Proposed Change to NDSBA Constitution

At their June 9-10, 2013, board retreat, the NDSBA Board of Directors approved a motion to amend the Constitution to require elected officers of the association to have served as a regional director. The proposed language is underlined below in the appropriate section of the Constitution. This change will be presented, discussed, and voted on by the Delegate Assembly during the business meeting on Saturday, October 26, 2013.

ARTICLE VI
ASSOCIATION OFFICERS
Section 1: Composition

Officers of the association shall be a president, vice president, and executive director/secretary-treasurer. President and vice president shall be elected by delegates at the annual meeting for one-year terms, eligible to succeed themselves once. Eligibility to be elected president or vice president requires an individual to have served as a regional director. The Board of Directors shall appoint the executive director to serve as secretary-treasurer. Duties of such officers shall be as herein provided.

Delegate Assembly Information

NDSBA’s Annual Convention is an excellent event for board member development. It is also the time NDSBA elects state board members and adopts resolutions that drive our legislative agenda.

Resolutions are voted on at the Delegate Assembly where registered delegates are responsible to cast votes representing their local boards. Resolutions that are passed dictate NDSBA’s collective legislative position on critical issues. It is important to review proposed resolutions as a board so your delegates come prepared.

Convention delegates and alternates should be clearly noted on the district’s registration form that must be received in the NDSBA office no later than October 11 in order to vote at Delegate Assembly. Only those registered as alternates BY THIS DEADLINE will be allowed to substitute for a registered delegate. There will be no exceptions.

If your board votes to bring a resolution to the convention floor for consideration by the Delegate Assembly, the following process must be followed:

- Have 400 copies of your resolution ready to distribute at the close of the First Business Session on Friday afternoon.
- At the Second Business Session on Saturday morning, the chair will ask if there are resolutions that were distributed on Friday. At that time, a delegate from your board must come to the microphone and move the resolution. A delegate from a different board must make the second.
- Once a motion and second have been made, your resolution will be debated and voted on by the Delegate Assembly.

Online Question Submission Form for NDSBA Convention

NDSBA will offer a question-and-answer session for both business managers and board members at the Annual Convention. Attendees may submit their questions for these sessions in advance online by visiting the website at www.ndsba.org and clicking on the link to the online submission form.

NDCSA Annual School Law Seminar

The 34th Annual School Law Seminar, sponsored by the North Dakota Council of School Attorneys (NDCSA), will be held on Thursday, October 24, 2013. This one-day seminar kicks off the NDSBA Annual Convention. An outstanding line-up of speakers and topics will be offered to assist and inform school attorneys, school board members, administrators, and business managers about current legal issues for schools.

SPECIAL EDUCATION LAW AND LEAST-RESTRICTIVE ENVIRONMENT

Julie Weatherly, Esq., Founder of RISE, Inc., located in Mobile, Alabama, will provide information on hot topics in special education law and least-restrictive environment for special education students.

RISE is a full-service legal and consulting firm that assists educational agencies in the avoidance and resolution of special education legal disputes arising under IDEA, Section 504 of the Rehabilitation Act of 1973, ADA, and other applicable laws.

CURRENT DEVELOPMENTS IN SCHOOL LAW

NDSBA staff members Annette Bendish and Alyssa Martin will present an update on current developments in school law and policy including statutory changes as a result of the 2013 Legislative Assembly, recent North Dakota Attorney General Opinions, and state and national court cases.

CLASSIFIED STAFF ISSUES

Amy DeKok, shareholder at the Bismarck office of Fredrikson and Byron, will give a presentation regarding classified staff issues including wage
Update on the Reauthorization of the Elementary and Secondary Education Act

The No Child Left Behind Act (NCLB), initially authorized in 1965 as the Elementary and Secondary Education Act (ESEA), which was signed into law on January 8, 2002, is the major federal law impacting K-12 education. In the intervening eleven years, local school districts continue to struggle to comply with the law at a time when unintended consequences of this complex law are imposing far more dysfunctional and illogical implementation problems than had been anticipated.

Clearly, it’s time for this Act to be discussed, debated, and changed. As North Dakota State Superintendent Kirsten Baesler said to our Congressional delegation, “It might not be a long time since ESEA was reauthorized in Congressional terms, but for students, that’s their entire primary and secondary education.”

A bill drafted by the National School Boards Association with bi-partisan support, the Local School Board Governance and Flexibility Act (H.R. 1386), will help rein in the U.S. Department of Education’s authority in the absence of federal legislation and restores greater flexibility to local school boards. This legislation also ensures that the U.S. Department of Education fulfills its role as policy implementer rather than policymaker and will perform that role with proper recognition of governance. Significant portions of H.R. 1386 were incorporated into the House version of the ESEA bill, The Student Success Act, (H.R. 5), which passed the House on July 19 on a 221-207 vote. We are pleased that ND Congressman Kevin Cramer voted in favor of the bill.

On the Senate side, the Health, Education, Labor and Pensions Committee passed its version of ESEA, Strengthening America’s Schools (S. 1094) on June 12. The Senate has not scheduled a floor vote.

Reggie Felton, Assistant Executive Director for Congressional Relations at the National School Boards Association, has been in touch with U.S. Senator Heidi Heitkamp’s office. He expressed his desire to have her introduce a companion bill to the Local School Board Governance and Flexibility Act (H.R. 1386). Unfortunately, Alison Grigonis, aide to Senator Heitkamp, told Reggie that the Senator is not looking to introduce any companion legislation at this time but will keep the request in mind for the future should circumstances change.

Recently, I met with Shawn Affolter, Legislative Aide to U.S. Senator John Hoeven, and we discussed the reauthorization of ESEA along with important components of the Local School Board Governance and Flexibility Act. It is our hope that Senator Hoeven will lend his support to this federal legislation and continue to champion education as he did while serving as North Dakota’s governor.

The National School Boards Association recently sent a letter to the Senate Health, Education, Labor and Pensions Committee to ensure that there are no further delays in the legislative process to reauthorize ESEA by requesting a Senate floor vote on Strengthening America’s Schools Act (S. 1094) within the next 30 days.

Once the Senate passes its version of ESEA, a joint House-Senate Committee will be appointed to negotiate final language between the House bill (H.R. 5) and the Senate bill (S. 1094), followed by Senate and House adoption before going to President Obama for signature.

It’s time to get out from under this flawed, unworkable, and overly burdensome federal legislation.
Access to School Records

As school starts, questions arise regarding student records and who has access to a student's records, especially when a student is living with only one parent, a guardian, family member, or other caretaker. Students' education records are protected under the Family Education Rights and Privacy Act (FERPA). FERPA prohibits school personnel from releasing information about students' education and behavior without written parental permission.

Q: Who has access to a student's records?
A: Typically both parents are entitled to equal access to the student's educational records, regardless of who has custody and who has visitation. This may be modified by the court. In that case, you should request a copy of the court judgment defining who has legal custody of the student.

Q: Does a school have to provide parents with a copy of their child's education records if they request them?
A: Yes, schools must honor a parent's request to review his or her child's education records.

Q: If a student is living with someone other than a parent or legal guardian, can the school district release the student's records to that individual?
A: No, FERPA does not allow you to release information to that individual unless the parent consents to the release in writing.

Q: Can a school district release a student's education record without a parent's permission?
A: No, FERPA generally prohibits school districts from releasing federal funds from the Department of Education from disclosing student information that alone or in combination with other information can identify that student, without the prior written consent of a parent or the student (if that student is 18 years of age or older or attends a postsecondary institution). 20 U.S.C. §1232g

However, FERPA does allow schools to disclose records, without consent, to the following parties or under the following conditions:
- Specified officials for audit or evaluation purposes
- Organizations conducting certain studies for or on behalf of the school
- Accrediting organizations
- To comply with a judicial order or a lawfully issued subpoena

See 34 CFR § 99.31 for the full list of exceptions to the consent requirement.

Q: What is directory information and when can it be disclosed?
A: Consult your policy for your district's definition of directory information. Typically, directory information is general information including student and parent names, addresses, phone numbers, grade level, weight and height of members of athletic teams, and dates of attendance. Schools may disclose, without consent, directory information unless the student's parent has opted out of release.

Each year schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request, in writing, that the school not disclose their directory information. 20 U.S.C. §1232g

Q: If parents are divorced or separated who can pick up the student from school?
A: The parent with physical custody may pick up the child. The parent may also designate who is allowed to pick the student up from school in accordance with any court judgment and school policy.

Q: How should a teacher or school district handle a custody dispute?
A: Teachers and other school officials need to remain impartial. Do not offer testimony or written affidavits in support of one parent. If two parents get into an argument on school property, the school should contact law enforcement. School personnel should not make decisions for the parents or attempt to intervene.

Q: Can a teacher or school district disclose information from a student's education record in response to a subpoena?
A: Yes, if certain conditions are met. Educational agencies or institutions may disclose information pursuant to a court order or lawfully issued subpoena only if the school makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action. Additionally, schools must comply with FERPA's record keeping requirements under 34 CFR § 99.32 and 20 U.S.C. §1232g when disclosing information pursuant to a standard court order or subpoena.

If you have questions regarding a subpoena or other legal document, contact NDSBA or independent legal counsel.

Q: Is a school district required to notify parents if law enforcement or the Department of Human Services wants to interview a student?
A: The notification depends on the scope of the interview.

When police arrive on school property, consult your school district policy regarding student interrogations. Police do not have a right to interview a student on school property or remove students from school property for purposes of an interview. Administrators shall encourage law enforcement to schedule interviews with students at times when students are not under the district's jurisdiction. If the interview is conducted on campus, parents should be notified and provide consent. If an attempt to notify a parent is made and the parent cannot be reached, you can request that law enforcement make alternative arrangements with the student and parent to conduct the interview off campus.

If the interview is in response to a report of child abuse or neglect, North Dakota Century Code allows the Department of Human Services or a law enforcement agency to interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who currently resides or who has resided with the person responsible for the child's welfare or the alleged perpetrator. This interview may be conducted at school, a child care facility, or any other place where the alleged abused or neglected child or other child is found. N.D. Cent. Code §50-25.1-05

When these child abuse or neglect interviews are conducted on school property, the department or appropriate law enforcement agency shall notify the school principal or other appropriate school administrator of its intent to conduct an interview on school property under section 50-25.1-05. The school administrator may not disclose the nature of the notification or any other related information concerning the interview to any person, including a person responsible for the child's welfare. The school administrator and department or law enforcement agency shall make every effort to reduce the disruption of the educational program of the child, other students, or school staff when an interview is conducted on school property. N.D. Cent. Code §50-25.1-05.6

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Q: Is a school counselor required to disclose information made during a counseling interview?
A: No, for the purpose of counseling in a school system, any elementary or secondary school counselor possessing a valid North Dakota guidance credential from the Department of Public Instruction and who has been duly appointed a counselor for a school system by its proper authority, shall be legally immune from disclosing any privileged or confidential communication made to such counselor in a counseling interview. N.D. Cent. Code §31-01-06.1. However, the information shall be disclosed when requested by the counselee.

Q: Are medical records covered under FERPA?
A: If the records are made or maintained by a medical professional and the records are used only for treatment of a student and made available only to those persons providing the treatment, they are not considered education records under FERPA. These records are governed by strict confidentiality provisions of other laws, as well as the professional ethics of the medical professionals.

If the medical information is included in the student's education file, it is covered under FERPA.

**Convention Rooms**
If you have sleeping rooms reserved at the Ramkota Hotel for the 2013 NDSBA Annual Convention, you must give them a specific name for each reserved room by October 2, or the rooms will be released.

If a room is reserved for both Thursday and Friday nights and the guest does not arrive on Thursday, the reservation will automatically be canceled for the second night.

Ramkota Hotel reservations (701)258-7700; fax (701)224-8212.

**YOU’RE INVITED**
Please plan to attend the School Law Seminar on Thursday, October 24, at the Ramkota Hotel in Bismarck. The registration form was mailed to your school district and is also available at www.ndsba.org. Please register early to take advantage of the reduced registration fee and to ensure availability of printed materials. We look forward to seeing you!

**SCHOOL LAW SEMINAR**
and hour and FLSA, ADA and reasonable accommodation, termination of at-will employees, evaluations, and FMLA.

**PROVIDING MEDICATION IN SCHOOLS**
NDSBA staff members Alyssa Martin and Annette Bendish will provide an overview of the new state law on providing medication in schools and appropriate policies, practices, and safeguards that need to be in place to ensure that your district receives liability protection under the law.

**OPEN MEETINGS**
Back by popular demand, Mary Kae Kelsch, director of the State and Local Division of the North Dakota Attorney General’s Office, will explain North Dakota open meeting laws and how they apply to school board meetings.

**SEARCH AND SEIZURE**
Annette Bendish will present information regarding search and seizure procedure and the law--specifically searches at extracurricular activities.

The day will conclude with the NDCSA annual meeting and directors meeting.