



# North Dakota Legislative Council

Prepared for the Education Policy Committee  
LC# 23.9052.01000  
July 2021

## COMPULSORY SCHOOL ATTENDANCE STUDY - BACKGROUND MEMORANDUM

[House Concurrent Resolution No. 3009 \(2021\)](#) directs the Legislative Management to study provisions of the North Dakota Century Code relating to compulsory school attendance, including a comparison of compulsory school attendance laws in other states. House Concurrent Resolution No. 3009, which passed as introduced, was supported by the Department of Public Instruction and the Children's Cabinet. The testimony indicated a desire to study whether state compulsory school attendance laws are commensurate with current best practices and how North Dakota compulsory school attendance laws compare to similar laws in other states.

### HISTORY OF COMPULSORY SCHOOL ATTENDANCE LAWS North Dakota Constitution and Statutory Provisions

Sections 1 and 2 of Article VIII of the Constitution of North Dakota provide for the establishment and maintenance of a uniform system of free public schools. However, the constitution is silent regarding compulsory school attendance. The Century Code does not define the terms "compulsory," "compulsory education," or "compulsory attendance." However, in a 2010 publication by the Education Commission of the States, an interstate agency that tracks educational policy and provides research and advice to member states, including North Dakota, the commission indicated "[c]ompulsory school attendance refers to the minimum and maximum age required by each state in which a student must be enrolled in and attending public school or some equivalent education program defined by the law."

School attendance has been required in North Dakota since 1883. Section 119 of Chapter 44 of the 15<sup>th</sup> legislative session of the Territory of Dakota (1883) required parents of children ages 10 to 14 to send their children to public school for at least 12 weeks each year, 6 weeks of which were required to be consecutive, unless the child met an exception. Section 140 of Article XV, which passed during the first Legislative Assembly in 1889 (S.L. 1890, Ch. 62, §140), provided any person that had control of a child between 8 and 14 years of age was required to send the child to school in the district, city, town, or village of residence for at least 12 weeks each school year, of which 6 weeks were required to be consecutive. The law provided exceptions to the attendance requirement if the child received education for the required amount of time at a private school with similar curriculum, if the child already had learned the information taught in public school, if the child was in a physical or mental condition that rendered attendance inexpedient or impracticable, or if school was not offered within 2.5 miles of the child's residence. The law made noncompliance a misdemeanor and charged a fine of \$5 to \$20 for a first offense, and \$10 to \$50 for each subsequent offense. The law also required the president of the board of education of each city, town, or village to be responsible for inquiring into all cases of neglect of duty related to compulsory attendance.

Chapter 15.1-20 provides the state's compulsory school attendance laws. Chapter 15.1-20 was created by House Bill No. 1045 (2001) as part of a revision and rewrite of education provisions study. Before the rewrite of statutory education provisions that moved compulsory attendance laws into Chapter 15.1-20, the compulsory attendance laws existed in Chapter 15-34.1 from 1973 to 2001.

Section 15.1-20-01 provides for compulsory attendance and requires a person responsible for a child between the ages of 7 and 16 to ensure the child attends a public school for the duration of each school year. The section also requires a person who chooses to enroll a 6-year-old child in public school to ensure the child attends for the duration of the school year. The section allows a person to withdraw a 6-year-old child from public school, but once withdrawn the child may not be re-enrolled until the following year unless the child was withdrawn to relocate to another school district in the state.

Section 15.1-20-02 provides exceptions to the compulsory attendance requirements of Section 15.1-20-01. The exceptions apply if a person responsible for a child can demonstrate one of the criteria for an exception to the satisfaction of the school board. The criteria for an exception under Section 15.1-20-02 are:

- The child is in attendance for the same length of time at an approved nonpublic school under Section 15.1-06-06.1;
- The child has completed high school;
- The child is necessary to the support of the child's family;
- A multidisciplinary team that includes the child's school district superintendent, the director of the child's special education unit, the child's classroom teacher, the child's physician, and the child's parent has determined the child has a disability that renders attendance or participation in a regular or special education program inexpedient or impracticable; or
- The child is receiving home education pursuant to Chapter 15.1-23.

Section 15.1-20-02.1 provides the criteria for determining if a child is in attendance at school in compliance with the law. To be considered to be in attendance, this section provides a student may not be absent from school without an excuse for more than:

- Three consecutive school days during either the first half or second half of a school or school district's calendar;
- Six half days during either the first half or second half of a school or school district's calendar; or
- Twenty-one total class periods.

The section also requires school districts and nonpublic schools to adopt policies to define excused absences and allows school districts and nonpublic schools to withhold credit, remove students from courses, and take punitive measures against students who fail to arrive to school in a timely fashion or who exceed a specific number of absences, as determined by the school district or nonpublic school.

Section 15.1-20-03 requires teachers and administrators to enforce compulsory attendance. The section indicates Chapter 15.1-20 applies to all students offered school facilities by a district, regardless of whether the student resides in the district. The section requires teachers to notify the administrator of the school if a student is not in compliance with the chapter. The section also requires administrators to initiate investigations into the cause of reported absences by teachers and report to local law enforcement if the person responsible for the student fails to ensure the student is in attendance. A responsible person who fails to ensure a student is in attendance is guilty of an infraction for a first offense and a Class B misdemeanor for all subsequent offenses.

Section 15.1-20-03.1 requires school districts and nonpublic schools to submit data regarding school attendance to the Superintendent of Public Instruction. Section 15.1-20-03.2 requires the Superintendent of Public Instruction to disseminate information to school districts and nonpublic schools regarding truancy prevention and intervention programs, and research pertaining to best practices in truancy prevention.

### **Attendance Laws in Other States**

All 50 states and the District of Columbia have enacted compulsory attendance laws. However, the states vary on the age ranges of required compulsory attendance and the exceptions to compulsory attendance. Massachusetts was the first state to pass a compulsory education law in 1852. Mississippi was the last state to enact a compulsory attendance law in 1918. According to a 50-state comparison published by the Education Commission of the States in August 2020, the ages for compulsory school attendance under various state laws range from age 5 to age 19. The Education Commission of the States has identified the following required age ranges for attendance:

- Age 5-16: 1 state;
- Age 5-17: 1 state;
- Age 5-18: 10 states;
- Age 6-16: 10 states;
- Age 6-17: 5 states;
- Age 6-18: 10 states;

- Age 6-19: 1 state;
- Age 7-16: 6 states (including North Dakota);
- Age 7-17: 2 states;
- Age 7-18: 4 states; and
- Age 8-18: 1 state.

### **Minnesota**

Minnesota Statutes 2020, Section 120A.22 requires compulsory school attendance for children ages 7 to 17. Minnesota provides an exception to the compulsory attendance requirement for students who have graduated. Minnesota also requires students under the age of 7 who are enrolled in half-day kindergarten or full-day kindergarten on alternate days to be subject to the compulsory attendance laws, but a parent may withdraw the enrollment of a child under the age of 7 enrolled in those kindergarten programs at any time. Minnesota also requires students under the age of 7 who are enrolled in kindergarten or a higher grade than kindergarten in a public school to be subject to the compulsory attendance laws, unless the board of the district has a policy exempting students under age 7 from compulsory attendance. If a child is under age 7, enrolled in kindergarten or a higher grade, and subject to compulsory attendance requirements, the student may be withdrawn by a parent but the withdrawal must be for good cause and the parent must notify the district. Good cause includes enrollment in another school or the emotional immaturity of the child. Minnesota provides additional exceptions to the compulsory attendance requirements. The exceptions include the child's physical or mental health preventing attendance, the child already having completed state and district standards for high school graduation, or an absence from regular instruction if the parent or guardian chooses to have the child attend a school for religious instruction for a maximum of 3 hours per week.

### **South Dakota**

South Dakota Codified Laws Section 13-27-1 requires compulsory school attendance for children ages 5 to 18. South Dakota provides an exemption for students who have graduated from high school. South Dakota also provides an exemption for students who are at least 16 years old who enroll in a high school equivalency test preparation program that is school-based or for which a school contracts, if the student successfully completes the test or reaches the age of 18. To enroll in an equivalency test preparation program, a student must present written permission from a parent or guardian and at least one of:

- Verification from a school administrator that the child will not graduate with the child's cohort class because of credit deficiency;
- Authorization from a court services officer;
- A court order;
- Verification the child is under the direction of the Department of Corrections; or
- Verification that the child is enrolled in Job Corps.

A child who fails the high school equivalency test after completing the preparation program must re-enroll in the school district and may continue the preparation program or another suitable program determined by the school district.

South Dakota also provides an exemption from the compulsory attendance requirements after grade eight if the child or parents are members of a church that objects to high school education and the church provides a regularly supervised program of instruction in learning activities appropriate to the occupation the child will likely assume.

### **Montana**

Montana Code Annotated Section 20-5-102 requires compulsory school attendance for children ages 7 to 16. Montana provides an exception whereby a student is not subject to the compulsory attendance requirements once the student completes the eighth grade. Montana also provides additional exceptions, a child provided with supervised correspondence or home study, the child excused from attendance by a court determination that attendance is not in the best interest of the child, the child excused by the board of the school district upon a determination that attendance by a child who is 16 is not in the best interest of the child or school, or the child is enrolled in nonpublic or home school. Montana law provides if an attendance officer discovers a student is truant, the officer must attempt to notify the parent or guardian that continued truancy may result in prosecution and require the parent or guardian to meet and formulate a plan to address the truancy. Failure to comply, as

determined by a court, can result in a fine of up to \$100 and an order to perform up to 20 hours of community service. Failure to comply with court-ordered community service and fines can result in imprisonment for up to 3 days.

#### **Unique Compulsory Education Requirements in Other States**

Alaska requires compulsory school attendance for children ages 7 to 16. However, if a 6-year-old child is enrolled, the child is subject to the compulsory education laws.

Iowa requires compulsory school attendance for children ages 6 to 16. However, if a child aged 4 or 5 is enrolled in a school district, the child is subject to the compulsory attendance laws unless a parent or legal guardian notifies the school district of the intent to remove the child from enrollment.

Kentucky law requires compulsory school attendance for children ages 6 to 16. However, local school districts may adopt a districtwide policy requiring children ages 6 to 18 to attend school, and if at least 55 percent of all local school districts adopt the policy, all districts in the state are required to adopt a compulsory school age of 6 to 18.

New York law requires compulsory school attendance for children ages 6 to 16. However, local education boards may require children up to age 17 to attend full-time day instruction until the last day of the school year in which the student turns 17 if the student is not employed.

### **NORTH DAKOTA RECENT SCHOOL ATTENDANCE DATA**

According to the state's education information dashboard on [insights.nd.gov](https://insights.nd.gov), during the 2019-20 academic school year, 115,986 students were enrolled in prekindergarten through grade 12 in public schools throughout the state. During the 2020-21 academic school year, 114,825 students were enrolled in prekindergarten through grade 12 in public schools throughout the state. There was an attendance rate of 96 percent of the students enrolled during the 2019-20 academic school year. The attendance rate accounts for the average daily attendance for students in North Dakota. Attendance data for the 2020-21 school year is not available. During the 2019-20 academic school year, the chronic absenteeism rate in the state was 11 percent. According to the information dashboard, chronically absent students include those students who attended school for at least 10 days but who also missed 10 percent or more of their enrolled days during the academic school year.

### **RELEVANT 2021 LEGISLATION**

#### **Enacted**

While not specifically addressing compulsory school attendance laws, House Bill No. 1478 (2021), allows the board of a school district or nonpublic school to adopt a policy to allow students in grades 6 through 12 to earn course credits through educational opportunities with sponsoring entities outside of the classroom if certain criteria are met and approval is received from the Kindergarten Through Grade Twelve Education Coordination Council and the Superintendent of Public Instruction.

House Bill No. 1388 (2021) allows school districts to provide virtual instruction if the instruction complies with the school calendar length requirements for a full-day of instruction. The bill also requires the attendance of a student participating in virtual instruction to be verified by monitoring of the student's progress on academic pacing guides developed by the school district to ensure the student is in attendance and receiving sufficient instruction. The bill allows school districts and nonpublic schools to adopt a policy to allow students to engage in virtual instruction which must comply with rules adopted by the Superintendent of Public Instruction. The bill also requires the Superintendent of Public Instruction to provide biennial reports to the Legislative Management regarding the academic performance of students participating in virtual instruction. The bill allows the attendance of students participating in virtual instruction to comply with the compulsory attendance law and required the attendance be verified by monitoring progress on academic pacing guides developed by the school district to ensure students are in attendance and receiving sufficient instruction.

Senate Bill No. 2289 (2021), which creates a new North Dakota scholarship, provides the requirement for student eligibility for the scholarship is to achieve a 95 percent attendance rate unless the student maintains scholarship eligibility by satisfying other alternative criteria.

House Bill No. 1232 (2021) allows school districts to satisfy school calendar length requirements by providing virtual instruction. The bill also allows school districts and nonpublic schools to adopt policies allowing for virtual instruction which comply with school calendar requirements and rules adopted by the Superintendent of Public Instruction.

### **Failed**

House Bill No. 1467 (2021), as introduced, would have allowed parents to provide educational instruction through pod learning if the Governor declares a statewide state of disaster or emergency that affects the ability of schools to satisfy curriculum and testing requirements. "Pod education" was defined as a program of instruction in which parents may collaborate on the creation of lessons and the delivery of instruction to students outside the classroom during emergencies when in-person classroom instruction is not feasible. The bill would have required parents to file information with the student's school district, and also would have required parents to meet certain educational standards to be eligible to supervise the pod instruction. The bill also would have required the instruction to include the subjects required by state law and consist of at least 4 hours of instruction for at least 175 days per year. The bill would have exempted the students participating in pod education from the compulsory attendance requirements of Chapter 15.1-20. The bill failed to pass the House.

### **PREVIOUS COMPULSORY SCHOOL ATTENDANCE STUDY**

In 1985-86, the interim Education Committee was directed to study whether the state's compulsory school attendance law should be revised to accommodate alternative methods of student instruction. The final report indicated the interim committee reviewed the compulsory attendance laws and noted all school-age children in the state were required to attend state-approved school with limited exceptions. The committee also reviewed the requirements for a school to be approved in the state. The committee noted the law required school district personnel to review possible violations of the compulsory attendance law and required state's attorneys to prosecute violations. The penalty for violations in 1985 was an infraction. According to the study, in 1985 approximately 35 states allowed compulsory attendance exceptions for home school instruction under certain circumstances. The committee reviewed a number of United States Supreme Court and North Dakota Supreme Court challenges to compulsory attendance laws. In all cases the North Dakota Supreme Court upheld the state's compulsory school attendance laws against challenges. The committee reviewed Senate Bill No. 2263 (1985), which would have provided an exception to the compulsory attendance requirement for home school instruction that complied with certain criteria. However, the bill failed to pass the Senate. The committee also received extensive testimony from proponents and opponents of suggested amendments to the compulsory attendance law to allow for home school exceptions and to remove state approval over the curriculum of church-affiliated schools. The committee made no recommendation with respect to amendments to the state compulsory school attendance law.

### **STUDY APPROACH**

In conducting this study, the committee may wish to receive testimony from representatives of:

- The Department of Public Instruction regarding whether current state compulsory attendance laws are commensurate with current best practices, the impact of COVID-19 and virtual instruction on attendance rates, and rules adopted by the Superintendent of Public Instruction to govern changes to school calendar length and method of instruction in light of newly enacted legislation that allows for virtual instruction and education outside of the classroom;
- Other stakeholder groups regarding any perceived issues with compulsory attendance laws and suggestions for possible amendments;
- Other states regarding their compulsory attendance laws, how those states differ from North Dakota, and any efficiencies those states have found regarding attendance and policies to minimize truancy issues; and
- Organizations such as the Education Commission of the States and the National Conference of State Legislatures regarding compulsory attendance law trends and best practices.