2023 SENATE JUDICIARY

SB 2188

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2188
1/17/2023

A bill relating to requiring parental consent for minors' health care services, fundamental parental rights, a school district's obligation to notify parents of their rights related to education, and data collection; and to provide a penalty.

9:58 AM Chairman Larson called the hearing to order.

Madam Chair Larson, Vice Chair Paulson, Senator Sickler, Braunberger, Estenson, Luick, and Myrdal were present.

Discussion Topics:

- Medical/education separation
- Modeled Florida bill
- Parental involvement
- Prevention
- Transparency
- Restriction
- Conflicts
- Parental rights
- Cultural materials
- Comprehensive health
- Quality education
- Some revisions
- Emergency surgery
- Blanket consent
- Criminal penalties
- Controversial subjects
- Child abuse
- Contraception
- Insurance

9:58 AM Senator Clemens introduced SB 2188 and provided written testimony #13821.

10:18 AM Mark Jorritsma, Executive Director ND Family Alliance Legislative Action, testified in favor of the bill and provided written testimony #13739.

10:21 AM Melissa Hauer General Counsel, ND Hospital Association, testified opposed to the bill and provided written testimony #13675.

10:41 AM Marnie Walth, Senior Legislative Affairs Specialist, Sanford Health, spoke opposed to the bill.

10:42 AM Danielle Thurtle, Chief of Pediatric Medicine, Sanford Health, testified opposed to the bill and provided written testimony #13789.

10:48 AM Courtney Koebele, Executive Director, ND Medical Association, spoke opposed to the bill.

10:49 AM Amy De Kok, General Counsel for the ND School Board Association testified opposed to the bill and provided written testimony #13840.

11:08 AM Greg Kasowski, Executive Director, Children's Advocacy Center of ND, testified opposed to the bill and provided written testimony #13667.

11:10 AM Michael Heilman, Executive Director, ND Small Organized Schools, testified opposed to the bill and provided written testimony #13688.

11:17 AM Christina Sambor, Lobbiest, Youthworks, spoke opposed to the bill.

11:24 Samantha Field, Government Relations Director, Coalition for Responsible Home Education, testified opposed to the bill and provided written testimony #13595.

Additional written testimony:
Matt Mullins #13733
Kristen Sharbono #13712
Doug Sharbono #13740
Aimee Copas #13765
Tammy Owens # 13689
Rebekah Oliver #13678

11:29 AM Chairman Larson closed the public hearing.

11:29 AM Madam Chair Larson adjourned the meeting.

Patricia Wilkens, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2188
2/7/2023

A bill relating to requiring parental consent for minors' health care services, fundamental parental rights, a school district's obligation to notify parents of their rights related to education, and data collection; and to provide a penalty.

11:10 AM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger are present.

Discussion Topics:

- Committee action

11:07 AM Senator Myrdal moved to Do Not Pass the bill. Motion seconded by Senator Sickler.

11:09 AM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 7-0-0.

Senator Luick will carry the bill.

This bill does not affect workforce development.

11:10 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2188: Judiciary Committee (Sen. Larson, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2188 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

TESTIMONY

SB 2188

Madam Chairman and members of the committee;

My name is Samantha Field and I'm here representing the Coalition for Responsible Home Education, the only organization founded and run by homeschool alumni to advocate for homeschooled children. I come to you today deeply troubled by some of the language contained in senate bill 2188. I would like to direct your attention to lines six through ten and specifically highlight the term "fundamental right."

As I am sure the esteemed members of this committee are aware, this is a legal term of art. In our country, every citizen has certain *fundamental* rights—the right to free speech, freedom of expression, freedom of religion, etc. These are held to the standard described in lines six through ten of senate bill 2188—otherwise known as "strict scrutiny." I'm sure we can all agree it is important that our rights to speech and religion are this highly regarded as they are some of our chief governing values. However, I caution this committee against elevating *parental rights* to the same exalted position as our other foundational freedoms.

Parents do have rights. This is not up for debate. We have the foundational rights as citizens all Americans hold in common; We also in the practice of family law and other related fields have additional rights, but – and this is important – those rights are balanced with our responsibilities and the rights of our children. We should not be granted additional *fundamental* rights *as parents*, because of the legal imbalance this creates. Our *role* as parents is at its most essential about our power *over* our children. Loving, responsible parents control nearly every aspect of our child's lives for their own safety and well-being, with that control lessening as we guide our children toward adulthood and empower them to become productive citizens. However, not every parent is loving. Not every parent is responsible.

If all parents were granted *fundamental* rights, it would be giving the *role* of parenting – a role that is chosen, not inherent to a person—absolute control over children. It would, in function, reduce the *actual fundamental rights of children to be essentially meaningless*.

I was raised in a culture that regarded parents' rights to be fundamental. My life was dominated by the powerful lobby behind this bill—the Home School Legal Defense Association and their daughter organization the Parental Rights Foundation. Because of their work deregulating homeschooling and giving homeschooling parents absolute control over their children—I did not receive a basic education. I did not progress past eighth grade. I did not receive any education in higher math, science, or literature—and have not yet had the ability to rectify this gaping lack. I was kept isolated from my peers, from my family. My culture believed women should not be educated, should not attend college, should not be employed. All of this was purposefully designed to keep me trapped and dependent—to strip me of my rights to express my own thoughts, to practice a religion of my choosing, to rob me of the ability to speak about my experiences. Over many years and fighting tooth and nail, I'm here today despite their intentions to keep me helpless and silent.

This change in North Dakota's legal doctrine would be dangerous. It would result in more little girls growing up just like me, regardless of their educational approach. Right now in North Dakota, parents do not have absolute power to do this. Our worst impulses can be reasonably restrained. If this bill were to pass, however, parents like mine would be not just unchecked, but *empowered* by the law. I oppose senate bill 2188, and encourage the members of this committee to reject this possibly disastrous legislation.

CHILDREN'S ADVOCACY CENTERS OF NORTH DAKOTA

Senate Judiciary Committee
Testimony In Opposition to Senate Bill #2188
1-17-23

Madame Chairman, members of the Senate Judiciary Committee, my name is Greg Kasowski, and I'm the executive director of the Children's Advocacy Centers of North Dakota. I appear today in opposition to Senate Bill 2188, specifically Section 1, subsection 2.

As many of you are aware, Children's Advocacy Centers provide services to children who are victims of sexual abuse, physical abuse, neglect, and other forms of child maltreatment. One of the core services we offer is sexual assault medical exams for children, often referred to as "SANE exams" (Sexual Assault Nurse Examiner exams).

The proposed legislation would be troublesome for situations when the alleged offender of a sexual crime is both of the parents OR the sole parent of the child. Receiving parental consent for a child's SANE exam is not practical in these situations.

Century Code 14-10-17.1 does allow young victims, ages 14-17, to receive a SANE exam without consent from their parent or guardian, as long as reasonable steps are taken to notify the victim's parent or guardian.

However, for children ages 13 or younger, when both or the sole parent is the alleged offender, the Department of Health and Human Services takes custody and signs the consent. We believe this to be a sensible solution for a child while in the midst of an incredibly difficult circumstance.

It is important to note, for all SANE exams we do request consent from the child as well, because we would never force an exam on any child.

I respectfully ask the committee to recommend a DO NOT PASS to SB 2188.

Thank you for your time.
Sincerely,

Greg Kasowski
Executive Director

Children's Advocacy Centers of North Dakota

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701.301.3701

2023 Senate Bill no. 2188

Senate Judiciary Committee

Senator Diane Larson, Chairman

January 17, 2023

Chairman Larson and members of the Senate Judiciary Committee, I am Melissa Hauer, General Counsel/Vice President, of the North Dakota Hospital Association (NDHA). I testify in opposition to Senate Bill 2188. We ask that you give the bill a **Do Not Pass** recommendation.

It is a long-established principle that before treating a patient a health care provider must obtain the consent of that patient. What is a simple rule becomes less so when treating minors. The idea that parents should have the right and responsibility to make health care decisions for their children seems eminently reasonable. In most states, age 18 is the age of majority and so, before treating a patient under that age, consent must be obtained from the patient's parent or legal guardian. This seems straightforward but some provisions of the bill would change longstanding North Dakota law regarding minors' ability to consent to their own treatment in certain circumstances and other provisions of the bill are simply unworkable.

First, the bill would require prior, written consent of a parent before any health care provider could prescribe drugs or provide medical services or procedures to a minor. We feel this requirement is unworkable. For example, what if a minor needs emergency surgery and the parent cannot be reached in time? Currently, hospitals are required to attempt to contact a parent in that situation but would not delay life-saving treatment in the meantime. The bill has no exception for emergencies. The bill would also mandate prior, written consent for routine services that are performed every day without such paperwork, such as when a health care provider takes a child's temperature, looks in her ears, and listens to her heart as part of a routine well check visit or when seeing a child for

a minor illness. Do we really want every single health care service, treatment and prescription for a minor to require a parent's written consent?

There is also a long history of the legislature acknowledging that, in certain circumstances, it may be more important for a young person to have access to confidential medical services than it is to require that parents be informed of the situation. For example, current North Dakota law gives minors the right to consent to treatment in a few specific situations:

1. N.D.C.C. § 14-10-17, which provides that any person 14 years or older may receive examination, care, or treatment for sexually transmitted disease, alcoholism, or drug abuse without permission, authority, or consent of a parent or guardian.

2. N.D.C.C. § 14-10-17.1, which provides that a minor may contract for and receive emergency examination, care, or treatment in a life-threatening situation without the consent of the minor's parent or guardian. If a minor has an emergency medical condition or the potential for an emergency medical condition, consent to emergency examination, care, or treatment of the minor is implied if reasonable steps to contact the minor's parent or guardian are unsuccessful. It also provides that a health care provider may provide emergency medical care or forensic services to a minor who is a victim of sexual assault without the consent of the minor's parent or guardian. Reasonable steps must be taken to notify the minor's parent or guardian of the care provided.

3. N.D.C.C. § 14-10-18.1, which provides that an individual who is at least 16 years of age may donate blood on a voluntary and noncompensatory basis without obtaining the consent of the individual's parent or guardian.

4. N.D.C.C. § 14-10-19, which provides limited prenatal care, pregnancy testing, and pain management related to pregnancy for a minor without a parent's consent. A health care provider may provide prenatal care beyond the first trimester of pregnancy or in addition to the single prenatal care visit in the second or third trimester if, after a good-faith effort, the health care provider is unable to contact the minor's parent or guardian. The law requires that if a minor requests confidential services, the health care provider shall encourage the minor to involve her parents or guardian. The health care provider may inform the parent or guardian of any pregnancy care services in certain circumstances.

5. N.D.C.C. § 14-10-20, which just passed last session, allows an unaccompanied homeless minor to consent to health care (other than an abortion).

If SB 2188 passes, would it override these longstanding laws allowing minors to consent to their own health care in these limited circumstances? This bill is simply unworkable in the burden it would place on health care providers to secure prior written consent to all health care services, even routine examinations or prescriptions. In emergency circumstances this bill's requirements would be dangerous and impede life-saving care. And while health care providers agree that parental involvement is desirable and ideally parents and teenagers would work together to make well thought out health care decisions, the reality is that if we take away access to confidential health care in certain situations teenagers simply will stop seeking the care they need.

For these reasons, we ask that you give the bill a **Do Not Pass** recommendation.

I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/Vice President
North Dakota Hospital Association

January 16, 2023

Do Pass Testimony, SB 2188

Dear Chairwoman Larson and Members of the Senate Judiciary Committee,

As a resident of North Dakota, I write in support of SB 2188. Thank you for the opportunity to submit testimony supporting a Do Pass recommendation.

Children are precious and vulnerable human beings, and are easily influenced by others, especially in the early formative years. During these early years, parents are responsible to protect their child from harm, and to instill in their child the values, ethics, and duties that will enable that child to become an independent adult.

As educational and medical decisions become more federalized, individual decisions and diversity of thought are increasingly minimized. Various medical interventions have permanent consequences, many of which are not yet recognized. Various classroom topics, including explicit sexual content presented to very young children, may also have permanent and detrimental consequences. In such cases, parents have the right and duty to protect a minor child, allowing the child to mature sufficiently to make an independent decision.

While there might be extreme exceptions, the general welfare of children is best preserved by loving parents who are actively involved in the care and protection of their children. I urge a Do Pass recommendation on this critical bill.

Sincerely,

Rebekah Oliver
Fargo, ND

North Dakota Small Organized Schools

Mr. Michael Heilman
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Mr. Brandt Dick
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SB 2188 Testimony in Opposition
Senate Education Committee
Senator Larson – Chairperson
January 17, 2023

Senator Larson and members of the Senate Judiciary Committee, my name is Michael Heilman. I am the Executive Director of the North Dakota Small Organized Schools (NDSOS). I represent 150-member school districts of the North Dakota Small Organized Schools. NDSOS stands in opposition SB 2188.

Most, if not all the sections of this bill are currently covered in ND Century Code, are part of the approval and accreditation process, or are standard operating procedures for schools. North Dakota School Boards Association does an excellent job informing districts of required polices that cover much of what is in this bill.

Schools encourage parental involvement through orientation sessions, focus groups, parent advisory committees, parent teacher conference, fine arts and athletic booster groups. Information is shared via multiple forms of messaging, including emails, power school, websites, instant messaging, Facebook, twitter and school board meetings just to mention a few ways parents are informed and encouraged to be involved in their children's education.

NDSOS also has reservations about the last section of the bill related to collection of district-level data. We would question how this section of the bill might impact the collection of interim assessment data, standardized test data, report cards, student progress reports, teacher grade books, athletic team data, behavioral/disciplinary data just to name a few.

With existing laws and regulations NDSOS believes this legislation is unnecessary and stands in opposition to this SB 2188.

Mr. Michael Heilman – Executive Director
North Dakota Small Organized Schools
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Board of Directors

Region 1
Mr. Tim Holte, Supt. Stanley
Mr. John Gruenberg, Supt. Powers Lake

Region 2
Mr. Jeff Hagler, Supt. North Star
Mr. Steven Heim, Anamoose & Drake

Region 3
Dr. Frank Schill, Supt. Edmore
Mr. David Wheeler, Supt. Manvel

Region 4
Mr. Brian Christopherson, Supt. New Salem
Dr. Kelly Peters, Supt. Richardton-Taylor

Region 5
Mr. Rick Diegel, Supt. Kidder Co.
Mr. Brandt Dick, Supt. Burleigh County

Region 6
Mr. Mitch Carlson, Supt. LaMoure
Dr. Steven Johnson, Supt. Lisbon

Madam Chairperson and Judiciary Committee members,

My name is Tammy Owens from Fargo, ND. I am writing in support of bill S2188. I am just a citizen and grandparent that is concerned about the children of our state and the eroding rights of parents that are being taken over by government

Section 1 is dealing with the health care of the children. Parents should have the right to know what treatment and procedures will be done to their children. Parents are responsible for paying the medical costs so they should be made aware of what is being done.

Section 2 allows that parents have the right to direct their children's education, religious training, and healthcare. These decisions should be left up to parents and not any government entity. The parents should have the right to opt their children out of anything that they find objectionable but unless there is transparency from the school they will not be able to. If something is contrary to the family's beliefs this will also allow the parents to address the issues with their children based on their moral beliefs.

Another point is as taxpayers the parents should have the right to know what is being taught to their children. This will hold the school and individual teachers more accountable. Parents should not have to fight to know what is being taught.

This bill will assure that the parents have a final say in their children's upbringing and teaching.

I ask you give bill S2188 a DO PASS recommendation.

Thank you for your time and service.

Tammy Owens

Chairwoman Larson and members of Senate Judiciary Committee

I am advocating for the passing of SB2188 as a parent and mental health professional. It is imperative that parents are involved in the medical treatment and education of their children and have the authority to make decisions in the best interest of their minor children. Please pass SB2188.

Respectfully Submitted,

Kristin Sharbono M. Ed., LPCC

I, Matthew Mullins, as a North Dakota resident hereby state my opposition towards Senate Bill 2188 (SB 2188). My reasoning is as follows:

Parents should not be given the capacity to interfere with the development of a child's basic comprehension of the society that they will be joining. There is no circumstance in which this will produce a positive outcome for the child in question, especially when weighed against the potential negatives that may instead be produced should the child be sheltered from a proper and full social education, of which sexual education is a part.

Not only have studies shown that countries with comprehensive and compulsory sexual education in schools have lower teen pregnancy rates (https://www.jahonline.org/article/S1054-139X(14)00387-5/fulltext), but there have also been multiple articles published which display the effects of a lack of proper sexual education (Such as this article by Reuters: https://www.reuters.com/article/us-health-teens-pregnancy/spending-on-abstinence-only-education-not-tied-to-fewer-teen-births-idUSKCN1QM2A6 and this article by NPR: https://www.npr.org/sections/health-shots/2017/06/05/530922642/in-texas-abstinence-only-programs-may-contribute-to-teen-pregnancies)

Educational institutes and the bodies that govern them are inherently more qualified by virtue of the training and education of those that compose them than the average parent to understand and make decisions on the most effective ways to impart fundamental knowledge both functional and social towards children.

If a parent believes that this is not the case then not only do they have the option of home schooling their child, but also the option of enrolling them in a private educational institute of their choice. Both of which give them the ability in either full or partial capacity to exercise the amendments intended to be added via this bill.

These exists as -alternatives- for the education of a child, not as models to choose favored aspects from and apply to public education.

To conclude; sex is not a matter of morality or religion where the public space is concerned. It is a basic aspect of Human life. To give any private citizen, parent or otherwise, the ability to dictate whether a child receives education on this aspect of life is to ensure that there will always be more children ill-prepared for life in modern society than there could have been.

NORTH DAKOTA
Family Alliance LEGISLATIVE ACTION
Faith · Family · Freedom

Testimony in Support of Senate Bill 2188

Mark Jorritsma, Executive Director
North Dakota Family Alliance Legislative Action
January 17, 2023

Madam Chair Larson and honorable members of the Senate Judiciary Committee, my name is Mark Jorritsma and I am the Executive Director of North Dakota Family Alliance Legislative Action. Our organization is submitting testimony in support of Senate Bill 2188 and respectfully requests that you issue a "DO PASS" on this bill. While North Dakota Family Alliance Legislative Action supports this bill, we also believe that some changes might be considered.

Senate Bill 2188 supports that parents are the final arbiters of their child's education, medical treatment, mental health treatment, moral and religious training, and general upbringing. This is entirely consistent with biblical mandates and with our organization's values. The religious freedom embodied in this bill is fundamental to North Dakota law and to who we are as a state.

On the other hand, SB 2188 tries to address a huge number of facets related to parental rights vis-à-vis their children. We believe that this might be better served through multiple, more targeted bills and perhaps some refining of text. That said, it is up to the sponsor and committee to decide that.

North Dakota Family Alliance Legislative Action supports Senate Bill 2188, with the request that you consider our previously noted changes. Despite some reservations with the bill structure and language, our organization requests that you pass it out of committee with a "DO PASS" recommendation.

Thank you for allowing me to testify, and I'd now be happy to stand for any questions.

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Do Pass Testimony
of Doug Sharbono, citizen of North Dakota
on SB2188
in the Sixty-seventh Legislative Assembly of North Dakota

Dear Chairwoman Larson and members of the Senate Judiciary Committee,

I am writing as a citizen and believe SB2188 is great legislation.

In the past year, it has come to my knowledge that a school district has the legal ability to assist a minor student to gender transition against the will of the minor's guardians. This situation is untenable and requires some clear restraint given by the ND Legislature in order to protect families. Parental rights need to be reinforced. I believe this legislation will accomplish this. Please give SB2188 a Do Pass.

Thank you,

Douglas B. Sharbono

Doug Sharbono
1708 9th St S
Fargo, ND 58103

SB 2188

Testimony in opposition

Chairwoman Larson and members of the Senate Judiciary committee, my name is Dr. Aimee Copas, and I am the Executive Director for the North Dakota Council of Educational Leaders representing school leaders across North Dakota.

We are here following NDSBA and NDSOS in opposition to SB 2188. Our opposition is not intended to represent an opposition of parents to have all the rights they need to have regarding their children. I am a mother. I desire these rights. As an educator, I'd like to share that I have all these rights in North Dakota directly in part to the wise actions of the ND legislature over many years. Bills very similar to this have been put forth in 26 states and have passed in few states that needed the addition to code such as Georgia, Louisiana, and Florida to name a few. However, in states where they have very open sunshine laws and open doors to public schools similarly to North Dakota the need to amend their state laws has been determined to adequately cover the request from the bill. Those before me provided greater detail so I will not belabor additional points of detail

While it is not uncommon for us to see bills introduced based on concern from national narrative, it is important to reflect on what is currently in action in our state before amendments to century code are made. We as for a do not pass on SB 2188.

SANFORD HEALTH

Senate Judiciary Committee
Sen. Diane Larson, Chair
Jan. 17, 2023
SB 2188

Good morning, Chair Larson and members of the Senate Judiciary Committee. I am Dr. Danielle Thurtle, a board certified pediatrician and pediatric hospitalist with Sanford Health Bismarck. I serve as Sanford Bismarck's chief of pediatric medicine and patient safety officer and chair the physician executive committee.

We ask that you give this bill a **Do Not Pass** recommendation.

While the bill on its surface seems well intended, there are numerous situations when parental consent is not possible and/or may serve as a barrier to a minor receiving medical care in a timely manner:

- Medical emergencies: In emergency situations when reasonable attempts to contact a parent fail, consent to provide life-saving services is implied.
- Prenatal care: I have had minors seek pregnancy prevention or disclose sexual abuse without parental consent. If I were unable to even see minors without a parent's consent they would have no way to disclose abuse going on in the home.
- Substance use disorder: North Dakota law provides that minors 14 and older may receive examination and care without parental consent. I have had many, many minors disclose substance use to me only after I inform them that it's confidential. Once they disclose I always convince them that their parent is an ally so have never had to prescribe medications or other therapies without a parent's knowledge. The confidentiality is essential to building trust in the first place.
- Sexually transmitted disease: As with SUDs, North Dakota law specifically provides for minors ages 14 and older to receive examination and care for sexually transmitted disease. As with pregnancy and SUDs, confidentiality is essential to help ensure STDs do not go unchecked, potentially leading to infertility, disease and increased risk for organ failure.

From a purely operational standpoint, requiring consent for every commonplace treatment will bring an unnecessary layer of paperwork and workforce challenge to an already highly regulated industry.

Further, there are numerous times when a minor is accompanied by someone other than a parent, e.g. a grandparent.

While it's understandable to think minors all have parents that are actively involved in their lives, this simply is not the case. There are extenuating circumstances when it is critically important to provide care even when a parent is not present to provide written consent.

Thank you for your consideration.

I would be happy to answer any questions.

Danielle Thurtle, M.D.
Sanford Health Bismarck
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701-323-3700

JANUARY 17, 2023

JUDICIAL COMMITTEE

SB 2188

SUBMITTED BY SEN DAVID CLEMENS

I AM HERE TODAY TO INTRODUCE SB 2188.

SB 2188 DEALS WITH PARENTAL RIGHTS AND PARENTAL CONSENT CONCERNING A MINOR'S UPBRINGING, EDUCATION, HEALTH CARE AND MENTAL HEALTH.

THIS BILL PROVIDES GUIDELINES INVOLVING EDUCATION AND HEALTH TREATMENT AND ALL RECORDS ASSOCIATED WITH THE MINOR. THIS BILL DOES NOT RESTRICT NORMAL CLASSROOM INSTRUCTION, COURT PROCEEDINGS OR DOES IT AUTHORIZE PARENTAL ABUSE AND NEGLECT OF A CHILD.

ONE OF THE PURPOSES OF THE BILL IS TO HELP CREATE COOPERATION WITH SCHOOLS AND THE PARENTS SO THE PARENTS ARE MADE AWARE OF ALL ACTIVITIES IN THE SCHOOL.

I HAVE MENTIONED A GENERAL OVERVIEW OF THE BILL AND THIS CONCLUDES MY INTRODUCTION AND TESTIMONY.

SUBMITTED BY:

SEN DAVID CLEMENS

NDSBA
NORTH DAKOTA SCHOOL BOARDS ASSOCIATION

SB 2188
Testimony of Amy De Kok
Senate Judiciary Committee
January 17, 2023

Chair Larson and members of the committee, my name is Amy De Kok. I am General Counsel for the North Dakota School Boards Association. NDSBA represents all North Dakota public school districts and their boards. NDSBA stands in opposition to SB 2188.

NDSBA's opposition centers on Sections 3 and 4 of the Act. Section 3 requires each public school district in North Dakota to adopt a policy to promote parental involvement in the school system and then contains a extensive list of items the policy must contain. NDSBA opposes Section 3 because is it unnecessary. Public school districts already have school policies addressing most of these matters. Public school districts in North Dakota have long supported and encouraged parental involvement and engagement in their student's education, and school boards have adopted school policies reinforcing this idea. Indeed, school districts are already required to adopt a parental and family engagement policy under federal law, namely the Every Student Succeeds Act (ESSA). This policy is very detailed to achieve parent and family engagement on a district-wide level, as well as in each school within the district. It requires, among other things, joint development between the district, parents and families of a district-wide plan detailing the actions the district will take to ensure involvement of parents and families in school programs. The policy requires annual evaluation of the district plan to ensure effectiveness and addresses how to build the capacity of parents and families with training and resources. These are just a few things the policy covers. In addition to the parent and family engagement policy, school boards also adopt policies addressing:

- Curriculum design and adoption, including a complaint procedure available to parents and patrons to challenge curriculum adopted by the board and instructional materials used by teachers in the school system.
- Immunizations required to attend school in North Dakota and the process required to be exempt from those requirements.
- Student retention, promotion, acceleration, and graduation requirements.
- Enrollment in gifted and special education programs, including procedures to identify such students.
- Student attendance.
- Grading procedures.
- Access to student records and information and the limits of disclosure of such information absent parental consent.

In addition to policies, school districts already have most of the information referenced in Section 3 of the bill available on their website or available upon request. In other words, parents already have the ability to access all of this information. All they need to do is check their district's website or contact the school and request the information. Requiring public schools to adopt another policy addressing all of these issues will be duplicative and may cause confusion as to policies already in place.

Section 3 of the bill is also unnecessary because the open records laws in North Dakota already provide a means and method to request this information from public school districts. This includes school board policies, regulations, procedures, instructional materials, and information on student clubs and parent organizations, to name a few. Under the open records laws, anyone from anywhere may, in pretty much any manner, request records from a public school district, including electronically stored records. These records must be provided within a reasonable amount of time. Reasonableness will depend on the circumstances, including the breadth of the request and the type of records requested; however, what is reasonable is usually measured in a few days, not weeks. As for student specific information, the federal Family Educational Rights and Privacy Act (a.k.a., FERPA) provides parents the right to access their student's education records within 45 days of request. This would include such things as attendance records, grades/report cards, student conduct and discipline records, assessments, and related materials, essentially anything directly related to their student and maintained by the district.

Section 3 also includes a provision, starting on page 5, line 20, which allows a parent to make a written request for information from the school superintendent. The superintendent must then respond with the requested information within 10 days. This is regardless of the breadth of the request or the volume of information requested. If this bill is passed in its current form and a superintendent, for example, receives a request for copies of all instruction materials used by 3rd grade teachers, the superintendent would be required to drop everything and devote all of their time and attention to fulfill the request within the 10-day period. This doesn't even factor in other school staff who may need to assist in responding to the request. We believe this 10-day response period could prove problematic in many circumstances. Again, NDSBA believes the open records laws already provide a means of requesting information from a public entity and is better suited to cover these types of requests.

Finally, NDSBA has concerns with Section 4 of the bill. Section 4 prohibits a school district from collecting any "district-wide" data on a student that is not required to be collected by law. First, it is unclear to what is meant by "district-wide" data. Information and records gathered and maintained by public schools are not separated in such a way, at least for the most part. Also, is this meant to cover any and all data of a student? While it is true that federal and state law require certain student data to be collected, most data collected and maintained by schools is not collected because it is required by law. Rather, it is collected for various other reasons. For example,

data regarding athletic accomplishments and statistics are kept on a student-by-student basis. This is not information required to be collected and kept by law. If this bill passes, such data would not be able to be collected or maintained. Another example is a student's permanent record. For the most part, the law does not define what particular information should be included in a student's permanent record. This is usually dictated by school board policy, a document retention schedule, and/or best/common practices. These are just a few examples of the type of data collected that is not required by law.

For these reasons, NDSBA urges a Do Not Pass recommendation on SB 2188, and I am happy to stand for any questions. Thank you for your time.