

## **CHAPTER 15.1-19 STUDENTS AND SAFETY**

### **15.1-19-01. Legal surname - Use.**

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

### **15.1-19-02. Corporal punishment - Prohibition - Consistent policies.**

1. A school district employee may not inflict, cause to be inflicted, or threaten to inflict corporal punishment on a student.
2. This section does not prohibit a school district employee from using the degree of force necessary:
  - a. To quell a physical disturbance that threatens physical injury to an individual or damage to property;
  - b. To quell a verbal disturbance;
  - c. For self-defense;
  - d. For the preservation of order; or
  - e. To obtain possession of a weapon or other dangerous object within the control of a student.
3. For purposes of this section, corporal punishment means the willful infliction of physical pain on a student; willfully causing the infliction of physical pain on a student; or willfully allowing the infliction of physical pain on a student. Physical pain or discomfort caused by athletic competition or other recreational activities voluntarily engaged in by a student is not corporal punishment. A school board may not expand through policy the definition of corporal punishment beyond that provided by this subsection.
4.
  - a. The board of each school district shall develop policies setting forth standards for student behavior, procedures to be followed if the standards are not met, and guidelines detailing how all incidents are to be investigated.
  - b. The board shall ensure that the policies, procedures, and guidelines applicable to all elementary schools in the district are identical, that the policies, procedures, and guidelines applicable to all middle schools in the district are identical, and that the policies, procedures, and guidelines applicable to all high schools in the district are identical.

### **15.1-19-03. Period of silence.**

Repealed by S.L. 2001, ch. 187, § 2.

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

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

not be required to recite the pledge of allegiance, stand during the recitation of the pledge of allegiance, or salute the American flag.

**15.1-19-04. Religious instruction - Excuse of student.**

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

**15.1-19-05. Birth control device - Distribution - Restriction.**

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

**15.1-19-06. Abortion referrals.**

1. No person while acting in an official capacity as an employee or agent of a school district may refer a student to another person, agency, or entity for the purpose of obtaining an abortion. This provision does not extend to private communications between the employee or agent and a child of the employee or agent.
2. Between normal childbirth and abortion, it is the policy of the state of North Dakota that normal childbirth is to be given preference, encouragement, and support by law and by state action. A person acting in an official capacity as an employee or agent of a school district, between normal childbirth and abortion, shall give preference, encouragement, and support to normal childbirth. No public school in the state may endorse or support any program that, between normal childbirth and abortion, does not give preference, encouragement, and support to normal childbirth. No public school of the state may authorize a presentation to students that, between normal childbirth and abortion, does not give preference, encouragement, and support to normal childbirth.

**15.1-19-07. Communicable parasites - Detection and eradication.**

The board of a school district may contract with licensed health care personnel to assist in the detection and eradication of communicable parasites.

**15.1-19-08. Homeless child - Education.**

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

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

1. The board of a school district shall adopt rules regarding the suspension and expulsion of a student. The rules for expulsion must provide for a procedural due process hearing in the manner provided for in subsection 2 of section 15.1-19-10, before the determination to expel a student is made. A student's parent or representative must be allowed to participate in the expulsion hearing.
2. A student may be suspended for up to ten days for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy.

3. A student enrolled in an alternative education program for which state per student payments are available may be suspended for up to twenty days for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy.
4. A student, including one enrolled in an alternative education program, may be expelled from school for insubordination, habitual indolence, or disorderly conduct; provided the expulsion does not last beyond the termination of the current school year. A student who violates the school district's weapons policy may be expelled for up to twelve months.

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

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

**15.1-19-11. School safety patrols - Establishment - Adoption of rules.**

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

**15.1-19-12. School safety patrols - Immunity from liability.**

The superintendent of public instruction, schools, school boards and individual school board members, governing boards and individual governing board members, administrators,

principals, teachers, safety patrol members whether students or adults, and parents of safety patrol student members are immune from any liability that might otherwise be incurred as a result of an injury to a safety patrol member or as a result of an injury caused by an act or omission on the part of a safety patrol member while on duty, provided that the persons substantially complied with the rules to guide safety patrol members, as adopted by the superintendent of public instruction.

**15.1-19-13. Alcohol or controlled substance - Use or possession by student - Notification of principal - Exception.**

If a teacher knows or has reason to believe that a student is using, is in possession of, or is delivering alcohol or a controlled substance while the student is on school property, involved in a school-related activity, or in attendance at a school-sponsored event, the teacher shall notify the student's principal. The notification requirement in this section does not apply to a teacher or administrator who participates in a juvenile drug court program and receives confidential information regarding a student as a result of participation in the program. This section does not prevent a teacher or any other school employee from reporting to a law enforcement agency any violation of law occurring on school property, at a school-related activity, or at a school-sponsored event.

**15.1-19-14. School law enforcement unit.**

1. A school may create or designate a school law enforcement unit as defined in the Family Educational Rights and Privacy Act [20 U.S.C. 1232(g)] and rules adopted under the Act. Records of a school law enforcement unit regarding a student at a school are confidential but may be released to:
  - a. A juvenile court having the student before it in any proceeding;
  - b. Counsel for a party to the proceeding;
  - c. Officers of public entities to whom the student is committed;
  - d. Officers of a state or local law enforcement agency for use in the discharge of their official duties;
  - e. A superintendent or principal of another school in which the student wishes to enroll; and
  - f. The student's parent, legal guardian, or legal custodian.
2. Nothing in this section restricts the release of general information that does not identify the student.
3. This section does not apply to education records that are confidential under federal law.

**15.1-19-15. Record retention.**

Records regarding a student obtained by a school under section 15.1-19-14, section 27-20-51, or section 27-20-52 must be destroyed when the student reaches the age of eighteen or no longer attends the school, whichever occurs later.

**15.1-19-16. Asthma - Anaphylaxis - Self-administration of medication by student - Liability.**

1. A student who has been diagnosed with asthma or anaphylaxis may possess and self-administer emergency medication for the treatment of such conditions provided the student's parent files with the school a document that is signed by the student's health care provider and which:
  - a. Indicates that the student has been instructed in the self-administration of emergency medication for the treatment of asthma or anaphylaxis;
  - b. Lists the name, dosage, and frequency of all medication prescribed to the student for use in the treatment of the student's asthma or anaphylaxis; and
  - c. Includes guidelines for the treatment of the student in the case of an asthmatic episode or anaphylaxis.

2. Neither a private school or a school district nor any employee of the private school or district is liable for civil damages incurred by:
  - a. A student who administers emergency medication to himself or herself in accordance with subsection 1.
  - b. An individual because a student was permitted to possess emergency medication in accordance with subsection 1.
3. For purposes of this section, "emergency medication" includes a prescription drug delivered by inhalation to alleviate asthmatic symptoms and an epinephrine autoinjectable pen.

**15.1-19-17. Bullying - Definition.**

As used in sections 15.1-19-17 through 15.1-19-22:

1. "Bullying" means:
  - a. Conduct that occurs in a public school, on school district premises, in a district owned or leased schoolbus or school vehicle, or at any public school or school district sanctioned or sponsored activity or event and which:
    - (1) Is so severe, pervasive, or objectively offensive that it substantially interferes with the student's educational opportunities;
    - (2) Places the student in actual and reasonable fear of harm;
    - (3) Places the student in actual and reasonable fear of damage to property of the student; or
    - (4) Substantially disrupts the orderly operation of the public school; or
  - b. Conduct received by a student while the student is in a public school, on school district premises, in a district owned or leased schoolbus or school vehicle, or at any public school or school district sanctioned or sponsored activity or event and which:
    - (1) Is so severe, pervasive, or objectively offensive that it substantially interferes with the student's educational opportunities;
    - (2) Places the student in actual and reasonable fear of harm;
    - (3) Places the student in actual and reasonable fear of damage to property of the student; or
    - (4) Substantially disrupts the orderly operation of the public school; or
  - c. Conduct received or sent by a student through the use of an electronic device while the student is outside a public school, off school district premises, and off school district owned or leased property which:
    - (1) Places the student in actual and reasonable fear of:
      - (a) Harm; or
      - (b) Damage to property of the student; and
    - (2) Is so severe, pervasive, or objectively offensive the conduct substantially interferes with the student's educational opportunities or substantially disrupts the orderly operation of the public school.
2. "Conduct" includes the use of technology or other electronic media.

**15.1-19-18. Bullying - Prohibition by policy.**

1. Each school district shall adopt a policy providing that while at a public school, on school district premises, in a district owned or leased schoolbus or school vehicle, or at any public school or school district sanctioned or sponsored activity or event, a student may not:
  - a. Engage in bullying; or
  - b. Engage in reprisal or retaliation against:
    - (1) A victim of bullying;
    - (2) An individual who witnesses an alleged act of bullying;
    - (3) An individual who reports an alleged act of bullying; or
    - (4) An individual who provides information about an alleged act of bullying.
2. The policy required by this section must:

- a. Include a definition of bullying that at least encompasses the conduct described in section 15.1-19-17;
  - b. Establish procedures for reporting and documenting alleged acts of bullying, reprisal, or retaliation, and include procedures for anonymous reporting of such acts;
  - c. Establish procedures, including timelines, for school district personnel to follow in investigating reports of alleged bullying, reprisal, or retaliation;
  - d. Establish a schedule for the retention of any documents generated while investigating reports of alleged bullying, reprisal, or retaliation;
  - e. Set forth the disciplinary measures applicable to an individual who engaged in bullying or who engaged in reprisal or retaliation, as set forth in subsection 1;
  - f. Require the notification of law enforcement personnel if school district personnel have a reasonable suspicion that a crime might have occurred on or off school district property;
  - g. Establish strategies to protect a victim of bullying, reprisal, or retaliation; and
  - h. Establish disciplinary measures to be imposed upon an individual who makes a false accusation, report, or complaint pertaining to bullying, reprisal, or retaliation.
3. In developing the bullying policy required by this section, a school district shall involve parents, school district employees, volunteers, students, school district administrators, law enforcement personnel, domestic violence sexual assault organizations as defined by subsection 3 of section 14-07.1-01, and community representatives.
  4. Upon completion of the policy required by this section, a school district shall:
    - a. Ensure that the policy is explained to and discussed with its students;
    - b. File a copy of the policy with the superintendent of public instruction; and
    - c. Make the policy available in student and personnel handbooks.
  5. Each school district shall review and revise its policy as it determines necessary and shall file a copy of the revised policy with the superintendent of public instruction.

**15.1-19-19. Professional development activities.**

Repealed by S.L. 2017, ch. 350, § 6.

**15.1-19-20. Bullying prevention programs.**

Each school district shall provide bullying prevention programs to all students from kindergarten through grade twelve.

**15.1-19-21. Causes of action - Immunity - School districts.**

1. Sections 15.1-19-17 through 15.1-19-22 do not prevent a victim from seeking redress pursuant to any other applicable civil or criminal law. Sections 15.1-19-17 through 15.1-19-22 do not create or alter any civil cause of action for monetary damages against any person or school district, nor do sections 15.1-19-17 through 15.1-19-22 constitute grounds for any claim or motion raised by either the state or a defendant in any proceedings.
2. Any individual who promptly, reasonably, and in good faith reports an incident of bullying, reprisal, or retaliation to the school district employee or official designated in the school district bullying policy is immune from civil or criminal liability resulting from or relating to the report or to the individual's participation in any administrative or judicial proceeding stemming from the report.
3. A school district and its employees are immune from any liability that might otherwise be incurred as a result of a student having been the recipient of bullying, if the school district implemented a bullying policy, as required by section 15.1-19-18 and substantially complied with that policy.

**15.1-19-22. Causes of action - Immunity - Nonpublic schools.**

1. Sections 15.1-19-17 through 15.1-19-22 do not prevent a victim from seeking redress pursuant to any other applicable civil or criminal law. Sections 15.1-19-17 through

15.1-19-22 do not create or alter any civil cause of action for monetary damages against any person or nonpublic school, nor do sections 15.1-19-17 through 15.1-19-22 constitute grounds for any claim or motion raised by either the state or a defendant in any proceedings.

2. Any individual who promptly, reasonably, and in good faith reports an incident of bullying, reprisal, or retaliation to the nonpublic school employee or official designated in the school's bullying policy is immune from civil or criminal liability resulting from or relating to the report or to the individual's participation in any administrative or judicial proceeding stemming from the report.
3. A nonpublic school and its employees are immune from any liability that might otherwise be incurred as a result of a student having been the recipient of bullying, if the school implemented a bullying policy, similar to that required by section 15.1-19-18 and substantially complied with that policy.

**15.1-19-23. Medication program - Establishment - Opt-out - Liability - Immunity from liability.**

1. The board of a school district or the governing body of a nonpublic school may establish a program for providing medication to students that includes authorizing individuals to provide medication to a student if the individual has received education and training in medication administration and has received written consent of the student's parent or guardian.
2. A teacher or classified staff member, who is not employed as a licensed health care provider to provide medication, may choose to not provide medication under the program established under subsection 1.
3. An individual authorized to provide medication under subsection 1, or a school district, the board of a school district, or the governing body of a nonpublic school that establishes a program for providing medication to students is not civilly or criminally liable for any act or omission of that individual when acting in good faith while providing medication to a student, except when the conduct amounts to gross negligence.

**15.1-19-24. Youth suicide prevention - Training.**

Repealed by S.L. 2017, ch. 350, § 6.

**15.1-19-25. Student journalists - Freedom of expression - Civil remedy.**

1. As used in this section:
  - a. "Protected activity" means an expression of free speech or freedom of the press.
  - b. "School-sponsored media" means any material that is prepared, substantially written, published, or broadcast by a student journalist at a public school, distributed or generally made available to members of the student body, and prepared under the direction of a student media adviser. The term does not include any media intended for distribution or transmission solely in the classroom in which the media is produced.
  - c. "Student journalist" means a public school student who gathers, compiles, writes, edits, photographs, records, or prepares information for dissemination in school-sponsored media.
  - d. "Student media adviser" means an individual employed, appointed, or designated by a school district to supervise or provide instruction relating to school-sponsored media.
2. Except as provided in subsection 3, a student journalist has the right to exercise freedom of speech and of the press in school-sponsored media, regardless of whether the media is supported financially by the school district, by use of facilities of the school district, or produced in conjunction with a class in which the student is enrolled. Subject to subsection 3, a student journalist is responsible for determining the news, opinion, feature, and advertising content of school-sponsored media. This subsection

may not be construed to prevent a student media adviser from teaching professional standards of English and journalism to student journalists. A student media adviser may not be dismissed, suspended, or disciplined for acting to protect a student journalist engaged in a protected activity or for refusing to infringe on a protected activity.

3. This section does not authorize or protect expression by a student that:
  - a. Is libelous, slanderous, or obscene;
  - b. Constitutes an unwarranted invasion of privacy;
  - c. Violates federal or state law; or
  - d. So incites students as to create a clear and present danger of the commission of an unlawful act, the violation of school district policy, or the material and substantial disruption of the orderly operation of the school.
4. A school district may not authorize any prior restraint of any school-sponsored media except when the media:
  - a. Is libelous, slanderous, or obscene;
  - b. Constitutes an unwarranted invasion of privacy;
  - c. Violates federal or state law; or
  - d. So incites students as to create a clear and present danger of the commission of an unlawful act, the violation of school district policies, or the material and substantial disruption of the orderly operation of the school.
5. A school district may not sanction a student operating as an independent journalist.
6. Each school district shall adopt a written student freedom of expression policy in accordance with this section. The policy must include reasonable provisions for the time, place, and manner of student expression. The policy may also include limitations to language that may be defined as profane, harassing, threatening, or intimidating. An expression of free speech or freedom of the press made by a student journalist under this section may not be construed as an expression of school policy. A school, school official, employee, or parent or legal guardian of a student journalist may not be liable in any civil or criminal action for an expression of free speech or freedom of the press made by a student journalist, except in the case of willful or wanton misconduct.

**15.1-19-26. Prohibition on aiding and abetting sexual abuse.**

1. The state educational agency, or local educational agency that receives federal funds under section 8546 of the Elementary and Secondary Education Act [20 U.S.C. 7926] shall prohibit any individual who is a school employee, contractor, or agent, or any state educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, there is confirmation, or there is an investigation underway based on a claim the school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of law.
2. Subsection 1 does not apply if:
  - a. The information has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct and any other authorities as required by federal, state, or local law; and
  - b. (1) The matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law;
  - (2) The school employee, contractor, or agent has been charged with, and acquitted or otherwise exonerated of the alleged misconduct; or
  - (3) The case or investigation remains open and there have been no charges filed against, or indictment of, the school employee, contractor, or agent within one year of the date on which the information was reported to a law enforcement agency.



**15.1-19-27. Conviction of aiding and abetting sexual abuse - Penalty.**

Any individual who is a school district employee, contractor, or agent convicted of aiding and abetting sexual abuse as described in section 15.1-19-26 is guilty of a class B misdemeanor.

**15.1-19-28. Dress code - Inclusion of traditional tribal regalia and objects of cultural significance.**

The board of a school district or a school may not establish a dress code policy that includes prohibiting a student from wearing traditional tribal regalia or objects of cultural significance at a graduation ceremony. For purposes of this section "tribal regalia" or "object of cultural significance" means an eagle feather or eagle plume.