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JULY 2013

Excellence in North Dakota public education through local school board governance ■ VOL XXXVIII ISSUE 7

Federal Government Delays Implementation of IRS Rules for Affordable Care Act

On July 2, 2013, the U.S. Department of the Treasury (Department) announced that it will provide an additional year before the Affordable Care Act (ACA) mandatory employer and insurer reporting requirements and financial penalties begin. Under the mandate, employers with 50 employees or more were required to provide affordable health coverage to their employees working 30 hours or more per week or pay a penalty (\$2,000 per worker if they provided no coverage; \$3,000 per worker if their coverage was considered unaffordable).

The purpose of the delay, as stated by the Department, is to allow them to consider ways to simplify new reporting requirements consistent with the law. It will also provide time to adapt health coverage and reporting systems while employers are moving toward making

health coverage affordable and accessible for their employees. Formal guidance describing this transition will be published by the Department, with proposed rules expected this summer.

On March 18, 2013, The National School Boards Association (NSBA) filed a comprehensive response to IRS proposed rules implementing ACA to explain to the agency the unanticipated impact certain provisions of the proposed rule may have on public school

districts ranging from calculation of service hours to large employer determinations. In its comments to the IRS, NSBA raised concerns about challenges the proposed rules would have on school employment arrangements such as long- vs. short-term teaching substitutes with consecutive assignment, independent contractors, additional extracurricular duty providers, re-hired retired employees, and even pay for school board members.

Convention Committee Members Sought

Several months prior to each NDSBA Annual Convention, three committees are selected to assist with the convention process. The **Nominating Committee** recommends a slate of candidates to be presented to the Delegate Assembly. A **Credentials Committee** oversees

the registration process, reports appropriate numbers to the Delegate Assembly, ensures delegates are properly seated, and counts floor votes when required. The **Ballot Counting Committee** counts ballots and verifies election results.

NDSBA members are encouraged to serve on one of these committees. If you are interested, please call NDSBA by **August 1**.

NDSBA Service Award Program

NDSBA recognizes board members for their professional development, service, and participation. Awards are made in two categories based on a point system: **Veteran Board Members** (100 points) and **Master Board Members** (200 points). Members who have participated in National School Boards Association events receive their award "with distinction." Awards are presented at NDSBA's Annual Convention.

Business managers should maintain scoring forms for board members and update them each year. Business managers should send a copy to NDSBA when 100 and 200 points have been earned. Forms are available at www.ndsba.org

under the "Services" link. Also available on the webpage is a spreadsheet that may be useful to record board members' yearly activities. Some service activity or participation areas may not be listed on the form.

If you have a board member who participates in something that is not listed or you have other questions about point categories, please call the NDSBA office.

A copy of the qualifying board member's form must be received by NDSBA **no later than Friday, September 13**.



Next Step in Tax Relief is with Local Officials

By Rep. Mike Nathe, R-Bismarck,
District 30, Chairman of the House
Education Committee

In funding \$850 million in property tax relief, the 2013 North Dakota Legislature has done its part to reduce your local property tax bill. Now it is up to local elected officials to do their part and hold the line on spending and property tax increases due to rising home values.

The state does not set property taxes, does not collect them, and the state certainly does not spend property taxes. The power over local property taxes is given to local entities such as cities, counties, park districts, townships and schools. The state does, however, have the power to allocate money to buy down local property taxes using state money.

That is what we did during the last session.

The state has a constitutional obligation to help fund education and, as a result of the work done during the 2013 session, the state will now fund about 80 percent of school districts' budgets.

The legislature appropriated more than \$1 billion for school operations and \$656 million in state-funded property tax relief for schools. This school property

tax relief replaces school funding that would have been drawn from local property taxes.

To reform the state's school property tax system, the new education funding model also contains restrictions on the percentage of home value or mills that school districts can levy. Any mill levy over the state limit for a school district would have to be approved by a vote of residents of the school district.

The legislature also provided \$200 million in a state-funded property tax credit. This credit will be deducted from your overall annual property tax bill. The combined property tax relief packages should cut an average 40 percent off of your 2013 property tax bill.

Whether or not all this property tax relief will end up in your pocket is now in the hands of the local governments. These local government officials have the choice of passing the state-funded

tax relief on to their taxpayers or letting rising values and increased spending consume part or all of the state-funded property tax relief. Taxpayers and voters must hold their local elected officials accountable for how this tax relief is managed.

Even in the face of rising values, these boards and commissions will have the choice to reduce the local property taxes to ensure local taxpayers realize the tax relief intended by the state legislature. Legislators have heard the call from the citizens of North Dakota to reduce property taxes and have responded by providing more than \$850 million in property tax relief. Now it is up to the local governments to do their part.

Candidates for North Dakota Teacher of the Year

Ten teachers are being considered for the 2014 North Dakota Teacher of the Year award. It is the mission of the State and National Teacher of the Year program to recognize and honor contributions of the American classroom teacher. Teachers from each state have an opportunity to be selected "National Teacher of the Year." The program is a project of the Council of Chief State School Officers, i.e., state superintendents.

Members of the screening committee—including North Dakota's current Teacher of the Year, Andrea Noonan from West Fargo—are reviewing applications with the goal of narrowing the field down to four finalists. Interviews with finalists are scheduled for August 26.

Ten outstanding teachers have been nominated this year: Mary Carlson, 7th and 8th grade English and math, Edgeley; Julie Jaeger, K-6 Talented and Gifted, Minot; Rebecca Hoffman, Early Childhood Special Education, Bismarck; Andy Braaten, math/science, Carrington; Joan Petrick, social studies, Makoti; Aaron Knodel, English language arts, West Fargo; Kristi Shanenko, English/communication, Valley City; David Midgarden, English, Fargo; Debra Nelson, biology, Bottineau; and Kaley Mills, preschool and kindergarten, Westhope.

NDSBA thanks North Dakota's teachers for their dedication and commitment. The association is proud to recognize this year's nominees for the state's top teaching award.

Human Resource Collaborative Update – New I-9 Form

The U.S. Citizenship and Immigration Services (USCIS) issued a revised Employment Eligibility Verification Form I-9 on March 8, 2013. This form is used for verifying the identity and employment authorization of individuals hired for employment in the United States. All employers are required to complete a Form I-9 for each employee hired in their organization; whether they are full time, part time, permanent or temporary; including interns. One of the major changes made to this form is newly hired employees must complete and sign Section 1 of the form **no later than the first day of employment**. The prior form states the employer is responsible for ensuring that Section 1 is timely and properly completed.

After May 7, 2013, employers must only use Form I-9 (Rev. 03/08/13). The revision date can be found on the lower left corner of the form.

Employers should not complete a new Form I-9 for current employees if a properly completed Form I-9 is already on file. Form I-9 must be retained and stored by the employer either for three years after the date of hire or for one year after employment is terminated, whichever is later. The link to access the new form is <http://www.uscis.gov/files/form/i-9.pdf>.

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your Q our A

By Annette Bendish,
NDSBA Legal Counsel

Another open meeting opinion was issued by the North Dakota Attorney General on June 12, 2013. The issue in this opinion was whether the school board violated the open meeting law by: (1) failing to provide public notice of an executive session, (2) failing to follow proper procedures for conducting an executive session, and (3) holding an executive session that was not authorized by law. The opinion answered several questions regarding open meetings, executive session, and criminal history record checks. The complete opinion can be found at <http://www.ag.nd.gov/Opinions/2013/OR-OM/2013-O-09.pdf>.

Q: Must the meeting notice include notice of executive session?

A: Yes, unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity, including notice of any executive sessions expected or anticipated to be held. N.D. Cent. Code §44-04-20(1).

Q: Must the subject matter of the executive session be included in the notice?

A: Yes, the notice must contain general subject matter of any executive session expected or anticipated to be held during the meeting. N.D. Cent. Code §44-04-20(2).

Q: Are regular meetings restricted to the agenda topics included in the notice?

A: No, unlike special meetings, regular meetings need not be restricted to agenda topics included in the notice. N.D.A.G. 2000-O-10. However, a notice of a regular meeting, if practicable, should include all topics the governing body expects to consider when the notice is prepared. N.D. Cent. Code §44-04-20(2). Flexibility of regular meeting agendas does not relieve a governing body of the legal obligation to include in the notice topics known to be

considered during the meeting.

Q: What process must be followed to hold an executive session?

A: Prior to holding an executive session, the governing body must announce both legal authority for the session and general topics to be discussed or considered. N.D. Cent. Code §44-04-19.2; N.D.A.G. 2003-O-22.

Q: Are topics discussed during an executive session limited?

A: Yes, topics discussed during the executive session must be limited to those announced during the open portion of the meeting and topics allowed by law. N.D. Cent. Code §44-04-19.2(2)(d).

Q: Can a governing body go into executive session to discuss personnel matters?

A: No, general personnel matters are not confidential and there is no legal authority to have those discussions in executive session. See generally N.D.A.G. 2008-O-02; N.D.A.G. 2003-O-22; N.D.A.G. 2000-O-09. Mere reference to a personnel matter is insufficient to identify the legal authority required by N.D. Cent. Code §44-04-19.2.

Q: Must the executive session be recorded?

A: Yes, all closed meetings of a governing body must be recorded electronically or on audiotape or videotape. N.D. Cent. Code §44-04-19.2(5).

Q: What do we do with the recording after the executive session?

A: The audiotape or videotape should be placed in an envelope, sealed,



marked, and stored with minutes from the open meeting. An electronic recording should be saved to some form of electronic storage, marked, and stored with minutes from the open meeting. The recording must be maintained by the public entity for a minimum of six months after the executive session. N.D. Cent. Code §44-04-19.2(5).

Q: Do we have to keep minutes of the executive session?

A: No, although all executive sessions must be recorded, minutes of executive sessions need not be kept. See North Dakota Open Meetings Manual p.17 found at <http://www.ag.nd.gov/Manuals/OROMManuals/2013OpenMeetingsManual.pdf>

Q: Do we have to reference the executive session in the regular meeting minutes?

A: Yes, minutes of an open meeting during which an executive session is held must indicate names of members attending the executive session, date and time the executive session was called to order and adjourned, a summary of general topics discussed or considered that does not disclose any closed or confidential information, and legal authority for holding the executive session. N.D. Cent. Code §44-04-19.2(4)

Q: Is there a penalty for disclosing confidential information to the public?

A: Yes, disclosing confidential information to the public is generally punishable as a class C felony. N.D. Cent. Code §12.1-13-01.

Q: Am I required to complete a criminal history record check on new employees?

A: Yes, North Dakota law requires that all individuals hired after June 30, 2011, and having unsupervised contact with students at the school have undergone a criminal history record check required by the school district or undergone a criminal history background check in order to be licensed by a state licensing board. N.D. Cent. Code §15.1-06-06(1)(f).

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Q: What is the difference between a criminal history record check and a background check?

A: A criminal history record check is a search of confidential law enforcement databases, cross-referencing by the person's name, date of birth, social security number, and other specific identifiers (including fingerprints). Extensive cross-referencing ensures that the result relates only to that person, even if the person has used several names or there are other individuals with the same name. By law, only the North Dakota Bureau of Criminal Investigation (BCI) can supply a criminal history record check. Criminal history records are confidential, and any board discussion about a criminal history record shall be held in executive session.

A background check is often just a search of publicly available online records (such as court records, sex offender registries, and other unofficial sources), cross-referencing only by the person's name. These public records may have data for more than one person with the same name or may be out of date. If you have a question about information included on a background check report, you must contact the private company directly.

ESEA Moves to the Next Step

The House of Representatives Majority Leader, Rep. Eric Cantor (R-VA), announced that the full House may consider the Student Success Act, (H.R. 5) in mid-July. This is the House of Representatives' bill to reauthorize the Elementary and Secondary Education Act (ESEA). The National School Boards Association voiced its support for H.R. 5, while urging the committee to restore maintenance of effort (MOE) provisions and to lift proposed caps on education funding. Of particular interest to school boards is the significantly increased authority and flexibility to be returned to states and local school boards to more effectively address unique circumstances and innovations needed to improve student achievement and to close the achievement gap within our local school populations. There has been no announcement concerning when the full Senate will consider its bill "Strengthening America's Schools Act" (S. 1094) reported out of committee on June 12.

DEADLINE ALERTS

NDSBA dues should be received by July 31.

Resolutions must be received in the NDSBA office no later than 4:00 p.m. on Monday, August 12.



mark your calendar

2013 School Law Seminar

October 24, 2013
Ramkota Hotel, Bismarck

2013 NDSBA Annual Convention

October 25-26, 2013
Ramkota Hotel, Bismarck

2014 NSBA Annual Conference

April 5-7, 2014
New Orleans, LA

2014 NDSBA Annual Convention

October 23-25, 2014
Ramkota Hotel, Bismarck

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