

**2019 SENATE EDUCATION**

**SB 2181**

# 2019 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Sheyenne River Room, State Capitol

SB 2181  
1/30/2019  
31772

- Subcommittee  
 Conference Committee

Committee Clerk: Lynn Wolf
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## Explanation or reason for introduction of bill/resolution:

A bill relating to cyberbullying of students.

## Minutes:

Att. #1-Davison; Att. #2- Copas; Att. #3-DeKok
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**Chairman Schaible:** SB 2181. Senator Davison will pinch hit for Senator Poolman this morning in introducing the bill.

**Senator Davison, Dist. 1: See Attachment # 1.** (Senator Davison read the testimony for Senator Poolman as she was unable to attend the hearing.) Senator Poolman did not attach an amendment.

**Chairman Schaible:** Yes, I indicated to her it would be best to have the hearing first and then at the amendment when she has an opportunity to testify in person. Other testimony in favor of the bill.

(5:07) **Amiee Copas, Exec. Director of ND Council of School Leaders: See Attachment #2.**

**Senator Rust:** Reported by whom?

**Amiee Copas:** It could be reported by students, by a parent, we would just need to have a report to a school administrator.

Senator Rust: To whom?

**Amiee Copas:** To a school administrator or a teacher and the teacher could subsequently go to the administration – just as they do now. Clearly, unless if we know something is happening outside of school – what we don't want to run into is a scenario where something that is happening outside of school is completely beyond the realm of our understanding and then later, it came back on the school saying why didn't you investigate this was happening in xyz home and it was never brought to the attention of the school to investigate.

**Senator Rust:** Aren't you opening up a whole new world here? I mean, when you start doing things off school premises, aren't you opening up a whole new world that you have some serious issues with?

**Amiee Copas:** Absolutely Senator Rust, we had some reservations in the beginning and as I started calling our schools, the reality is that this is what they are dealing with today – already. By and large, especially our larger districts are already investigating things that take place outside of school because it greatly impacts what happens what happens to them in school. I was originally going to say that goodness, there is no way that we could possibly do this and understanding now in talking to our administrators most of them already are, but what they don't know is where their jurisdiction lies. But, because it impacts the school day, it is a weird world we live in now. Very challenging, but which one of which our schools want to protect our students as best as we can. We were worried about a liability piece, but if you look farther into that section of Century Code, the schools are already released of liability in that section – I think it is section 20 or something farther down in code.

**Senator Rust:** My thought is that once you put them there, I think you have shifted somethings. Sjofsted them and shifted them seriously to the school and you've now created a situation where whatever happens, the school is going at fault. I have serious reservations with this.

**Amiee Copas:** I can't disagree with your comment, but, in the same token, we are not sure where the shift has stopped for any realm for schools. The kids are ours and they are expected to be ours and that we find the best way to get them to be successful members of the community upon graduation. If this is going to be a piece of it – it already is a piece of it – then we need to do our best to support our children and making sure that there is a liability exclusion is critical to this nature. It is impossible for our schools to be omniscient and to stop everything, but the reality is they are already experiencing this, already grappling with it. Which one of you kiddos don't already have a phone already and carry it with you all the time (she had turned to a group of students)? This is the world we live in – just like we are expecting our new people to prepare for a world they don't even know it exists year, we're living in that world and we are working to prepare and protect our kids as best as we can.

**Chairman Schaible:** So, how do you see an investigation of a complaint – of bullying outside of the school realm. They can't go check a person's phone, their personal email? How do they do that?

**Amiee Copas:** How it happens now is it happens within the scope of what we have access to within the school day. If they have their phone at school, we would ask be able to look at that – even though the conduct may have happened outside of school hours, we are finding our school administrators are already having tight levels of communications with administration at Facebook, Twitter, at Snapchat – trying to – by in large, most of those companies are very good about working with school administrators to dig into details, find IP addresses, find out where the bullying is happening and then they communicated with their local law enforcement to enforce the investigation outside of the school walls.

**Chairman Schaible:** Does the student have to comply? Do they have to give you their phone and let you look at it?

**Amiee Copas:** Not necessarily, they do have the right to search and seizure, so, usually, if it is the students in question that is receiving the bullying, they want help, so they come and look for help and usually hand over their stuff and say, whatever you can do to help me find out who is doing this and stop it. Understanding that outside of our school walls, our school administrators cannot knock on a door and ask for information, but this is where they begin to communicate with their local law enforcement to carry forward from there. Rather than throwing up our hands and saying, it happened

outside of school, we can't touch it, well, now we are going to take it a step further and say, we need help with this investigation and partner with our local law enforcement to protect our students.

**Chairman Schaible:** You say it is happening already, so, do we need a law to do that?

**Amiee Copas:** I would say no, except for the clarity that school districts should not feel it is outside of their jurisdiction to pay attention to what is happening in kids' lives outside of the 5.5 or six hours of the school day.

**Chairman Schaible:** Other questions. Thank you. Other questions in favor of the bill.

(12:40) **Amy DeKok:** *See Attachment #3.*

**Senator Davison:** Lessen the risk, but provide more clarity to the superintendent.

**Amy DeKok:** Absolutely, that is the intent behind the amendment.

**Senator Rust:** Are you aware of any court cases now where schools have kind of crossed over that anyway and have been taken to task because they have?

**Amy DeKok:** Yes, there are lower court cases that have dealt with that very issue. Where that is coming from is from students that are disciplined for off campus speech that is alleged to be cyberbullying. They claim that their first amendment rights for free speech are being violated. There are courts that have said there has to be some substantial material disruption on the school environment in order for the school to be able to regulate the conduct. There has to be that nexus or connection to the school environment and not just a nominal risk of disruption.

**Senator Davison:** Would you suggest that the current language, from what Dr. Copas talked about the current practices are – would suggest that this language that you are asking to put in there would help with what is already happening within the schools to protect the superintendents and the liability piece of the school.

**Amy DeKok:** Yes, I think it would provide some clarity until we have further clear direction from the court, I think this will provide the districts some level of ability to feel comfortable regulating off campus conduct, but not fearing that risk of liability. So, I think it is a balance right now and until we have more clear direction from the courts, I think this is a good compromise.

(18:44) **Chairman Schaible:** Other testimony in favor of the bill.

**Elroy Burkle: Exec. Director of Small Organized Schools:** I am going to support on behalf for our organization because I do support the amendment. I also support the previous speaker talking about the need for more clarity for school administrators.

**Chairman Schaible:** Other testimony in favor of the bill. Agency testimony. Opposing testimony. Hearing closed.

# 2019 SENATE STANDING COMMITTEE MINUTES

**Education Committee**  
Sheyenne River Room, State Capitol

SB 2181  
2/13/2019  
32662

- Subcommittee  
 Conference Committee

Committee Clerk: Lynn Wolf

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

A bill relating to cyberbullying of students.

## Minutes:

Att. #1-19.0523.02003

**Chairman Schaible:** We are going to look at SB 2181.

**Senator Oban:** Looking at the amendment I provided, none of the words are changing, we are just reordering and inserting some or and ands in different places. Because of the concerns about cyberbullying that happens outside of a school, off the grounds, in the evening when a kid is at home, something like that. This would give the school a little bit more coverage to say, "We are not responsible for everything that happens off of our premises, but if that conduct places the student in actual and reasonable fear of harm or it might damage the property of the student and is so severe, pervasive, or objectively offensive that substantially interferes with the student's educational opportunities or it substantially disrupts the order of the public school." It is saying it has to be one of those first two, it has to harm the student or damage property and it has to do one of those other two things. It is a little bit more limiting, but still, really gives schools some guidance on much of what they are already doing, if it is interfering with the school day or the operation of the school. The second change is on – you will notice additional language is being added in the original bill on lines 20 and 21. We realize we can actually remove pretty much of lines 18 through 21, because we have defined where those actions have to place in the definitions – so, we don't need to specify any of those locations that lines 18-21 would be doing. What that will read is each school district shall adopt a policy providing that a student may not a) engage in bullying, b) engage in the rest of the section. Does that make sense to everybody? It still essentially does everything it was before – providing a little bit more clarity on what a school would be responsible for. All of this relates to anything that is reported. Later in this chapter, it tells a school if you don't know something is going on, you are not responsible for it. They would have to know if this is going on. The discussion about reported doesn't need to be added because of that – and that was in discussions with the sponsor of the bill, and with Legislative Council. It is absolutely implied that there is nothing a school can do if they don't know it is happening. They can't be responsible for that. That is the amendment.

**Chairman Schaible:** Questions? Discussion.

**Senator Oban:** I move the adoption of the amendment 19.0523.02003.

**Senator Marcellais:** Second.

Senate Education Committee  
SB 2181  
2/13/2019  
Page 2

**Chairman Schaible:** Motion and second for the adoption of 19.0523.02003. Other discussion. Clerk will take the roll.

**Roll Call Vote: 7 Yeas; 0 Nays, 0 Absent.**

**Amendment is adopted.**

**Senator Oban:** I move a Do Pass on SB 2181 as amended.

**Senator Marcellais:** Second.

**Roll Call Vote: 7 Yeas; 0 Nays; 0 Absent.**

**Motion passes.**

**Senator Oban will carry the bill.**

PROPOSED AMENDMENTS TO SENATE BILL NO. 2181

Page 2, line 7, remove "Is so severe, pervasive, or objectively offensive that it substantially"

Page 2, remove line 8

Page 2, line 9, remove "(2)"

Page 2, line 9, remove "harm;"

Page 2, replace lines 10 through 12 with ":

(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."

Page 2, line 17, overstrike "while"

Page 2, overstrike lines 18 and 19

Page 2, line 20, overstrike "activity or event,"

Page 2, line 20 remove "; or outside a public school, off school district premises, and off'

Page 2, line 21, remove "school district owned or leased property if using an electronic device."

Renumber accordingly

Date: 2-13-19  
 Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES**  
 BILL/RESOLUTION NO. SB 2181

Senate Education Committee

Subcommittee

Amendment LC# or Description: 19.0523.02003

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

Motion Made By Sen Oban    Seconded By Sen Marcellais

Senators	Yes	No	Senators	Yes	No
Chairman Schaible:	✓		Senator Marcellais:	✓	
Vice-Chairman Fors:	✓		Senator Oban:	✓	
Senator Davison	✓				
Senator Elkin:	✓				
Senator Rust:	✓				

Total (Yes) 7    No 0

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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



**REPORT OF STANDING COMMITTEE**

**SB 2181: Education Committee (Sen. Schaible, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2181 was placed on the Sixth order on the calendar.

Page 2, line 7, remove "Is so severe, pervasive, or objectively offensive that it substantially"

Page 2, remove line 8

Page 2, line 9, remove "(2)"

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Page 2, line 21, remove "school district owned or leased property if using an electronic device."

Renumber accordingly

**2019 HOUSE EDUCATION**

**SB 2181**

# 2019 HOUSE STANDING COMMITTEE MINUTES

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

SB 2181  
3/13/2019  
33609

- Subcommittee  
 Conference Committee

Committee Clerk: Bev Monroe

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

A bill relating to cyberbullying of students

## **Minutes:**

Attachment 1, 2, 3

**Chairman Owens:** Opened the hearing on SB 2181.

**Sen. Nicole Poolman: (Attachment 1)** The threshold for what we have added is higher than it would be for bullying taking place in school. We are talking about situations where students are scared of physical harm and unable to attend school or learn when they get there. This involves pervasive, ongoing and that makes it difficult enough that the student is scared to come to school or unable to learn when they get there. I think this allows the parents to call the principal, call the school, resolve it in the principal's office, without calling law enforcement. I would respectfully ask for your favorable recommendation.

**Rep. Hoverson:** Could you share a bit more specifically what are the exact changes are? The differences of what the schools can do or are doing?

**Sen. Poolman:** Right now all of the bullying, even online bullying only counts if it's taking place in the school, at a school event or on the school grounds. Students are usually not with their phones in the building so most of the bullying is taking place online at night. In the other definition the level of the threshold says it has to be this or that, it only has to meet one of those requirements to be considered bullying, but what we're adding says it has to be really pervasive; they have to be fearing physical harm and it has to majorly disrupt their ability to learn or attend school. In the rest of it, it can be just one of those things. In what we are adding it needs to be all of those things. It needs to be significant.

**Rep. Hoverson:** Is the overall aim to broaden the definition of bullying?

**Sen. Nicole Poolman:** When we are checking on what is happening at 9:00 at night in a kid's bedrooms, it has to be really bad. We are only talking about what is reported. This isn't the school going out and monitoring. It is the parents reporting this to the school.

**Rep. Hoverson:** The big change is broadening it outside?

**Sen. Nicole Poolman:** Right. But it is tougher to meet the definition if it is outside.

**Chairman Owens:** Any further questions? You don't believe that if we say 'if you bring a weapon to school its automatic suspension' and leave it up to the school, but I understand about local control, but in this case I am wondering about local control.

**Sen. Nicole Poolman:** I sympathize with the frustration because I hear that from parents in our community. Sometimes it is bullying and sometimes it is mental health issues that create outbursts. It is difficult to know. I always lean on local control. The bill as you know makes these districts have a policy. It removes all liability as long as they reasonably follow that policy. I am supportive of that concept, leaving it up to the school districts.

**Chairman Owens:** Do you see this as overreaching by the school into outside the school?

**Sen. Nicole Poolman:** I don't because of that definition that is has to be significantly disturbing the student's ability to come to school. That is a requirement. This isn't just bullying that is taking place; it involves impacting the child's ability to learn and it disrupts their education in order to qualify.

**Chairman Owens:** Any questions from the committee? Any more in support? Those in opposition? Any neutral testimony?

**Russ Ziegler, NDCEL: (Attachment 2) 11:00-16:15**

**Chairman Owens:** Any further questions?

**Rep. Mary Johnson:** Russ, you are referring to a section of the code that is already in existence. Can you pinpoint some failures of school districts? Did they overreact in reporting or underreact in reporting when they should have reported? Can you more clearly define those instances and where and when they happen?

**Russ Ziegler:** Specifically I can't go into details. I know from the input we have had from principals when we've asked them to give us input on this legislation, the majority of principals that we heard from have said that if it happens outside of school they automatically go to law enforcement.

**Rep. Mary Johnson:** Sen. Poolman's bill takes it offsite. Do you have firsthand knowledge of incidences where because prior to this bill, everything was on school premises? So, when it is on school premises, have they underreacted, overreacted? Where does this 2 f fail without consideration of Sen. Poolman's bill?

**Russ Ziegler:** I think 2 f is going to be up to the judgement of the individuals. School officials are not sure what is considered a crime and what is not. If a school has reported it to law enforcement and it shouldn't have been, that is up to the judgement of the individuals. Right now, principals are flying at the seat of their pants. Without specific guidance on what should or shouldn't be reported, it's a guessing game.

**Chairman Owens:** Any further questions?

**Rep. Hoverson:** I'm guessing you have probably seen the trends over time. What is the difference with today's bullying caused by social networking? Another question regarding the bullying at schools, with gangs and cliques, where they continued with bullying after school?

**Russ Ziegler:** Regarding your social media question – I would wholeheartedly agree that is where cyberbullying or bullying has gotten worse because of social media. Kids don't shut off their social media so they can't get away from it. When they leave school it is still there. To your second question, a lot of times it does start at school with an event at school and continues beyond the school bounds. I would agree with that statement as well.

**Rep. Hoverson:** A school I subbed at actually said 'no more cell phones in the school unless you are a junior/senior in a special class', they had some exceptions. What would you think of that as a better cure?

**Russ Ziegler:** We contemplate that all the time. Do we let or not let them have cell phones? The problem I see that if we prohibit them from having cell phones, how are they going to learn to use them correctly? Once they are out of school, they will have cell phones. They will have to manage a job while having a cell phone and be able to do that correctly. If they aren't learning that in the school environment, where will they learn it?

**Chairman Owens:** Any questions from the committee?

**Rep. Daniel Johnston:** Are you saying they are using the cell phones at school when they are supposed to be in studies?

**Russ Ziegler:** Yes, whether it is allowed or not students are using their cell phones when they shouldn't be on their bathroom trips and in the hallways.

**Rep. Daniel Johnston:** My concern isn't whether they are catching on to proper cell phone usage if it was banned during school hours.

**Chairman Owens:** Any further questions?

**Rep. Brandy Pyle:** What does a bullying policy have in it? Is there a conversation with the student doing the bullying?

**Russ Ziegler:** The policy itself is supposed to be created with school officials, teachers, parents and community members. Part of the policy in code states that the policy has to have a method of talking to the person being bullied, the person doing the bullying and any witnesses.

**Rep. Brandy Pyle:** What about the parents?

**Russ Ziegler:** That, in code, is not required. If a bullying incident happens, where parents would be involved, I don't know of an administrator that would not call the parents if that were the case.

**Rep. Brandy Pyle:** I kind of agree with that statement but I know of other things that have happened and administration has not called the parents. I know it's not always done.

**Chairman Owens:** Any further questions?

**Amy DeKok, In- house counsel, ND School Boards Association: (Attachment 3)** end 28:50

**Chairman Owens:** Any further questions?

**Rep. Mary Johnson:** This is not preventive legislation; this is reactive legislation. You are talking about an existing cause of action, talking about harm already being done under this bill.

**Amy DeKok:** I understand your point and don't disagree with it. If the school district takes action against a student who has engaged or allegedly engaged in cyberbullying off campus, they are being held liable for taking disciplinary action against the student on the basis of freedom of expression, freedom of speech.

**Rep. Mary Johnson:** They are recognizing a harm done, reporting it to the police and saying 'here's a possible cause of action'. This person by no matter what tool they used, caused harm to that child who is no longer able to attend school. Whether it is emotional abuse, physical abuse, that harm is done – here's a cause of action – possibly.

**Amy DeKok:** I agree with you. In that circumstance there is nothing. Regardless of what we do here the school officials have the ability to report that conduct and probably have a moral obligation to report that conduct to law enforcement. What this bill is trying to do and seeks to do is to add an element of cyberbullying to the definition of bullying, which would then mean that if the district is aware of cyberbullying happening off campus they have an obligation to investigate and potentially regulate that conduct. It goes further than just reporting that conduct to law enforcement. They still have the ability to do something. We don't oppose the intent.

I'm not aware of a school district contacting law enforcement and allowing law enforcement for investigation and potential criminal action.

**Vice Chairman Cynthia Schreiber-Beck:** Once the administration knew of this incidence and it was reported, the receiver of the cyberbullying was unable to pursue it because of lack of proof due to the unidentifiable source (through Snap Chat, etc.). Do you have any comment on that?

**Amy DeKok:** That is a problem. There are mechanisms in place that make it hard to identify if cyberbullying is actually taking place. That presents an issue of having the ability to regulate and leave the issue of where the conduct occurs. If there is no sufficient evidence, then we are relying on the word of the student.

**Vice Chairman Cynthia Schreiber-Beck:** The State's Attorney was unable to get information from the company where the incident occurred and they would not release the information unless there had been a death or something that was criminal.

**Amy DeKok:** That is an issue. Even if the harm doesn't result, hopefully it doesn't have to get to that level. School officials have a desire to be involved, they are just unsure where the line is. The court system has not provided guidance on that. That is our concern. The language that was amended in the Senate is more palatable on that issue. It requires a more reasonable fear of physical harm or damage of property and it has to impact the school environment. That provides some limit on what the school can do, but there is still a gray area.

**Chairman Owens:** Any further questions? Any more neutral testimony?

**Brandt Dick, Board President, ND Small Organized Schools:** The concern I want to bring up is 'loco parentis'. We struggle with where is that line that as schools we act as parents. Is that line when they get on the bus in the morning and we are no more parents when they leave school or does that line include in the evening and so forth. I totally agree that cyberbullying is an issue. It is something schools need to deal with. What one parent may think is so severe and pervasive another parent may not. That is the challenge when we are delving into that area of events that are happening off campus in the evenings, on weekends, etc. and how far do we go with that?

**Rep. Hoverson:** Do you think that the state can do something regarding contacting the parent of the child doing the bullying?

**Brandt Dick:** You are going to get a different response from those parents in those situations. It may or may not be helpful. That is a hard one to give good guidance on.

**Chairman Owens:** Is it safe to say that Section 2 e is causing the liability problem?

**Brandt Dick:** That probably would be the part because that would direct us to do disciplinary action and where is that line?

**Chairman Owens:** Any further questions? Any further neutral testimony? Closed the hearing on SB 2181.

# 2019 HOUSE STANDING COMMITTEE MINUTES

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

SB 2181  
3/20/2019  
34049

- Subcommittee  
 Conference Committee

Committee Clerk: Bev Monroe

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

A bill relating to cyberbullying of students

## Minutes:

**Chairman Owens:** After talking to legislative management and after reading over the bill you will notice that the current law says that on school property and in school vehicles around the school, etc. it contains in there about their dealing with it in 'e' and again in 'f' regarding contacting police if there is a crime. If we change that to where the focus is off campus, then we rule out the portion of them doing on campus. What you have before you is an amendment that returns everything in lines 17-21 back to school property and comes over to 'e' and leaves 'e' alone, but at f it changes it to include a crime where they don't investigate but if they have reasonable suspicion of a crime, then they notify the police just as they do now if it is on school grounds. Also, if they have suspicion of it being perpetrated off school grounds they will not do an investigation. They will notify the police and the police will decide if a crime has actually occurred.

That is what the amendment does. It returns some of the overstrike (page 2) and it leaves the new definition of cyberbullying in section 1. The amendment only affects section 2.

**Representative Denton Zubke:** I'll move the amendment .03001 to SB 2181.

**Rep. Longmuir:** Seconded.

**Chairman Owens:** We have a motion to amend SB 2181 by Rep. Zubke and seconded by Rep. Longmuir. Any discussion?

**Rep. Dennis Johnson:** The questions I have from my constituents they were opposed to is the fact that they are responsible for after school hours or weekends. The superintendent didn't like the bill because of that fact.

**Chairman Owens:** They are not responsible for it now. If someone complains about it affecting them, they are still limited to the school district, school property and the school equipment. By changing f we have allowed them to say that there may be something illegal

going on, so we will notify the police. We have taken away their ability to go off the school property and become policemen.

**Rep. LaurieBeth Hager:** Do we want this to say 'during the school calendar year'? Otherwise this does not exclude them in July?

**Chairman Owens:** We are returning it to current law. It already says that. If this bill goes away, current law doesn't limit it to just the school year. What you have in section 2, if you remove the overstrike, is what is in current law. Also, it is summer school as well.

**Rep. Mary Johnson:** I don't see where it's limiting it to the school year.

**Chairman Owens:** If you take out the overstrike on page 2, lines 17-20 - providing that at a public school, on school district premises, in a district owned or leased school bus, school vehicle or at any public school or school district sanctioned or sponsored activity or event – so it is limited to where they have authority.

**Rep. Mary Johnson:** Yes, but not time limited.

**Chairman Owens:** No, it's not. But it's never been time limited. What you are saying is that if somebody commits a crime in July or August on school property, the school has no authority. If they bully somebody on the playground of school property during the summer, the school can't react?

**Rep. LaurieBeth Hager:** Yes.

**Chairman Owens:** The bill and the amendment does not address that right now. It doesn't limit it to school year or summer school, but it does say school activities and events. If you limit it to school activities and events, and they have a school event during the other time frame, they have no authority either.

**Rep. Brandy Pyle:** I think I understand that it has to be a school sponsored activity. It could be a field trip where an incident happened during that activity, but when they are out of school and the playgrounds are used by daycares for a couple of hours during the day it is a daycare issue, not a school issue.

**Chairman Owens:** According to this bill as it stands right now it is on school property so the school could get involved. Since no one is there, no one would know about it. Any further questions? A **Voice Vote** was taken and the **motion carried to adopt an amendment**.

**Vice Chairman Cynthia Schreiber-Beck:** I'll move a **Do Pass** as Amended on SB 2181.

**Rep. Mary Johnson:** **Seconded**.

**Chairman Owens:** Any further discussion?

A **Roll Call Vote** was taken: **Yes 12, No 0, Absent 2.** A **Do Pass as Amended** motion carried. Rep. Johnston will carry SB 2181.

DF 3/20/19

19.0523.03001  
Title.04000

Prepared by the Legislative Council staff for  
Representative Owens  
March 20, 2019

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2181

Page 2, line 17, remove the overstrike over "~~while~~"

Page 2, remove the overstrike over lines 18 and 19

Page 2, line 20, remove the overstrike over "~~activity or event,~~"

Page 3, line 10, overstrike "an investigation by"

Page 3, line 11, overstrike "results in" and insert immediately thereafter "have"

Page 3, line 12, after "occurred" insert "on or off school district property"

Renumber accordingly

Date: 3-20-19  
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2181

House Education Committee

Subcommittee

Amendment LC# or Description: 19.0523.03001

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

Motion Made By Rep. Zubke Seconded By Rep. Longmuir

Representatives	Yes	No	Representatives	Yes	No
Chairman M. Owens			Rep. Guggisberg		
V. Chair. Schreiber-Beck			Rep. Hager		
Rep. Heinert					
Rep. Hoverson					
Rep. D. Johnson					
Rep. M. Johnson					
Rep. Johnston					
Rep. Longmuir					
Rep. Marschall					
Rep. Pyle					
Rep. Strinden					
Rep. Zubke					

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

Absent \_\_\_\_\_

Floor Assignment VOICE VOTE - MOTION CARRIED

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

Date: 3-20-19  
Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2181

House Education Committee

Subcommittee

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

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

Motion Made By Rep. Schreiber-Beck Seconded By Rep. M. Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman M. Owens	✓		Rep. Guggisberg	✓	
V. Chair. Schreiber-Beck	✓		Rep. Hager	✓	
Rep. Heinert	A				
Rep. Hoverson	A				
Rep. D. Johnson	✓				
Rep. M. Johnson	✓				
Rep. Johnston	✓				
Rep. Longmuir	✓				
Rep. Marschall	✓				
Rep. Pyle	✓				
Rep. Strinden	✓				
Rep. Zubke	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Johnston

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

**REPORT OF STANDING COMMITTEE**

**SB 2181, as engrossed: Education Committee (Rep. Owens, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2181 was placed on the Sixth order on the calendar.

Page 2, line 17, remove the overstrike over "~~while~~"

Page 2, remove the overstrike over lines 18 and 19

Page 2, line 20, remove the overstrike over "~~activity or event,~~"

Page 3, line 10, overstrike "an investigation by"

Page 3, line 11, overstrike "results in" and insert immediately thereafter "have"

Page 3, line 12, after "occurred" insert "on or off school district property"

Renumber accordingly

**2019 TESTIMONY**

**SB 2181**

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1-30-19  
Att #1  
P. 1 of 1

Nicole Poolman

Testimony to Senate Education Committee

Wednesday, January 30, 2019 9:30 am

SB 2181

Good morning, Chairman Schaible and members of the Education committee, my name is Nicole Poolman, state senator from District 7 representing Bismarck and Lincoln. I am here today to introduce SB 2181, a bill to revise the bullying policy currently in code.

The bill was drafted as a result of many parents in my area concerned about the amount of bullying taking place online. My own school district held a number of meetings to discuss a revision of their bullying policies, and in the end, the school board decided to make sure their bullying policy stayed within the confines of the law, and the policy remained unchanged. I agree with their decision keep it within what we have in code, but I have always felt that what we have in code is dated. I wanted to find a way to modernize the policy to reflect how bullying realistically takes place while ensuring it met the same definition of bullying currently in code.

In my discussions with other advocates, one other concern came up. It was noted that this online activity could take place without the knowledge of the school, so we would appreciate committee consideration of an amendment adding the word "reported" not only to the portion I seek to add, but to each of the definitions of bullying. Aimee Copas of NDCEL suggested that language, and I have an amendment for your consideration attached to my testimony.

I believe SB 2181 would be adding to the code what is most likely the practice of plenty of administrators today, but in the world we live in, I think it is important to ensure they have the permission to take action within our policy. We will by no means put an end to bullying with this proposal - the majority of this activity goes unreported - but it will ensure that when this activity is reported, schools can feel confident they are working within the confines of the law, and maybe more students will be encouraged to report this activity if we place it in the definition.

I respectfully ask for your support of this bill, and I would stand for any questions you may have.



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SB 2181  
1-30-19  
Att. #2  
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SB 2181 – Cyberbullying of Students

1/30/19 – Testimony in Support

Good morning Chair Schaible, and members of the Senate Education committee – I am here in support of SB 2181 which provides additional guidance on bullying and expands the requirements on School Board policy with regard to the protection and safety of our students.

Senator Poolman provided to you a modestly amended version of the bill of which we wholeheartedly support and it provides the real guidance for the fact that these cases need to be reported – hopefully those amendments will provide an actionable awareness for our communities.

In many of our school today, the practice of guarding against our students in the electronic modality already. We are well aware of the fact that much of the bullying that they may experience takes place outside of school hours, however, it almost always impacts their school day and ability to perform at school. Hence, it will not adjust practice where it is currently being conducted. However, what we have heard is that in some instances, school were uncomfortable or unsure about their jurisdiction with regard to things that happen outside of school hours and on equipment that may not be school equipment. This provides clarity to that jurisdiction.

We support bill and believe it is good for kids. We recommend a DO Pass of SB 2181.



**NDSBA**  
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**Testimony on SB 2181**  
**Senate Education Committee**  
Amy L. De Kok, Legal Counsel  
North Dakota School Boards Association  
January 30, 2019

Chairman Schaible and members of the committee,

My name is Amy De Kok. I am in-house legal counsel for the North Dakota School Boards Association. NDSBA represents all operating school districts within the State of ND and their governing boards. I am here testifying in support of SB 2181.

Cyber bullying is a growing concern in our schools and I receive calls frequently from school administrators about how and if schools can regulate this type of off campus conduct. I would say the majority of school administrators that I talk to have a desire to be able to regulate this type of off campus conduct in order to protect students. Cyberbullying certainly impacts the school environment and therefore our schools have to deal with this off campus conduct. We agree that the bullying definition set forth in ND law should be revised to include cyberbullying to at least some extent. However, we have some concerns with the proposed bill language because there is a risk of liability if schools discipline a student for off campus conduct, non-school related speech, particularly speech that may be protected by the First Amendment.

The U.S. Supreme Court has not addressed the issue of whether schools have the ability to regulate and provide disciplinary measures for off campus conduct; however, many circuits courts have. While there is disagreement over the extent to which schools can discipline for this conduct, there has been a general trend toward protection of students First Amendment rights. I believe most courts have determined that the off campus conduct has to have substantial and foreseeable risk of disruption on the school environment in order for schools to lawfully regulate. This brings me to my concerns regarding SB 2181. Let me first say that NDSBA supports the intent behind the bill and agrees that schools should have some ability to regulate without the fear of liability. We believe the definition of cyberbullying in the bill should make clear that the conduct must have a substantial and foreseeable risk of disruption to the school environment in order for it to be conduct that the schools can regulate. So, for example, adding in subsection c, which starts on page 4, line 4 after "leased property" the language: "which is reasonably foreseeable to cause a substantial disruption at school". If that language is included, we likely would not need paragraph 4 of subsection c as it is duplicative of the proposed language.

NDSBA believes this language will give us that nexus and connection to the school environment to lessen the risk of liability for schools. Thank you and I'll stand for any questions.

February 13, 2019

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2-13-19  
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PROPOSED AMENDMENTS TO SENATE BILL NO. 2181

Page 2, line 7, remove "Is so severe, pervasive, or objectively offensive that it substantially"

Page 2, remove line 8

Page 2, line 9, remove "(2)"

Page 2, line 9, remove "harm;"

Page 2, replace lines 10 through 12 with ":

(a) Harm; or

(b) Damage to property of the student; and

(2) Is so severe, pervasive, or objectively offensive that it substantially interferes with the student's educational opportunities, or substantially disrupts the orderly operation of the public school."

Page 2, line 17, overstrike "while"

Page 2, overstrike lines 18 and 19

Page 2, line 20, overstrike "activity or event,"

Page 2, line 20 remove "; or outside a public school, off school district premises, and off"

Page 2, line 21, remove "school district owned or leased property if using an electronic device."

Re-number accordingly

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3-13-19  
#1

Nicole Poolman

Testimony to House Education Committee

Wednesday, March 13, 2019 9:00 am

SB 2181

Good morning, Chairman Owens and members of the Education committee, my name is Nicole Poolman, state senator from District 7 representing Bismarck and Lincoln. I am here today to introduce SB 2181, a bill to revise the bullying policy currently in code.

The bill was drafted as a result of many parents in my area concerned about the amount of bullying taking place online. My own school district held a number of meetings to discuss a revision of their bullying policies, and in the end, the school board decided to make sure their bullying policy stayed within the confines of the law, and the policy remained unchanged. I agree with their decision keep it within what we have in code, but I have always felt that what we have in code is dated. I wanted to find a way to modernize the policy to reflect how bullying realistically takes place while ensuring it met the same definition of bullying currently in code.

You will notice in the bill that the threshold is actually higher for this portion of the definition. We are talking about situations where kids are scared of physical harm AND unable to attend school or learn once they get there. This is not intended to apply to students who simply say rude things or make kids feel excluded. This refers to real fear of harm, and in my opinion, allows these situations to be resolved with a phone call to the school rather than a phone call to the police.

I believe SB 2181 would be adding to the code what is most likely the practice of plenty of administrators today, but in the world we live in, I think it is important to ensure they have the permission to take action within our policy. We will by no means put an end to bullying with this proposal - the majority of this activity goes unreported - but it will ensure that when this activity is reported, schools can feel confident they are working within the confines of the law, and maybe more students will be encouraged to report this activity if we place it in the definition.

I respectfully ask for your support of this bill, and I would stand for any questions you may have.



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SB 2181 – Cyberbullying of Students  
3/13/2019 – Neutral Testimony

Good morning Chairman Owens and members of the House Education committee. I am Russ Ziegler the assistant director for NDCEL. I am testifying in a neutral stance to SB 2181 with concerns.

NDCEL feels that the intent of the bill is something that we can support, however there are concerns that have made it impossible for us to support the bill outright. Adding the definition of bullying to include electronic devices outside of a public school, off school district premises, and off of school district owned or leased property we believe is well intended. Where we get concerned is in the operational aspects of the bill.

With the existing code schools were to “adopt a policy providing that while at a public school, on school district premises, in a district owned or leased school bus or school vehicle, or at any public school or school district sanctioned or sponsored activity or event a student may not engage in:” bullying or in reprisal or retaliation against others. While the student is in the care of the school we see that the school has the authority to establish such policy and disciplinary measures. However, when the child is outside of school where does the school authority end? Principals and other school officials are not trained investigators or law enforcement officials and asking them to investigate items that occur outside of school is out of their area of expertise. Another concern is that school personnel are already overwhelmed with their regular duties. Schools that have the opportunity to have a School Resource Officer are better equipped to handle these investigations, our concern would be the schools who are not fortunate enough to have an SRO.

Besides the investigations, another concern that we have would be with the disciplining of the individuals who are doing the bullying. In this bill the responsibility of discipline would fall on the school. How would a school discipline a student from another district, or one that has



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graduated, or from a student that might even be from another state? We understand that in section 2 letter f. it states, "Require the notification of law enforcement personnel if an investigation by school district personnel results in a reasonable suspicion that a crime might have occurred". But, remember as school personnel we are not trained in law enforcement policies and procedures. So, the question would be, should all bullying activity outside of the school be reported to law enforcement?

Possible amendment:

2. f. Require the notification of law enforcement personnel if an investigation by school district personnel results in a reasonable suspicion that a crime might have occurred or if there is reasonable suspicion that the cyberbullying has occurred outside of the school as in 15.1-19-17 section 1c.

Another concept to think about as you are working with this legislation is the idea of including bullying and cyberbullying to the suspected child abuse or neglect mandatory reporting requirements. If these were added, then the schools would be responsible for reporting these incidences to social services to investigate. Social services are better equipped and trained to work with law enforcement, parents, children, in the area of behavior health. Schools and other agencies need to start working more closely to do what is in the best interest of students.

We are well aware of the fact that much of the bullying that students may experience takes place outside of school hours, however, it almost always impacts their school day and ability to perform at school. What we have heard is that in some instances, school were uncomfortable or unsure about their jurisdiction with regard to things that happen outside of school hours and on equipment that may not be school equipment. Where is the defining line between what we are to investigate, what are school officials are to mandatorily report? When we continue to ask school professionals to be experts in areas in which they are not trained, licensed, or credentialed in, is that a reasonable expectation? We believe that we need more clarification on the operational procedures of this legislation.

This concludes my neutral testimony on SB 2181.

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**SB 2181**  
**Testimony of Amy De Kok**  
**House Education Committee**  
**March 13, 2019**

Chairman Owens and members of the committee, my name is Amy De Kok. I am in-house legal counsel for the North Dakota School Boards Association. NDSBA represents all operating school districts within the State of ND and their governing boards. I am here to provide neutral testimony on SB 2181.

Cyber bullying is a growing concern in our schools and I receive calls frequently from school administrators about how and if schools can regulate this type of conduct when it occurs off campus, outside of school hours. I would say the majority of school administrators that I talk to have a desire to be able to regulate this type of off-campus conduct in order to protect students; however there is also a concern about liability if a school district overreaches its authority. Cyberbullying certainly impacts the school environment and therefore our schools have to deal with this off campus conduct. However, we have some concerns with the proposed bill language, even as amended by the Senate, because there is still a risk of liability if schools discipline a student for off campus, non-school related speech, particularly speech that is likely protected by the First Amendment.

The U.S. Supreme Court has not yet addressed the issue of whether schools have the ability to regulate and provide disciplinary measures for off campus conduct or speech; however, many circuit courts have and there is disagreement as to when and how schools may regulate such conduct. There are several courts that have analyzed this issue under the Supreme Court's analysis established in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 593 (1972), which permits regulation when student speech would reasonably lead school officials to forecast substantial disruption of or material interference with school activities. Some courts have applied this analysis regardless of the geographic origin of the conduct or speech at issue. Still yet, other courts first look at the "location" of the conduct or speech before applying the *Tinker* analysis and have held that there has to be a certain degree of "nexus" or connection between the conduct and the school environment before regulation is permitted. If the conduct occurred off-campus, it may be entitled to more protection. All of this is to say that the law in this area is still very much developing and there is disagreement among the courts as to the bounds of

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school district authority and reach in these circumstances. As a result, even if we limit the definition of cyberbullying in SB 2181, there is still a risk that school districts would be subject to liability if and when they regulate off campus conduct.

For these reasons, NDSBA is taking a neutral stance on SB 2181. Thank you and I'll stand for any questions.