

# 2025 NDSBA School Law Seminar

October 9, 2025 | 8 a.m. - 2:30 p.m. | Bismarck Event Center

Approved for 5.0 CLE credits – State Bar Association of North Dakota



## NDSBA

NORTH DAKOTA SCHOOL  
BOARDS ASSOCIATION

- 7:00 a.m.     **Registration & Continental Breakfast | Welcome**
- 8:00 a.m.     **Special Education & Disability Discrimination – 10 Things You Need to Know**  
*Laura Tubbs Booth, Attorney – Ratwik, Roszak & Maloney, P.A., Minneapolis, MN*
- 9:00 a.m.     **Keeping it Legal: Managing Claims and Complaints**  
*Seth Thompson, Attorney – Vogel Law Firm, Bismarck, ND*
- 9:40 a.m.     **Break**
- 9:55 a.m.     **Sponsor Message: North Dakota Insurance Reserve Fund**  
*Keith Pic, NDIRF CEO*
- 10:00 a.m.    **ND Department of Public Instruction: Tips for Public Schools**  
*Matthew S. Menge, Assistant Attorney General/General Counsel for NDDPI*
- 11:00 a.m.    **Panel Discussion: Top Issues School Boards are Facing in 2025-2026**  
*Moderated by KrisAnn Norby-Jahner, NDSBA General Counsel*
- 12:00 p.m.    **Lunch (Hall B – included with registration)**
- 12:45 p.m.    **NDSBMCP Graduation Ceremony (Hall A)**
- 1:00 p.m.     **Legislative Updates**  
*Amy De Kok, NDSBA Executive Director*
- 1:30 p.m.     **Panel Discussion: School Safety & Relationships with SROs**  
*Moderated by KrisAnn Norby-Jahner, NDSBA General Counsel*  
  
*Panelists: Becky LaBella, Safety Director, Bismarck Public Schools; Ryan Riehl, Assistant Principal, BPS – Legacy High School; Officer Trevor Schmidt; Bismarck PD/SRO – Legacy High School*
- 2:30 p.m.     **Conclusion of Seminar**

Sponsored by



# **10 THINGS EVERY EDUCATOR SHOULD KNOW ABOUT IDEA AND SECTION 504**

NDSBA School Law Seminar

October 9, 2025

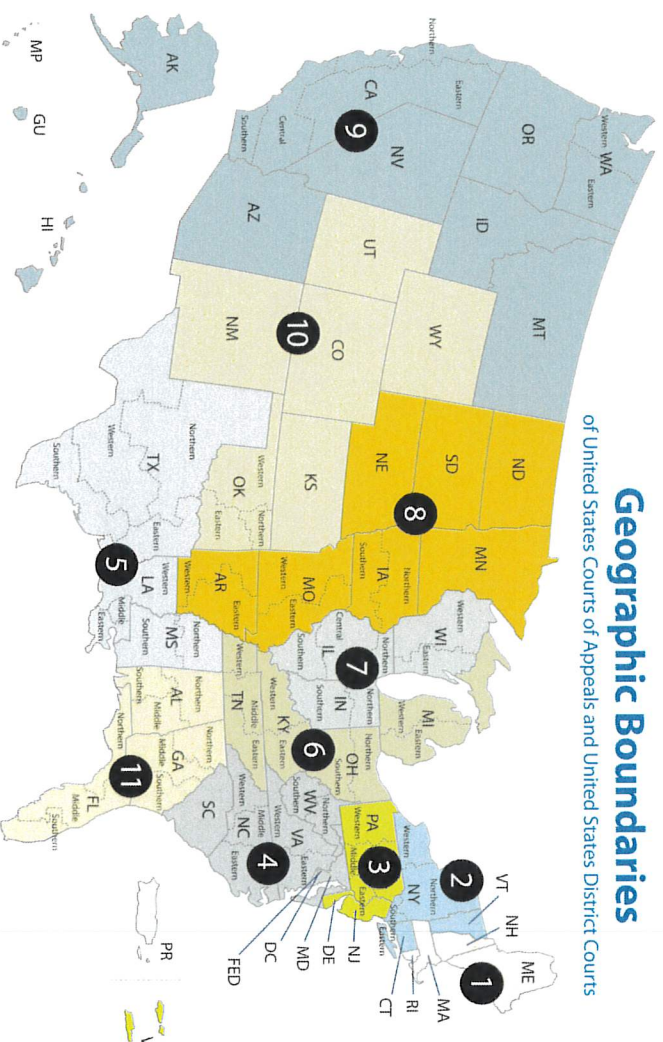
*Laura Tubbs Booth*

*Ratwik, Roszak & Maloney, PA*



# NO. 1 WE ARE THE 8<sup>TH</sup> CIRCUIT

**Geographic Boundaries**  
of United States Courts of Appeals and United States District Courts



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## NO. 2 - WHAT LAW GOVERNS?

Section 504 / ADA

IDEA

ND Century Code

- And consider District policy



# SECTION 504 OF THE REHABILITATION ACT OF 1973

Section 504 provides:

"No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ."



# WHAT SECTION 504 IS NOT...

- Section 504 not just accommodations (& not just “reasonable accommodations”)
- Section 504 is not a parent-driven process
- A diagnosis of a medical or mental health disability is not required
- Section 504 plans are not written for “perceived disabilities”



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# ND HUMAN RIGHTS ACT

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SIMILARLY,  
PROTECTS  
INDIVIDUALS FROM  
DISCRIMINATION  
INCLUDING BASED  
ON DISABILITY



# THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT - IDEA

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STATES RECEIVE  
FEDERAL FUNDS  
AND IN EXCHANGE  
AGREE TO PROVIDE  
DUE PROCESS FOR  
STUDENTS WHO  
QUALIFY





## IDEA

## Direct instruction for individual deficits

Special Education IEP

IEP must be agreed upon by IEP Team

Funding for individuals with IEP only

## Consider this...

- Under IDEA, a student with dyslexia and a SLD will receive direct instruction directed at her individual disability area
- Under 504, that same student may receive books at her reading level, peer assistance, more time



### 3. Reading and Dyslexia

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MLK v. Minnetonka  
(8<sup>th</sup> Cir. 2022)

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Student v. Fort Bend  
Sch. Dist. (TX 2025)



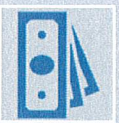
## 4. Disability Discrimination



Claims under IDEA previously had to be exhausted thru a hearing



Now parents/guardians may sue directly for discrimination



Fee-shifting statute



# THE US SUPREME COURT DECIDES AJT V. OSSEO AREA SCHOOLS

AKA RATWIK GOES TO WASHINGTON!

RRM

Ratwik, Rensik & McIntire, P.A.





## BACKGROUND INFORMATION



A.J.T. is a teenage girl with a severe form of epilepsy that makes her unable to start the school day until noon, due to seizures.



District excused absences but parents wanted a 6.5 hour school day

R R M

Russell, Rosalee & Maloney, P.A.



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## THERE WERE TWO CASES...

- IDEA Hearing – Did the District fail to provide AJT with a FAPE?
- Discrimination Claim – Did the District discriminate by not providing AJT with a FAPE?



# IDEA DUE PROCESS HEARING

- ALJ held that the District shortened the school day for administrative convenience
- ALJ did not receive a FAPE because there was no time for a toileting goal
- Federal District Court and 8<sup>th</sup> Circuit Court of Appeals agreed with the ALJ



# DISCRIMINATION CASE

- Parties completed discovery and District moved for Summary Judgment
- District Court and 8<sup>th</sup> Circuit held that the evidence did not support disability discrimination
- Parents sought cert





Kenneth R. Ruszok & Maloney, P.A.



**U.S. SUPREME COURT**     *A.J.T. v. Osseo Area Sch., Indep. Sch. Dist., Case No. 24-249*





## **AT ISSUE IN AJT V. OSSEO...**

- The 8<sup>th</sup> Circuit had developed a standard for proving disability discrimination for students on IEPs 43 years ago
- “Gross misjudgment” must be shown
- Other Circuits joined this court created standard



## SCOTUS HELD...

- Gross misjudgment is not the standard as it is not in 504 or the ADA and
- Courts should apply the same standard that they do in other discrimination cases



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## WHAT THIS MEANS...

Consider whether actions could be construed to be disability discrimination (see below re shortened day)

There is still a requirement for intentional discrimination in money damages cases (as opposed to injunctive relief)

Not likely to change your practice much... we hope 😊



*W.H. v. Fort  
Bend ISD, 2025  
WL 2147067  
(S.D. Texas,  
Houston  
Division)  
(2025)*

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- School's refusal to accommodate was not deliberate indifference when it was based on child's needs.
  - Cited A.J.T. U.S. Supreme Court decision.

R  
R  
M

Russell, Roszak & Maloney, P.A.



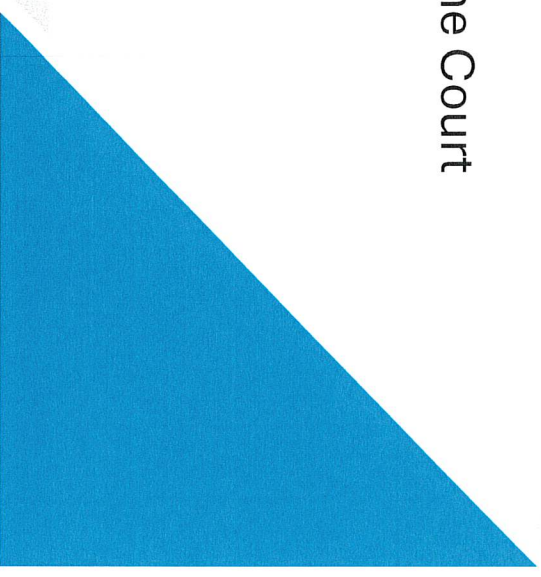
*J.M., et al. v.  
Ozark Horizon  
State School,  
2025 WL  
1698509 (W.D.  
Mo. 2025)*

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- Petition would survive motion to dismiss based on deliberate indifference standard.
- Cited A.J.T. U.S. Supreme Court decision.

R  
R  
M

Rosch, Rosch & Mahoney, P.A.





## 5. Shortening the School Day

Discipline

Transportation

Special Education



## Shortened Day - Discipline

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IDEA allows disciplinary removals  
up to 10 days for one incident

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If 10 cumulative days accrue, -  
MD, FBA & Behavior Plan

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Changing a student's placement  
via discipline is illegal

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OCR has applied these same rules  
to 504 students

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# Shortened Day - Discipline

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- EEK v. Minneapolis Schools
- Student w/ IEP was suspended 34 days
- You be the judge – was that a violation of IDEA?





## EEK continued

Partial days on 34 schools for a total of 11 school days (as measured by 6 hour days)

It was held to be a change in placement however, the student was not harmed by the change because of the district's robust work with the student



# Informal or partial removals

Asking the  
parent to pick  
up the  
student early

Parent  
volunteering  
to pick up  
student early

Restrictive  
setting for  
student

- All of these can be considered suspension for a student with disabilities



# Shortened day - Transportation

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- With few exceptions, shortening the day to “allow” a student on an IEP or 504 to leave early to navigate halls or get to bus, will be found to be an illegal shortening of the day





# Shortened Day – Special Education Process

IEP team must consider other  
alternative

IEP team may decide that the  
student's needs dictate a shortened  
day

Stamina – Christopher M. v. Corpus  
Christie (5<sup>th</sup> Cir. 1991)

# Shortened Day – Practice Tips

- Avoid unilateral shortened days
- IEP may shortened the day for physical stamina issues
- If the day is shortened, have a plan for increasing the stamina and the school day
- Never say never – consider an extended school day



# Shortened Day Case Law

Sultan Sch.  
Dist. (WA.  
2025)

In Re: Student  
w/ Disability  
(WI. 2025)

Rapid City (SD.  
2024)

Lake Local  
Sch. Dist. (OH  
2019)(same  
length of day,  
staggered time  
approved)

# ABA Therapy v. Shortened Day

- Is the ABA therapy necessary for FAPE?
- Are absences excused for other types of mental health issues?
- IEP



# Discipline

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Exec. Order 4/2025

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Discipline related policies cannot promote unlawful discrimination

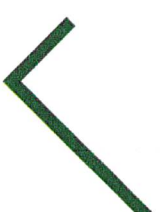
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Note – Students on IEPs and 504 plan have separate protections including MD, FBA and behavior plans

## 6. Service Animals



Dog



**District may ask two questions:**

Is the dog necessary for the person with disabilities

What tasks does the dog do for the individual



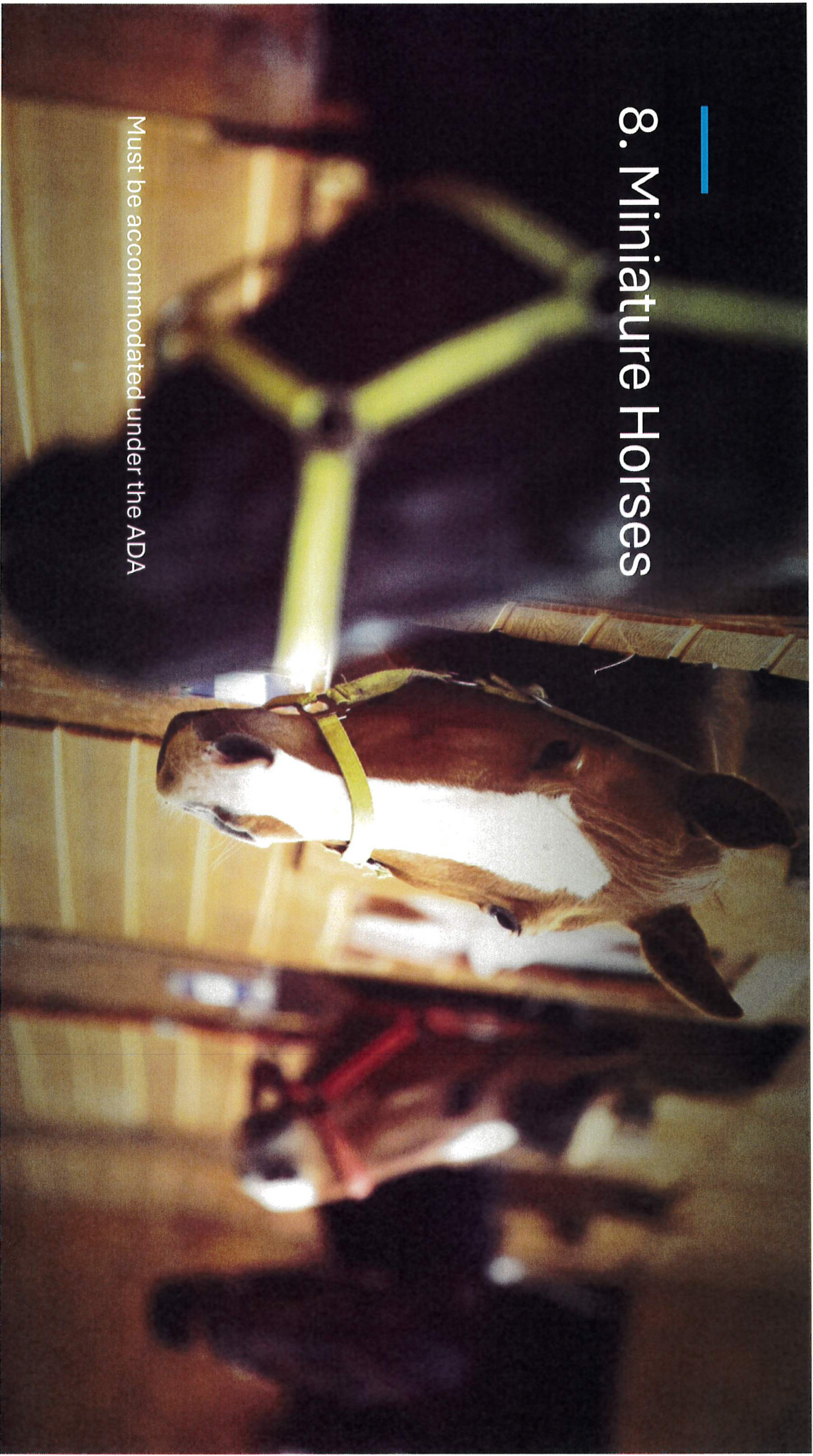


## Service Animals

- Kimball Area Sch. v. IRM (MN 2025)
- All found that the dog was necessary for FAPE
- On appeal to the 8<sup>th</sup> Circuit Court of Appeals

## 8. Miniature Horses

Must be accommodated under the ADA





## 9. *ADA* and Communication

*ADA* requires that the mode of communication that a person with a disability chooses must be honored by district

Does it apply to hearing individuals – this is the next question



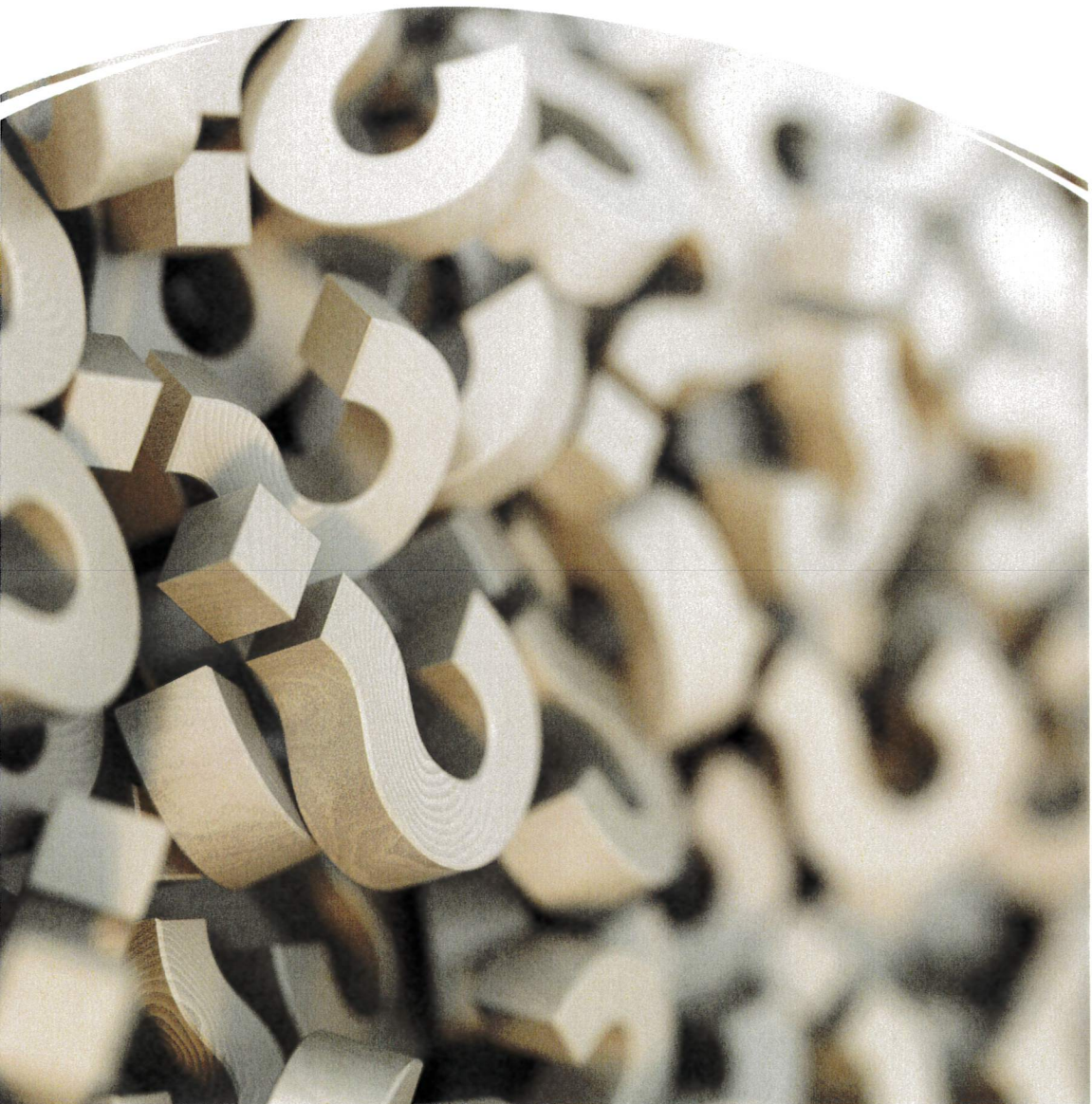
# 10. Avoid Litigation

Consider parental input; utilize expert advice	Its never a defense to say "the parent wanted it" School staff drive the bus
Use the Prior Written Notice	Akin to Informed Consent
2 way, concrete communication	Not just document, but inform parent
Train staff continuously	Behavior speaks volumes, times are a changin...
Use your data	Lets not be data rich and analysis poor



# Thank you!

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## **Ten Things Every Educator Should know about SPECIAL EDUCATION and SECTION 504**

**Laura Tubbs Booth**  
**[ltb@ratwiklaw.com](mailto:ltb@ratwiklaw.com)**

**North Dakota School Board's Legal Presentation**  
**October 9, 2025**

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NOTE: The purpose of this presentation, and the accompanying materials, is to inform you of interesting and important legal developments. While current as of the date of presentation, the information given today may be superseded by court decisions and legislative amendments. We cannot render legal advice without an awareness and analysis of the facts of a particular situation. If you have questions about the application of concepts discussed in the presentation or addressed in this outline, you should consult your legal counsel. ©2025 Ratwik, Roszak & Maloney, P.A.



## **I. A QUICK REVIEW OF SECTION 504, THE IDEA, ADA, AND STATE LAW**

### **A. Section 504 of the Rehabilitation Act of 1973 (“Section 504”)**

- a. Section 504 (29 U.S.C. § 794) is a federal civil rights law. Section 504 is implemented through federal regulations. *See* 34 C.F.R. Part 104. There is no state law counterpart to Section 504. The purpose of Section 504 is to eliminate discrimination against individuals with disabilities in all programs or activities receiving federal financial assistance. Section 504’s requirements apply in the areas of employment, education, and “other services” offered by a recipient of federal funds. As recipients of federal funds, school districts have Section 504 obligations in all three of the above areas. As it pertains to disabled students, Section 504 requires school districts to provide a level playing field through reasonable accommodations. The cost of compliance is born solely by the recipient of federal funds, i.e., the school district.
- b. Section 504 requires that school districts provide a *qualified student with a disability* an opportunity to benefit from the school district’s program equal to that of students without disabilities.
- c. Like the IDEA, Section 504 requires the school district to provide students with a disability a free appropriate public education (“FAPE”). 34 C.F.R. § 104.33. The regulations define a FAPE as “the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of [specific Section 504 regulations].”

### **B. The Individuals with Disabilities Education Act (“IDEA”)**

- a. The Individuals with Disabilities Education Act (“IDEA”) (20 U.S.C. § 1400 et seq.) is a comprehensive educational scheme for some, but not all, disabled students. IDEA gives eligible disabled students the right to receive public education designed to provide them with educational benefit. It provides significantly greater procedural and due process rights to eligible students and their parents than does Section 504 or the ADA. Individualized Education Programs (“IEPs”) developed under IDEA are often more prescriptive than are Section 504 plans.
- b. The IDEA requires the District to provide qualified students with a free appropriate public education (“FAPE”), in this context, FAPE is the

provision of individualized special education and related services which permit students to receive meaningful educational benefit. *See Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *see also* 34 C.F.R. § 300.17. The IDEA is implemented by an extensive and complex body of federal regulations. *See* 34 C.F.R. Part 300.

- c. The IDEA requires the provision of special education to students with disabilities who meet certain requirements. The IDEA and its implementing regulations prescribe detailed steps that must be taken with respect to qualifying students. Educators should be aware that the IDEA applies to a smaller group of students than does Section 504; not all students with disabilities will be subject to the IDEA or have an IEP. Any student who qualifies for IDEA services also is protected by Section 504. The reverse, however, is not necessarily true.

### **C. The Americans with Disabilities Act (“ADA”)**

1. The ADA is also a federal law prohibiting discrimination against individuals with disabilities. 42 U.S.C. § 12101, *et seq.* The ADA and Section 504 are similar with regard to the manner in which they relate to education and employment. Effective January 1, 2009, the ADA was amended to include a broader range of individuals as disabled. *See* ADA Amendments Act of 2008, Pub. L. 110-325, 122 Stat. 3553 (2008). The ADA Amendments Act (or “ADAAA”) redefined what constitutes a disability under the Act. The ADAAA expressly contains provisions which modify the definition of “disability” in Section 504 so that Section 504 is reliant upon and mirrors the definition found in the ADAAA. *Id.* at Sec. 7. Section 504 was also amended to refer back to the new definition of disability under the ADAAA. *See* 29 U.S.C. § 705(9)(B). As a result, the ADAAA had a direct impact on Section 504.
2. Title II of the ADA specifically applies to school districts. Title II of the Americans with Disabilities Act prohibits discrimination on the basis of disability by state and local governments. 42 U.S.C. § 12132, *et al.* Specifically, Title II of the ADA states that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132; *Pottgen v. Missouri State High Sch. Activities Ass’n*, 40 F.3d 926, 930 (8th Cir. 1994).
3. Federal Rule 28 C.F.R. § 35.130 addresses the provision of services to individuals with disabilities under Title II. It states that a school district



must provide access to the same benefits, services and activities that are provided to individuals without disabilities. 28 C.F.R. § 35.130(a). It also states that an individual with a disability has the right to choose not to accept an accommodation under the statute. *Id.* at (e)(1).

4. Title II is expressly modeled after Section 504 and adopts many of its substantive standards. Both regulations prohibit a public school district from treating a disabled individual differently than it treats a non-disabled individual unless it has a legitimate, nondiscriminatory reason for doing so. *See* 34 C.F.R. § 104.4(b)(1) and 28 C.F.R. § 35.130(b)(1)(iv).
5. The regulations promulgated pursuant to Title II of the ADA require public entities to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7); *see also Davis v. Francis Howell Sch. Dist.*, 138 F.3d 754, 756 -757 (8<sup>th</sup> Cir. 1998).
6. The ADA also has relatively new provisions specifically governing the use of service animals. While an extensive discussion of these provisions is outside the scope of this presentation, educators should be aware of these provisions.

**D. The North Dakota Human Rights Act.** The North Dakota Human Rights Act, NDCC Chapter 14-02.4, is an anti-discrimination statute which prohibits, among other forms of discrimination in the provision of public services, discrimination on the basis of sex and disability.

## II. INTERPLAY BETWEEN SECTION 504 AND THE IDEA

The requirements of Section 504 are similar to, but less prescriptive and less extensive than, the requirements of IDEA. In other words, Section 504 is broader than IDEA. Below are a few ways in which Section 504 and IDEA intersect:

- A. Child Find.** Similar to IDEA, Section 504 imposes an obligation to locate, identify, and evaluate students who are believed to be in need of accommodations or special education services.
- B. Procedural Safeguards.** Section 504 requires that school districts notify parents of their procedural safeguards and the obligations that school districts have under Section 504. However, Section 504 provides far fewer procedural safeguards to parents than IDEA. Under Section 504, a parent's procedural safeguards are

generally limited to: (1) notice explaining any evaluation and placement decisions; (2) notice of the right to review relevant records; (3) notice of the right to request an impartial hearing or file a complaint with the OCR; and (4) notice of review procedures.

- C. **FAPE.** If the student has a physical or mental impairment that substantially limits a major life activity, the school district must provide the student with a Free Appropriate Public Education (FAPE). This typically involves providing accommodations that are (1) based on individual needs, (2) provided in the LRE, and (3) designed to remove the barriers to education that are created by handicapping conditions. Section 504 does not require that school districts provide a greater opportunity for disabled students to participate in academic, nonacademic, or extracurricular activities, but districts must take steps to ensure that disabled students have equal access to educational benefits and opportunities.
- D. **Eligibility.** A student who is no longer eligible for IDEA services may still be eligible for Section 504 services, if he or she continues to meet the Section 504 criteria. *See, e.g., Brado v. West*, 2010 WL 333760 (D. Md. 2010).
- E. **Exits.** A school district should offer students who exit IDEA services a 504 evaluation or 504 plan, as appropriate. *See, e.g., H. v. Montgomery Cty. Bd. of Educ.*, 784 F. Supp. 2d 1247 (M.D. Al. 2011); *see also Hamilton Sch. Dist. v. Doe*, 2005 WL 3240597 (E.D. Wis. 2005).

## II. CASE LAW: SUPREME COURT OF THE UNITED STATES AND EIGHTH CIRCUIT COURT OF APPEALS.

### A. *A.J.T. v. Osseo Area Schools*, 605 U.S. 24 (2025).

- 1. Facts. A.J.T. has a form of epilepsy. A.J.T. did not attend school until noon. Pursuant to her individualized education program (“IEP”), A.J.T. received intensive special education from noon until after the school day at 4:15 p.m. A.J.T.’s parents made requests for A.J.T. to receive additional evening instruction, but the District denied the requests.
- 2. Issue.
  - a. Did the District deny A.J.T. a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Act (“IDEA”)?



- b. Did the District engage in disability discrimination in violation of Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”)?

3. Eighth Circuit’s Holdings.

- a. IDEA Case. The panel held that the school district denied the student a FAPE.

- i. The panel held that A.J.T. made “only slight progress in a few areas” over a period spanning multiple school years. For instance, A.J.T. did not meet her annual IEP goals from 2016 to 2020. The panel held that the progress was *de minimis* and that the level of progress was “predictable” and “strong evidence” that the school district denied A.J.T. a FAPE.
- ii. The panel found that “toileting ability” is “essential” for A.J.T. to live a “healthy and dignified life” and that the District “remov[ing] her toileting goal for lack of time in the short day” for a period violated its obligation to provide a FAPE.
- iii. The panel held that the school district denying the evening instruction was a “purely administrative decision” and that “its choice to prioritize its administrative concerns had a negative impact on A.J.T.’s learning.” The panel further held that A.J.T. “would have made more progress with evening instruction.”

- b. Section 504 and ADA Case. The Eighth Circuit panel held that the District could not be held liable for disability discrimination.

- i. Bad Faith or Gross Misjudgment Standard. The Eighth Circuit panel held that the law of the circuit requires plaintiffs to prove that school officials acted with bad faith or gross misjudgment when bringing Section 504 and ADA claims based on educational services for a student with a disability. The panel held that A.J.T. had failed to make such a showing. The school district met with the parents, updated A.J.T.’s IEP each year, provided the student a “variety of services” including intensive one-on-one instruction, extended A.J.T.’s school day so that she could safely leave school, and offered 16 three-hour sessions at home each summer. The panel

concluded that, regardless of whether the school district complied with Section 504 and the ADA, the bad faith or gross misjudgment standard was not met. The entire Eighth Circuit declined to review the decision or, in other words, declined *en banc* review.

4. U.S. Supreme Court

- a. The Supreme Court of the United States accepted review of the bad faith or gross misjudgment standard for Section 504 and ADA claims based on educational services for a student with a disability.
- b. There were two issues before the court:
  - i. Whether discrimination claims based on educational services brought by children with disabilities are subject to the “bad faith or gross misjudgment” standard, or, alternatively, a more lenient standard (e.g., deliberate indifference) should be utilized for purposes of determining discrimination as used for ADA and 504 claims outside of the school setting?
  - ii. And whether, under that standard, the District engaged in disability discrimination in violation of Section 504 and the ADA?
- c. *Nowhere in the decision* did the U.S. Supreme Court find that the School District discriminated against A.J.T., instead it only indicated that A.J.T was denied FAPE.
- d. The U.S. Supreme Court decision held narrowly that the bad faith and gross misjudgment standard for Section 504 and ADA claims based on educational services for a student with a disability was not the appropriate standard.
- e. The U.S. Supreme Court held that courts should apply the same standard for all disability discrimination cases. It did not articulate the standard.

**B. *Kass v. W. Dubuque Cmty. Sch. Dist.*, 101 F.4th 562 (8th Cir. 2024).**

- 1. Facts. Brody “has epilepsy, autism, attention deficit/hyperactivity disorder, severe vision impairment, and intellectual disabilities.” “During his senior year of high school in 2019–20, Brody attended classes full time in the high



school and accumulated the requisite number of credits for graduation.” Due to unmet transitional needs, the school district proposed that, after his senior year, “Brody would spend a half-day focusing on developing his reading and math skills through individualized and practical training” in order “to prepare Brody for his transition into a work environment.” The Kasses objected to the proposal. Brody remained in his then-current educational placement and “Brody completed his high school education entirely under his former IEP because of the statute’s stay-put provision.” During the proceedings, Brody “past the qualifying age for a FAPE under the IDEA.”

2. Issues.

- a. Is the case moot because Brody is past the qualifying age for a FAPE under the IDEA?
- b. Did the school district violate the IDEA in the development and proposal of the IEP?
- c. Did the school district violate Section 504 in the development and proposal of the IEP?

3. Holding.

- a. Mootness. The Eighth Circuit held that compensatory education may be available for students who are past the qualifying age for a FAPE under the IDEA.
- b. IDEA’s Procedural Requirements. The Eighth Circuit held that the school district complied with IDEA’s procedural requirements in developing the proposed IEP.
  - i. Parental Participation. The Eighth Circuit held that the “record indicates the Kasses were involved in drafting the IEP” and that the “district court did not err in finding the District has satisfied its obligation regarding parental involvement.” The school district held “numerous meetings” and “involved Brody’s parents in meetings,” including over the “contentious topic of reduced school days.” Brody’s parents were also involved in finalizing the IEP.
  - ii. General Education Classes. The Eighth Circuit held that, “[a]lthough the Kasses preferred Brody to be in general

education classes, the District had no obligation to follow their preferences.” Instead, the IDEA only requires that “parental preferences are ‘consider[ed]’ and ‘address[ed].’” The Eighth concluded that the district court did not err in holding that the school district considered the Kasses’ requests.

- c. IDEA’s Substantive Requirements. The school district’s “thorough reevaluation . . . led the school team to make an individualized determination that he had only unmet transition needs.” The proposed IEP addressed those needs in both the school and community setting. As the Eighth Circuit explained, “the District did not simply shorten Brody’s school day without providing additional services to fill in these gaps.” Therefore, the Eighth Circuit agreed with the district court that the proposed IEP “substantively addressed Brody’s unmet transition needs” and that the proposed IEP complied with the IDEA.
- d. Section 504. The district court dismissed the Section 504 claim as “subsumed under the IDEA claims.” The majority opinion affirmed the district court’s decision without analysis specific to Section 504.

**C. Key Takeaways on “Regular” School Day Cases.**

- 1. Shortening the “Regular” School Day. For IDEA-eligible students, use the IEP process to shorten a student’s school day. A student’s school day should only be shortened to meet a student’s individual needs.
- 2. Instruction Outside of the “Regular” School Day. IDEA’s FAPE requirement obligates a school district to educate a student outside the “regular hours of the school day” if it is necessary to provide the student a FAPE. *Osseo Area Sch. v. A.J.T. ex rel. A.T.*, 96 F.4th 1062, 1066 (8th Cir. 2024).

**D. *Steckelberg ex rel. AMS v. Chamberlain Sch. Dist.*, 77 F.4th 1167 (8th Cir. 2023).**

- 1. Facts. AMS had “severe neuropsychiatric conditions and received services pursuant to the IDEA. Before his junior year, an outside provider developed and shared a behavior support plan with school staff but school staff did not consider the behavior support plan nor include a behavior support plan in AMS’ IEP. In addition, AMS’ IEP behavior goals “left little to no room for error.”



AMS eventually was “placed at home to learn.” The amended IEP, however, “lacked adequate information about how AMS was going to make progress despite the change in learning environment” and left him “without adequate academic support.” AMS’ education at home “did not go well.”

The Steckelbergs, AMS’ family, placed AMS at a private academy. AMS completed “different classes,” did well enough to graduate,” and moved on to college.

2. Issues.

- a. Did the school district deny AMS a FAPE?
- b. Were the Steckelbergs entitled to reimbursement for the private academy?

3. Holding.

- a. FAPE. The school district denied AMS a FAPE. The school district did not appropriately program for AMS’ behavioral needs or academic needs.
- b. Reimbursement. The private academy was an appropriate placement for AMS. In other words, the private academy was “specially designed” to meet AMS’ needs in that it was “equipped to handle AMS’s problematic behaviors” and allowed him to learn. Therefore, reimbursement was not error.

### III. CASE LAW: UNITED STATES COURT OF APPEALS.

A. *Pitta v. Medeiros and Bridgewater-Raynham Regional Sch. Dist.*, 90 F.4<sup>th</sup> 11 (1st Cir. 2024)

- 1. Facts. Pitta is a parent of a child who receives IEP services in the school district. Pitta met virtually with district employees to discuss a new IEP for his child. According to Pitta, the district sought to remove his child from IEP-based special education services but made several statements that were “harmful to [their] argument.” For example, the district allegedly admitted that they “had not data upon which to base their opinion.” After the district allegedly omitted certain facts, including the previous statement, from the official minutes of an IEP meeting, Pitta sought to video record future meetings with district staff. The district denied his request, citing its policy

against video recording. Pitta sued the district and the administrator of special education under 42 U.S.C. Section 1983, alleging a violation of his First Amendment right to record government officials in the performance of their duties.

2. Issues. Defendants moved to dismiss the complaint for lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted. The district court granted the motion, stating that “[u]nder the circumstances, the Court concludes that plaintiff does not possess a First Amendment right to video record a private meeting with school district officials concerning the suitability of an IEP for his minor child.” Pitta appealed the district court’s decision to the 1st Circuit Court of Appeals.
3. Holding. The parent could not show that a Massachusetts district violated his First Amendment rights when it denied his request to video record his child's IEP meetings. Determining that the parent failed to state a viable claim for relief, the U.S. District Court, District of Massachusetts granted the district's motion to dismiss the parent's constitutional claim. The 1st U.S. Circuit Court of Appeals upheld the District Court ruling that dismissed the parent's constitutional claim. The U.S. Supreme Court denied the petition for a writ of certiorari. *See* 124 LRP 18348.

**B. *J.S. v. New York State Dep't of Corr. & Cmty. Supervision*, 76 F.4th 32 (2d Cir. 2023)**

1. Facts. Plaintiff was diagnosed with a learning disability as a child and received special education services throughout his school years. At age 17, Plaintiff was convicted of a state crime and incarcerated; however, during his three years of incarceration the New York State Department of Corrections did not provide him special education. When Plaintiff was 20 years old, he initiated an administrative proceeding alleging the DOC denied him a FAPE in violation of IDEA. The hearing officer determined the DOC violated IDEA and directed the DOC to institute various educational measures for Plaintiff. Plaintiff subsequently requested the DOC reimburse him for the attorney’s fees he incurred in bringing the administrative proceeding. The DOC refused and Plaintiff brought an action in district court to recover the fees.
2. Issues. The district court dismissed Plaintiff’s claims on the basis that the fee-shifting provision under IDEA only allows for a parent of a child with a disability to recover fees. Plaintiff appealed arguing the provision should apply to both parents and the child.



3. Holding. The Second Circuit held Plaintiff was entitled to recover his attorney fees. The court analyzed the meaning of the term “parent” under IDEA, which defines it as “an individual who is legally responsible for the child's welfare.” The court held Plaintiff qualified as an individual who is legally responsible for the disabled child's welfare since he was no longer a minor and was thus “responsible” for his own wellbeing. Additionally, the court reasoned Plaintiff was included under this provision since Congress would not have created an enforcement scheme that disfavored the enforcement rights of “children with disabilities” between the ages of 18 and 21 when IDEA explicitly provided for the provision of services to individuals of those ages.

**C. *Miller v. Charlotte-Mecklenburg Sch. Bd. of Educ.*, No. 21-2003, 2023 WL 2799738 (4th Cir. Apr. 6, 2023)**

1. Facts. J.M. is a student at North Carolina Public School District. J.M. was diagnosed with autism spectrum disorder. The School District convened a team to evaluate J.M.'s eligibility in the autism category and requested evaluations in several areas, including adaptive behavior, vision and hearing, educational, speech-language, occupational therapy, and autism rating scales. The team determined J.M. was not eligible for special education under the IDEA because he did not demonstrate at least three of the four impairments required to qualify as a student with autism needing special services as laid out in state policies. The School District thus declined to provide J.M. with an IEP. J.M.'s parent disagreed with the IEP team's conclusion and asked the School District to pay for additional evaluations in five areas. The School District approved funding for the first five areas but declined to pay for the new evaluations. J.M. petitioned for a contested case hearing. The ALJ ruled in favor of the school district. J.M. then appealed the decision in federal court, which affirmed the ALJ's decision. J.M. then appealed to the 4<sup>th</sup> Circuit Court of Appeals.
2. Issues. Did the school district violate IDEA when it determined the autistic student was ineligible for special education services?
3. Holding. The Court affirmed the District Court's decision that the school district did not violate IDEA. That obligation requires States to establish “policies and procedures to ensure” that “[a]ll children with disabilities residing in the State ... are identified, located, and evaluated.” 20 U.S.C. § 1412(a) & (a)(3)(A). States must also “develop[ ] and implement[ ]” “a practical method ... to determine which children with disabilities are currently receiving needed special education and related services.” § 1412(a)(3)(A). But the child find obligation does not require schools to

provide an IEP to any student whose parent believes their child is entitled to one. Rather, when a school district has convened an IEP team and comprehensively evaluated a student's eligibility for services, and where the State maintains and follows detailed policies to evaluate children needing such services, the child find obligation has been satisfied. A student does not “need” such services if the student is already getting what would qualify as a free appropriate public education *without* them.

#### **IV. NORTH DAKOTA ADMINISTRATIVE CASES**

##### **A. North Dakota State Educational Agency In re: Student with a Disability 124 LRP 40109 (November 19, 2024)**

1. Facts. Parents of a 9-year-old student with autism alleged during due process hearing that the child’s IEP failed to appropriately address her sleep needs. Parents maintained student should be exempted from compulsory attendance to accommodate her disability and sleep needs and that all her absences should be medically excused. Student’s attendance was at 59 percent due to parents allegedly keeping her home when she did not receive the doctor recommended 8-12 hours of sleep each night, even after district developed an attendance action plan and allowed the child to attend school for a shortened school day.
2. Issues. Did the school fail to provide accommodations in the student’s IEP to address needs related to sleep disorder, including accommodations for absences and tardiness in violation of the IDEA?
3. Holding. The agency found the district did not violate the IDEA. The agency reasoned that the physician letter the parents cited in support of their child’s sleep disorder did not state that the student should be exempt from attendance or tardy policies or state that if the student did not get recommended amount of sleep, she should not attend school. Agency further found that even if this had been specifically recommended by the physician, doctors do not prescribe educational programs.

##### **B. North Dakota State Educational Agency In re: Student with a Disability 124 LRP 40107 (November 18, 2024)**

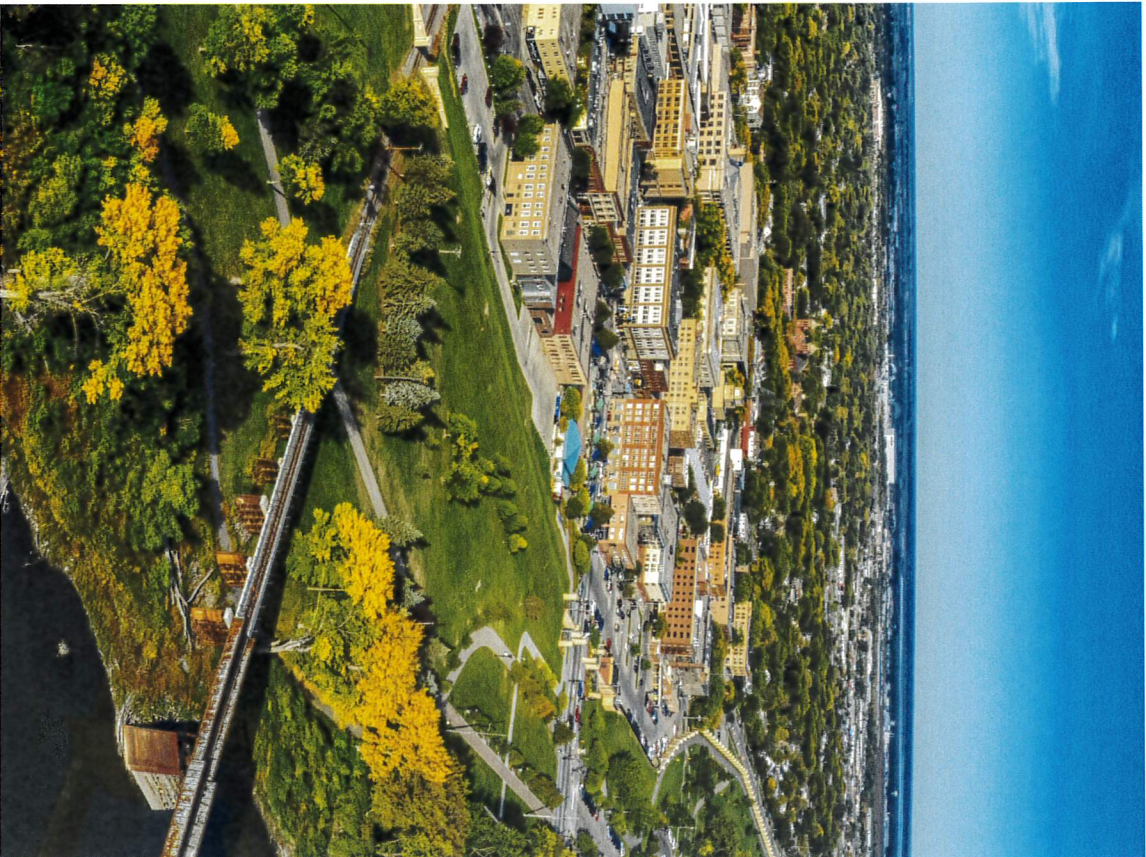
1. Facts. Thirteen-year-old student with Down syndrome received special education and related services including speech therapy. Due to a shortage of certified speech-language pathologists, the school district decided that some students would be provided virtual speech therapy including the 13-year-old, even though her IEP specifically indicates her speech language



services “will take place in speech-language resource setting in a small group or one-to-one setting” and that “tactile cues” will be used. The school did not send prior written notice of its decision.

2. Issues. Department of Education addressed whether the school failed to provide speech-language services in conformity with the student’s IEP in violation of the IDEA and thereby denied the student of a FAPE. Department further addressed whether the school failed to provide the parents with prior written notice of the school’s decision to change the student’s speech-language services from in-person speech therapy to virtual speech therapy in violation of the IDEA and thereby denied the student a FAPE.
3. Holding. The agency found the school violated the IDEA when it switched the delivery of speech services for the teen from in-person to virtual because it did not consider the IEP’s requirement that the student be provided with a speech-language pathologist in the school resource room, in individual and small group instruction, utilizing, among other things, tactile cues. The school’s lack of personnel (such as certified speech-language pathologists) and a school’s convenience cannot excuse the failure to provide services in conformity with a student’s IEP. Further, the school violated the IDEA by failing to provide prior written notice of the change to virtual speech therapy where the student’s IEP specified instructional methods to be used that were changed by switching to virtual speech therapy. While IEP teams may be tempted to refrain from specifying methods in IEPs to provide the school more freedom to change how services are provided, generic IEPs that do not sufficiently address the student’s needs may fail to provide FAPE.

## V. QUESTIONS



# Department of Public Instruction: Tips for Public Schools



*Matthew S. Menge, Assistant Attorney General  
General Counsel, NDDPI*



## **DISCLAIMER**

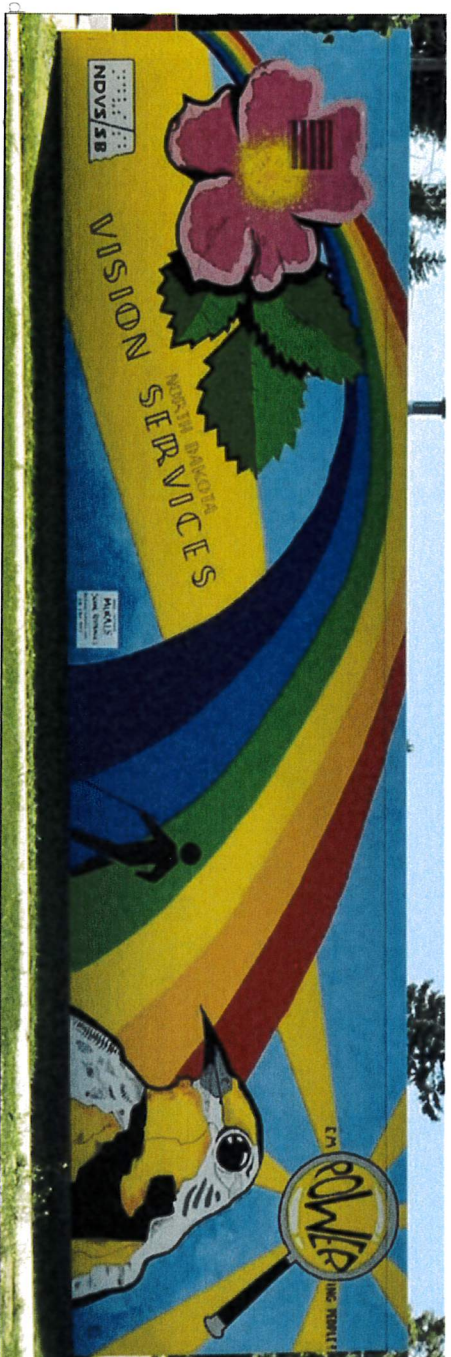
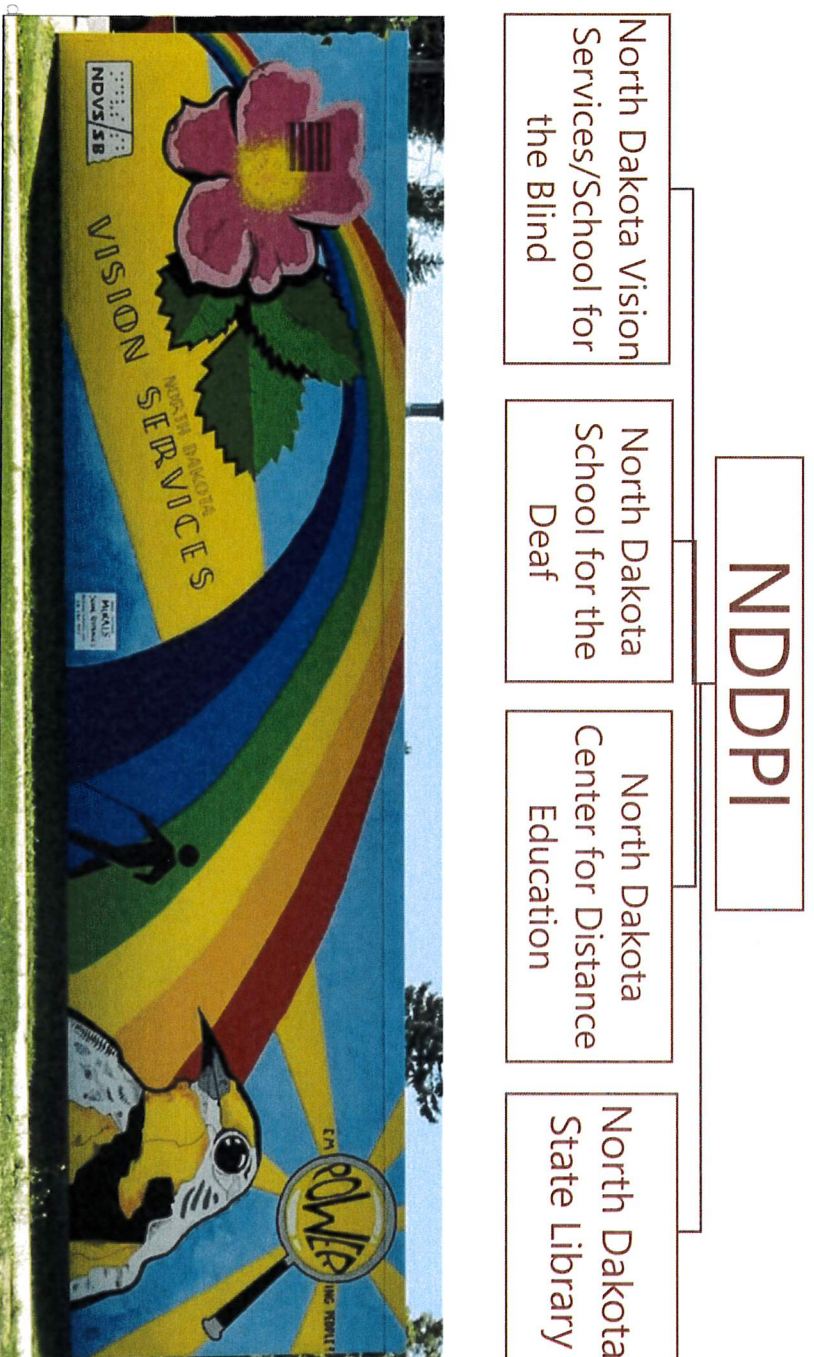
- ☐ This presentation is not intended as legal advice.
- ☐ The information and commentary provided in this presentation and any comments or materials are provided for educational purposes only and should not be considered legal advice.
- ☐ Please consult with your attorney for legal advice.

## ROADMAP

- Legislative Changes
- Virtual Education Policies
- School Approval and Compliance



# Organizational Structure



## **Recent Legislative Changes**

- [SB 2354](#) (Use of Personal Electronic Devices)
- [SB 2241](#) (Public Charter Schools)
- [SB 2180](#) (Public Comment at Meetings)
- [HB 1105](#) (School District's Learning Policies)
- [HB 1357](#) (Protection of Student Data and Data Sharing Agreements)



## **SB 2354 (Use of Personal Electronic Devices)**

- N.D.C.C. § 15.1-07-41 –
  - “Bell-to-Bell” Ban
- Applies to “personal electronic communication devices” including:
  - Smart phone;
  - Cell phone;
  - Bluetooth-enabled devices;
  - Tablet;
  - Smartwatch or other wearable device; or
  - Gaming device.

## **SB 2354 (Use of Personal Electronic Devices)**

- N.D.C.C. § 15.1-07-41(2) –
  - Requires implementation of local policy
  - NDSBA proposed policy



## **SB 2354 (Use of Personal Electronic Devices)**

➤ N.D.C.C. § 15.1-07-41(3) –

“Notwithstanding subsection 2, a school may not prohibit a student from possessing or using a personal electronic communication device, if:

- a. A ***medical provider*** licensed under title 43 determines the possession or use of a personal electronic communication device is necessary for the health or well-being of the student...
- Title 43 contains all occupation and professional licensing boards.
- The term ***“medical provider”*** is not defined within Title 43.

## **SB 2354 (Use of Personal Electronic Devices)**

- N.D.C.C. § 15.1-07-41(4) –
  - Requires schools to collect data annually with the goal of measuring the impact of its policy on student behavior, mental health, disciplinary incidents, school attendance, and academic performance.
- Reporting of additional information:
  - Local modifications to NDSBA policy.
  - Implementation or other enforcement issues.



## **SB 2241 (Public Charter Schools)**

- SB 2241 establishes the framework for the addition of public charter schools in North Dakota.
  - NDDPI would encourage our public school districts to maintain a cooperative relationship with the newly established charter schools.
  - Because of the statutory requirements set forth in SB 2241, charter schools may have to contract with public school districts to provide certain special education services.

## **SB 2180 (Public Comment at Meetings)**

- SB 2180 added a section to N.D.C.C. ch. 44-04 to which requires city, county, township, school district, park district, and water resource district boards to allow public comment time at regularly scheduled meetings.
  - Commentor must give name and address (this is an exempt record).
  - School board may limit comments by time and agenda topic.
- School board must develop a policy on comments.
  - Comments must be relevant;
  - Comments may not interfere with orderly conduct; and
  - Comments may not be defamatory, abusive, harassing, or unlawful.



## **HB 1105 (Virtual Education Policies)**

- HB 1105 changed the statutory requirements contained within N.D.C.C. § 15.1-07-25.4 to permit school boards with the authority to develop its own local policies governing virtual instruction.

## Virtual Education Policies Guidance

- ***Virtual School*** - an educational institution operated by a school district or nonpublic school in this state which offers virtual instruction. Virtual schools generally do not maintain a physical facility, and students and teachers are geographically remote from one another. Students can enroll in these schools through open enrollment.
- ***Virtual Instruction*** - teaching and learning that takes place through digital means and can be synchronous or asynchronous.
- ***Distance Education*** - A method of learning in which students complete courses remotely through the North Dakota Center for Distance Education (NDCDE).



## Virtual Education Guidance

- If a district chooses to provide virtual instruction because of weather or other conditions, the district ***must*** have a policy.
  - [N.D. Admin. Code § 67-30-01.](#)
- If a district operates a virtual school, the school board ***must*** create and adopt a local policy governing virtual instruction.
- If a district opts to offer semester or year-long virtual instruction using its own teachers or an external provider, without establishing a formal virtual school, adopting a policy is ***optional***.

## **Virtual Education Guidance**

### **DISTRICT RESPONSIBILITIES FOR OPEN ENROLLMENT**

- Districts must not restrict student access to virtual learning options.
- Resident school districts cannot deny students open enrollment to an approved virtual school.
  - April 1<sup>st</sup> deadline for open enrollment.
- The admitting district takes on all responsibilities for educating the student, including providing special education and related services.
- The district of residence must reimburse the admitting district for excess costs associated with special education service.



# Virtual Education Guidance

## STUDENT ENROLLMENT & ELIGIBILITY

- A student's school district of residence is responsible for covering the required fees when the student chooses to enroll in courses through NDCDE.
  - [N.D.C.C. § 15.1-09-01\(3\).](#)

### ➤ **Districts may:**

- Require virtual course registration to follow standard school course enrollment deadlines.
- Set a minimum number of courses required to be taken onsite, whether virtual or in person.
- Establish prerequisites for students enrolling in sequential virtual courses.

### ➤ **Districts may not:**

- Establish more rigorous or additional expectations for enrollment in NDCDE or other virtual instruction courses than would be expected for brick-and-mortar enrollment or other agencies.

## Virtual Education Guidance

### FINANCIAL RESPONSIBILITIES FOR DISTRICTS

- If a school district does not offer a required course, the district **must** pay for the virtual course if it helps the student graduate on time.
- The student's school district of residence **must** pay for all course enrollments, even if that course is offered locally, if the student meets the local school district's policy requirements and enrollment guidelines.
- Districts **must** notify students and their parents annually about available virtual courses through NDCDE.
  - [N.D.C.C. § 15-19-01.1.](#)
- Districts may decide whether to pay for course retakes.



## **Annual Compliance Reports**

- N.D.C.C. § 15.1-06-06 requires schools to submit an annual compliance report to NDDPI no later than October 1<sup>st</sup> of each year.
- Once submitted to NDDPI, NDDPI conducts an internal audit of the submissions to verify and certify compliance with North Dakota law.

## Public School Approval Requirements

➤ N.D.C.C. § 15.1-06-06(1) sets forth the following factors that must be verified to obtain certification as an approved public school:

- a) Each classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
- b) Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 15.1-09-57;
- c) The school meets all curricular requirements set forth in chapter 15.1-21;
- d) The school participates in and meets the requirements of a review process that is:
  - (1) Designed to improve student achievement through a continuous cycle of improvement; and
  - (2) Approved by the superintendent of public instruction.
- e) The school has been inspected by the state fire marshal or the state fire marshal's designee in accordance with section 15.1-06-10 and:
  - (1) Has no unremedied deficiency; or
  - (2) Has deficiencies that have been addressed in a plan of correction which was submitted to and approved by the state fire marshal or the state fire marshal's designee;
- f) All individuals hired after June 30, 2011, and having unsupervised contact with students at the school, have:
  - (1) Undergone a criminal history background check requested on behalf of the employing school; or
  - (2) Undergone a criminal history background check in order to be licensed by the education standards and practices board or by any other state licensing board; and
- g) The school uses North Dakota eTranscripts, or an alternative information system designated by the information technology department in collaboration with the superintendent of public instruction, to generate official transcripts.

***Effective June 30, 2026, as a condition of school approval, the school must execute a data sharing agreement with ND DPI pursuant to N.D.C.C. §§ 15.1-07-25.3 and 15.1-07-33.***



## **HB 1357 (Protection of Student Data)**

- N.D.C.C. § 15.1-07-25.3 currently requires each school district to adopt a policy regarding the protection of student data.
- HB 1357 added amendments to N.D.C.C. §§ 15.1-06-06 and 15.1-07-25.3.
  - Added requirement that schools execute a data sharing agreement with NDDPI to maintain certification as an approved school.
  - Also requires schools to update local policies regarding protection of student data to allow school districts to share student data with NDDPI.
  - These provisions will become effective ***July 1, 2026***.

## **NDDPI Compliance Report Submission**

- The annual compliance report has been modified to require submission of relevant documentation to support exceptions.
  - “All schools must comply with the statutory requirements for school approval. In *exceptional circumstances*, when substantial and documented efforts have been undertaken yet a specific requirement remains unmet, those exceptions must be clearly noted. **Please provide a detailed summary of the actions taken toward compliance accompanied by relevant documents supporting those efforts. DPI will review all documented exceptions and initiate appropriate follow-up actions.**”



## **Common Compliance Report Issues**

- Throughout the audit process, NDDPI has identified a few common compliance issues:
  - Fire Marshal Report
    - A site inspection is required to be completed every three (3) years.
    - In the event your school has not been able to obtain a fire marshal inspection prior to the expiration of the past report, please let NDDPI know.
  - Long-Term Substitute Teachers
    - Please provide NDDPI with documentation to show what efforts the school has undertaken to find a full-time teacher.
    - Identification of long-term substitute teacher must be clear.
    - Notification of long-term substitute teacher must be provided to parents.
    - Please contact the Education Standards Practices Board to discuss the situation with them and follow through with any recommendations.

## **Other Considerations for School Approval**

- Please be proactive about requesting exceptions and working towards finding a resolution.
- Continuing obligation to inform NDDPI of a change in circumstances which would affect approval status.
  - See N.D.C.C. § 15.1-06-06(8).
- Arlene Wolf, Director, Office of School Approval & Opportunity.
  - [arlenewolf@nd.gov](mailto:arlenewolf@nd.gov)



## QUESTIONS

- Matthew S. Menge
  - [mmenge@nd.gov](mailto:mmenge@nd.gov)

## VIRTUAL EDUCATION FAQs

Question	District Virtual Instruction (NDCC 15.1-07-25.4)	NORTH DAKOTA CENTER FOR DISTANCE EDUCATION (NDCC CH. 15-19 controls; NDCC 15.1-07-25.4 otherwise applies)
How should virtual students be treated compared to in-building students?	<ul style="list-style-type: none"> <li><b>Law requires:</b> Students remain district students, subject to the same policies and rules as when taking classes in person.</li> <li><b>Best practice:</b> Apply the same prerequisites, registration deadlines, attendance expectations, grading policies, and accountability rules as for in-person students.</li> </ul>	<ul style="list-style-type: none"> <li><b>Law requires:</b> Students remain district students, subject to the same policies and rules as when taking classes in person.</li> <li><b>Best practice:</b> Be aware that NDCDE has policies in addition to district requirements. Apply the same rules to NDCDE students as in-building students for registration, prerequisites, grading, and accountability.</li> </ul>
Who pays for courses? Retakes?	<ul style="list-style-type: none"> <li><b>Law requires:</b> District must pay if it does not offer the course and credit is needed for on-time graduation.</li> <li><b>District discretion:</b> No obligation if the course is offered locally; retakes are discretionary.</li> <li><b>Best practice:</b> Publish a clear list of what the district covers; mirror in-person retake rules. District covers retakes tied to disability, medical issues, or documented need.</li> </ul>	<ul style="list-style-type: none"> <li><b>Law requires:</b> District must pay for any NDCDE course taken by its enrolled students, even if offered locally.</li> <li><b>District discretion:</b> Retakes are discretionary.</li> <li><b>Best practice:</b> Publish a clear list of what the district covers; mirror in-person retake rules. District covers retakes tied to disability, medical issues, or documented need.</li> </ul>
Extensions or holds	<ul style="list-style-type: none"> <li><b>Law requires:</b> Nothing specific.</li> <li><b>District discretion:</b> District may approve or deny.</li> <li><b>Best practice:</b> Approve for good cause (illness, family emergency).</li> </ul>	<ul style="list-style-type: none"> <li><b>Law requires:</b> Nothing specific.</li> <li><b>District discretion:</b> Local policy governs approval and payment.</li> <li><b>Best practice:</b> Same as district virtual — approve for good cause. Treat long-term extensions the same as retakes.</li> </ul>

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## VIRTUAL EDUCATION FAQs

<b>Who pays for supplies and materials?</b>	<ul style="list-style-type: none"> <li>• <b>Law requires:</b> Nothing specific. District discretion: Local policy decides.</li> <li>• <b>Best practice:</b> Parents buy items normally provided at home (notebooks, calculators). District provides items normally provided in-person (lab kits, microscopes).</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Law requires:</b> Nothing specific.</li> <li>• <b>District discretion:</b> Local policy decides.</li> <li>• <b>Best practice:</b> Same split as district virtual — parents cover home items; districts cover school-supplied items.</li> </ul>
<b>Registration, add, and drop</b>	<ul style="list-style-type: none"> <li>• <b>Law requires:</b> The law allows districts to require add/drop periods for virtual courses to coincide with in-person deadlines.</li> <li>• <b>Best practice:</b> Use the same registration/add/drop windows as for building-based courses.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Law requires:</b> The law allows districts to require add/drop periods for NDCDE courses to coincide with in-person deadlines.</li> <li>• <b>Best practice:</b> Use the same registration/add/drop windows as for building-based courses.</li> </ul>
<b>Onsite requirements</b>	<ul style="list-style-type: none"> <li>• <b>Law requires:</b> District may set a minimum number of onsite hours during which virtual or in-person instruction takes place but cannot unreasonably restrict access.</li> <li>• <b>District discretion:</b> Define local requirements for onsite learning.</li> <li>• <b>Best practice:</b> Publish clear onsite attendance policy so families know when a Statement of Intent to Homeschool should be considered.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Law requires:</b> District may set a minimum number of onsite hours, but cannot unreasonably restrict access to NDCDE courses. On-site time may include a combination of NDCDE, district virtual, and in-person courses.</li> <li>• <b>District discretion:</b> Define local requirements for on-site learning.</li> <li>• <b>Best practice:</b> Publish a clear onsite attendance policy so families know when a Statement of Intent to Homeschool should be considered.</li> </ul>

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## VIRTUAL EDUCATION FAQs

Question	District Virtual Instruction (NDCC 15.1-07-25.4)	NORTH DAKOTA CENTER FOR DISTANCE EDUCATION (NDCC CH. 15-19)
Grades and Credit Transfer	<ul style="list-style-type: none"> <li><b>Best practice:</b> District virtual courses count as district courses with the same grading standards as those associated with in-person courses.</li> </ul>	<ul style="list-style-type: none"> <li><b>Best practice:</b> NDCDE courses should be accepted by the district regardless of who paid for them and be transcribed and applied to graduation requirements based on the MIS03 code. Districts should establish a policy on which portion of the NDCDE completion certificate they will use to determine the local letter grade (percentage or NDCDE letter grade).</li> </ul>
Special education services	<ul style="list-style-type: none"> <li><b>Law requires:</b> District of residence responsible for FAPE and IEP/504 services.</li> </ul>	<ul style="list-style-type: none"> <li><b>Law requires:</b> District of residence responsible for FAPE and IEP/504 services.</li> <li><b>Best practice:</b> Set a clear process to communicate accommodations to NDCDE, which will assist with implementing them.</li> </ul>
Dual credit courses	<ul style="list-style-type: none"> <li><b>Law requires parents to pay for dual credit regardless of delivery method</b> (NDCC 15.1-25-03)</li> </ul>	<ul style="list-style-type: none"> <li><b>Law requires:</b> Same — parents always pay for dual credit.</li> </ul>
Homeschool students (Also see Onsite requirements)	<ul style="list-style-type: none"> <li><b>Law:</b> May take in-person or virtual courses through the school, and the school district is entitled to proportionate state payment. The total amount may not exceed the equivalent of one full state aid payment. Students are subject to the rules the district has established for virtual instruction.</li> <li><b>Best Practice:</b> Communicate virtual course-taking expectations with these families.</li> </ul>	<ul style="list-style-type: none"> <li><b>Law:</b> May take NDCDE courses through the school, and the school district is entitled to proportionate state payment. The total amount may not exceed the equivalent of one full state aid payment. Students are subject to the rules the district has established on virtual instruction.</li> <li><b>Best Practice:</b> Communicate NDCDE course-taking expectations with these families.</li> </ul>

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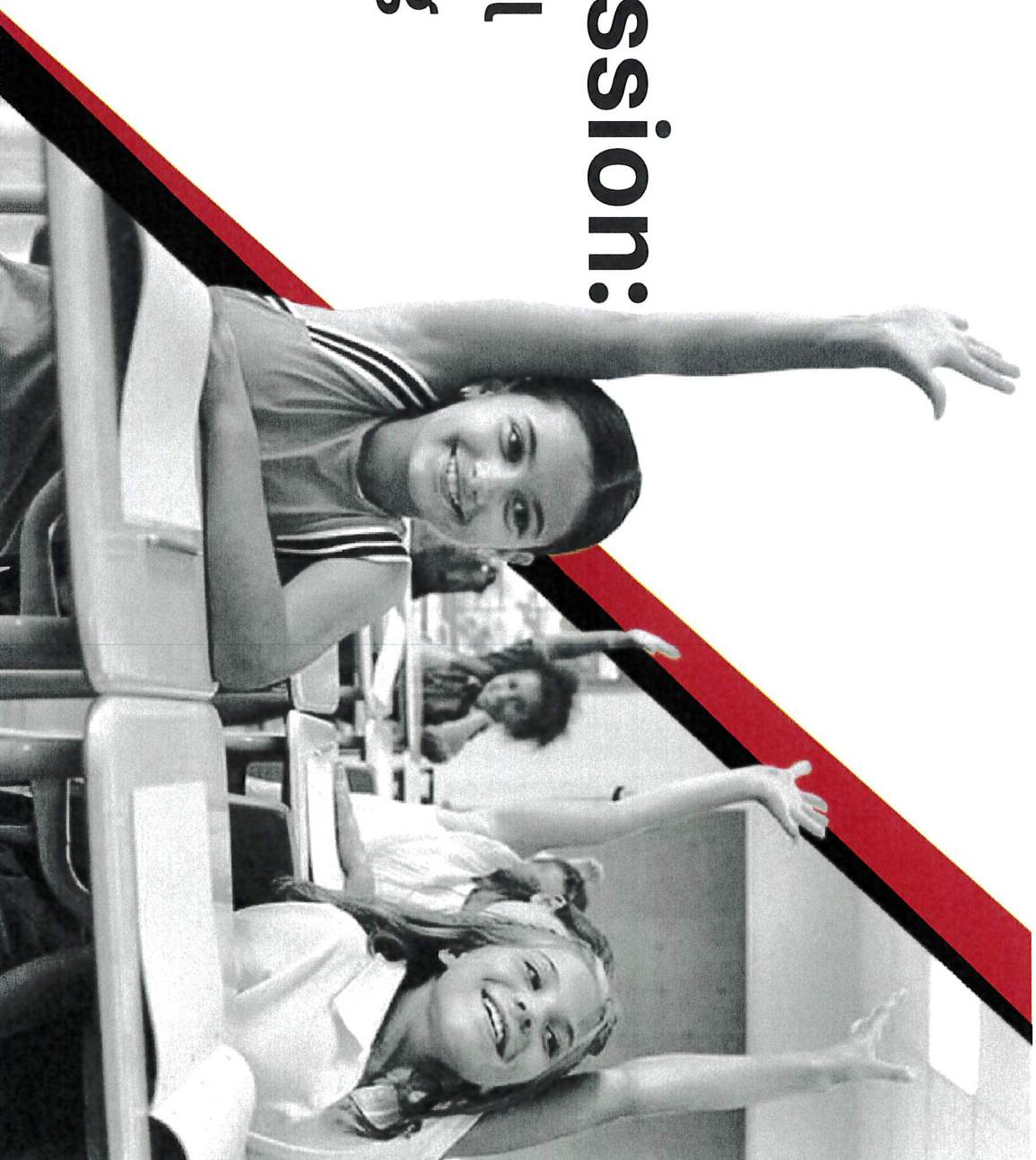


## VIRTUAL EDUCATION FAQs

Question	District Virtual Instruction (NDCC 15.1-07-25.4)	NORTH DAKOTA CENTER FOR DISTANCE EDUCATION (NDCC CH. 15-19)
Accountability for test scores	<ul style="list-style-type: none"> <li><b>Law requires:</b> District is accountable for the test scores of students in district virtual instruction.</li> </ul>	<ul style="list-style-type: none"> <li><b>Law requires:</b> District is accountable for the test scores of students in district virtual instruction.</li> <li><b>Best practice:</b> As NDCDE transitions to competency-based education, it will provide districts with information on which standards students have not yet achieved proficiency in after completing NDCDE courses. Districts should review this information when processing NDCDE completion certificates and adjust their procedures to ensure it is used to guide interventions and improve test scores.</li> </ul>
Learning coaches	<ul style="list-style-type: none"> <li><b>Law requires:</b> Nothing specific.</li> <li><b>District discretion:</b> Decide supervision requirements.</li> <li><b>Best practice:</b> On campus → district provides a Learning Coach. At home → parent designates learning coach outside the immediate household.</li> </ul>	<ul style="list-style-type: none"> <li><b>Law requires:</b> Nothing specific.</li> <li><b>NDCDE requires:</b> On campus → district provides a Learning Coach. At home → parent designates learning coach outside the immediate household.</li> </ul>
Summer school	<ul style="list-style-type: none"> <li><b>Law requires:</b> Courses listed in 15.1-21-16, whether virtual or in person, qualify for payment as provided in section 15.1-27-19. Registration, pre-reqs, and onsite requirements for summer virtual courses cannot exceed those established for in-person summer courses (NDCC 15.1-07-25.4).</li> </ul>	<ul style="list-style-type: none"> <li><b>Law requires:</b> Courses listed in 15.1-21-16, including those that the district pays for through NDCDE, qualify for payment as provided in section 15.1-27-19. Registration, pre-reqs, and onsite requirements for district-paid summer courses through NDCDE cannot exceed those established for in-person summer courses (NDCC 15.1-07-25.4).</li> </ul>



# **Panel Discussion: Top Issues School Boards are Facing in 2025-2026**





# SCHOOL BOARD PANELISTS:

## INTRODUCTIONS

- ▶ Nathan Berseth
  - Richland # 44/ Richland Public School District No. 44
  - NDSBA Board – Vice President
- ▶ Dan Eastgate:
  - Bismarck Public School District
- ▶ Benjie Foss
  - Ray/ Nesson Public School District
- ▶ Sherri Horsager
  - Valley City Public School District

# SCHOOL BOARD PANELISTS: Q&A

## ▶ Nathan Berseth

- Richland # 44/ Richland Public School District No. 44
- NDSBA Board – Vice President

## ▶ Dan Eastgate:

- Bismarck Public School District

## ▶ Benjie Foss

- Ray/ Nesson Public School District

## ▶ Sherri Horsager

- Valley City Public School District

## ▶ Moderated Questions

## ▶ Audience Questions

- Please come to the front of the stage and approach one of the microphone stands to ask a question.
- Thank you!





# 2025 NDSBA School Law Seminar

**2025  
Legislative  
Update**



## Session Stats

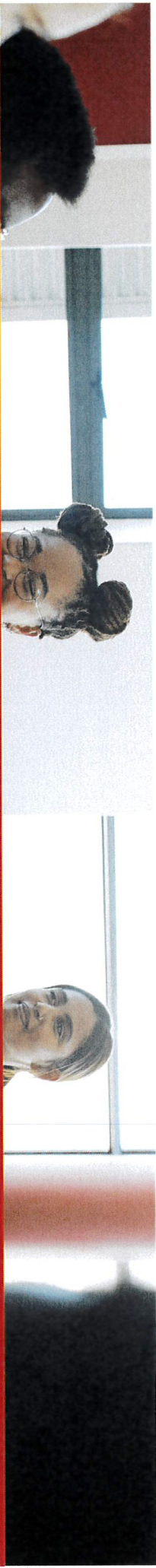
1,089 Total bills introduced (most since 2009); over 600 signed into law

NDSBA tracked 218 bills with impact on K-12 education

Sine Die around 4 a.m. 5/3

Saved 5 days (special session likely after first of year)





# Top Issues 2025





## **HB 1176 – Property Tax Relief and Reform**

- Comprehensive property tax relief and reform
- Provides \$403 million in relief through a new Primary Residence Credit (PRC) of up to \$1,600 per household
- Funded entirely by Legacy Fund earnings
- New levy limitations, including caps on annual property tax growth for local taxing districts, including school districts
  - 3% cap on total dollars levied
  - Exceptions include tuition fund levy and new or additional levying authority resulting from change in law or voter approval
  - Building fund levy is included (even though requires voter approval); however, if new or increase levying authority, does not count against cap for first year
  - Can seek relief from caps from voters that applies for up to 4 years; only at a statewide general election
- Gap funding program for districts whose taxable valuation increases more than 3% pushing general fund levy below 60 mills

# Funding/Budget



## Funding/Budget

### **HB 1369 – K-12 funding policy bill**

- Provides for a 2.5% increase in per pupil payment each year of the biennium (\$11,349 FY 25-26 and \$11,633 FY 26-27)
- School construction project loans to AFB districts from coal development trust fund (max of 20% of total cost or \$20M, which is less)
- Lowered the maximum loan amounts for loans to districts from school construction revolving loan fund (no dollars transferred to fund)
- Increased public improvement bidding and bonding threshold from \$200k to \$250k
- 3 year rolling ADM removed from bill



## **HB 1013 – DPI budget bill**

- DPI Budget/Foundation Aid appropriation
- NO “70% of new money” REQUIREMENT
- \$6M appropriation for free lunch reimbursement for students from families with income within 225% of federal poverty
- Requires electronic collection of free or reduced lunch eligibility by school districts annually – must provide access to electronic form to all parents or guardians and a paper form upon request from parent or guardian

Funding/Budget



# Funding/Budget

- HB 1142 – increases statutory liability caps (\$486,750 per person and \$1.875 M per occurrence)
- **HB 1214** – changes the transportation payment calculation for school districts to a weighted formula that includes factors of square miles of the district, number of runs, and number of buildings in the district. The formula would no longer use rides as a factor
- SB 2158 – allows county committee to distribute a portion of unobligated cash balance of a dissolving district to another political subdivision located partially or wholly within boundaries of district (not to exceed \$500,000)



# Instruction & Curriculum

- ✓ **HB 1105** - did not eliminate existing obligations under N.D.C.C. § 15-19-01(3), which continues to require a student's district of residence to pay for virtual instruction through NDCDE when a student chooses to enroll. Adds a separate requirement that, if a school district does not offer a particular course and that course is needed for a student to graduate on time, then the district must pay for the virtual instruction.
- ✓ **HB 1200** – establishes the waiver and substitution of one unit required for high school graduation under emergent circumstances
- ✓ **HB 1533** – adds one-half unit of financial literacy to the high school coursework minimum requirement for high school graduation
- ✓ **SB 2330** – requires policy regarding mandatory human trafficking education to students in grades 6, 10, and 11



# Elections

- HB 1138 – bond election must be held at least 64 days after adoption of initial resolution (used to be 20 days)
- **HB 1165** – prohibits a political subdivision from using a private entity to administer an election.
  - Absent voter's ballot must be received (whether mailed or hand delivered) by the business manager before the close of polls on election day
- HB 1178 – requires adoption of policy allowing qualified students to leave campus on election day to vote and allows for school to set conditions on same
- **HB 1469** – expands requirements for filing statements of interest (annually before Jan 31 for current board members; disclose if sold goods/services in excess of \$5,000)
- **HB 1482** - requires bond elections for municipalities, including school district, be held during either the statewide primary or general elections (no regular or special school elections)
- **SB 2269** – increases threshold for signatures required on recall petitions (35%) and requires cancellation of recall election if no candidates file for seat
- HCR 3003 - propose constitutional amendment to be placed on the general election ballot in 2026 that, if approved, would increase the threshold for approving a constitutional amendment from a simple majority to sixty percent



# School Choice

- SB 2241 – provides framework for the approval of public charter schools
- HB 1540 – private school voucher bills (VETOED)
- SB 2400 – ESA program that included a private school voucher (DEFEATED)



# School Safety and Student Rights

- **HB 1222** – requires schools to provide an opportunity for students to recite Pledge of Allegiance at start of each school day
- **HB 1223** – extends maximum expulsion period for non-firearm violations to 12 months
- **HB 1247** – establishes requirements for a responsible student to attend the same school as the victim of sexual assault committed by the responsible student (e.g., development of safety plan, no contact, expulsion hearing, transfer to alternative education program or other school in district, etc.)
- **HB 1363** – requires schools to adopt a cardiac response plan

**HB 1160/SB 2354** – requires adoption of policy prohibiting student device use and possession during instructional time

- Includes lunch, recess and other structured or unstructured learning experience
- Does not include private student travel time to and from CTE center or other offsite learning experience
- Defines “personal electronic communication device” to include portable communication devices capable of communication by voice, text, or other data and includes smartphone, cell phone, tablet, smartwatch and other wearable device (excludes school owned or approved devices and medical devices)
- Requires devices to be turned off or silenced and stowed away and inaccessible to students during instructional time
- Exceptions for IEPs, 504 plans or other accommodations required by federal or state law
- Requires communication of policy to students and parents and publication of policy in student handbooks

“Cellphone/  
Electronic  
Device Ban”



## Other/Misc.

- HB 1095 – allows schools to designate a child protective services liaison to work with CPS
- HB 1144 - adds “guidelines, whether implicit or explicit” to school districts’ enforcement of transgender student accommodations, further zoning of restroom use, and attorney general enforcement
- HB 1238 – changes lifetime teacher license from 30 years to 25 years; adds reporting requirements
- HB 1498 – clarifies that school boards have authority to issue signing bonuses to first year teachers who were employed by the district in previous year in different role
- **SB 2180** - requires a meeting of a public entity to include an opportunity for an individual in attendance to provide public comment and allows the public entity to establish parameters for such public comment (e.g., time limits for overall public comment and by speaker, limit to agenda of current or one prior meeting, no harassing or abusive comments)
- SB 2198 – removes requirement that individual work for political subdivision for at least 90 days before eligible for military leave of up to 20 days without loss of pay
- SB 2213 – science of math/math competency requirements





# Policy Updates and Guidance

- NDSBA staff have released template policy updates and detailed guidance because of legislative changes
  - ✓ New policies on electronic device ban, child safety liaison and training, virtual instruction, etc.
  - ✓ Updates to numerous existing policies
- Updates to Elections Handbook (pending)



## New Policies

- FFI – Personal Electronic Communication Devices – Prohibition During Instructional Time  
(from HB 1160 & SB 2354)
- ACG – Child Safety Liaison and Training  
(from HB 1095 & HB 1562)
- ACCB – Protection for Student Victims of Sexual Offenses (from HB 1247)
- \*Forthcoming:  
HB 1363 – Cardiac Emergency Response Plans  
(Once Dept. of Health & Human Services creates a plan template for adoption by 2027-28 school year, NDSBA will update policies accordingly.)

## Significantly Revised Policies

- ABAD - Virtual Schools; GACA - Virtual Instruction  
(from HB 1105)
- BCBA – Board Meeting Agenda & Pre-Meeting Preparation;  
BCBA – Public Participation at Board Meetings  
(from HB 2180)

# Other Policy Updates

- ABEA - Wellness Policy; ABEA-AR3-Smart Snacks in Schools Regulation  
*(from HB 1132)*
- ACBD-E4-Emergency Medication Check-in Form; FCQA-Accommodating Students with Allergies and Special Dietary Needs; FCQA-AR-General Guidelines for Reducing Risk of Exposure to Allergens  
*(from SB 2196)*
- BBA - School Board Elections and Terms of Office; BBA-E1 - Election Letter Notice  
*(from HB 1165, HB 1469, and SB 2269)*
- DCCA - Signing Bonuses *(from HB 1498)*
- DDBD -Military Leave *(from SB 2198)*
- FF - Student Conduct and Discipline  
*(from HB 1328, juvenile court referrals)*
- FFK -Suspension and Expulsion; FFK-BR, Suspension and Expulsion Regulations  
*(from HB 1223)*
- FFE - Extracurricular Participation Requirements *(from SB 2037)*
- FGA - Student Records and Privacy; FGA-E8 -Parties Approved to Receive Student Data  
*(from HB 1357, data sharing agreements)*
- GABE - Human Trafficking and Exploitation Prevention and Awareness Education  
*(from SB 2330)*
- GACB -Patriotic Exercises *(from HB 1178 – voting and HB 1222 – pledge allegiance)*
- GACE - Alternative Methods of Credit for High School Graduation and Curriculum Requirements *(from HB 1200- emergent circumstances, alternative course credit)*

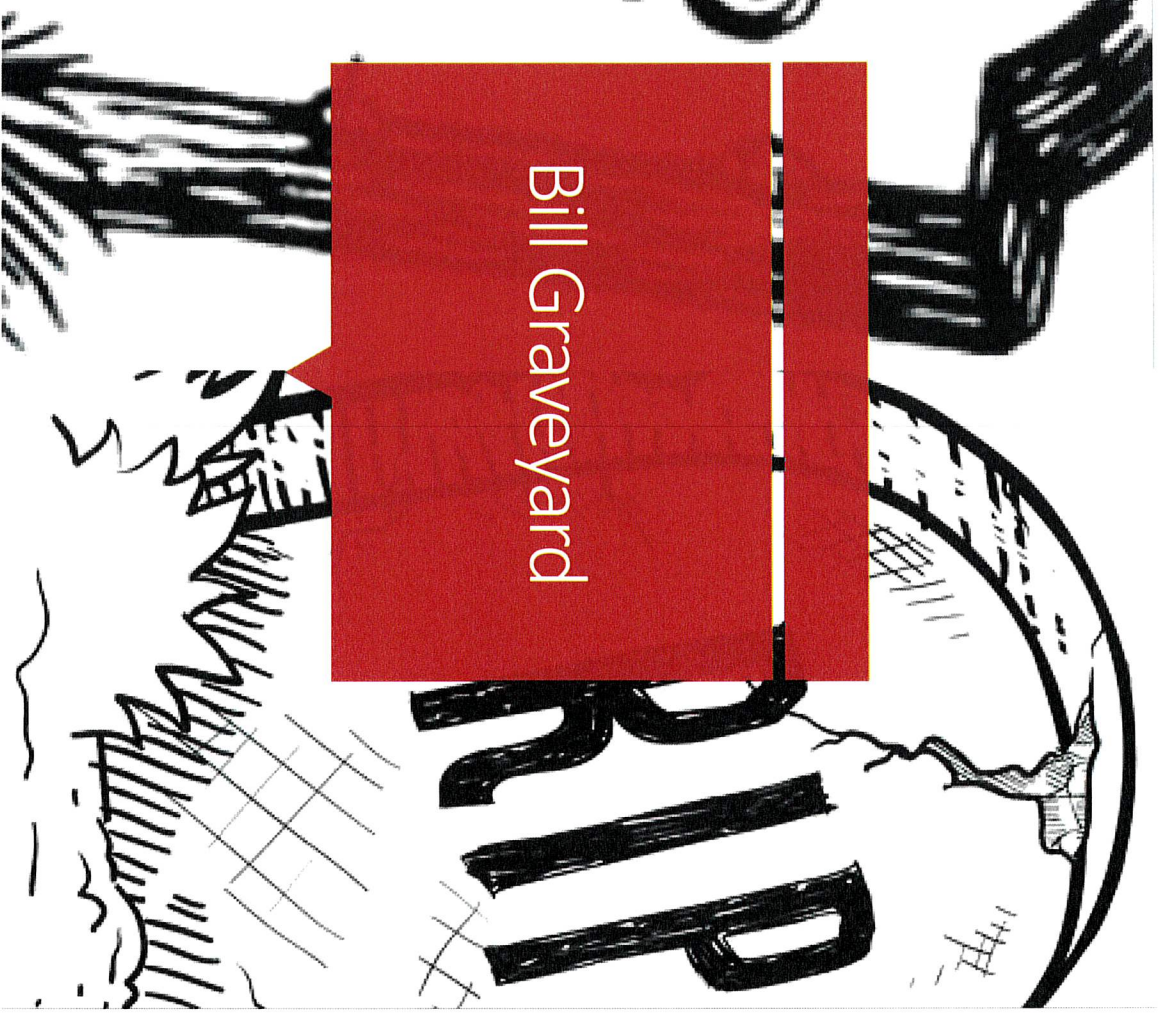


More than 104 bills we were tracking died, were successfully vetoed by Governor Armstrong, or were withdrawn

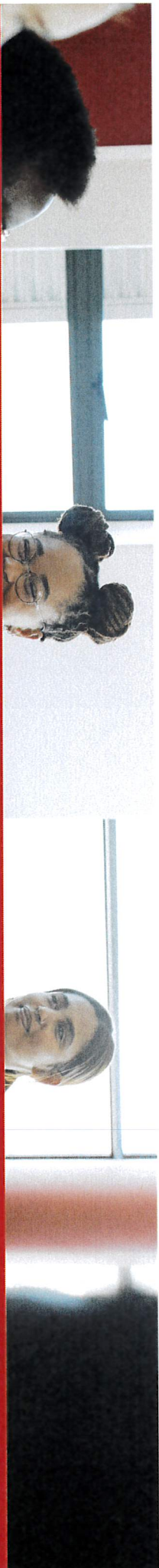
- Employee observers on boards
- Book bans
- Property tax limitations and prohibitions
- Vouchers/ESAs/microschools
- Universal free school lunch
- Measure 4 retaliation bill
- Ten Commandments
- Legal compliance reviews
- Moving school elections to Nov
- Additional campaign contribution requirements

I.P.

Bill Graveyard







# How do I participate?

2025-26 Interim, 2027 Session





# NDSBA Legislative Committee

THANK YOU!

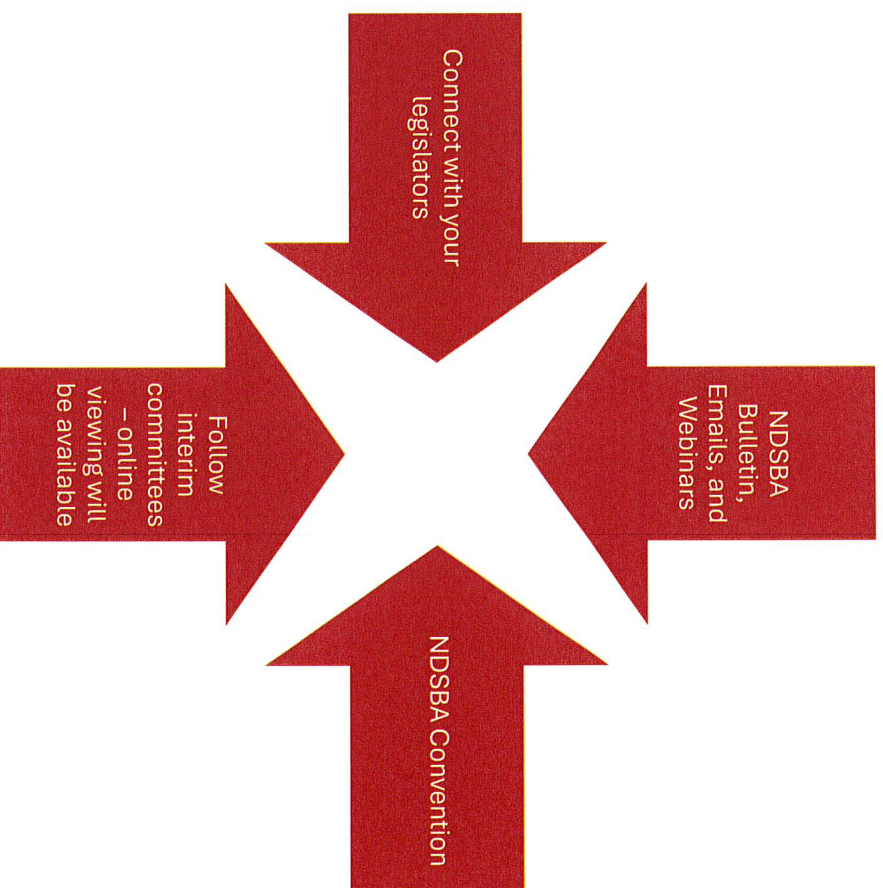
- Nathan Berseth – Richland County, SE, NDSBA BoD
- Lynn Carlson – Finley-Sharon/NE
- April Dutchuk, Killdeer, SW
- Lucas Greff – Mott-Regent, SW, NDSBA President
- Nikkie Gullickson – Fargo, SE, NDSBA BoD
- Dustin Hager – Rugby, NW
- Collette Hertz – Harvey, NW
- LeeAnn Johnston – Devils Lake, NE
- Kortney Kindsfater – Hettinger/SW
- Marlana Knudson – Mayport-CG, NE, NDSBA BoD
- Mike Lautenschlager – Lewis & Clark, NW
- Paula Moch – Kidder County/SE
- Robin Nelson – Fargo, SE
- Michelle Orton – Dickinson, NDSBA BoD
- Jason Rohr – Jamestown, SE
- Patti Stedman – West Fargo, SE, NDSBA Past President
- Liz Tofteland – Westhope, NW
- James Vannett – Nedrose, NW, NDSBA BoD

# Government Affairs Committee

▶ NDSBA begins  
soliciting  
applications each  
year in July



# Stay in The Know





## **PUBLIC SCHOOLS**

### **Join and follow ND4PS!**

- NDSBA is proud to be a part of North Dakotans for Public Schools (ND4PS)
- Broad-based coalition dedicated to protecting and strengthening public education in North Dakota
- ND4PS brings together educators, parents, school boards, and concerned citizens who believe that public schools are the foundation of strong communities and are committed to advocating for policies that support high-quality public education for all students
- Share your successes and challenges!
- [www.ndforpublicschools.com](http://www.ndforpublicschools.com)

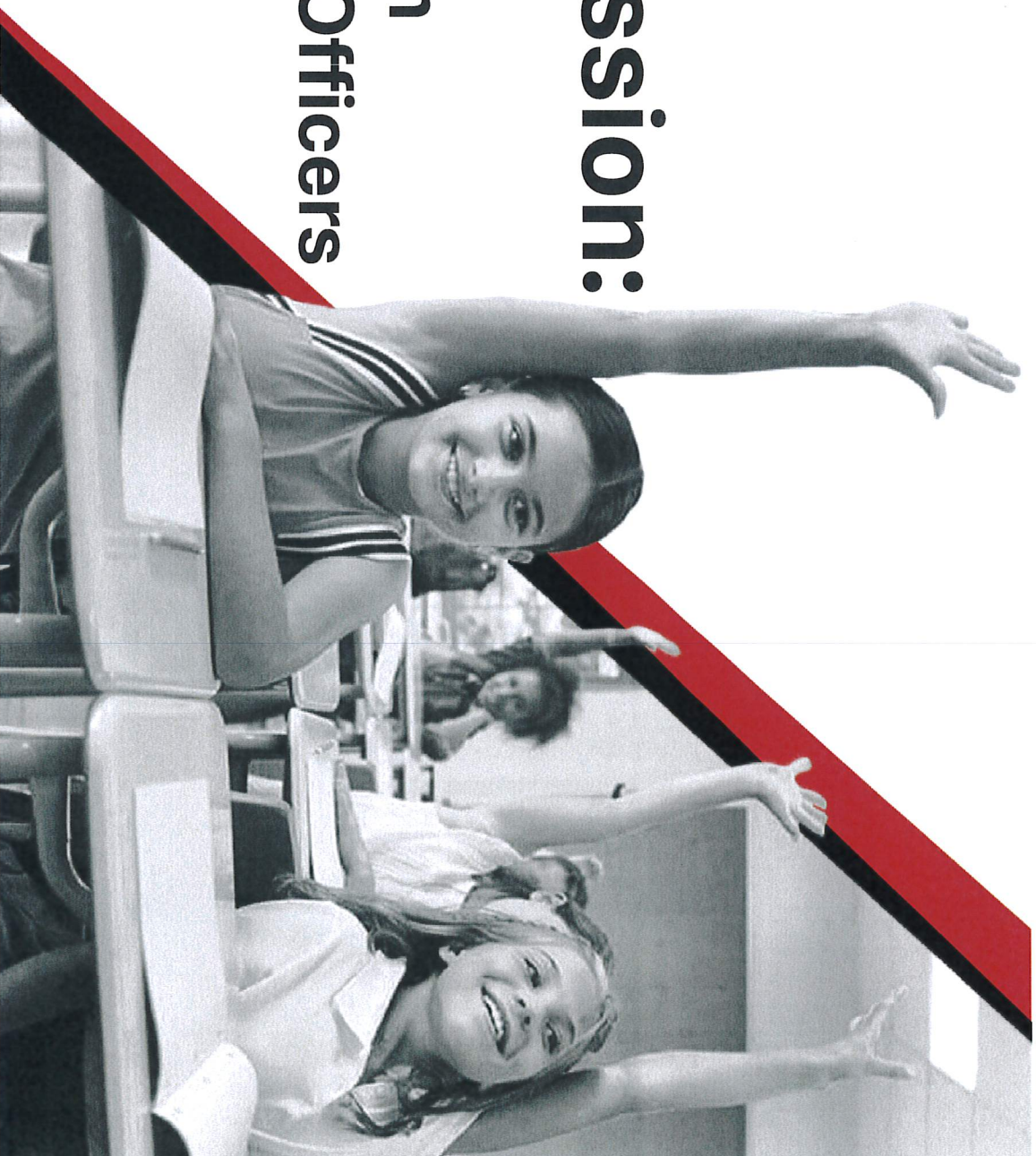




Questions?



# **Panel Discussion: School Safety & Relationships with School Resource Officers**





# BOARD PANELISTS: INTRODUCTION

## ▶ Becky LaBella

- Safety Director, Bismarck Public Schools

## ▶ Ryan Riehl

- Assistant Principal – Legacy High School / Bismarck Public Schools

## ▶ Officer Trevor Schmidt

- Bismarck Policy Department/ SRO, Legacy High School

# BOARD PANELISTS: Q&A

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- Safety Director, Bismarck Public Schools

## ▶ Ryan Riehl

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