunity to opt out, and is that the intents of the senate's language.

Sen. Donald Schaible: yeah, I guess the intent is that we are not trying to have anybody play games with this, I don't think we want to money it up with more language that we feel is unnecessary, it is certainly not our intention to restrict somebodies rights to do this, there again I don't think we have to list everything that their rights have, and the second thing is if somebody is playing games with school boards or something like this, I am sure we will hear about it, and have an opportunity to look at it again, and especially if we remove the sunset, I think somebody will bring it back, and that is fine with us, like you said the sunset is not that big of an issue, the rest of us I think we can live with, and see how it goes and go it that way.

Rep. Corey Mock: Mr. Chairman if I may, and again thank you to the senate for the good work you did on the bill, we do like the amendments, I am glad we got the clarity on subsection 2, so with that Mr. Chairman I would move that the house accede to the senate amendments and further amend to remove section 2, of the sunset clause.

Rep. Bill Oliver: seconded motion.

Rep. Rich S. Becker: discussion.

Sen. Donald Schaible: I think we are ok with that, with the language like I said the sunset goes away, we'll allow, we will see if something comes up we can probably hear about it, so.

Rep. Rich S. Becker: any more discussion, then let's take a roll call vote on this. Vote is 6-0-0. Well I think it looks and sounds like we completed our assignment and our job, and we have agreed and I again I just want to thank all of you for your help on this, and now we will go forward. Thank you all we are adjourned.

April 6, 2017

9/6/17 VK  
1 of 2

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1389

That the Senate recede from the Senate amendments as printed on pages 1174 and 1175 of the House Journal and pages 907 and 908 of the Senate Journal and that Reengrossed House Bill No. 1389 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15.1-21 of the North Dakota Century Code, relating to parental directives.

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

**SECTION 1.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Parental directive - Administration of tests and assessments - Report.**

1. A student's parent may direct the school district in which the student is enrolled not administer to the student any state test or state assessment required in accordance with section 15.1-21-08.
2. In addition to the authority granted under subsection 1, a student's parent may direct that the school district in which the student is enrolled not administer any other specific test or assessment to the student, except a parental directive under this subsection does not apply to:
  - a. Any test or assessment required by the student's school district of enrollment or this state for the completion of any grade from kindergarten through twelve;
  - b. Any test or assessment required by the student's school district of enrollment or this state for high school graduation;
  - c. The ACT; or
  - d. WorkKeys assessments.
3. a. A parental directive is valid only if it is presented to the school district using a standardized form, prepared by the superintendent of public instruction, and signed by the student's custodial parent.
  - b. A parental directive is valid only until the conclusion of the school year in which it is received by the school district.
  - c. A parental directive submitted to a school district in accordance with this section must be retained as part of the student's educational record.
4. A school district is not liable for any consequences incurred by a student as a result of a parental directive submitted in accordance with this section.

7/6/11  
2 of 2

5. A school district is not required to provide instruction or activities for a student during the administration of any test or assessment referenced in the parental directive submitted by the student's parent.
6. Each school district shall post the parental directive form on its website and make the form available to a parent, upon request.
7. At the time and in the manner directed by the superintendent of public instruction, each school district shall provide a report regarding:
  - a. The number of parental directives received;
  - b. The number of parental directives applicable to students who are economically disadvantaged, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency; and
  - c. Any loss of funding stemming from the parental directives."

Renumber accordingly

2017 HOUSE CONFERENCE COMMITTEE  
 ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1389 as (re) engrossed

House Education Committee

- Action Taken  HOUSE accede to Senate Amendments  
 HOUSE accede to Senate Amendments and further amend  
 SENATE recede from Senate amendments  
 SENATE recede from Senate amendments and amend as follows

Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Mock Seconded by: Oliver

Representatives	4/4	4/5	4/6	Yes	No	Senators	4/4	4/5	4/6	Yes	No
(chairman) Rep. Rich S. Becker	✓	✓	✓	✓		Sen. Donald Shcaible	✓	✓	✓	✓	
Rep. Bill <del>Devlin</del> <u>Oliver</u>	✓	✓	✓	✓		Sen. Jordan Kannianen	✓	✓	✓	✓	
Rep. Corey Mock	✓	✓	✓	✓		Sen. Erin Oban	✓	✓	✓	✓	
Total Rep. Vote						Total Senate Vote					

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number 17.0879.03003. of amendment

LC Number \_\_\_\_\_ 05000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

4/4 - no agreement, meeting again.  
Floor session is only barrier, on what time to meet.

4/5 - <sup>10:30am</sup> We will need one more meeting.

Insert LC: 17.0879.03003  
House Carrier: R. Becker  
Senate Carrier: Schaible

**REPORT OF CONFERENCE COMMITTEE**

**HB 1389, as reengrossed:** Your conference committee (Sens. Schaible, Kannianen, Oban and Reps. Rich S. Becker, Oliver, Mock) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1174-1175, adopt amendments as follows, and place HB 1389 on the Seventh order:

That the Senate recede from the Senate amendments as printed on pages 1174 and 1175 of the House Journal and pages 907 and 908 of the Senate Journal and that Reengrossed House Bill No. 1389 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15.1-21 of the North Dakota Century Code, relating to parental directives.

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

**SECTION 1.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Parental directive - Administration of tests and assessments - Report.**

1. A student's parent may direct the school district in which the student is enrolled not administer to the student any state test or state assessment required in accordance with section 15.1-21-08.
2. In addition to the authority granted under subsection 1, a student's parent may direct that the school district in which the student is enrolled not administer any other specific test or assessment to the student, except a parental directive under this subsection does not apply to:
  - a. Any test or assessment required by the student's school district of enrollment or this state for the completion of any grade from kindergarten through twelve;
  - b. Any test or assessment required by the student's school district of enrollment or this state for high school graduation;
  - c. The ACT; or
  - d. WorkKeys assessments.
3. a. A parental directive is valid only if it is presented to the school district using a standardized form, prepared by the superintendent of public instruction, and signed by the student's custodial parent.
  - b. A parental directive is valid only until the conclusion of the school year in which it is received by the school district.
  - c. A parental directive submitted to a school district in accordance with this section must be retained as part of the student's educational record.
4. A school district is not liable for any consequences incurred by a student as a result of a parental directive submitted in accordance with this section.
5. A school district is not required to provide instruction or activities for a student during the administration of any test or assessment referenced in the parental directive submitted by the student's parent.



Insert LC: 17.0879.03003  
House Carrier: R. Becker  
Senate Carrier: Schaible

6. Each school district shall post the parental directive form on its website and make the form available to a parent, upon request.
7. At the time and in the manner directed by the superintendent of public instruction, each school district shall provide a report regarding:
  - a. The number of parental directives received;
  - b. The number of parental directives applicable to students who are economically disadvantaged, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency; and
  - c. Any loss of funding stemming from the parental directives."

Renumber accordingly

Reengrossed HB 1389 was placed on the Seventh order of business on the calendar.

**2017 TESTIMONY**

**HB 1389**

HB 1389

Attachment 1

1/31/17

1/31/17- Testimony HB 1389- Ben Koppelman

Mr. Chairman and Members of the Committee, I am Rep. Ben Koppelman, and I represent District 16 in West Fargo. I am here to introduce HB 1389.

This bill was written as an attempt to codify the rights that parents have to direct the education of their children. Most parents believe that they know what is best for their children and value the ability to work with the schools to make choices on their child's behalf. I am a parent who exercises my ability to direct my child's education. Section 1, Subsection 1 of the bill outlines the general rights of parents to direct their child's education, and clarifies that this subsection in no way limits the ability of the state to fund schools on a per pupil basis.

Section 1, Subsection 2 describes which state required tests a parent may opt their child out of based on the rights of the parent outlined in subsection 1. Code reference 15.1-21-08 references the state assessment of math, reading, and science; 15.1-21-17 references a school district interim assessment, and 15.1-21-18 references a career interest inventory for educational and career planning.

This bill does not specifically give parents the right to opt out of the ACT or Work KEYS summative assessment which is located in 15.1-21-19 of the Century Code.

Section 1 Subsection 3 ensures that by not taking these exams the student is not penalized against the allowed absences for the school year term.

Section 1 Subsection 4 prescribes how a parent is to submit the parental directive and how often the directive must be filed. It states that a school is not required to provide alternative instruction or activities for the student during the time that the student is opted out of an activity. Also, this subsection sets reporting and record keeping requirements as well as instructs school districts to post the

parental directive form on their website and have the form available to the parent upon request.

During the 2015 legislative session, HB 1283 had similar intentions, and passed the House with a vote of 74-14 and the Senate 31-15. The bill later failed the House after the conference committee was unable to agree on a version that achieved the bill sponsor's intentions.

The concept of parental directives in education is a time honored concept in ND. This bill would provide for a consistent application of this principle across all ND school districts. It will also signal to the districts that it is appropriate to recognize these rights of parents, and that the schools will not be negatively affected by doing so.

Mr. Chairman and Committee Members, thank you for your time and consideration of this important bill. I would stand for any be happy to try and answer any questions that you may have.



**To the House Education Committee  
In Support of HB 1389  
January 31, 2017**

Mr. Chairman and members of the committee, I am Linda Thorson, the State Director for Concerned Women for America (CWA) of North Dakota. CWA is the nation's largest public policy women's organization. Education has been established as one of our Seven Core Issues on which we focus our efforts. CWA supports the reform of public education by returning educational authority to parents. We believe excellence in academic achievement begins with the acknowledgment of parental rights.

CWA of North Dakota is in strong support of HB 1389 to respect and support the right of a parent to opt their child out of public school and any activity, practice or testing, with no interference from the state.

Parents have the authority to make decisions regarding their child's education and wellbeing. The purpose of the bill is to address concerns about a misguided focus on assessments to the detriment of academic content instruction. I am a retired speech language pathologist, who has worked in public school settings with students ages Pre-K through High School for 26 years.

Our school climate today places too much emphasis on federal control through mandated tests. As North Dakota Superintendent of Public Instruction, Ms. Kirsten Baesler, wrote in *A Vision for North Dakota Schools* from October 31, 2016,

"In North Dakota, we have a proud tradition of local control of education. We elect our school board members and put our trust in them. We have a chance to reinvigorate this tradition as we go about the task of implementing a new federal education law, called the Every Student Succeeds Act (ESSA)

"This law (ESSA) gives more flexibility to our state and local education officials than we have had in more than 25 years.

"The previous law put too much emphasis on academic standards and test results as a way of measuring the quality of our schools."<sup>1</sup>

She is correct about the over-emphasis on test results. Consider our students who, beginning at a young age spend hours, days and weeks in their classrooms, often behind a computer, taking practice

<sup>1</sup> <https://www.sayanythingblog.com/entry/kirsten-baesler-vision-north-dakotas-schools/>

tests and achievement tests. HB 1389 addresses the ability of parents to opt their child out of test assessments such as:

1. Smarter Balanced Assessment Consortium Tests, Practice Tests and Training Tests that cover Reading, Mathematics and Science and administered annually to all public school students in grades 3,4,5,6,7,8 and in at least one grade level selected from 9-11.<sup>2</sup>
2. Interim Assessments – Which may include tests given monthly or quarterly like the DIBELS – Dynamic Indicators of Early Literacy Skills (beginning at kindergarten), STARS – Standardized Testing and Reporting including the STAR Early Literacy (beginning at kindergarten), STAR Reading and STAR Math<sup>3</sup>, NWEA-MAP or Measures of Academic Progress<sup>4</sup>, Grays Oral Reading Test and Grays Silent Reading Test.<sup>5</sup>
3. Career Interest Inventory<sup>6</sup> – career interest inventory for Middle School, Career Interest Inventory for High School.
4. Summative Assessments – The ACT,<sup>7</sup> including the Writing ACT and/or three WorkKeys Assessments<sup>8</sup> to measure essential workplace skills.

Much of the opposition to the Common Core and aligned assessments among parents is related to the amount of testing students now undergo and the fact that instructional time in the classroom is diminished. There are good assessment measures that help teachers make decisions about instruction and intervention. In the past, it was expected the teacher would use their professional discretion to evaluate their students and decide how and when to test to reach learning goals. But, as the list of tests (which is not complete) makes clear, students are under the test microscope far too often.

How did we get here? Common standards call for common assessments. In 2009, 48 states and the District of Columbia joined together to launch the Common Core State Standards initiative. High-stakes testing of student's mastery of those standards is the reason for the simultaneous requirement that students in North Dakota take the Smarter Balanced Assessment Consortium tests.<sup>9</sup>

The Council of Chief State School Officers and the National Governors Association desired to unify K–12 standards through the Common Core initiative with the goal “all students, regardless of where they live, are graduating high school prepared for college, career, and life.” However, commitments to the consortia's assessments has weakened in the last five years. The number of states planning to use the tests dropped from 45 in 2011 to 20 in 2016.<sup>10</sup> Thus, it is no longer possible for interstate comparability of student achievement.

<sup>2</sup> <https://www.smarterbalanced.org/assessments/>

<sup>3</sup> <http://starsamplequestions.org/>

<sup>4</sup> <https://www.nwea.org/>

<sup>5</sup> <http://www.hmhco.com/hmh-assessments/other-clinical-assessments/gort-5>

<sup>6</sup> <https://careertech.org/student-interest-survey>

<sup>7</sup> <http://www.act.org/content/act/en/products-and-services/the-act.html>

<sup>8</sup> <http://www.act.org/content/act/en/products-and-services/workforce-solutions/act-workkeys.html>

<sup>9</sup> <http://educationnext.org/the-politics-of-common-core-assessments-parcc-smarter-balanced/>

<sup>10</sup> <http://educationnext.org/the-politics-of-common-core-assessments-parcc-smarter-balanced/>

CWA of North Dakota urges you to look at the facts. Listen to the request of parents; enact parental directives for the administration of tests and assessments. Vote a "Do Pass" for HB 1389.

As Superintendent of Public Instruction, Ms. Kirsten Baesler stated, "No more. This new law (ESEA) reinforces our authority in North Dakota to determine for ourselves how to measure the progress of our students. It gives us more room to develop their creativity and entrepreneurship, and to help them become productive citizens of our state, nation and world."<sup>11</sup> That authority begins with the respect and support of parental rights.

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<sup>11</sup> <https://www.sayanythingblog.com/entry/kirsten-baesler-vision-north-dakotas-schools/>

**Concerned Women for America of North Dakota**

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**House Bill 1389**

**Testimony in Opposition**

**North Dakota Council of Educational Leaders, Russ Ziegler**

Good Morning Chairman Owens, Vice Chairwoman Schreiber-Beck, and the members of the house education committee. For the record, I am Russ Ziegler, the assistant director of the North Dakota Council of Educational Leaders. Thank you for the opportunity to testify in opposition to HB 1389.

I'm here today to help with the understanding of the importance of assessments and for the participation of public school children to equally participate in them. Effective use of education data to improve student achievement is necessary to any school system. Parents have a right and should be able to understand what data are collected about their child, how those data are used and shared, and how the data are protected. High quality education data can empower parents to better understand their child's academic progress and play a greater role in their child's education. Current law required that parents have access to the data in their child's education record. Some have advocated for policies that allow parents to have more choice, specifically to the ability to "opt out", when it comes to what data are collected, used and shared about their child. Yet including more consent allowances could make it more difficult for parents to receive information about their child's progress and could disrupt other core school and district activities. It is not feasible to allow parents to limit the data schools collect about their child for administrative, instructional, or assessment and measurement purposes because it would hinder or minimize the impact of data's use to improve student achievement and would strain



everyday school functions. Policy leaders need to understand the potential implications of enacting such policies and be prepared to help parents understand the issue.

The Facts:

Within the Elementary and Secondary Education Act (ESEA), one of the requirements is that there will be a state assessment for all students grades 3-8 and once in grades 9 – 12. School districts are held accountable to assess all students and report out on the achievement and participation results. The State Education Agency creates a report for every school and district that highlights the results of the state assessment. In addition to reporting the results in reading/language arts and mathematics, the report also indicates whether the school or district had at least 95% of their students participate in the state assessment at the composite and subgroup levels. This regulation was put into place to ensure that all students, even those with a disability, those who have limited English proficiency, or those living in poverty are assessed to hold schools accountable for their education of all children. Some other areas where assessments are needed include:

1. In order for students to receive Title I and Special Education services, they must first be assessed. The results of the multiple assessments will determine whether students meet the criteria and are eligible for supplemental services within one or both of these federal programs.
2. In order for students to participate in the State Scholarship program (NDCC 15.1-21), the students must participate in certain assessments and obtain an eligible score. Students who are not assessed are not eligible to apply for a scholarship.
3. For any student that intends to go to college after high school, they must participate in certain assessments that will be used to determine acceptance and/or placement into certain remedial courses.

Our schools are bound by testing requirements within both federal and state law and their percentage of participation is monitored and they are held to a standard. If we legislate the opening for parents to opt out, the schools *should* ultimately be held harmless for any results our

% tested as the data sample could be substantially altered. We believe it to be ill-advised to support a law that blatantly counter acts another law.

The question then becomes how do we know how the schools are doing if not all are being assessed? This is in direct contrast of wanting schools to be more transparent with how they are doing educationally. How can a school report accurate data when they do not have any? Another question we have with the bill is in the first paragraph.

Respect and support the right of a parent to opt a child of the parent out of public school and ANY activity, practice, or testing, with no interference from the state, which the parent finds UNACCEPTABLE or to which the parent has a philosophical, moral, or religious objection.

What exactly does that mean? To me that is more than assessments! It states ANY activity, practice, or testing. So, does that mean if a parent finds a homework assignment unacceptable the child could opt out? A parent thinks they run too much in basketball practice so they opt their child out, but yet the child should play in the game? A parent thinks that the anti-bullying and suicide prevention assemblies, which are required in law, are unacceptable so they opt their child out? Where does it end?

We do understand the parents side and the fear that their students' data is being used inappropriately. However, the laws in North Dakota make it illegal for agencies to provide identifiable data to others. The Family Educational Rights and Privacy Act, also known as FERPA, gives parents certain right with respect to their children's educational records. This federal law protects the privacy of students' educational records and must be followed by all schools the receive funds under an applicable program of the U. S. Department of Education. In my research of this topic I have discovered that ND Statewide Longitudinal Data System has procedures and safeguards in place that protect the students' information. There is absolutely NO exchange of student identifiable information sent to Smarter Balance or the PARK assessment.

While we are on the topic of the Smarter Balanced assessment, since they are an authorized provider they ALSO must follow the FERPA guidelines.

As a parent of two kids who have been on Individualized Education Programs's since very young ages I know how testing can and is used to inform instruction and curriculum. Without being able to test a child how do you know what is working, what is not working, and even where to begin?

As educators, we've worked hard to believe that these laws were enacted to ultimately empower parents and children through quality information – we must be cautionary to move down a road toward enabling. Are the assessments hard? Yes, sometimes they are. Do our kids get nervous taking them? Yes, sometimes they do. Do parents want to protect their children from things that might be deemed uncomfortable? Yes, of course. Is that action something that we should legislate – knowing the consequences of doing so. We don't believe so.

We as states provide free public education. Just like with a free public transit system, we may not like all the mandated stops along the way, but if we want to participate in the free opportunity, that is part of the price we pay as citizens. That analogy could be applied to education as well.

We recommend a DO NOT PASS for HB 1389.

4



Attachment 3B HB 1389

1/31/17

## The Family Educational Rights and Privacy Act

### Guidance for Parents

February 2011

The following guidance provides parents with general information about the Family Educational Rights and Privacy Act (FERPA). This document is a compilation and update of various letters and guidance documents previously issued that respond to a variety of questions about FERPA. While this guidance reflects our best and most current interpretation of applicable FERPA requirements, it does not supersede the statute or regulations. We will attempt to update this document from time to time in response to questions and concerns.

FERPA is a Federal law that is administered by the Family Policy Compliance Office (Office) in the U.S. Department of Education (Department). 20 U.S.C. § 1232g; 34 CFR Part 99. FERPA applies to educational agencies and institutions (e.g., schools) that receive funding under any program administered by the Department. Private and parochial schools at the elementary and secondary levels generally do not receive such funding and are, therefore, not subject to FERPA.

FERPA gives custodial and noncustodial parents alike certain rights with respect to their children's education records, unless a school is provided with evidence that there is a court order or State law that specifically provides to the contrary. Otherwise, both custodial and noncustodial parents have the right to access their children's education records, the right to seek to have the records amended, the right to consent to disclosure of personally identifiable information from the records (except in certain circumstances specified in the FERPA regulations, some of which are discussed below), and the right to file a complaint with the Department. When a student reaches 18 years of age or attends a postsecondary institution, he or she becomes an "eligible student," and all rights under FERPA transfer from the parent to the student. The term "education records" is defined as those records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution.

FERPA generally prohibits the improper disclosure of personally identifiable information derived from education records. Thus, information that an official obtained through personal knowledge or observation, or has heard orally from others, is not protected under FERPA. This remains applicable even if education records exist which contain that information, unless the official had an official role in making a determination that generated a protected education record.

Under FERPA, a school is not generally required to maintain particular education records or education records that contain specific information. Rather, a school is required to provide certain privacy protections for those education records that it does maintain. Also, unless there is

an outstanding request by a parent to inspect and review education records, FERPA permits the school to destroy such records without notice to the parent.

### **Access to Education Records**

Under FERPA, a school must provide a parent with an opportunity to inspect and review his or her child's education records within 45 days following its receipt of a request. A school is required to provide a parent with copies of education records, or make other arrangements, if a failure to do so would effectively prevent the parent from obtaining access to the records. A case in point would be a situation in which the parent does not live within commuting distance of the school.

A school is not generally required by FERPA to provide a parent with access to school calendars or general notices such as announcements of parent-teacher meetings or extra-curricular activities. That type of information is not generally directly related to an individual student and, therefore, does not meet the definition of an education record.

Under FERPA, a school is not required to provide information that is not maintained or to create education records in response to a parent's request. Accordingly, a school is not required to provide a parent with updates on his or her child's progress in school unless such information already exists in the form of an education record.

### **Amendment of Education Records**

Under FERPA, a parent has the right to request that inaccurate or misleading information in his or her child's education records be amended. While a school is not required to amend education records in accordance with a parent's request, the school is required to consider the request. If the school decides not to amend a record in accordance with a parent's request, the school must inform the parent of his or her right to a hearing on the matter. If, as a result of the hearing, the school still decides not to amend the record, the parent has the right to insert a statement in the record setting forth his or her views. That statement must remain with the contested part of the student's record for as long as the record is maintained.

However, while the FERPA amendment procedure may be used to challenge facts that are inaccurately recorded, it may not be used to challenge a grade, an opinion, or a substantive decision made by a school about a student. FERPA was intended to require only that schools conform to fair recordkeeping practices and not to override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations. Thus, while FERPA affords parents the right to seek to amend education records which contain inaccurate information, this right cannot be used to challenge a grade, an individual's opinion, or a substantive decision made by a school about a student. Additionally, if FERPA's amendment procedures are not applicable to a parent's request for amendment of education records, the school is not required under FERPA to hold a hearing on the matter.

## Disclosure of Education Records

Under FERPA, a school may not generally disclose personally identifiable information from a minor student's education records to a third party unless the student's parent has provided written consent. However, there are a number of exceptions to FERPA's prohibition against non-consensual disclosure of personally identifiable information from education records. Under these exceptions, schools are *permitted* to disclose personally identifiable information from education records without consent, though they are not *required* to do so by FERPA. Following is general information regarding some of these exceptions.

One of the exceptions to the prior written consent requirement in FERPA allows "school officials," including teachers, within a school to obtain access to personally identifiable information contained in education records provided the school has determined that they have "legitimate educational interest" in the information. Although the term "school official" is not defined in the statute or regulations, this Office generally interprets the term to include parties such as: a teacher; administrator; board member; support or clerical staff; attorney; nurse and health staff; counselor; human resources staff; information systems specialist; school security personnel; and a contractor, consultant, volunteer or other party to whom the school has outsourced institutional services or functions.

A school may disclose personally identifiable information from education records without consent to a "school official" under this exception only if the school has first determined that the official has a "legitimate educational interest" in obtaining access to the information for the school. A school that allows school officials to obtain access to personally identifiable information contained in education records under this exception must include in its annual notification of FERPA rights a specification of its criteria for determining who constitutes a "school official" and what constitutes "legitimate educational interests." A school official generally has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

Another exception permits a school to disclose personally identifiable information from a student's education records, without consent, to another school in which the student seeks or intends to enroll. The sending school may make the disclosure if it has included in its annual notification of rights a statement that it forwards education records in such circumstances. Otherwise, the school must make a reasonable attempt to notify the parent in advance of making the disclosure, unless the parent or eligible student has initiated the disclosure. The school must also provide a parent with a copy of the records that were released if requested by the parent.

FERPA permits a school non-consensually to disclose personally identifiable information from a student's education records when such information has been appropriately designated as directory information. "Directory information" is defined as information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed. Directory information could include information such as the student's name, address, e-mail address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of

athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended, photograph, grade level (such as 11th grade or junior year), and enrollment status (full-time or part-time).

A school may disclose directory information without consent if it has given public notice of the types of information it has designated as directory information, the parent's right to restrict the disclosure of such information, and the period of time within which a parent has to notify the school that he or she does not want any or all of those types of information designated as directory information. Also, FERPA does not require a school to notify parents individually of the types of information it has designated as directory information. Rather, the school may provide this notice by any means likely to inform parents of the types of information it has designated as directory information.

FERPA also permits a school to disclose personally identifiable information from education records of an "eligible student" (a student age 18 or older or enrolled in a postsecondary institution at any age) to his or her parents if the student is a "dependent student" as that term is defined in Section 152 of the Internal Revenue Code. Generally, if either parent has claimed the student as a dependent on the parent's most recent income tax statement, the school may non-consensually disclose the student's education records to both parents.

There are several other exceptions to FERPA's prohibition against non-consensual disclosure of personally identifiable information from education records, some of which are briefly mentioned below. Under certain conditions (specified in the FERPA regulations, 34 CFR Part 99), a school may non-consensually disclose personally identifiable information from education records:

- to authorized representatives of the Comptroller General of the United States, the Attorney General of the United States, the U.S. Secretary of Education, and State and local educational authorities for audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs;
- in connection with financial aid for which the student has applied or received;
- to state and local authorities pursuant to a State statute concerning the juvenile justice system and the system's ability to effectively serve the student whose records are being disclosed;
- to organizations conducting studies for or on behalf of the school making the disclosure for the purposes of administering predictive tests, administering student aid programs, or improving instruction;
- to comply with a judicial order or a lawfully issued subpoena; and
- in connection with a health or safety emergency.

As stated above, the conditions specified in the FERPA regulations have to be met before a school may non-consensually disclose personally identifiable information from education records in connection with any of the exceptions mentioned above.

### **Annual Notification of FERPA Rights**

Under FERPA, a school must annually notify parents of students in attendance of their rights under FERPA. The annual notification must include information regarding a parent's right to inspect and review his or her child's education records, the right to seek to amend the records, the right to consent to disclosure of personally identifiable information from the records (except in certain circumstances), and the right to file a complaint with the Office regarding an alleged failure by a school to comply with FERPA. The school must also inform parents of its definitions of the terms "school official" and "legitimate educational interest."

FERPA does not require a school to notify parents individually of their rights under FERPA. Rather, the school may provide the annual notification by any means likely to inform parents of their rights. Thus, the annual notification may be published by various means, including any of the following: in a student handbook; in a notice to parents; in a calendar of events; on the school's website (though this should not be the exclusive means of notification); in the local newspaper; or posted in a central location at the school or various locations throughout the school. Additionally, some schools include their directory information notice as part of the annual notice of rights under FERPA.

### **Law Enforcement Units and Law Enforcement Unit Records**

A "law enforcement unit" means any individual, office, department, division or other component of a school, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by the school to: enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any law against any individual or organization; or to maintain the physical security and safety of the school. The law enforcement unit does not lose its status as a law enforcement unit if it also performs other, non-law enforcement functions for the school, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceeding against a student.

"Law enforcement unit records" (i.e., records created by the law enforcement unit, created for a law enforcement purpose, and maintained by the law enforcement unit) are not "education records" subject to the privacy protections of FERPA. As such, the law enforcement unit may refuse to provide a parent with an opportunity to inspect and review law enforcement unit records, and it may disclose law enforcement unit records to third parties without the parent's prior written consent. However, education records, or personally identifiable information from education records, which the school shares with the law enforcement unit do not lose their protected status as education records because they are shared with the law enforcement unit.

### **Complaints of Alleged Failures to Comply with FERPA**



FERPA vests the rights it affords in the parent of a student. The statute does not provide for these rights to be vested in a third party who has not suffered an alleged violation of their rights under FERPA. Thus, we require that a parent have "standing," i.e., have suffered an alleged violation of his or her rights under FERPA, in order to file a complaint.

The Office may investigate those timely complaints that contain specific allegations of fact giving reasonable cause to believe that a school has violated FERPA. A timely complaint is defined as one that is submitted to the Office within 180 days of the date that the complainant knew or reasonably should have known of the alleged violation. Complaints that do not meet FERPA's threshold requirement for timeliness are not investigated.

If we receive a timely complaint that contains a specific allegation of fact giving reasonable cause to believe that a school has violated FERPA, we may initiate an administrative investigation into the allegation in accordance with procedures outlined in the FERPA regulations. If a determination is made that a school violated FERPA, the school and the complainant are so advised, and the school is informed of the steps it must take to come into compliance with the law. The investigation is closed when voluntary compliance is achieved.

Please note that a parent should state his or her allegations as clearly and succinctly as possible. To aid us in efficiently processing allegations, we ask that a parent only include supporting documentation that is relevant to the allegations provided. Otherwise, we may return the documentation and request clarification. This Office does not have the resources to review voluminous documents and materials to determine whether an allegation of a violation of FERPA by a school is included. A parent may obtain a complaint form by calling (202) 260-3887. For administrative and privacy reasons, we do not discuss individual allegations and cases via email. Please mail completed complaint forms to the Office (address below) for review and any appropriate action.

#### Complaint Regarding Access

If a parent believes that a school has violated FERPA by failing to comply with the parent's request for access to his or her child's education records, the parent may complete a FERPA complaint form and should include the following specific information: the date of the request for access to the student's education records; the name of the school official to whom the request was made (a dated copy of any written request to the school should be provided, if possible); the response of the school official, if any; and the specific nature of the information requested.

#### Complaint Regarding Amendment

If a parent believes that a school has violated FERPA by failing to provide the parent with an opportunity to seek amendment of inaccurate information in his or her child's education records or failed to offer the parent an opportunity for a hearing on the matter, the parent may complete a FERPA complaint form and should include the following specific information: the date of the request for amendment of the student's education records; the name of the school official to whom the request was made (a dated copy of any written request to the school should be provided, if possible); the response of the school official, if any; the specific nature of the

information for which amendment was requested; and the evidence provided to the school to support the assertion that such information is inaccurate.

#### Complaint Regarding Disclosure

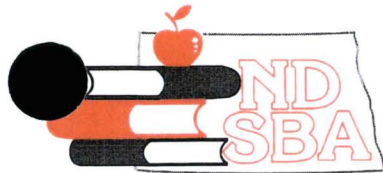
If a parent believes that a school has violated FERPA by improperly disclosing personally identifiable information from his or her child's education records, the parent may complete a FERPA complaint form and should include the following specific information: the date the alleged improper disclosure occurred or the date the parent learned of the disclosure; the name of the school official who made the disclosure, if that is known; the third party to whom the education records were disclosed; and the specific nature of the information disclosed.

This guidance document is designed to provide parents of minor students with some basic information regarding FERPA and their rights, and to address some of the basic questions most frequently asked by parents. You can review the FERPA regulations, frequently asked questions, significant opinions of the Office, and other information regarding FERPA at our Website as follows:

[www.ed.gov/policy/gen/guid/fpc/index.html](http://www.ed.gov/policy/gen/guid/fpc/index.html)

If, after reading this guidance document, you have questions regarding FERPA that are not addressed here, you may write to the Office for additional guidance at the following address:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-8520



**NORTH DAKOTA  
SCHOOL BOARDS  
ASSOCIATION**

**I N C O R P O R A T E D**

*Excellence in North Dakota public education through local school board governance*

**HB 1389 – TESTIMONY**

**L. Anita Thomas, J.D., LL.M.**

**General Counsel**

**North Dakota School Boards Association**

**January 31, 2017**

HB 1389 is a bill that tries to define the rights of a parent vis-a-vis the public school system.

While bills like this can garner a lot of philosophical support, it is important to know exactly what this bill allows, what it requires, and how it will impact the delivery and administration of K-12 education in this state.

Beginning on page 1, line 7, the bill provides that the Superintendent of Public Instruction shall “[r]espect and support the right of a parent to opt a child . . . out of public school . . . with no interference from the state . . .” There is a conflict here with the compulsory attendance law, which states that any “person having responsibility for a child between the ages of seven and sixteen years [shall] ensure that the child is in attendance at a public school for the duration of each school year.”

This section also permits the parent to opt a child out of “any activity, practice, or testing, with no interference from the state, which the parent finds unacceptable or to which the parent has a philosophical, moral, or religious objection.” That raises several questions.

- Where is the child supposed to go during this period of time?
- What expectations are being placed on school districts if the activity or practice is ongoing (e.g. music class; physical education class; etc.)
- Who is supposed to watch the child?
- If the child is not going to engage in required activities, or testing, how should a grade be determined?
  - How would one determine a grade that is fair in relation to the other students who actually participated in the activity or took the test?
  - Can a school district refuse to promote a child who has not engaged in the requisite activities, practice, or testing?
  - Can a school district withhold the high school diploma of a child who has not engaged in the requisite activities, practice, or testing?
  - With respect to the ND academic and CTE scholarships, can school districts just waive grade requirements for certain students whose parents would prefer that their children not be asked to demonstrate that which they have learned by means of a semester final?

On page 1, line 16, it states that a child withheld from a "test or assessment" is deemed to be in attendance for all purposes under this title. Does that also hold true for a child who is opted "out of public school" and out of "any activity [or] practice?" Is that child considered present or absent?

In enforcing laws related to educational neglect, will a determination need to be made regarding the sincerity of a parent's philosophical, moral, or religious objection? Who will decide whether Mom has a sincerely held objection to determining her child's achievement level based on a test or whether the child may simply not have applied himself sufficiently enough to pass the semester chemistry final?

The North Dakota Constitution directs the Legislative Assembly to provide for the establishment and maintenance of a uniform system of free public schools throughout the state. Parental input into the education of this state's children is a valued component of a successful uniform system. Parental input has been and continues to be encouraged through participation as an elected school board member or as an advisory board member. Parents can participate in their local PTA, volunteer at a school, or even seek employment at a school.

However, when the focus of parental input goes from what is best for the students of a school district or school to what the parent believes is best for his or her own child, the constitutional obligation to provide a uniform system of education becomes challenged and the school board's legal obligation to equitably deliver and administer education becomes impossible to meet.

The public school system is designed to educate the masses. It is not designed to educate individual students according to the philosophical, moral, or religious beliefs of the students' parents.

We respectfully request a **DO NOT PASS** on HB 1389.



**TESTIMONY ON HB 1389  
HOUSE EDUCATION COMMITTEE**

**January 31, 2017**

**By: Kirsten Baesler, State Superintendent**

**701-328-4570**

**Department of Public Instruction**

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Chairman Owens and Members of the Committee:

I am Kirsten Baesler, State Superintendent of the Department of Public Instruction. I am here today to offer information on House Bill 1389.

Parents' rights to direct aspects of their children's education are widely recognized, understood by educators and protected in school districts across North Dakota.

Parental rights to exempt their children from specific instruction and assessment, including the North Dakota State Assessment, are currently recognized, and honored. Local superintendents and principals inform and explore with parents the potential drawbacks that any exemption might have for their child's long-term instructional standing, remediation, or scholarship eligibility, in a personalized and discreet manner, but ultimately the decision is always left to the parent.

During the 2015-16 administration of the North Dakota State Assessment, 502 students, out of a total of approximately 54,800 enrolled students within assessed grades (0.92%), did not participate based on a parent's request for non-participation. This non-participation rate demonstrates that parents do exercise their current right to exempt their child from participation in state assessments.

Assessments, including the assessments specified in HB 1389, play a critical role in instruction, measuring each student's achievement, growth, strengths and deficiencies. These assessments have been specifically placed into state statute by previous legislators as a means of ensuring a valid, reliable, and uniform system of public education, and confirming, in part, that every child is the recipient of the quality of education required by the State Constitution.

These assessments also become the basis for providing an accounting of the quality of education statewide, offering assurances to citizens that the state's education system is performing to expectations and meeting its mission.

Each student's participation in these select assessments is important to the individual student, providing guidance for their instruction, and to the wider community, providing understanding of our schools' efforts to improve. Any student exempted, lessens our ability to provide a well-informed, quality education for the individual child and to ensure that we are providing for a uniform system of education for all our citizens. The legislature has historically spoken clearly and enacted policy that communicates high expectations for the state's education system, inclusive of all students.

The passage of this bill could unintentionally present a conflicting message from the state legislature. On one hand, North Dakota has put in place statute requirements for all students that signals the importance of holding every school

accountable for high return of investment of state dollars for each student. On the other hand, this bill sends a message that parents can disregard the statutes passed by the legislature to measure students' achievement goals and path to graduation for college and work.

The only specific concern I have with HB 1389 is on page 2 line 3, "A school district is not liable for any consequence incurred by a student as a result of a parental directive submitted in accordance with this section." It should be noted, while the school district may not be liable for a student's consequence, the school district itself may become liable and face certain consequences for not meeting mandated requirements. Within the Elementary and Secondary Education Act (ESEA), reauthorized by Congress in 2015, one of the requirements is a state assessment will be administered to all students grades 3-8 and 11. School districts are held accountable to assess all students and report out on the achievement and participation results. In addition to reporting the academic results in reading/language arts and mathematics, the report also indicates whether the school or district had at least 95% of their students participate in the state assessment at the composite and subgroup levels. This regulation was put into place to ensure that all students, even those with a disability, those who have limited English proficiency, those living in poverty, or those of color are assessed to hold schools accountable for their education of all children. Schools and districts who are not

able to demonstrate that 95% of their students participated in the state assessment may face undetermined consequences from Congress.

Mr. Chairman, this completes my testimony. I am available to answer any questions. Thank you.

4



Attachment 1  
2/8/17

February 8, 2017

PROPOSED AMENDMENTS TO HB 1389

Page 1, line 10, remove: ~~practice, or testing, with no interference from the state, which parent finds unacceptable or~~

Page 1, line 9, after "school" insert: "as allowed under sections 15.1-20-02 and 15.1-23-02"

Page 1, line 9, after "activity," insert "survey, or testing that is not part of a curriculum; or any curriculum"

**SECTION 1.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Parental directive - Administration of tests and assessments.**

The superintendent of public instruction shall:

1. Respect and support the right of a parent to opt a child of the parent out of public school, as allowed under sections 15.1-20 and 15.1-23-02, and any activity, ~~practice, or testing, with no interference from the state, which the parent finds unacceptable or~~ survey, or testing that is not part of a curriculum, or any curriculum to which the parent has a philosophical, moral, or religious objection. This subsection does not prohibit the state from funding public education on a per-pupil basis.

# Attachment 1

17.0879.01003  
Title.

2/15/17

Prepared by the Legislative Council staff for  
Representative B. Koppelman  
February 10, 2017

## PROPOSED AMENDMENTS TO HOUSE BILL NO. 1389

Page 1, line 8, remove "public"

Page 1, line 9, remove "school and"

Page 1, line 9, remove "activity, practice, or testing, with no interference from the state, which"

Page 1, line 10, replace "the parent finds unacceptable or" with "survey or testing that is not a part of a curriculum."

Page 1, line 11, remove "This subsection does not prohibit the state from funding public"

Page 1, remove line 12

Page 1, remove lines 18 through 22

Page 2, remove lines 1 through 12

Renumber accordingly

HB 1389  
3-15-2017  
#1 p.1

3/15/17- Testimony HB 1389- Ben Koppelman

Mr. Chairman and Members of the Committee, I am Rep. Ben Koppelman, and I represent District 16 in West Fargo. I am here to introduce HB 1389.

This bill was written as an attempt to codify the rights that parents have to direct the education of their children. Most parents believe that they know what is best for their children and value the ability to work with the schools to make choices on their child's behalf. I am a parent who exercises my ability to direct my child's education. Section 1, Subsection 1 of the bill outlines the rights of parents to opt their child out of non-curricular surveys or tests that they have an objection to

Section 1, Subsection 2 describes which state required tests a parent may opt their child out of based on the rights of the parent outlined in subsection 1. Code reference 15.1-21-08 references the state assessment of math, reading, and science; 15.1-21-17 references a school district interim assessment, and 15.1-21-18 references a career interest inventory for educational and career planning.

This bill does not specifically give parents the right to opt out of the ACT or Work KEYS summative assessment which is located in 15.1-21-19 of the Century Code.

Section 1 Subsection 3 ensures that by not taking these exams the student is not penalized against the allowed absences for the school year term. It also serves to ensure that the school district will not lose any attendance credit toward ADM (average daily membership) for funding purposes.

Section 1 Subsection 4 prescribes how a parent is to submit the parental directive and how often the directive must be filed. It states that a school is not required to provide alternative instruction or activities for the student during the time that the student is opted out of an activity. Also, this subsection sets reporting and

HB 1389  
3-15-17  
11 p. 2

record keeping requirements as well as instructs school districts to post the parental directive form on their website and have the form available to the parent upon request.

During the 2015 legislative session, HB 1283 had similar intentions, and passed the House with a vote of 74-14 and the Senate 31-15. The bill later failed the House after the conference committee was unable to agree on a version that achieved the support of the House.

The concept of parental directives in education is a time honored concept in ND. This bill would provide for a consistent application of this principle across all ND school districts. It will also signal to the districts that it is appropriate to recognize these rights of parents, and that the schools will not be negatively affected by doing so.

It is important for us to create a state opt-out policy by statute, as the new ESSA only authorizes an opt out of the required math, reading, and language arts standardized testing if it is included in a state policy. It is my belief that since 15.1-21-08 says "The superintendent must administer..." tests relating to reading, mathematics and science, that the superintendent does not have the statutory authority to create a policy that conflicts with this section of law.

I have handed out excerpts of the ESSA as well as the ND Century Code to assist you in reading the sections that I have referenced in my testimony.

Mr. Chairman and Committee Members, thank you for your time and consideration of this important bill. I would stand for any be happy to try and answer any questions that you may have.

(i) The State may average data from the school year for which the determination is made with data from one or two school years immediately preceding that school year.

(ii) Until the assessments described in paragraph (3) are administered in such manner and time to allow for the implementation of the uniform procedure for averaging data described in clause (i), the State may use the academic assessments that were required under paragraph (3) as that paragraph was in effect on the day preceding the date of enactment of the No Child Left Behind Act of 2001, provided that nothing in this clause shall be construed to undermine or delay the determination of adequate yearly progress, the requirements of section 1116, or the implementation of assessments under this section.

(iii) The State may use data across grades in a school.

(K) ACCOUNTABILITY FOR CHARTER SCHOOLS.—The accountability provisions under this Act shall be overseen for charter schools in accordance with State charter school law.

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[Note: Effective on August 2, 2016, paragraph (2), as amended by section 1005 of Public Law 114-95, is amended to read as follows:]

(2) *ACADEMIC ASSESSMENTS.*—

(A) *IN GENERAL.*—*Each State plan shall demonstrate that the State educational agency, in consultation with local educational agencies, has implemented a set of high-quality student academic assessments in mathematics, reading or language arts, and science. The State retains the right to implement such assessments in any other subject chosen by the State.*

(B) *REQUIREMENTS.*—*The assessments under subparagraph (A) shall—*

(i) *except as provided in subparagraph (D), be—*

(I) *the same academic assessments used to measure the achievement of all public elementary school and secondary school students in the State; and*

(II) *administered to all public elementary school and secondary school students in the State;*

(ii) *be aligned with the challenging State academic standards, and provide coherent and timely information about student attainment of such standards and whether the student is performing at the student's grade level;*

(iii) *be used for purposes for which such assessments are valid and reliable, consistent with relevant, nationally recognized professional and technical testing standards, objectively measure academic achievement, knowledge, and skills, and be tests that do not evaluate*

HB 1389  
3-15-17  
#1 p4

or assess personal or family beliefs and attitudes, or publicly disclose personally identifiable information;

(iv) be of adequate technical quality for each purpose required under this Act and consistent with the requirements of this section, the evidence of which shall be made public, including on the website of the State educational agency;

(v)(I) in the case of mathematics and reading or language arts, be administered—

(aa) in each of grades 3 through 8; and

(bb) at least once in grades 9 through 12;

(II) in the case of science, be administered not less than one time during—

(aa) grades 3 through 5;

(bb) grades 6 through 9; and

(cc) grades 10 through 12; and

(III) in the case of any other subject chosen by the State, be administered at the discretion of the State;

(vi) involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding, which may include measures of student academic growth and may be partially delivered in the form of portfolios, projects, or extended performance tasks;

(vii) provide for—

(I) the participation in such assessments of all students;

(II) the appropriate accommodations, such as interoperability with, and ability to use, assistive technology, for children with disabilities (as defined in section 602(3) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(3))), including students with the most significant cognitive disabilities, and students with a disability who are provided accommodations under an Act other than the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), necessary to measure the academic achievement of such children relative to the challenging State academic standards or alternate academic achievement standards described in paragraph (1)(E); and

(III) the inclusion of English learners, who shall be assessed in a valid and reliable manner and provided appropriate accommodations on assessments administered to such students under this paragraph, including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what such students know and can do in academic content areas, until such students have achieved English language proficiency, as determined under subparagraph (G);

(viii) at the State's discretion—

HB 1389  
3-15-17  
#1 p. 5

(ii) Whether the child is provided services by para-professionals and, if so, their qualifications.

(B) ADDITIONAL INFORMATION.—In addition to the information that parents may request under subparagraph (A), a school that receives funds under this part shall provide to each individual parent of a child who is a student in such school, with respect to such student—

(i) information on the level of achievement and academic growth of the student, if applicable and available, on each of the State academic assessments required under this part; and

(ii) timely notice that the student has been assigned, or has been taught for 4 or more consecutive weeks by, a teacher who does not meet applicable State certification or licensure requirements at the grade level and subject area in which the teacher has been assigned.

(2) TESTING TRANSPARENCY.—

(A) IN GENERAL.—At the beginning of each school year, a local educational agency that receives funds under this part shall notify the parents of each student attending any school receiving funds under this part, that the parents may request, and the local educational agency will provide the parents on request (and in a timely manner), information regarding any State or local educational agency policy regarding student participation in any assessments mandated by section 1111(b)(2) and by the State or local educational agency, which shall include a policy, procedure, or parental right to opt the child out of such assessment, where applicable.

(B) ADDITIONAL INFORMATION.—Subject to subparagraph (C), each local educational agency that receives funds under this part shall make widely available through public means (including by posting in a clear and easily accessible manner on the local educational agency's website and, where practicable, on the website of each school served by the local educational agency) for each grade served by the local educational agency, information on each assessment required by the State to comply with section 1111, other assessments required by the State, and where such information is available and feasible to report, assessments required districtwide by the local educational agency, including—

- (i) the subject matter assessed;
- (ii) the purpose for which the assessment is designed and used;
- (iii) the source of the requirement for the assessment; and
- (iv) where such information is available—

(I) the amount of time students will spend taking the assessment, and the schedule for the assessment; and

(II) the time and format for disseminating results.

**15.1-21-06. Goals 2000 - Participation voluntary.**

The board of a school district may choose to participate or not to participate in the Goals 2000 Educate America Act [Pub. L. 103-227; 108 Stat. 125; 20 U.S.C. 5801 et seq.]. A board that chooses to participate and directly or indirectly receives federal funds for its participation shall expend the funds in the manner it determines best meets the goal of educational enhancement in the school district, in accordance with the district's locally developed goals 2000 educational improvement application plan. The superintendent of public instruction may not impose any financial penalty or other sanction on a school or school district if the school board chooses, at any time, to terminate participation in the Goals 2000 Educate America Act.

3-15-17

**15.1-21-07. School-to-work - Student participation voluntary.**

Before an elementary or secondary school student may participate in any course, program, or project offered under the auspices of the School-to-Work Opportunities Act of 1994 [Pub. L. 103-239; 108 Stat. 568; 20 U.S.C. 2394 et seq.], the student's school principal shall obtain the written consent of the student's parent or legal guardian. Participation by a student is voluntary and may not be deemed a condition of graduation. Neither school personnel, school district personnel, nor the superintendent of public instruction may impose any academic penalties or any other sanctions on a student for failure to participate. A student's participation in a course, program, or project offered under the auspices of the School-to-Work Opportunities Act of 1994 is subject to all state and federal child labor laws.

**15.1-21-08. Reading, mathematics, and science - Administration of test.**

1. The superintendent of public instruction shall administer to public school students a test that is aligned to the state content and achievement standards in reading and mathematics. This test must be administered annually to all public school students in grades three, four, five, six, seven, eight, and in at least one grade level selected from nine through eleven.
2. The superintendent of public instruction shall administer a test that is aligned to the state content and achievement standards in science. This test must be administered to all public school students in at least one grade level selected from three through five, in at least one grade level selected from six through nine, and in at least one grade level selected from ten and eleven.

**15.1-21-09. Test scores - Compilation.**

The superintendent of public instruction shall arrange for the compilation of test scores in a manner that indicates achievement and allows a comparison of individual students, classrooms within a given school and school district, schools within the state, and school districts within the state. The test scores must also allow for comparisons based on students' gender, ethnicity, economic status, service status, and assessment status, unless doing so enables the identification of any student.

**15.1-21-10. Test scores - Publication.**

Upon receiving notice that the compilation of test scores has been completed, the superintendent of public instruction shall inform the legislative council. The superintendent shall present the test scores publicly for the first time at a meeting of a legislative committee designated by the legislative management. At the meeting, the superintendent and representatives of the testing service that created the tests shall provide detailed testimony regarding the testing instrument, the methodology used to test and assess the students, the established cut scores, the methodology used to determine the cut scores, the validation of all test products, and the significance of the test scores.

**15.1-21-11. Superintendent of public instruction - Review of test questions.**

The superintendent of public instruction shall require that the entity developing a test to be administered under section 15.1-21-08 not include questions that might be deemed personal to a student or to the student's family and that the entity developing the test not include questions



**15.1-21-16. Summer school courses and programs - Eligibility for payment.**

The summer school courses and programs for which a school district may receive payment as provided in section 15.1-27-19 are:

1. a. Remedial mathematics provided to students enrolled in any grade from kindergarten through eight;
- b. Remedial reading provided to students enrolled in any grade from kindergarten through eight;
- c. Beginning after the conclusion of the 2009-10 school calendar, mathematics provided to students enrolled in any grade from five through eight;
- d. Beginning after the conclusion of the 2009-10 school calendar, reading provided to students enrolled in any grade from five through eight;
- e. Beginning after the conclusion of the 2009-10 school calendar, science provided to students enrolled in any grade from five through eight; and
- f. Beginning after the conclusion of the 2009-10 school calendar, social studies provided to students enrolled in any grade from five through eight; and
2. Any other high school summer courses that satisfy requirements for graduation, comprise at least as many clock-hours as courses offered during the regular school term, and comply with rules adopted by the superintendent of public instruction.

**15.1-21-17. Interim assessment.**

Each school district shall administer annually to students in grades two through ten the measures of academic progress test or any other interim assessment approved by the superintendent of public instruction.

**15.1-21-18. Career interest inventory - Educational and career planning - Consultation.**

1. A school district shall administer to students, once during their enrollment in grade seven or eight and once during their enrollment in grade nine or ten, a career interest inventory recommended by the department of career and technical education and approved by the superintendent of public instruction.
2. At least once during the seventh or eighth grade, each school district shall arrange for students to participate in either an individual consultative process or a nine-week course, for the purpose of discussing the results of their career interest inventory, selecting high school courses appropriate to their educational pursuits and career interests, and developing individual high school education plans.
3. Each school district shall notify its high school students that, upon request, a student is entitled to receive a consultative review of the student's individual high school education plan at least once during each high school grade. Upon the request of a student, the school district shall provide the consultative review.
4. Each school district shall verify compliance with the requirements of this section at the time and in the manner required by the superintendent of public instruction.

**15.1-21-19. Summative assessment - Selection - Cost - Exemptions.**

1. Except as otherwise provided, each public and nonpublic school student in grade eleven shall take the ACT, including the writing test, or three WorkKeys assessments recommended by the department of career and technical education and approved by the superintendent of public instruction. The student shall determine which summative assessment to take. The superintendent of public instruction is responsible for the cost of procuring and administering one summative assessment per student.
2. The student's career advisor or guidance counselor shall meet with the student to review the student's assessment results.
3. A school district superintendent or a school administrator in the case of a nonpublic school student may exempt a student from the requirements of this section if taking the test is not required by the student's individualized education program plan or if other special circumstances exist.

HB 1389  
3-15-17  
# 2 p.1

**House Bill 1389**

**Testimony in Opposition**

**North Dakota Council of Educational Leaders, Russ Ziegler**

Good Morning Chairman Schaible, Vice Chairman Rust, and the members of the Senate Education Committee. For the record, I am Russ Ziegler, the assistant director of the North Dakota Council of Educational Leaders. Thank you for the opportunity to testify in opposition to HB 1389.

I'm here today to help with the understanding of the importance of assessments and for the participation of public school children to equally participate in them. Effective use of education data to improve student achievement is necessary to any school system. Parents have a right and should be able to understand what data are collected about their child, how those data are used and shared, and how the data are protected. High quality education data can empower parents to better understand their child's academic progress and play a greater role in their child's education. Current law required that parents have access to the data in their child's education record. Some have advocated for policies that allow parents to have more choice, specifically to the ability to "opt out", when it comes to what data are collected, used and shared about their child. Yet including more consent allowances could make it more difficult for parents to receive information about their child's progress and could disrupt other core school and district activities. It is not feasible to allow parents to limit the data schools collect about their child for administrative, instructional, or assessment and measurement purposes because it would hinder or minimize the impact of data's use to improve student achievement and would strain

HB 1389  
3-15-17  
#2 p.2

everyday school functions. Policy leaders need to understand the potential implications of enacting such policies and be prepared to help parents understand the issue.

The Facts:

Within the Elementary and Secondary Education Act (ESEA), one of the requirements is that there will be a state assessment for all students grades 3-8 and once in grades 9 – 12. School districts are held accountable to assess all students and report out on the achievement and participation results. The State Education Agency creates a report for every school and district that highlights the results of the state assessment. In addition to reporting the results in reading/language arts and mathematics, the report also indicates whether the school or district had at least 95% of their students participate in the state assessment at the composite and subgroup levels. This regulation was put into place to ensure that all students, even those with a disability, those who have limited English proficiency, or those living in poverty are assessed to hold schools accountable for their education of all children. Some other areas where assessments are needed include:

1. In order for students to receive Title I and Special Education services, they must first be assessed. The results of the multiple assessments will determine whether students meet the criteria and are eligible for supplemental services within one or both of these federal programs.
2. In order for students to participate in the State Scholarship program (NDCC 15.1-21), the students must participate in certain assessments and obtain an eligible score. Students who are not assessed are not eligible to apply for a scholarship.
3. For any student that intends to go to college after high school, they must participate in certain assessments that will be used to determine acceptance and/or placement into certain remedial courses.

Our schools are bound by testing requirements within both federal and state law and their percentage of participation is monitored and they are held to a standard. If we legislate the opening for parents to opt out, the schools *should* ultimately be held harmless for any results our

HB 1389  
3-15-17  
#2 p.3

% tested as the data sample could be substantially altered. We believe it to be ill-advised to support a law that blatantly counter acts another law.

The question then becomes how do we know how the schools are doing if not all are being assessed? This is in direct contrast of wanting schools to be more transparent with how they are doing educationally. How can a school report accurate data when they do not have any?

We do understand the parents side and the fear that their students' data is being used inappropriately. However, the laws in North Dakota make it illegal for agencies to provide identifiable data to others. The Family Educational Rights and Privacy Act, also known as FERPA, gives parents certain right with respect to their children's educational records. This federal law protects the privacy of students' educational records and must be followed by all schools the receive funds under an applicable program of the U. S. Department of Education. In my research of this topic I have discovered that ND Statewide Longitudinal Data System has procedures and safeguards in place that protect the students' information. There is absolutely NO exchange of student identifiable information sent to Smarter Balance or the PARK assessment. While we are on the topic of the Smarter Balanced assessment, since they are an authorized provider they ALSO must follow the FERPA guidelines.

As a parent of two kids who have been on Individualized Education Programs's since very young ages I know how testing can and is used to inform instruction and curriculum. Without being able to test a child how do you know what is working, what is not working, and even where to begin?

As educators, we've worked hard to believe that these laws were enacted to ultimately empower parents and children through quality information – we must be cautionary to move down a road toward enabling. Are the assessments hard? Yes, sometimes they are. Do our kids

HB 1389  
3-15-17  
# 2 p 4.

get nervous taking them? Yes, sometimes they do. Do parents want to protect their children from things that might be deemed uncomfortable? Yes, of course. When these children get to college, trade school, workforce, or even the military do the parents understand that there will be high stakes testing there? Is opting them out now the best thing? No, we do not think so. Is this action something that we should legislate – knowing the consequences of doing so. We don't believe so.

We as states provide free public education. Just like with a free public transit system, we may not like all the mandated stops along the way, but if we want to participate in the free opportunity, that is part of the price we pay as citizens. That analogy could be applied to education as well.

We recommend a DO NOT PASS for HB 1389.

HB 1389  
3-15-17  
#3 p.1

**TESTIMONY ON HB 1389**  
**SENATE EDUCATION COMMITTEE**  
**March 15, 2017**  
**by Robert Bauer, Acting Director of Assessment**  
**701-328-2224**  
**ND Department of Public Instruction**

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Mr. Chairman and Members of the Committee:

My name is Robert Bauer and I am the Acting Director of Assessment for the Department of Public Instruction. I am here with a neutral position and to provide information regarding House Bill 1389, which would enact a new section to North Dakota Century Code, chapter 15.1-21, relating to parental directives.

The purpose of my testimony is to point out some questions and issues that may arise from the enactment of this bill based on the potential for differing interpretations.

Section 1.1 states that the superintendent of public instruction shall respect the right of a parent to opt a child out of any survey or testing that is not part of curriculum. Although the superintendent of public instruction may respect and support this right of a parent, the primary assessments managed by the Department of Public Instruction and administered across the state are the North Dakota State Assessment (NDSA), ACT, ACT WorkKeys, and the National Assessment of Educational Progress (NAEP). These would clearly be assessments to which parental directives for opting out could apply. However, the Department of Public Instruction is not involved in the selection or creation of curriculum or any other testing related or unrelated to curriculum for a school district. Therefore, aside from the assessments required by state and federal law, it will need to be left to the discretion of the school district to determine which surveys or tests are not a part of curriculum, and for which surveys or tests a parent may provide a directive to opt out.

Section 1.2 references any state test or state assessment required in accordance with section 15.1-21-08, 15.2-21-17, or 15.1-21-18, but does not reference any assessments administered at the local level at the discretion of the school district. Again, this will need to be left to the discretion of the school district to determine which assessments would apply under this title.

HB 1389  
3-15-17  
#3 p.2

In Section 1.3 of this bill, a child withheld from a test or assessment is deemed to be in attendance for all purposes under this title. This may raise concerns of responsibility and liability for a school district. If school records are required to indicate that a student is in attendance, but the student is not on the school premises, not under the supervision of school district personnel, and is at home or elsewhere in or outside the community, what responsibility and liability does that place on the school district for this student who is considered to be in attendance?

Section 1.4.a stipulates that a directive is valid only if it is prepared using a standardized form prepared by the superintendent of public instruction. Although the superintendent can create a standardized form for the parental directive, which may apply to any assessment in North Dakota Century Code specified in Section 1.2 of this bill, the school district would still need to determine which other assessments would qualify for the use of the standardized form.

Finally, Section 1.4.g stipulates that each school district shall provide a report regarding the number of parental directives received. Since local school districts determine the type and frequency of most tests, it would not be meaningful for the Department of Public Instruction to collect the number of parental directives for every type and number of assessments administered in each school district. Such reporting may create an administrative burden for school districts, and provide little information of value at the state level. It would be more meaningful to collect only the number of directives received for assessments managed by the Department of Public Instruction and administered statewide.

The Department of Public Instruction respectfully requests that you consider the questions raised and the information provided in this testimony as you study the merits of this bill.

HB 1389  
3-20-17  
# 1 p. 1

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1389

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15.1-21 of the North Dakota Century Code, relating to parental directives; and to provide an expiration date.

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

**SECTION 1.** A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

**Parental directive - Administration of tests and assessments - Report.**

1. A student's parent may direct that the school district in which the student is enrolled not administer to the student any state test or state assessment required in accordance with section 15.1-21-08.
2. In addition to the authority granted under subsection 1, a student's parent may direct that the school district in which the student is enrolled not administer any other specific test or assessment to the student, except a parental directive under this subsection does not apply to:
  - a. Any test or assessment required by the student's school district of enrollment or this state for the completion of any grade from kindergarten through twelve;
  - b. Any test or assessment required by the student's school district of enrollment or this state for high school graduation;
  - c. The ACT; or
  - d. WorkKeys assessments.
3. a. A parental directive is valid only if it is presented to the school district using a standardized form, prepared by the superintendent of public instruction, and signed by the student's custodial parent.  
b. A parental directive is valid only until the conclusion of the school year in which it is received by the school district.  
c. A parental directive submitted to a school district in accordance with this section must be retained as part of the student's educational record.
4. A school district is not liable for any consequences incurred by a student as a result of a parental directive submitted in accordance with this section.
5. A school district is not required to provide instruction or activities for a student during the administration of any test or assessment referenced in the parental directive submitted by the student's parent.



HB 1389  
3-20-17  
# 1p 2

6. Each school district shall post the parental directive form on its website and make the form available to a parent, upon request.
7. At the time and in the manner directed by the superintendent of public instruction, each school district shall provide a report regarding:
  - a. The number of parental directives received;
  - b. The number of parental directives applicable to students who are economically disadvantaged, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency; and
  - c. Any loss of funding stemming from the parental directives.

**SECTION 2. EXPIRATION DATE.** This Act is effective through June 30, 2019, and after that date is ineffective."

Renumber accordingly