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Board Ethics

There is no legally imposed code of ethics for school board members in North Dakota. Each local school board may adopt its own code of ethics if desired. Sample policies on this topic are available from NDSBA.

A law passed in 1991 (15.1-09-32) mandates that each newly elected board member take an in-service program offered by NDSBA. In addition, board members need to be familiar with the following state statutes and operate within the parameters determined by state law:

- School board powers (15.1-09-33)
- Conflict of interest related to school district contracts (15.1-07-17)
- Conflict of interest (44-04-22)

New Board Members

After winning the election, then what? Many people conduct a successful campaign for a seat on the local school board and then begin to find out what's involved.

All candidates should attend board meetings during the campaign, and successful candidates should certainly attend meetings held between the election and the meeting when they take office.

New board members should be aware that the school board only exists when it sits in a legal meeting; other than that, individual members have no board power.

A new member should express opinions articulately, but for some time, try to do more listening than talking. Boardmanship is an art and a science that is nurtured and matured over a long period involving much experience.

New members should be prepared to devote an inordinate amount of time to being a board member. The local public school is a model of grass-roots democracy at work--it is a good process, but it takes time, compromise, and a lot of hard work.

New board members can expect to be singled out in the community and to be bombarded with questions and complaints. These must be handled cautiously. It is essential that a new board member immediately learn the "chain of command" for complaints and refer constituents to the proper staff member.

NDSBA does a number of things to help new board members. A New Member Seminar is offered in conjunction with the NDSBA Annual Convention. Law mandates that each newly elected board member attend this seminar within one year of assuming office (NDCC 15.1-09-32). NDSBA also offers publications to assist new board members and new board officers including *So You Want to Be a School Board Member* and *Call to Order*.

Board Organization

The school board is created by law to maintain public schools within a given school district. Individual board members exercise their authority only when the board is actually in session and not individually outside of the board meeting. Decisions and policies of the board are agreed on only in official board meetings, and individual members should not commit the board to any action except as authorized by the board at a legal board meeting.

School districts may increase or decrease the size of their school boards only as prescribed in NDCC 15.1-09-01. Boards in reorganized districts are often elected from geographic precincts. The board may, by resolution, change to voting "at large." Law allows reorganized school districts to change the boundaries of their geographic precincts by a simple majority of the electors voting (NDCC 15.1-12-21).

The only stated requirement for membership on a school board is that the person be a qualified voter of the district. The North Dakota Supreme Court has stated that a person holding such office cannot work directly for the district in an incompatible position (see footnote at NDCC 15.1-07-17). Newly elected board members must take an inservice program offered by NDSBA within one year of assuming office (NDCC 15.1-09-32).

Throughout law, there is reference to a concept that a board member serves until a successor is elected and qualified. This is generally interpreted to mean that a newly elected member will actually take the seat at the annual meeting after the previous board has completed unfinished business and after the new member has taken the oath of office.

At the annual meeting (a date in July following the annual election), the board shall elect a president. The president can be a vital factor in the success of the board's operation (NDCC 15.1-09-30 and 15.1-09-27). The business manager, who is also the treasurer, is employed by the board but is not a member of the board.

Vacancies that occur on the board may be filled by board appointment or through a special election. Should a board be confronted with a vacancy, a careful review of NDCC 15.1-09-05 is in order and then, if questions remain, contact NDSBA. Law provides for appointment of a board member by the State Board of Public School Education should the number of members fall below a quorum.

Under provisions of NDCC 44-08-23 a school board may remove a member that they appointed.

State law also allows for recall of elected officials of political subdivisions, including school board members (NDCC 44-08-21). The Secretary of State's Office has published a pamphlet entitled *How to Recall an Elected Official of the State or Political Subdivision*. We would suggest making it a part of the board's reference library.

Board Meetings

NDCC 15.1-09-30 establishes the annual meeting of the school board to be in July, following the annual election. The board president is required to select a meeting date that is convenient to the other board members and provide board members with written notice of the meeting. It is at this meeting that new members take office and the board organizes itself.

The same law also prescribes that:

- Boards shall hold a regular meeting for transaction of business once each calendar month after the annual meeting. One and two-room schools meet as often as needed but not less than four times each year.
- Special meetings may be called by the president or any two members of the board.
- For both emergency and special meetings, written or printed notice must be given to each board member. Attendance by all board members at any meeting without objection constitutes a waiver of the requirement for written notice to them (NDCC 15.1-09-30 and 44-04-20).

In addition:

- Notice must be (a) filed with the county auditor, or (b) posted on the district's Website and posted at the school office. NDCC 44-04-20(3)
- On the day of the meeting, notice must be posted at the place of the meeting. NDCC 44-04-20(4)
- Notice of emergency or special meetings must also be given to the district's official newspaper and any media requesting notice. NDCC 44-04-20(6)
- Notice of all meetings shall include the date, time, and location of the meeting and, if practicable, the topics to be considered. The notice must also contain the general subject matter of any executive session expected to be held during the meeting (NDCC 44-04-20(2)). The business manager keeps minutes of every meeting of the school board.
- All meetings must be open (NDCC 15.1-07-21); however, portions of open meetings may be closed to address certain matters. Such executive (or closed) sessions are permitted in nonrenewal and discharge procedures as covered in NDCC 15.1-15-06, 15.1-15-08, 15.1-14-06, and 15.1-14-10; to instruct negotiators or meet with an attorney when the board may reasonably predict that it may be involved in litigation (NDCC 44-04-19.1); to discuss student educational records, including health and medical information contained therein (Family Educational Records Privacy Act (FERPA)); to consider suspension or expulsion of a student (FERPA and Attorney General's Opinion No. 94-28); or to discuss employee medical records (NDCC 44-04-18.1).

- All committees of the board, regardless of whether there are any board members on the committee, are subject to the state's open meeting laws (NDCC 44-04-17.1(6)).
- NDCC 15.1-09-29 specifies that a quorum exists when a majority of elected school board members are present. Agreement of the majority of those present is sufficient for transaction of almost all business. (**Note:** Conflict of interest is dealt with in NDCC 15.1-07-17 and 44-04-22.) Some items may require unanimous approval. (See NDCC 15.1-15-10, Subsection 4, and NDCC 15.1-07-17 for examples.)
- General powers and duties of the board are stated in NDCC 15.1-09-33.
- Duties of the president are listed in NDCC 15.1-09-28. A booklet of procedures for North Dakota school boards to follow when conducting meetings is entitled *Call to Order* and is available from the NDSBA office.
- Business manager's duties are outlined in NDCC 15.1-07-21. The board may add other duties.
- Integral to the business manager's role as treasurer are requirements for handling the activities fund (NDCC 15.1-07-10) and all other moneys (NDCC 15.1-07-24).
- Minutes and other records are public domain (NDCC 15.1-07-25). The business manager should always maintain such documents so they are understandable and complete.

Presiding at a Board Meeting

Success of the entire district is often determined by virtue of what is done by the president of the school board. It is a far more demanding position than most people realize. Some very important decisions and comments may come from the president, and it is imperative that the president, the rest of the board, and everyone else understand the role. Duties of the president are noted in NDCC 15.1-09-28.

The president (chairman) may introduce or second a motion unless it is prohibited by local board policy. It is generally preferred to state the desire to have one made (entertain). The president must vote on all issues.

The president of a school board in North Dakota has authority to call special meetings within the limits of the statutes governing board meetings (NDCC 15.1-09-30).

In order to avoid harassment, by either special interest groups or individuals presenting themselves as advocates of select bodies, the board president should be thoroughly familiar with *Robert's Rules of Order*, the agenda which the board has adopted, and the techniques of dealing with pressure tactics. The board is an elected body charged with great responsibility and entitled to a certain dignity becoming the office. A board meeting is a business meeting held in public—not a public forum.

NDSBA has published a handbook for school board presidents, *Call to Order*, to help them conduct efficient and productive meetings.

Board Authority and Responsibility

General powers and duties of North Dakota school boards are specified in NDCC 15.1-09-33. Board members exercise their authority only when the board is actually in session and not individually outside of the meeting. Decisions and policies of the board can only be made in official board meetings, and individual members should not commit the board to any action except as authorized by the board at a legal board meeting.

School boards have functions that cover four broad areas:

- A. Planning and Goal Setting - Joint effort between the board, staff, and community to establish short-term and long-range goals and objectives for the district.
- B. Policy Making (Legislative) - Adoption of general guidelines (policy) within which the administration operates the district on a day-to-day basis. The superintendent should recommend and provide supportive data; then the board should accept, reject, or modify the superintendent's recommendation.
- C. Judicial - Function of the board to hear facts in a controversy involving students or district employees and then, based upon a fair and impartial hearing (trial), to make a decision (verdict) [e.g., nonrenewals, discharges, suspensions, expulsions]. This is perhaps the most weighty aspect of being a board member and has the most potential to lead to litigation.
- D. Appraisal and Evaluation – Role of the board in improving student achievement includes evaluation of the school's program and curriculum and a proper evaluation procedure for personnel. The only persons the board should directly evaluate are the superintendent and business manager; the evaluation of all other personnel is the responsibility of the superintendent. It is the board's responsibility to formulate a policy that requires evaluation of all staff and then to ascertain that the superintendent is in fact causing evaluation to happen.

Minutes and Records

Minutes should be neatly produced, filed in chronological order in a binder or in some permanent file, and should be available at all board meetings for quick reference. They should be as simple as possible yet tell exactly what ACTION the board took, what topics were discussed, and what motions were made (NDCC 44-04-21). Minutes should not contain editorializing by the business manager or anyone else. It is important to record any split vote to conform to the law (NDCC 44-04-21). In order for a motion to be reconsidered, it must be brought back by a person who voted with the majority and at the same meeting. A motion to rescind may be made at any subsequent meeting by any member of the board so long as nothing has been done as a result of the motion that cannot be undone. For further information, consult *Robert's Rules*.

- Minutes are the history of what actions the school board has taken. It is prescribed in law that the business manager is responsible for keeping these minutes (NDCC 15.1-07-21).
- The minutes of open school board meetings are public record and the public has a right to review minutes.
- If, as is the case in most districts, the minutes and proceedings are published as the result of mandates from elections (NDCC 15.1-09-31), then it is incumbent on the district, and especially the business manager, that such information be supplied to the media completely and in a timely fashion.
- Published minutes must contain an itemized list of all bills approved for payment. This includes either a list, by name, of all payroll checks each month or a once-a-year publication of contract amounts and hourly rates listed by individual name.
- Minutes, prior to being declared official, must come back before the board for approval. There are no official minutes for a meeting until they are reviewed, corrected (if necessary), and approved by the board. Any release or publication of minutes prior to approval should have a disclaimer indicating they are unofficial.
- Minutes should be signed by the person responsible for taking them (district business manager) and, when approved, they should be signed by both the business manager and the president of the board.
- Minutes taken in executive sessions are somewhat different. These minutes should be properly secured and NOT RELEASED unless so instructed by a judge of competent jurisdiction. All closed sessions must be recorded electronically or on an audiotape or videotape. (NDCC 44.04-19.2)
- Business managers are urged to become familiar with the NDSBA publication *Call to Order*, pertinent sections of the *Century Code*, *Robert's Rules of Order* regarding taking and keeping minutes, and the Office of Attorney General *Open Records Manual* and *Open Meetings Manual*.

Board Evaluation

School boards often become so involved in evaluation of the district's programs, progress of students, performance of administration, and performance of teachers that they may overlook evaluating their own performance.

This process of evaluation should be incorporated into the district's philosophy and policy. Boards should be willing to submit, individually and as a body, to some sort of questioning or interview process. Questions should be focused on some specific items that all boards and board members should be doing.

These items include the extent to which the board is accomplishing its mission, the manner in which it relates to other groups, extent to which it practices discernment and objectivity, the way in which it interacts, audience sensitivity, advocacy for education, orientation toward performance, and orientation toward growth.

NDSBA has developed a sample school board evaluation form that is available on NDSBA's Webpage under Resources, School Board Self-Evaluation.

Workshops and Seminars

It is difficult for board members to take time away from their regular employment and family responsibilities to attend programs designed to help them become better at boardsmanship. Therefore, NDSBA makes an effort to combine relevant and timely topics in the following manner:

1. Seminars for business managers, the Council of School Attorneys, and new school board members are held in conjunction with the annual convention. State law mandates that each newly elected board member attend an in-service program offered by NDSBA within one year of assuming office (NDCC 15.1-09-32).
2. In February or March of each year, NDSBA conducts an intensive negotiations seminar. In conjunction with the seminar, NDSBA provides a training session on teacher nonrenewals.
3. As needs arise, NDSBA is prepared to visit with any group, at any time, to share information that will help school board members fulfill their responsibilities.

Boardsmanship Recognition and Training

NDSBA recognizes board members for their professional development and service on two levels: *Veteran Board Member* and *Master Board Member*. A point system has been adopted whereby each opportunity carries a specific value. When a board member has earned 100 points, a certificate will be awarded designating the individual as a *Veteran Board Member*. When 200 points are earned, the designation is *Master Board Member* and a certificate and lapel pin will be awarded. Recipients are recognized at the NDSBA Annual Convention.

Board members who participate in national meetings earn their certificate "with distinction."

Business managers have information about this program, and boards are encouraged to submit names of local members who might qualify. This is a good way to give recognition to those who have provided distinguished service.

Elections

All districts should have certain materials available for immediate reference. Some that will be needed for elections include:

- A. Current copy of the North Dakota Century School Code and current supplements. See NDCC 16.1 on elections.
- B. *Election Laws*, a booklet available from the Secretary of State that is a complete set of all state election laws.
- C. Copy of legal notice of election.
- D. Samples of news releases concerning the election.
- E. Statement of Interest forms for candidates (financial disclosure).
- F. Poll books with tally lists and official returns.
- G. Instructions to Voters materials.
- H. Notice of Election and official oath for school board members.
- I. Certificate of Election and qualifications of school officers.
- J. Certificate of selection of president and business manager of school board.
- K. Voter's affidavit.
- L. Affidavit of challenged elector.
- M. Absentee ballot materials.
- N. Information packets for specific types of elections, available from the Department of Public Instruction.
- O. The latest copy of *Election Officials' Manual*, published by the Secretary of State.
- P. A pamphlet published by the Secretary of State, *How to Recall an Elected Official of the State or Political Subdivision*.

In addition to help available from NDSBA, you may also obtain assistance from the Secretary of State, Department of Public Instruction, the North Dakota Association of School Business Managers, the state's attorney for your county, your local school district's attorney, and your county superintendent.

Resource Materials

School boards should keep certain vital sources of reference handy. Almost every item identified below is available either free of charge or at a reasonable cost.

Recommended items include:

- A. *Handbook for School Board Members*. Produced by NDSBA, this handbook addresses problems most frequently encountered by boards and is available on NDSBA's Website.
- B. Local district's current written policy. This document is the working plan for the district.
- C. Complete copy of the board's minutes from past meetings.
- D. Basic *North Dakota Century School Code* with the latest supplements, available from the Department of Public Instruction.
- E. During the legislative session, NDSBA posts weekly updates on its Website under Legislation.
- F. Department of Public Instruction's *Educational Directory*, available on its Website at www.dpi.state.nd.us under Resources.
- G. School boards need to be familiar with the proper way to conduct a meeting. A copy of *Robert's Rules of Order, Revised*, can be purchased at any bookstore.
- H. NDSBA publishes an *Unemployment Insurance Operations Manual* for Group Account members. Information contained therein is applicable to all forms of coverage and can be valuable to all districts.
- I. NDSBA *Bulletin*, published monthly and distributed to approximately 2,000 persons, contains information on current issues. We recommend a file of these newsletters be retained for reference. Past issues are available on the NDSBA Website under Resources.
- J. NDSBA publishes a *Negotiations Basics Handbook* that should be readily accessible—especially during negotiations.
- K. NDSBA publication *So You Want to be a School Board Member* contains basic information regarding school boards.
- L. NDSBA publication *Call to Order* provides information for presiding at school board meetings.
- M. *Becoming a Better Board Member*, published by the National School Boards Association.
- N. NDSBA's *Policy Ponderings*, a monthly online newsletter available to members of Policy Services.

Multidistrict Units

Through the use of multidistrict units, school districts benefit by working together.

Regional Education Associations

School districts in various parts of the state have entered into a joint powers agreement for the purpose of providing improved educational services within the geographic area of members. Membership in a Regional Education Association (REA) is voluntary.

Any school district, political subdivision, agency, or organization may be a member of a Regional Education Association by obtaining authority from its governing body and signing an agreement, with concurrence by resolution of current members of the REA.

The governing body of the REA consists of one board member appointed by each member school district.

The 2003 Legislative Assembly provided funding (NDCC 15.1-27-40) for those school districts participating in an REA wishing to receive reimbursement for expenses. Required criteria are outlined in NDCC 15.1-07-28, and the superintendent of public instruction must approve the agreement.

Legislation passed in 2007 provides the following:

- An REA may employ an individual to serve as a school district business manager or contract with any person to perform duties assigned to a school district business manager.
- Requires all members of the governing board to be school board members.
- An REA may prepare an annual plan regarding provision of special education and related services, including transportation of students enrolled in member districts.
- A portion of foundation aid will be paid directly to the REA in the same time and manner as other state aid payments.

Cooperatives

North Dakota law allows school districts to cooperate in the provision of educational services:

- School districts operating under an academic cooperative agreement approved by the superintendent of public instruction may participate in multiboard meetings as long as those meetings are concerned with cooperative activities (NDCC 15.1-09-30).

- School districts may employ a superintendent jointly with one or more other districts (NDCC 15.1-09-55).
- Districts cooperating with each other in the joint provision of educational services under a plan approved by the superintendent of public instruction are considered to be a single district (NDCC 15.1-29-03) for the purpose of providing one or more grade levels.

Special Education Multidistricts

Districts wishing to establish a multidistrict unit may petition the superintendent of public instruction, who will approve or disapprove based upon submitted plans. The plan submitted to the Department of Public Instruction must include the number of members on the multidistrict special education board, how each district will be represented, selection of officers, terms of office, meeting times, requirements for a quorum, and such other items as may be required by regulation of the superintendent of public instruction. The superintendent of public instruction must approve the plans annually.

School boards of participating districts appoint representatives on the multidistrict board. Compensation for board members is governed by NDCC 15.1-33-05. For a thorough explanation of legal requirements governing multidistrict special education, see NDCC Chapter 15.1-33.

Career and Technical Education Multidistricts

Area Career and Technical Education Centers conduct programs of vocational education (NDCC chapter 15-20.2). They are composed of three or more school districts and must have a plan approved by the State Board for Vocational and Technical Education. They are governed by a board of representatives from participating districts. Board members must be members of their local school boards.

Open Enrollment

Open enrollment became a reality in 1993 and is controlled by NDCC chapter 15.1-31. This law establishes an application period whereby parents can apply to enroll their children in a district other than the district of residence. Board approval by the receiving board is necessary on all open enrollment applications.

The Department of Public Instruction provides open enrollment application forms and instructional guidelines to be used by school districts. Be sure you are using current information available from DPI.

NDSBA Policy Services has developed a sample policy on this topic. If more information is needed, please contact DPI or the NDSBA office.

Title IX

1. "NO PERSON . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."

Title IX of the Education Amendments of 1972, as stated above, applies to each and every school and student in the United States. Congress designed the requirements of this law to be easy to implement and easy for students and staff to understand. Requirements are:

- A. Establishment and notification of the school's nondiscrimination policy
- B. Designation of a Title IX coordinator
- C. Adoption of an affirmative action grievance procedure
- D. Annual self-evaluation

These procedures are required to be in place and to be understood and usable for all students and staff. If these policies and procedures are not in place or are unknown/unusable to the students and staff, the school is considered to be "out of compliance" and is then open to the consequences of noncompliance.

2. What is Title IX?

Title IX of the Education Amendments of 1972 is a law enacted by Congress to prohibit sex discrimination in schools and colleges receiving federal money.

3. Who is protected by Title IX?

Under Title IX, female and male students of all ages and races are entitled to equal access and treatment. This means kindergarten, elementary, high school, and university students, as well as all those who attend vocational and technical schools. Title IX also protects teachers and other adults involved in the field of education.

4. What kind of protection does Title IX offer men?

With Title IX's coverage, young men, just as young women, must be given equal encouragement and opportunities to study whatever interests them—music, writing, nursing, computer science, home economics—and not what society has deemed appropriate.

5. What were the conditions that necessitated the passage of Title IX?

Before Title IX became law, there were often double standards in education programs throughout this country:

- A. Many colleges required women to have SAT scores 30-40 points higher than men.
- B. A major standardized test which measured interests and aptitude of high school students used a separate scoring system for females and males. For example, although a female student may have exhibited similar skill and interest in science as her male peer, she was advised to pursue nursing rather than medicine.
- C. No colleges or universities offered women athletic scholarships.
- D. Some schools assigned male teachers to grades 4-7 and females to the lower grades.
- E. Most schools had very few athletic opportunities for female students.

6. How is Title IX enforced?

Schools should be advised that the U. S. Supreme Court has ruled that monetary damages are available to victims of intentional discrimination. Students and staff no longer need to use internal procedures but may hire an attorney and proceed directly to court. Courts will then view policies and procedures to determine if it harbors a learning environment that is intimidating, hostile, or offensive. Schools, students, and parents may also contact the Office for Civil Rights (which is a branch of the U. S. Department of Education) to request them to review a school for compliance or to file a complaint of discrimination. Compliance with Title IX policies and procedures protects the school because good faith compliance with Title IX helps the school defend against accusations of discrimination.

For assistance at the state level,
contact:

Educational Equity Coordinator
Department of Public Instruction
600 E. Boulevard, 9th Floor
Bismarck ND 58505-0440

For assistance at the federal
level, contact:

U. S. Department of Education
Office for Civil Rights, Region VIII
930 Ward Parkway, Floor 2, Suite 2037
Kansas City MO 64114

Privacy and Confidentiality

Recent times have seen a strong legal emphasis on some very important dimensions of personal privacy in schools.

- A. Education records of students are confidential and disclosure is controlled by the Family Educational Rights and Privacy Act (FERPA). Release of any non-directory information from any student file should be preceded by specific authorization from the parent/guardian (or student, if 18 years of age or older) that clearly states what is going to be released and to whom. Law contains exceptions to the parental consent requirement. For example, copies of student records may be sent to another school in which the student has enrolled without specific permission if the district has informed students and parents of that practice. Other exceptions to the parental consent requirement are contained in FERPA under 34 CFR § 99.31.
- B. Personnel files are public record except for certain items of personal information (see NDCC 44-04-18.1). In addition, NDCC 15.1-07-25 allows school districts to exempt certain personnel records during an administrative investigation. Every district should have a procedure that allows for the orderly review of these files. NDCC 15.1-17-01 gives information about materials in teachers' files and about maintaining such files.

It is common for schools to be asked for various mailing lists of students and staff persons. It is strongly recommended that each district have a clear written policy that controls the release of such information. Lists of children are exempt from the open records law. However, federal law requires districts to provide lists to military officials upon request. Also, NDCC 15.1-07-25.1 requires that the names, addresses, and telephone numbers of students in grades 10 and 11 be provided by schools to the North Dakota University System.

Confidentiality of student records also extends to conversations in the teachers' lounge and hallways. Districts are urged to have policies that make violation of that confidentiality subject to disciplinary action.

Information retained about a person—student or staff member—must be accessible to that person and legitimate representatives of that person.

District Record Retention

It is sometimes difficult to determine which specific items must be retained and which can be discarded by public schools. Storage becomes an increasing problem for many schools, and it is apparent that some guidelines are necessary to assist schools in properly maintaining their files.

Under the provisions of NDCC 21-06-04, some documents must be kept permanently while others may be destroyed (NDCC 21-06-05), after being offered to the state archivist.

NDCC 21-06-06 specifies the proper procedure for destruction of records.

NDSBA has developed a record retention schedule that provides comprehensive guidance on record retention requirements and recommendations for schools. This document can be purchased for a nominal fee from NDSBA.

Annexation, Reorganization, and Dissolution

Boundaries of a school district in North Dakota may be modified by annexation, dissolution, or reorganization. These terms are defined in state statute (15.1-12-01) as follows:

1. Annexation – alteration of a school district’s boundaries through removal of real property from one district and its attachment to another contiguous school district. (The term “contiguous” means two or more tracts of real property which share a common point or that would share a common point but for an intervening road or right-of-way.)
2. Dissolution – process through which a school district ceases to function and the subsequent attachment of its real property to other school districts. *This is a decision that can be made by the board.*
3. Reorganization – formation of a new school district through the combination, in whole or in part, of two or more school districts. *This requires a vote by the electorate.*

When considering any of these options, it is imperative that the board include the community in the discussions early on. The following process originated with the Monsanto Chemical Company, and although it was conceived with industry in mind, there does seem to be application to school business, especially the function of making decisions when a school closing is at hand.

- A. The process used to make this decision is a systematic putting together of facts and experience to provide better judgment on the part of the administrator (board). It is the organization of relevant information into a form that can be clearly understood and handled in the making of a choice.
- B. Some of the errors or pitfalls that should be avoided are: 1. Setting alternatives first, then objectives; 2. Failure to identify all the alternatives; 3. Treating all objectives with equal importance; 4. Coming up with a solution without assessing consequences; 5. Trying to keep track of events and facts “mentally”; 6. Disorganization.
- C. This choice or decision should follow the seven basic steps used in making any important decision: 1. Set objectives against which to choose; 2. Classify objectives as to importance; 3. Develop alternatives from which to choose; 4. Evaluate alternatives against the objectives; 5. Choose the best alternative as a tentative solution; 6. Assess adverse consequences from that tentative solution; 7. Control effects of final decision.

This is not intended to suggest making these kinds of decisions by a formula and totally eliminating subjectivity. It simply points out that the process should be well thought out and organized so that the best decision is finally made.

Laws governing these procedures are found in NDCC Chapter 15.1-12. Assistance at any step of the process is available from NDSBA. The North Dakota Department of Public Instruction

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has also developed handbooks and additional resources to assist with annexation, reorganization and dissolution that are available at www.dpi.state.nd.us/finance/org/index.shtm.

Budget

A budget is the heart of fiscal management. To implement good management of a school district's funds, educational plans must be translated into dollar terms and thus become the mechanism through which these educational plans are realized.

The budget is a document that does three significant things:

- A. It is the educational plan and outlines educational opportunities that the district hopes to offer during the year.
- B. It is the spending plan by being the blueprint of specific allocation of funds for defined purposes in the educational plan.
- C. It is the revenue plan and presents a detailed analysis of sources of revenue required to meet expenditures.

It has both legal and accounting characteristics.

The budget must be approved after July 1 by the newly organized board and submitted to the Department of Public Instruction and to the county auditor on or before August 15. It may be amended on or before October 10 of each year (see NDCC 57-15-13 and 57-15-31.1). Prior to taking final action on a total mill levy that will result in a property tax increase (excluding new growth not taxable in the prior year), each school board must follow notice and hearing procedures set out in NDCC 57-15-02.1.

It is recommended that a careful review of NDCC Titles 21 and 57, Form SFN 9149 (Public School District Budget and Tax Levy), and the most current copies of DPI's school finance bulletins be undertaken prior to actually beginning work on the budget. Additional information may be obtained by calling the director of finance at the Department of Public Instruction.

Levies

A careful study of NDCC Title 57 is essential to understanding mill levies. The district property tax levy for the general fund is the primary source of local revenue. It is based on taxable valuation of the district. Below is a summary of state law on mill levies pertaining to schools as amended during the 2013 North Dakota Legislative Session.

Districts without Excess Mill Authorization

With the exception of districts whose patrons have voted for a specified or unlimited excess levy, school districts are limited to the following levies:

- **2013:** Up to 82 mills for the provision of education services and miscellaneous purposes and expenses. In addition to this 82 mill limit, the amount levied cannot exceed the following dollar amount:
(2013 taxable valuation x (sum of 60 mills)) + (2012 long distance learning/technology levy) + (2012 hazardous substances abatement, alternative education, and HVAC levies) = Total + (Total x 0.12) = Allowable dollar amount for 2013 levy
- **2014 and thereafter:** Up to 70 mills for the provision of educational services. In addition to this 70 mill limit, districts must not exceed the dollar amount levied the prior year plus 12%. Districts are also authorized to levy 12 mills on the taxable valuation for miscellaneous purposes and expenses.

There are special levy categories not considered in the above maximums, which can be enacted by a **simple majority** vote of a school board for tax years beginning in 2013 and thereafter. These mills are authorized by 57-15-14.2 and are as follows:

- A. Three (3) mills for a special reserve fund in accordance with NDCC Ch. 57-19.
- B. Number of mills necessary for tuition of students in grades 7-12 in accordance with NDCC 15.1-29-15. These mills must be deposited in a special tuition fund and may not be transferred.
- C. Building fund permitted by NDCC 15.1-09-49 and 57-15-16.
- D. Mills necessary to pay principal and interest on bonded indebtedness, including debt incurred under NDCC 57-15-17.1.

Districts with Excess Mill Authorization

Voters in each school district may authorize the school board to levy more than the above caps. Voters may grant authority for a school board to levy a **specified** number of mills beyond state caps or may authorize a school board to levy an **unlimited** number of mills beyond state caps. Each type of excess mill levy authority has certain restrictions under NDCC 57-15-14:

- **Specified mills:**
 - Authority to levy specified mills is terminated after tax year 2015. Voters must approve a specified mill levy by December 31, 2015, or the district will be subject to levy limitations under law.

- Levy reduction for 2013 and thereafter: If voters approved a specified excess mill levy before 2009, mills must be reduced to 115 as a condition of receiving state aid beginning in tax year 2013. If voters approved a specified excess mill levy after 2009, mills must be reduced by 40 mills as a condition of receiving state aid beginning in tax year 2013.
- **Unlimited mills:** Authority to levy unlimited mills is terminated after tax year 2015. Voters must approve a specified mill levy by December 31, 2015, or the district will be subject to levy limitations under law.

Revenue Bonds

Bonding activities of a district are complex and require the utmost in care and administration. Persons working in this area should become thoroughly familiar with NDCC Chapters 15.1-07-03 through 15.1-07-07 and 21-03. Districts anticipating a bond program are urged to secure competent legal advice.

Revenue bonds may be issued by a district to purchase, erect, enlarge, or improve school buildings and facilities, and for other reasons specified in NDCC 21-03-06(4) and (7), including purchase of bus equipment as specified by the Department of Public Instruction.

A 60 percent majority of voters is typically required to pass a bond issue election, except:

- A school board may, by a two-thirds vote, authorize and issue general obligation bonds to be paid by the building fund levy for the purposes of a construction or improvement project (NDCC 21-03-07 (7))
- A school district that creates a nonprofit corporation, as authorized by IRS ruling 63-20, for purposes of school construction projects and bond issuance must receive the approval of a majority of voters if the project will cost \$4 million or more. (NOTE: DPI approval of such projects is also required. See NDCC 21-03-06-1.1.)

If a district is unable to issue bonds in sufficient amounts within the normal five percent debt limit, a simple majority of qualified electors voting on the issue will increase the limit to ten percent (NDCC 21-03-04 (1)).

Sale of the bonds must be advertised in accordance with NDCC 21-03-05 and 21-03-06.

Financial assistance for school construction may also be sought from the State School Construction Fund (NDCC Chapter 15.1-36). Details about eligibility and procedure for application can be obtained from the Department of Public Instruction.

Federal Funding

The federal government provides funding for specific education programs. Some funds are for voluntary programs and some help defray costs of federally mandated programs. Titles of the programs, funding amounts, and regulations are frequently changing. To access the most current information on federal funding, go to the DPI Website at www.dpi.state.nd.us or the Website of the U.S. Department of Education at www.ed.gov.

Property Tax Assessment

Assessment is a process whereby a value is attached to property for the purpose of computing taxes based upon mills levied. Property is assessed at a percentage of its true and full value. Determination of actual value is dependent on the practices of the local assessor.

Assessment is to apply to all property—real and personal. However, there are numerous categories of exemption that, by elimination, define who and what is to be taxed.

Questions regarding the process of assessment should be directed to your county assessor, the State Tax Department, or the director of finance, Department of Public Instruction.

Certificates of Indebtedness

A certificate of indebtedness is simply an IOU that a school district gives to a lender, during the year of borrowing, pledging proceeds from taxes already levied. Total certificates issued may not exceed the amount of uncollected taxes levied for that year plus uncollected taxes for the four preceding years, minus the levies for sinking and interest purposes.

Districts contemplating issuance of these certificates should consult NDCC Chapter 21-02. Every detail must be followed to avoid costly mistakes.

The county auditor must verify the amount that a district may obligate by certificates of indebtedness and record the certificates. Certificates must have the auditor's certificate in addition to signatures of the board president and business manager.

Disposition of certificates of indebtedness requires the same procedure as the sale of bonds. The sale need not be advertised for bids if:

- the certificates are sold to the State Board of University and School Lands, the Bank of North Dakota, or the Municipal Bond Bank.
- other trust funds administered by public officials are invested in them.
- the total sum does not exceed \$100,000.

See NDCC Chapter 21-02 for more information or call the director of finance, Department of Public Instruction.

Depositories

NDCC Chapter 21-04, Depositories of Public Funds, prescribes limitations and requirements upon school districts in regard to depositing funds.

All moneys of a school district must be deposited in the Bank of North Dakota or any financial institution duly incorporated in the state or situated and doing business in the state. Any of these institutions may be designated as depositories by the board.

All moneys received by the business manager of a district must be deposited in the approved depository promptly upon receipt.

The school board need not select a depository on a bid basis. Selection may be made at any legal meeting without giving notice to financial institutions and without formal proposals (NDCC 21-04-15).

Since the business manager is by law the treasurer of the district and must sign each negotiable instrument drawn upon the district along with the board president, every business manager must be totally familiar with appropriate laws, regulations, and procedures (e.g., NDCC Ch. 21-04, 15.1-07-12, 15.1-07-24, Ch. 21-06, 44-08-13).

Investment of Funds

NDCC Chapter 21-04 prescribes the types of depositories to be used for public funds. This also applies to investments of those funds. The Bank of North Dakota or any financial institution duly incorporated in this state or situated and doing business in the state may be designated by the board as a depository.

There is an art and a science to investing public moneys. The art is knowing when and how, while the science is knowing the parameters set by law.

Districts receive funds in an erratic fashion. Usually there will be some surplus that will not immediately be needed to cover expenditures. The investor must be able to clearly and accurately determine cash flow and thus calculate how much surplus, if any, exists and for how long it will exist.

All school districts are eligible for interest-bearing checking accounts. This approach is the most basic form of investment. A simple passbook savings account is available to districts. This yields interest, is secure, and can be liquidated anytime.

When an amount of several thousand dollars, but less than \$100,000, is available, the money market certificate (not "fund") is recommended. The money is secured, but there is a substantial penalty for early withdrawal. Certificates of Deposit are usually considered for amounts of \$100,000 or more. The interest is negotiable and is normally slightly higher than the money market certificate rate.

Whenever a district has money in a financial institution in excess of \$100,000, that money must have a pledge of securities for 110 percent of every dollar over the hundred thousand. This pledge of securities guarantees the school's funds beyond the maximum covered by FDIC, FSLIC, or NCUA.

School districts may also invest surpluses in bonds, treasury bills and notes, or other securities that are a direct obligation of the treasury of the United States or an instrumentality of the United States, provided such investments are taken into consideration in making levies for the ensuing year. When funds from these investments are needed for current expenses, the school board must be authorized to convert said obligations into cash (see NDCC 21-06-07).

Funds of the district may be commingled for investment purposes. Extreme care should be exercised when using the sinking and interest funds for such purposes (see NDCC 21-03-43). Interest drawn must be credited back to the accounts in proportion to the amount invested from that fund.

Each July 1, a district must transfer from the special reserve fund to the general fund any amount that exceeds the amount that could be produced by a levy of 15 mills during that year (NDCC 57-19-02).

Insurance

NDCC Chapter 26.1-22, State Fire and Tornado Fund, requires buildings and contents belonging to political subdivisions of the state to be insured against fire, lightning, inherent explosion, windstorm, cyclone, tornado, hail, explosions, riot attending a strike, aircraft, smoke, and vehicles. They may also insure against risks of direct physical loss or indirect loss resulting out of one of the perils listed.

NDCC 15.1-09-59 requires that each school district work with its commercial property insurance carrier every six years to ensure school buildings, facilities, and contents are properly identified, inventoried, and accurately valued. This law also requires school districts to review insurance policies annually to ensure sufficient coverage for buildings, facilities, and contents in the event of loss.

School districts, Regional Education Associations (REAs), Special Education Units, and Career and Technical Education Centers are allowed to participate in a government self-insurance pool. The North Dakota Insurance Reserve Fund (NDRIF) was established for that purpose. [See Section 05-120.]

Property of schools may be insured with the State Fire and Tornado Fund, the North Dakota Insurance Reserve Fund, or a private insurance company. Such coverage can be purchased only from a company duly authorized to do business in this state [NDCC 15.1-09-33(12)].

Districts are authorized to carry motor vehicle (fleet) insurance through provisions of NDCC 39-01-08.

Bonding of personnel is a form of insurance and is discussed in Section 03-160.

Fringe benefits for staff often include insurance programs. This is discussed more under "Salaries and Fringe Benefits" in Section 06-60.

NDSBA coordinates unemployment insurance for school districts through the Group Account Unemployment Compensation Program. North Dakota requires all employers to provide Workers' Compensation (Workforce Safety and Insurance) for their employees.

Because of the constant possibility of lawsuits against districts or individuals, districts are urged to purchase coverage for directors and staff against actions brought because of errors and omissions while performing duties (NDCC 32-12.1-05).

Board Member Compensation and Reimbursement

Compensation

Board members may be compensated at a rate determined by their board (NDCC 15.1-09-06). This compensation must be reported to Workforce Safety and Insurance (Workers' Compensation). Social Security and Medicare taxes must be withheld and the district must contribute the employer's share on school board members' compensation if the board member receives more than \$50 per quarter. However, board member compensation is not included when reporting wages for unemployment compensation.

Reimbursement

Each board member may be reimbursed for all necessary meals, lodging, and travel expenses actually incurred while engaged in official business of the board at the same rate as provided for state officers and employees.

The State Office of Management and Budget sets reimbursement rates for lodging and mileage. Lodging rates will be 90 percent of the federal rates and mileage will be the same as federal rates. Federal rates for lodging and mileage change periodically but not on a set schedule. When rates change, NDSBA will publish an update in the *Bulletin*.

NDCC 44-08-04 divides the 24-hour day into four quarters and prescribes dollar amounts for each of these quarters to be paid to any official or employee discharging duties away from normal working and living residence. These payments are for meals.

Rates for lodging and meals can be found on OMB's website in the Fiscal and Administrative Policies document at: www.nd.gov/fiscal/accounting/rates/. Mileage reimbursement rates are determined by the U. S. General Services Administration and are available on NDSBA's Webpage under QuickClicks.

These prescribed rates are maximums and need not be paid in the full amount. Maximums are not negotiable.

Purchasing and Bidding Procedures

NDCC 15.1-09-33 grants boards authority to purchase, sell, exchange, improve and lease equipment, furniture, supplies, textbooks, and real property for up to one year.¹ Such actions must be performed within the framework of established policies, within limits of legal requirements, economically and efficiently, and in a manner that allows accounting and physical control. Each step of the purchasing process must be done openly and in a fashion that can be objectively documented.

- **Purchasing from local merchants:** There is often pressure to purchase from local merchants, which is perfectly acceptable, provided the product and price are competitive. Awards made simply because of the bidder's residence, however, can lead to legitimate concerns from other sellers and possible litigation.
- **Purchasing from state resident sellers:** Provisions of NDCC 44-08-01 indicate that a board shall give preference to bidders, sellers, and contractors who are residents of North Dakota. It prohibits exclusion of North Dakota bidders through the process of specifications. As defined by NDCC 44-08-02, a resident seller is one who has maintained a bona fide place of business in the state at least one year prior to the date on which the contract is awarded. North Dakota purchasing preference must be granted in accordance with the North Dakota Office of Management and Budget guidelines: www.nd.gov/spo/legal/docs/preference-laws.pdf
- **Prohibition on specifications related to labor unions:** State law prohibits any government unit (including school boards) from placing any criteria in bids related to organized labor or otherwise discriminating against a bid because of the bidder's or subcontractor's affiliation with labor unions, or lack thereof.

Minor Purchases

The board may designate a purchasing agent in policy. This individual may be authorized to issue purchase orders for minor purchases, as defined in policy, without prior approval of the board when budget appropriations will adequately cover the expense and formal bidding procedures are not required. The board should require the agent to maintain a purchasing record system. A list of purchases should be reviewed and receive final board approval at each regular meeting.

Major Purchases

Boards should define in policy what constitutes a major purchase. Such purchases must have board approval prior to the transaction and cannot be completed without such approval. Requests for these purchases should be in writing and include an executed statement of need, a description of the item needed, who needs it, for what purpose, when, and how much it costs. Even after board approval, if the purchase involves an excess of \$25,000 (except for items specifically exempted in 15.1-09-34), the award must be made on a bid basis.

Bidding

¹ A career and technical education facility purchased in accordance with 15.1-09-33 may be leased for up to 20 years.

When purchasing items governed by the bidding requirements in NDCC 15.1-09-34, boards must give at least ten days' notice in the district's official newspaper, receive sealed bids, and accept the bid of the lowest responsible bidder.

Bidding provisions specified in NDCC 15.1-09-34 do not apply to:

- A. Personal services by employees of the district
- B. Texts and reference books
- C. Articles not for sale on the open market
- D. Specific items to match those already in use
- E. Items so distinctive that only one source exists
- F. Building contracts over \$100,000 (see Title 48, NDCC)
- G. Transportation services purchased under 15.1-30-11
- H. Vehicle fuel purchased under 15.1-09-34.1
- I. Heating fuel purchased under 15.1-09-34.1
- J. Used motor vehicles purchased primarily for transportation of students
- K. Cooperative purchases with the state Office of Management and Budget under 54-44.4

Health Insurance

NDCC Chapter 15.1-09-53 allows contracts for health insurance to be up to six years in duration once the bidding requirements have been met.

Construction Projects

The definition of a construction project can be found in NDCC 48-01.2-01 and includes projects undertaken for purposes of alteration, repair, or improvement to a public structure, building, or property. In general, a board must advertise for bids when embarking on a construction project estimated to exceed \$100,000.² The advertisement procedure for such projects varies significantly from standard bid advertising procedures and can be found in NDCC 48-01.2-04 through 48-01.2-05. The procedure for opening bids and awarding contracts is outlined in NDCC 48-01.2-07 and allows a board to reject any and all bids.

Payment procedures for construction projects exceeding \$100,000 are outlined in NDCC 48-01.2-13. Construction projects exceeding \$100,000 must receive approval from the Department of Public Instruction. This approval requirement applies to non-profit corporations established by school districts under IRS ruling 63-20 for construction projects. For more information, go to: www.dpi.state.nd.us/finance/construct/.

² NDCC Chapter 48-01.2 allows governing bodies to hire a construction manager to handle all aspects of a construction project, even when a project is estimated to exceed \$100,000. The procedure for hiring such an individual is outlined in 48-01.2-20.

Fees - Student

Principal references for this subject are NDCC 15.1-09-36 and Attorney General's Opinions, State of North Dakota, dated April 23, 1990, and August 10, 2001.

15.1-09-36 School board — Authority over student fees strictly limits the fees a school district may charge any student.

Student fees not specifically allowed in law are illegal. If your district is unsure about a fee, you can request an opinion from the Department of Public Instruction. Districts that charge unauthorized fees are subject to loss of state per student aid.

Accounting and Bookkeeping

The Department of Public Instruction produces the *North Dakota School District Financial Accounting and Reporting Manual*. The manual serves as a vehicle for program cost accounting at the local level.

NDCC 15.1-02-08 requires the superintendent of public instruction to implement a uniform computerized system for the accounting, budgeting, and reporting of fiscal data for all school districts in the state. The superintendent of public instruction will recommend accounting software systems to be used by school districts.

Audits

Requirements for audit procedures are contained in NDCC 54-10-14. All fees for required audits must be paid by the school district.

At least once every two years, unless otherwise specified by state law, the state auditor shall audit the official financial records, accounts, and proceedings of all school districts in the state. Audits may be conducted more frequently if determined necessary by the state auditor or the local school board.

The school board may provide for an audit to be conducted by an independent certified public accountant or a licensed public accountant. The audit must contain specific information and be in such form as prescribed by the state auditor. This relieves the state auditor of the legislative mandates for performing the actual audits; however, a copy of the audit report must be filed with the state auditor at the same time the report is delivered to the school district. The state auditor will notify the school district and the auditing firm if the audit report does not meet required standards. The state auditor may charge a fee to the school district for the audit review. The school board may not pay the audit fee until the state auditor has accepted the report. School districts should notify the state auditor in a timely manner should a school district plan to change from an independent auditing firm to the services of the state auditor.

School districts receiving more than \$500,000 of federal funds annually must make certain that the audit is conducted in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.

With the exception of school districts that fall under the Single Audit Act requirements, the state auditor may, in lieu of conducting an audit every two years, require annual reports from districts with less than 100 enrolled students. When this requirement applies, specific financial information must be submitted to the state auditor for review. Further examination of the records may be required by the state auditor. The state auditor may charge a fee to the district for review of annual financial reports.

It is important to remember that the annual audit is not a fraud audit and should not be relied on as such.

Bonding School Officials

Information on the bonding of school officials may be obtained by reading Sections 15.1-07-23, 15.1-14-02, and Chapter 26.1-21, NDCC. This process is a form of insurance that pays the district a settlement, depending upon the limits of coverage, in the event that a person entrusted with school funds misappropriates the money to wrongful use.

Under the provisions of NDCC 26.1-21-10, all employees and officials of a political subdivision may be bonded through the State Bonding Fund simply by applying for such coverage and upon approval by the Commissioner of Insurance.

North Dakota law requires that all district business managers (who also are designated as treasurers by law) be bonded for not less than one-fourth the maximum amount of money in the business manager's control at any one time. Law also requires superintendents to be bonded for an amount established by the board, but not less than the actual amount subject to the superintendent's control at any one time.

Persons elected or appointed to office may furnish bonds issued by a duly authorized surety company, but public funds may not be used to pay for such bonds.

School Building Construction and Repair

Most building projects will be financed through a building fund levy (NDCC 57-15-16), sale of bonds (NDCC Chapter 21-03), or a loan from the school construction fund (NDCC Chapter 15.1-36) to be repaid through general fund levies.

Several laws require approval from the Department of Public Instruction and/or the State Fire Marshal before construction begins.

State law also contains approval requirements for school districts that create a non-profit corporation for purposes of school construction projects and bond issuance (see NDCC 21-03-06.1).

Contact the State Fire Marshal and the Department of Public Instruction for further information.

School Facilities Usage

One of the best public relations tools a board has is to allow groups to use the facilities. Under provisions of NDCC 15.1-06-14, school boards are allowed to permit use of school facilities, under proper restrictions, for any appropriate purpose when not in use for school activities. However, the board should be aware of potential liabilities occurring from use by other groups, and proper insurance arrangements should be required.

Religious and political groups of all denominations, parties, etc., must be given equal opportunity to use/lease school facilities.¹ The board may (and should) establish regulations for the use; most attach fees that are sufficient to cover utilities, custodial costs, etc. Districts have the responsibility and authority to assess charges for damage beyond normal wear and tear. A clear and concise policy should be developed and adopted by the board for this purpose.

NDCC 23-12-10 makes any place of public assembly a “no smoking” zone and NDCC 23-12-10.4 contains additional tobacco prohibition measures that must be followed by schools. This includes school properties. The Pro-Children Act of 1994 (PL 103-227) requires that any indoor facility must be smoke-free where education services that receive federal funds (whether directly or indirectly) are provided to persons under 18.

¹ NDCC 16.1-10-02 prohibits use of school property for political purposes (see law for definition) except: (a) through a lease/rental agreement, or (b) when use is for a political meeting required by law.

Fire, Disaster, and Lockdown Drills

North Dakota law requires fire, tornado, and other emergency or disaster drills, including lockdown drills (NDCC 15.1-06-12).

Each building is unique and should have plans specifically tailored to its configuration and conditions. Special attention should be given to accessible exits (NDCC 15.1-06-11).

Food Service

The Department of Public Instruction, under agreement with the United States Department of Agriculture, administers several programs related to nutrition and food distribution. Included are National School Lunch, School Breakfast, After School Snack, Summer Food Service, Child and Adult Care Food, Team Nutrition, and food distribution in schools.

A major source of information and guidance relative to food and nutrition programs is the Child Nutrition and Food Distribution Programs Unit of the Department of Public Instruction. The unit is a liaison between USDA and local schools. Through this partnership, food assistance is delivered to children and eligible recipients. DPI offers publications and training to assist schools with the food services program.

During the 2013-15 biennium, a school district may utilize funds under 15.1-27-03.1(n) to provide a mid-morning milk or juice break to students who qualify for free or reduced lunch.

Transportation

Transportation service must be equal for all students.

Districts that have high school students attending out-of-district facilities may either furnish vehicular transportation or pay a reasonable allowance for lodging.

The board of any district that is **not** reorganized may charge a fee to anyone riding on buses provided by the district. The amount of this fee is regulated by law (NDCC 15.1-30-05).

Districts may own buses and employ drivers or they may contract with private firms or individuals to provide transportation services.

Disciplinary authority of schools is carried on to buses—even those operated under contract—and the drivers are charged with control and discipline of the students while they are being transported.

Additional information is available from the Office of School Finance and Organization, Department of Public Instruction.

Bus and Vehicle Drivers

Commercial School Bus Drivers

ND law requires individuals transporting students in buses designed to transport 16 or more passengers obtain a commercial license with special endorsement from the ND Department of Transportation (DOT). DOT has special physical, medical, and testing requirements for commercial drivers. Please contact DOT for more details (www.dot.nd.gov).

School Vehicle Drivers

Vehicles designed to transport ten to fifteen passengers: NDCC 15.1-07-20 requires individuals transporting students in such vehicles to hold a ND driver's license, meet the physical and medical requirements established for commercial bus drivers, and complete annual training.

Vehicles designed to transport fewer than ten passengers: NDCC 15.1-07-20 requires individuals transporting students and/or passengers in these vehicles to hold a ND driver's license, meet certain physical and medical requirements, and pass any drug and alcohol screening required by the school board. At any time, a school board may request individuals undergo a physical examination by a health care professional designated by the board.

Training

Each year, usually in early fall, the North Dakota Safety Council, upon request, offers a series of seminars throughout the state for drivers of school buses and those who are required by law to undergo such training. When funds are available, NDSBA pays a portion of the cost for bus driver training. NDSBA strongly urges districts to send drivers to this seminar and to contact the Safety Council with any questions.

North Dakota School Boards Association

It is the philosophy of the North Dakota School Boards Association that boards and board members are first and foremost concerned about the quality of education that the young people of North Dakota receive through the public elementary and secondary schools under their governance.

The mission of the organization is to serve school boards and school board members, to stimulate their interest in matters pertaining to public schools, to keep them informed of trends in this state and elsewhere, to correlate the work of public schools and other interested agencies, and to be advocates for excellence in public education through local school board governance.

NDSBA provides a variety of services to its members. The Legal Services Program is included with association membership. NDSBA's in-house legal counsel is available during office hours to answer legal questions posed by school board members and administrators.

Policy Services is a subscription-based program designed to fit each individual district's needs. Services range from a monthly newsletter on the association's Web page, with relevant policy samples attached, to development and maintenance of a customized policy manual.

NDSBA members are able to participate in the unemployment insurance program (Group Account). Members of the Group Account are provided with claim monitoring as well as balanced payments toward their unemployment claims.

NDSBA staff members are available to assist districts with superintendent searches, boardmanship training, strategic planning, and facilitation of public meetings.

NDSBA provides legislative advocacy for local school board issues on the state and federal levels. NDSBA's Delegate Assembly adopts resolutions at the annual convention that become the association's legislative agenda. NDSBA staff and board of directors are actively involved in federal legislative activities, primarily through the National School Boards Association's Federal Relations Network.

NDSBA is governed by a seven-member board of directors elected by delegates at the annual convention. Members include a president, vice president, past president, and four regional directors. Documents containing NDSBA's Beliefs and Policies, along with all Standing Resolutions of the association, can be found on the NDSBA Web site at www.ndsba.org.

Questions about the association should be directed to the NDSBA office.

Title: North Dakota School Boards Association (NDSBA)
Mailing Address: P.O. Box 7128, Bismarck, ND 58507-7128
Street Address: 1224 West Owens Avenue, Bismarck, ND 58501
Telephone: 701-255-4127 or 1-800-932-8791
Fax: 701-258-7992
Web Page: www.ndsba.org

National School Boards Association

The National School Boards Association is a not-for-profit federation of state associations of school boards across the United States with a mission to foster excellence and equity in public education through school board leadership. To achieve that mission, NSBA represents the school board perspective before federal government agencies and with national organizations that affect education and provides vital information and services to state associations of school boards and local school boards throughout the nation.

NSBA advocates local school boards as the ultimate expression of grassroots democracy. NSBA supports the capacity of each school board—acting on behalf of and in close concert with the people of its community—to envision the future of education in its community, to establish a structure and environment that allow all students to reach their maximum potential, to provide accountability for the community on performance in the schools, and to serve as the key community advocate for children and youth and their public schools.

Working with its Federation Members, the state school boards associations, NSBA provides a variety of resources and services that support the work of local school board members across the nation.

- **Key Work of School Boards** – Provides a framework for vision and goal setting, change implementation, and continuous improvement to help your school board lead the way for improving student achievement in your district.
- **NSBA National Affiliates** – A national affiliate is a school district that has committed itself to the belief that excellence in public education today will produce the leaders of America tomorrow and is pursuing that commitment through its partnership with NSBA, its federation of state school boards associations, and with more than 2,500 other local districts throughout the nation.
- **NSBA's Advocacy Resources** – As the national advocate representing local governance of public education, NSBA provides an array of advocacy resources.
- **School Governance** – NSBA hosts a listserv focusing on issues of concern to school board members as they seek to lead districts and schools into the future.
- **School Law** – NSBA's Council of School Attorneys and Office of General Counsel provide an array of resources to help school boards anticipate, prevent, and overcome legal challenges.
- **Publications and Newsletters** – The *School Board News* and *American School Board Journal* provide news from the school board member's perspective on a variety of topics and deliver practical information on the complex issues facing educators today.

Inquiries for additional information may be made through NDSBA or directly to the National School Boards Association.

Title: National School Boards Association (NSBA)
Address: 1680 Duke Street, Alexandria, VA 22314
Telephone: 703-838-6722
Fax: 703-683-7590
Web Page: www.nsba.org

North Dakota Council of School Attorneys

The North Dakota Council of School Attorneys was formed to:

- A. Identify current legal problems of concern to those who advise school boards, to disseminate legal information and analyses to members, and to promote exchange of legal information and analyses among members.
- B. Provide a state forum on the practical legal problems faced by school attorneys related to their primary function of providing legal counsel, advice, and representation to school boards.
- C. Promote a closer and more understanding relationship between school attorneys and their client school board members and the North Dakota School Boards Association.

The Council is governed by a six-person board of directors consisting of a president, vice president, and four elected directors. NDSBA legal counsel is an ex officio director. The executive director of NDSBA is the secretary-treasurer and an ex officio board member.

To be a member, an attorney must represent a school district in North Dakota that is a member of NDSBA. This representation must be current or within the past calendar year. Current members are listed on the NDSBA Webpage under ND Council of School Attorneys.

The Council conducts a School Law Seminar annually in conjunction with the NDSBA Annual Convention. The seminar is open to NDCSA members, administrators, business managers, and school board members. Its focus is to update members and school officials on the latest developments in North Dakota school law and to identify those areas where school administrators may need to seek legal assistance.

School boards are encouraged to urge their local attorneys to become members and to become actively involved in this unique opportunity to update their knowledge in the specialized field of school law. It is permissible for school districts to pay their attorney's dues to this organization and registration to the School Law Seminar.

Title: North Dakota Council of School Attorneys (NDCSA)

Address: P.O. Box 7128, Bismarck, ND 58507-7128

Telephone: 701-255-4127 or 1-800-932-8791

Fax: 701-258-7992

North Dakota Association of School Business Managers

The purpose of this association is to provide training, networking, and professional growth opportunities to individuals employed as business managers for public school districts, special education units, or career and technology centers. NDASBM is governed by eight directors representing eight regions in the state.

Membership is open to all persons who perform duties similar to those of a business manager as outlined in North Dakota Century Code. Each district has a maximum of one vote in association business, and only active members in good standing may hold office or represent a district as a delegate. Non-voting associate memberships are available for other interested individuals.

More information is available by contacting NDSBA or through the NDASBM Website: *ndasbm.com*.

Department of Public Instruction

The mission of the North Dakota Department of Public Instruction is to ensure a uniform statewide system for effective learning. The Department is dedicated to providing assistance and serving as a resource for all school districts and related education organizations in North Dakota, as illustrated through its goals:

- Align all elements of public education to help students achieve academic success
- Promote health and wellness initiatives that provide a safe and nurturing environment that encourages community involvement and embraces diversity
- Ensure a comprehensive system of accountability for results-based decision making
- Build capacity to ensure a uniform education system that meets or exceeds established standards

The Superintendent of Public Instruction is required to enforce all state statutes and federal regulations pertaining to the establishment and maintenance of public schools and related programs; supervise ND School for the Deaf and the State Library; operate the Department of Public Instruction efficiently and effectively; expand delivery options that increase educational opportunities for all North Dakota citizens; evaluate and communicate educational policy and vision to all North Dakota residents; and serve as an advocate for adequate financial resources to support public education.

Title: Department of Public Instruction (DPI)

Address: 600 E. Boulevard Avenue, Department 201, Bismarck, ND 58505-0440

Telephone: 701-328-4570

Fax: 701-328-2461

Web Page: www.dpi.state.nd.us

State Board of Public School Education

The State Board of Public School Education consists of the superintendent of public instruction and one qualified elector appointed from each of six geographical districts described in NDCC 15.1-01-01. The governor makes these appointments.

The board serves as the decision-making body when matters are appealed through NDCC Chapter 15.1-29 (Nonresident Tuition and Reciprocity) and NDCC Chapter 15.1-12 (Annexation, Reorganization, and Dissolution).

Along with the executive director of Job Service North Dakota and the Chancellor of Higher Education (or designee), the board oversees the Department of Career and Technical Education.

Additional information may be obtained from the director of school finance and organization at the Department of Public Instruction.

North Dakota Council of Educational Leaders

The North Dakota Council of Educational Leaders is a confederation of nine administrator organizations in North Dakota:

- North Dakota Association of School Administrators
- North Dakota Association of Secondary School Principals
- North Dakota Association of Elementary School Principals
- North Dakota Association of County Superintendents
- North Dakota Association of School Business Officials
- North Dakota Interscholastic Athletic Administrators Association
- North Dakota Association of Local Administrators
- North Dakota Special Education Study Council
- North Dakota Association of Technology Leaders

These 700 administrators have joined together for the purposes of better communication, strengthened effort for mutual goals, greater professionalism, providing sound counsel for state and local decision-makers, and general improvement of their status.

Title: North Dakota Council of Educational Leaders (NDCEL)

Address: 121 East Rosser Avenue, Bismarck, ND 58501

Telephone: 701-258-3022

Fax: 701-258-9826

Web Page: <http://www.ndcel.org>

North Dakota Education Association

The North Dakota Education Association membership includes classroom teachers, school support staff workers, retired teachers, and future teachers. NDEA is part of the National Education Association with affiliates in each of the 50 states, Puerto Rico, and overseas schools.

Association policy is approved by a Representative Assembly of delegates from approximately 196 local associations across the state. Each local association is allowed at least one delegate to represent their membership, no matter how small. Delegates meet each year for a weekend in April to approve policy and a budget. The Association's 15-member Board of Directors meets about 10 times a year to oversee implementation of that policy and otherwise propose new policy and direct Association business.

NDEA is led by a full-time president who is elected for a two-year term and may run for three consecutive terms.

The Association's staff is headed by an executive director. The staff includes UniServ directors who live and work in the NDEA's six regions across the state, a director of communications, director of instruction and professional development, director of advocacy, business manager, and support staff.

Title: North Dakota Education Association (NDEA)
Address: 410 E. Thayer Avenue, Bismarck, ND 58501
Telephone: 701-223-0450 or 1-800-369-6332
Fax: 701-224-8535
Web Page: www.ndea.org

County Superintendent of Schools

North Dakota county superintendents are employed by county commissions. Qualifications for the position are specified in law (15.1-11-01, NDCC). Since 1995, county commissions have been allowed to choose not to employ a county superintendent with consent of a majority of school board presidents representing districts whose administrative headquarters are in the county.

County commissions choosing not to employ a county superintendent must set forth a written plan which assigns legally mandated duties to one or more persons. The plan must be approved by the superintendent of public instruction and filed with the Legislative Council.

Education Standards and Practices Board

The Education Standards and Practices Board was created to develop and revise codes and standards relating to ethics, conduct, performance, and practice of the teaching profession consistent with state law. The board promulgates standards for the preparation of teachers and reviews programs. ESPB determines criteria for teacher licensure. By law, standards include a consideration of character, educational preparation, and general fitness to teach in North Dakota schools.

ESPB adopts rules and regulations for issuance of licenses. The board may revoke or suspend a teacher's license for intemperance, immorality, cruelty, incompetence, commission of a crime, neglect or refusal to perform duties, breach of contract, violations of professional codes or standards, or any cause that would have prevented the license from being issued in the first place had the facts been known.

Title: Education Standards and Practices Board (ESPB)

Address: 2718 Gateway Avenue, Suite 303, Bismarck, ND 58503-0585

Telephone: 701-328-9641

Fax: 701-328-9647

Web Page: www.nd.gov/espb

North Dakota Insurance Reserve Fund

The North Dakota Insurance Reserve Fund is a not-for-profit, non-governmental corporation owned by its members. NDIRF's objective is to be a stable source of risk management services to North Dakota's political subdivisions by providing cost effective liability, automobile, and inland marine coverage.

North Dakota school boards are represented with a seat on the NDIRF board of directors. Member school districts receive the NDIRF newsletter that, along with the Web site, keep districts abreast of potential liability issues and ways to avoid exposure.

Title: North Dakota Insurance Reserve Fund (NDIRF)

Mailing Address: PO Box 2258, Bismarck, ND 58502-2258

Street Address: 1320 West Century Avenue, Bismarck, ND 58503

Telephone: 701-224-1988; ND Toll Free 1-800-421-1988

Fax: 701-224-0609

Web Page: <http://www.ndirf.com>

North Dakota Center for Distance Education

The ND Center for Distance Education (formerly the Division of Independent Study), which is under the umbrella of the North Dakota Educational Technology Council, offers grades 4-12 curriculum through correspondence and on-line. Students may expand studies beyond local course offerings and/or schedule classes that cannot be arranged locally. In all cases, the Center serves as a resource to the local school. Administrative approval from the local school district is required before students are accepted for enrollment. School district policies should include provisions for distance education as it pertains to graduation requirements.

The Center operates one of the largest public grades 6-12 correspondence and on-line schools in the country and serves students from every state and 40 foreign countries. More than 10,000 new subject enrollments are handled annually. Required and elective courses are offered to supplement elementary, middle, and high school curricula and to provide an alternative method of earning a diploma. An increasing number of schools are incorporating a regular class period during the school day for students to pursue their distance education under a manager of instruction who supervises student progress.

The Center for Distance Education is located on the campus of North Dakota State University in Fargo.

Title: North Dakota Center for Distance Education

Address: P.O Box 5036, Fargo, ND 58105-5036

Telephone: 701-231-6000

Fax: 701-231-6052

Web Page: www.ndcde.org

North Dakota High School Activities Association

The North Dakota High School Activities Association was created as a voluntary organization of high schools. Each member has joined by resolution of the local school board. The association functions within the framework of a constitution and bylaws. The General Assembly, composed of one voting delegate from each high school, convenes twice each year—once in January and again in October.

During the interim periods, the business of the association is conducted through a board of directors composed of eleven persons. The North Dakota School Boards Association and the Department of Public Instruction each have a representative on the board. The eight remaining persons are elected to their posts on the basis of four Class B schools and three Class A schools, apportioned geographically, one member of the Interscholastic Athletic Administrator Association, and one secondary principal. A full-time executive secretary and staff maintain an office in Valley City.

Services provided include determination of eligibility for students and sponsorship and coordination of all sports programs plus band, orchestra, choir, debate, drama, speech, and student council activities.

Title: North Dakota High School Activities Association (NDHSAA)

Mailing Address: P.O. Box 817, Valley City, ND 58072-0817

Street Address: 350 Second Street NW, Valley City, ND 58072

Telephone: 701-845-3953

Fax: 701-845-4935

Web Page: www.ndhsaa.com

Personnel Problems

Personnel problems come in two types: complaints **from** personnel and complaints **about** personnel.

Complaints **from** personnel often come in the form of a grievance. The district must follow its own grievance procedure so it is important that close attention be given to the procedure and the definition of a grievance ([see Section 06-12](#)).

Complaints **about** personnel should be directed to the administration if the complainant can't resolve the problem with the individual concerned. NDSBA recommends that boards refuse to hear complaints about personnel because of the potential for libel and slander and the danger of a flawed due process in the event of a later nonrenewal or discharge.

Grievance Procedure

A grievance is a complaint arising from circumstances or conditions relating to one's employment. A grievance procedure is a formal method for dealing with complaints expressed by an employee that allows school to continue without interruption during the process. Whether such complaint is formally recognized as a "grievance" depends on mechanics of the grievance procedure.

A grievance procedure should contain the following:

- A. A section that defines terms such as (but not limited to) "grievance" and "days." It is recommended that the definition of grievance exclude everything except application of terms of the individual contract or negotiated agreement.
- B. A time limitation for filing a grievance so that a valid grievance will receive prompt attention while not permitting events to be brought up so long after the fact that accurate data is not available. The procedure should state that failure to meet grievance filing deadlines shall be a waiver of that grievance.
- C. A statement emphasizing that the status quo prevails during the process and until a final solution is presented.
- D. Levels of appeal, beginning with the immediate supervisor and terminating with a review and final decision by either the board or superintendent. NDSBA recommends that an appeal to the superintendent be the final level of appeal. Grievance procedures should not contain provisions allowing or requiring third-party arbitration or mediation.

It is recommended that a grievance procedure **be limited to licensed staff** and further limited to complaints about application of the terms of an individual contract or negotiated agreement.

NDSBA strongly recommends that the grievance procedure be a part of policy and **not** in the negotiated agreement. Please call NDSBA if you have questions about the way your district is handling the grievance process.

Inservice

Inservice is the process by which teachers and administrators are given an opportunity to continue learning about teaching methods, classroom management, and specific subject areas. It can occur in a single district, in cooperation with neighboring districts, or statewide.

The board can create the environment and provide support to the administrator, but it is the administrator who must put it all into action. A plan for inservice training should:

- Meet staff needs
- Be organized
- Involve careful and detailed planning
- Include a variety of media

Some methods and vehicles for conducting an inservice session are workshops, seminars, faculty meetings (general and specific groups), and distribution of prepared materials. Regional Education Associations (REAs) provide regional inservice opportunities. The school calendar mandated by law includes days devoted to professional development (NDCC 15.1-06-04).

Participation in training opportunities should be encouraged because of the benefits to individual growth as well as the welfare of the total staff. Encouragement should also be given to individual teachers to fill gaps in their background of training and experience to help prepare them for advancement. Requirements for highly qualified teachers in the No Child Left Behind Act of 2001 include professional development.

Another area of inservice to consider involves classified staff. These employees frequently have to look to regional opportunities because they are often the only person doing that particular job in the district.

Licensing and Credentialing

The North Dakota Educator's Professional License is a basic requirement for teaching in the state, and upon it is built the credentialing system that enables teachers to perform in specialized fields. An applicant must have a bachelor's degree from an approved teacher training program within an accredited college or university. There are further specific course work requirements within the degree. Initial application requires a fee, as does the request for each renewal. Additional requirements may apply to teachers entering North Dakota who earned their license or certificate out of state (see NDCC 15.1-13-20.)

Under the provisions of NDCC 15.1-13-10, the Education Standards and Practices Board (ESPB) determines the criteria for teacher licensure.

Standards for licensure include character, adequate educational preparation, and general fitness to teach. A background check, including fingerprinting, is required of each applicant for initial licensure.

North Dakota will not issue a license to any teacher whose license in another state is suspended or revoked. Upon termination of such suspension or revocation, each case will be reviewed individually under the mandates of North Dakota law.

For assistance and information regarding licensure, see NDCC Chapters 15.1-09, 15.1-13, and 15.1-18, or contact the Education Standards and Practices Board.

In addition to the basic licenses issued by the ESPB, the Department of Public Instruction issues specialized credentials for educators who have more specific assignments. These include:

- A. Administrator (superintendent)
- B. Secondary Principal
- C. Elementary Principal
- D. Counselor
- E. Reading Specialist
- F. Drivers' Education Instructor
- G. Library Media Specialist
- H. Special Education (all areas)

More information is available by writing or calling the Education Standards and Practices Board (www.nd.gov/espb) or the Department of Public Instruction (www.dpi.state.nd.us).

Teacher Recruitment

Colleges and universities preparing teacher education candidates in North Dakota (both public and private) have collaborated to produce one list of education vacancies. If a district wishes to post an opening, they contact any one of the college or university placement offices. That placement office will then disseminate information to all other placement offices including Job Service North Dakota's Website at www.jobsnd.com.

Another good source of recruits is the central office of other districts that have received applications for vacancies. Some districts join together to hold "fairs" where unemployed teachers can make contact with districts that have vacancies. Colleges and universities may also sponsor job fairs.

Newspaper ads are also an avenue of recruitment. How widely to advertise will depend on the position to be filled.

Signing Bonuses

NDCC 15.1-09-33.1 allows school districts to pay signing bonuses (for purposes of recruiting) to teachers who did not teach in a public school in North Dakota the previous year. The bonus may be paid in a lump sum or over a period up to three years. There is no limit on the amount, and it does not become part of salary for continuing contract purposes.

Paying Off the Salary Schedule

NDCC 15.1-16-21 allows school districts unable to fill a position required for school approval to offer a salary above the negotiated salary schedule. In order to qualify, the teacher may not have taught in North Dakota in the past 12 months. There are strict timelines and procedures that must be followed. Refer to NDCC 15.1-16-21 before offering a salary off your schedule.

This is a recruiting tool allowed by law that you should not negotiate.

Continuing Contract Laws

Most teachers and administrators in North Dakota enjoy immediate job security under the laws governing their contracts. This protection is a statutory right and no amount of verbiage to the contrary written onto that contract changes the status of permanency. The only way to dissolve that contract is to go through the procedures prescribed for nonrenewal or discharge or for the person to resign (see 06-84, 06-90, and 06-93). The only exceptions are listed in NDCC 15.1-15-12.

“Teachers,” as covered by these provisions, include all teachers, principals, and assistant superintendents in all public schools in the state. Superintendents and directors of multidistrict special education units and area career and technology centers are entitled to due process under a separate law (see 06-92).

Be aware that a teacher is not bound to a contract for the ensuing year until a contract for that year is signed. NDSBA will continue to investigate possibilities for legislation that would bind the teacher to the same extent as the board.

Superintendent Selection

The selection of a new superintendent is one of the most important decisions a school board will make. The superintendent sets the tone and climate for instructional leadership, student achievement, fiscal responsibility, and communication within the school organization and in the community.

The North Dakota School Boards Association provides three options for guidance to school boards as they engage in the process of selecting a new education leader.

Option One

NDSBA provides a list of steps to follow and the search is conducted entirely by the local school board.

Option Two (Fee-based)

NDSBA provides partial assistance that includes the following search components:

- Supply an application form
- Participate in recruitment of candidates
- Review candidate applications
- Review a brochure developed by the district (if applicable)
- Review interview questions developed by the board and make suggestions
- Provide a list of questions that should NOT be asked
- Assist the board in conducting reference checks on applicants
- Discuss qualifications of finalists selected for an interview
- Review interview procedures

Option Three (Fee-based)

NDSBA provides full assistance that includes the following search components:

- Initial consultation with board members to provide an overview of the process
- Establish a timeline
- Assist the board in identifying the skills, qualities, and characteristics that an individual must possess to be a successful superintendent in the district
- Visit with administration, staff, teachers, students, and community members about the school district, community, and what they are looking for in the new superintendent
- Supply an application form
- Develop a brochure highlighting the school district and community
- Advertise and post the vacancy
- Participate in recruitment of candidates
- Screen applicants and conduct reference checks

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- Manage the application process including written correspondence
- Provide interview questions based on district needs
- Provide a list of questions that should NOT be asked
- Discuss qualification of finalists selected for an interview
- Review interview procedures
- Assist in developing a compensation package

Superintendent's Role

Public school districts are led by the school board and managed by a superintendent. The superintendent, who is selected by the school board, can be viewed as the chief administrative officer of the school system, overseeing all aspects of the schools' day-to-day operations and is directly responsible for administering educational programs and interpreting policies passed by the school board. Duties of the superintendent are outlined in law (NDCC 15.1-14-33). The school board delegates authority to the superintendent to deal with issues such as student conduct, management of classes, and assignment of staff members.

Although hiring authority is given to school boards through statute (NDCC 15.1-09-33), the board may (through policy) authorize the superintendent to hire and fire ancillary staff as well as interview and hire licensed staff. However, the school board has ultimate authority on hiring and firing district staff as well as authorizing contracts.

The school board is a group of elected residents of the community who approve the superintendent's requests and plans. This model of a superintendent selected by school board members—who are elected by the public—works to provide a system of checks, balances, and accountability.

School boards should avoid getting involved in what is properly the role of the superintendent. If a board finds itself making administrative decisions, it is time to examine the board/superintendent relationship. Schools that find themselves in serious trouble administratively usually have a problem with that relationship.

Superintendent's Contract

The contract between the superintendent and the school district is one of the most important documents that the board is required to develop. It is not appropriate to use a standard teacher contract for the agreement with the superintendent. Terms of the contract may be different than the teacher contract, and the benefits need to be spelled out in the contract as opposed to the negotiated agreement. NDSBA legal counsel has developed a sample contract for consideration that is available online and in the *Superintendent Selection, Evaluation, Nonrenewal, and Discharge Handbook*, available for purchase from NDSBA.

Superintendent Evaluation

Superintendents must be evaluated twice each year in accordance with Section 15.1-14-03, NDCC, with the first such evaluation to be completed **before December 15** and the second **before March 15**. This area is of utmost importance to boards since evaluation of the superintendent is mandatory for nonrenewal. It is also where evaluation of all staff begins.

Inherent in the process of evaluation is the potential for the appraisal of unsatisfactory performance. When this is the case, the term “unsatisfactory” should be used in each subject area where it is appropriate, and the board is required to clearly spell out (1) detailed findings, including the basis for the assessment in each area in which the superintendent’s performance is deemed unsatisfactory; and (2) recommendations for improvement in each area deemed unsatisfactory.

Sample evaluation forms are available on NDSBA’s Webpage under Resources, School Personnel Documents, and in the *Superintendent Selection, Evaluation, Nonrenewal, and Discharge Handbook*, available for purchase from NDSBA.

Business Manager of the District

Section 15.1-09-33, NDCC, authorizes the board to employ a business manager. A 30-day notice in writing is necessary to dismiss the business manager unless there is serious cause, in which case dismissal or suspension may be without prior notice.

NDCC 15.1-07-21 lists major duties of the business manager but other duties are found in Titles 21 and 57.

The business manager is charged by law with safekeeping of district funds and must be bonded. Only the business manager and the board president are authorized by law to sign checks on behalf of the district and only after the board has approved the expenditure. The law requires that both individuals sign every check and then only after the business manager ascertains that there are adequate funds in the account (NDCC 15.1-07-12 and 15.1-09-28). The only exceptions are the incidental revolving fund described in NDCC 15.1-07-11 and the delegation of certain specific bill paying authority given by board policy pursuant to NDCC 15.1-07-12.

It is important to note that the business manager works **for** the board and **with** the superintendent. Therefore, if an evaluation of the business manager is done, it should be conducted by the board. Note that state law does not require an evaluation.

See [Section 05-40](#) for information on the North Dakota Association of School Business Managers.

Evaluation of Classified Personnel

The desired outcome of the evaluation process is to help the individual become a better employee. An evaluation program could include, without limitation:

1. Document performance that needs improvement
2. Improve performance
3. Create a basis to reward superior performance
4. Promote individual growth
5. Provide for modification of assignments
6. Provide notice of deficiencies that may impact continued employment
7. Create a channel of communication between administrators and classified employees in the area of job performance appraisal

North Dakota law does not require "cause" for dismissal of at-will (not under contract) school employees. However, given all of the protected categories (e.g., age, disability, race), it is helpful if objective written assessments of job performance are available in the event that a termination is considered. Memos that document areas of concern and/or dissatisfaction with job performance are particularly useful in dealing with charges of discrimination or retaliation filed with the Department of Labor or the Equal Employment Opportunity Commission (EEOC).

When a classified employee is employed for a specified duration, the employee may be entitled to due process rights prior to termination. These rights include (a) notice of charges against the employee, (b) an explanation of the employer's evidence, and (c) an opportunity for the employee to respond prior to final action.

Evaluation of Licensed Personnel

It is recommended that school boards create an environment that will assist the growth and development of all employees. NDCC 15.1-15-01 requires every school district to conduct performance reviews (evaluations) of licensed employees.

Each district should develop and tailor the procedure that best serves the community represented but should keep in mind that the immediate supervisor is the most likely to have a clear picture of what is happening. This supervisor should be, or should be trained to be, educated in the evaluation process.

If it appears that deficient performance is adversely affecting student achievement, then an appropriate improvement plan may be needed. Explicit outcomes should be designated in the improvement plan and specific timelines established. In the event that positive outcomes do not materialize, the district will have documentation to support a nonrenewal and to establish that the district made a good faith effort to help the person improve.

NDCC Sections 15.1-15-02, 15.1-15-03, 15.1-15-05, and 15.1-14-03 make evaluation of teachers and administrators a mandatory prerequisite for performance-based nonrenewal. For more information, see Sections 06-39, 06-90, and 06-92 of this handbook and *Nonrenewal and Discharge of Teachers Handbook*, available for purchase from NDSBA.

Salaries and Fringe Benefits

Each year, districts are faced with decisions surrounding how much money it will cost to employ the staff for the following year. Salary, although the most costly item in any package, is not the sole consideration. It is very important that the administration and board fully realize how much the settlement will cost.

There is much skill involved in costing a package. Persons who have been doing this for many years are reluctant to cast themselves as authorities. We strongly urge those assigned this responsibility to attend the NDSBA Negotiations Seminar.

Insurance is a popular fringe benefit. The most common type of insurance for teachers is medical insurance. Some districts pay the total premium, some pay only the equivalent of a premium for a single person, and some pay a flat dollar amount. Whatever the type or amount of health insurance coverage offered, districts need to determine the impact of new federal legislation on these benefits. Visit www.healthcare.gov for more details.

Closely related to medical insurance are dental and vision insurance. Again, each district may approach the payment of premiums differently. A board should carefully consider whether it wants to commit to the payment of a percentage, the full premium, or a flat dollar amount. Premiums are subject to drastic change with no control by the board. A flat dollar amount provides board control and cost sharing.

Disability insurance is growing in popularity as a fringe benefit. Term life insurance is another option. Some districts provide other benefits such as an automobile or travel allowance. These reimbursements are subject to state limits. Also, districts may provide housing and utilities. Some pay all or part of the relocation costs for persons brought into the district. NDCC Section 15.1-09-33.1 enables school districts to pay a signing bonus (outside the negotiated agreement and not included in the continuing contract) to a teacher who did not teach in North Dakota the previous year. These kinds of benefits may be subject to IRS taxation, Social Security, and TFFR. **It is suggested that districts determine immediately with the IRS which benefits are taxed and which are sheltered.**

Regardless of what forms salary and fringe benefits take, the bottom line is how much per each employee the district will have to pay. Don't forget, the district's share of teacher retirement and Social Security must be considered. NDCC Section 15-39.1-09(2) permits school districts to pay the teachers' share of the retirement amount as a fringe benefit. However, seek guidance from the TFFR office before you offer this item as a fringe benefit (for all compensation earned after June 30, 1983), as the method of presenting it to the employee will determine tax liability to the employee and the district. Your accountant should also be consulted with reference to tax and Social Security liability when paying part or all of the teachers' share of TFFR.

Each district's salary schedule and fringe benefit package can be completely unique. It is very difficult to accurately compare. Unless the mechanics of a district's salary schedule are known and understood, a simple beginning salary figure can be misleading. Typical salary schedules establish increases on a negotiated "base" salary. When a district agrees to a built-in increase

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for the future, that district *MUST* consider sustainability. Once a schedule is in place, it's extremely difficult to remove it.

Teachers' Retirement

North Dakota Teachers' Fund for Retirement

North Dakota Teachers' Fund for Retirement (TFFR) was established to provide retirement, disability, and survivor benefits for all North Dakota public school teachers. School districts provide a vital link between members and the retirement system. School districts are required to enroll new members, collect and forward member and employer contributions, report earnings and service credit, and disseminate information about TFFR to nearly 10,000 members. Statutory authority for TFFR is found at Chapter 15-39.1 of the North Dakota Century Code.

Membership

Any person licensed by the Education Standards and Practices Board and contractually employed in teaching, supervisory, administrative, or extracurricular services is required to be a TFFR member. This includes superintendents, assistant superintendents, business managers, principals, assistant principals, classroom teachers, special teachers, and other persons named in state statutes.

For TFFR purposes, a "contract" means a written agreement with any school board or other governing body of any school district of this state or a letter of appointment by a state institution, state agency, or other employer participating in the Fund.

Employee/Employer Contributions

Employee and employer contributions are based on a member's "salary" which is defined in state law. In general, salary includes a member's earnings in eligible employment for teaching, supervisory, administrative, and extracurricular services during a school year, plus any salary reduction or salary deferral amounts. Exceptions to this definition are outlined in state law. School business managers must be familiar with this definition and aware of any changes made by the legislature.

Members and employers contribute to the fund--this includes returning retirees.¹ The contribution rates periodically change and are found in NDCC 15-39.1-09.

North Dakota law allows employee contributions to be made on a tax-deferred basis for federal and state income tax purposes. Payment of the employee contributions may be made by the school district through a salary reduction or in lieu of a salary increase under special employer payment plan models. Special rules apply and should be evaluated carefully.

Service Credit

¹ NDCC 15-39.1-19.1 should be reviewed carefully if the district is considering employment of a returning retiree. This section of code was modified substantially during the 2011 Legislative Session.

School districts are required to report the number of compensated hours (not to exceed 700 hours) a member is employed during each fiscal year. This enables TFFR to post every member's account with the correct amount of service credit each year.

Monthly Employer Reports

All public school districts, state institutions, and other participating employers must submit a monthly payment and report (paper or electronic) showing the amount of salary and employee and employer contributions paid for each TFFR member. All reports must be in a format approved by the Fund.

Failure to file required reports on time may result in the school district paying a civil penalty of \$250 and interest of one percent per month for delay in payment of the penalty. Failure to file the reports may also result in withholding foundation payments by DPI until the TFFR reports are filed and approved.

Retirement, Disability, and Survivor Benefits

Members of the Fund may apply for TFFR benefits when they terminate employment and meet statutory eligibility requirements. Questions pertaining to retirement, disability, survivor, and refund applications should be referred to the Fund's administrative office.

Summary

Since a teacher's retirement, disability, survivor and refund benefits are based on service credit and retirement salary reported by the employer, accuracy in payment and reporting is critical. TFFR will provide technical assistance to any school district upon request. Contact the Fund's administrative office for more information.

Title: ND Retirement and Investment Office

Address: 1930 Burnt Boat Drive, P. O. Box 7100, Bismarck, ND 58507-7100

Telephone Number: (701)328-9885

Toll Free: 1-800-952-2970

Fax: (701)328-9897

Web Page: www.nd.gov.rio

Social Security

Under NDCC 52-09-27 and 52-10-05 school district employees may participate in Social Security with board approval, in addition to the existing Teacher Retirement Fund. Some employees who are not subject to Social Security tax are subject to the Medicare portion of that tax. Check with the Social Security Administration if you are not sure whether this affects your employees.

Because of the complex nature of this tax and the sensitivity of any relationship involving money and the federal government, it is strongly recommended that the person(s) working with the payroll obtain and become very familiar with two key publications:

- A. All of Title 52 (Social Security) of the North Dakota Century Code. It is available from the Secretary of State for a nominal cost. It is also available online at: www.legis.nd.gov/cencode/t52.html
- B. The most current copy of Circular E, Employer's Tax Guide (Pub. 15), free and available from the Internal Revenue Service. It is also available on their Web site at www.irs.gov.

It is important to keep current on the mandates of Social Security. If there are questions which the printed materials do not answer, contact your nearest Social Security Administration Office.

Note the following:

- The percentage withheld changes periodically.
- Maximum amount of wages subject to the tax changes annually.
- Withheld Social Security taxes should be deposited as required and explained in Circular E.
- A Form 941 must be filed quarterly by all employers. Details and exceptions are covered in Circular E.
- Employers must keep all tax records at least four years.
- Compensation paid to school board members is subject to Social Security tax.

For all practical purposes, the Social Security number has become a federal ID number and is used for many purposes other than Social Security. Under North Dakota law (NDCC 44-04-28), Social Security numbers are confidential and should not be used for identification purposes. The number should be excised on any document that is subject to the open records law.

Unemployment Insurance

North Dakota Unemployment Compensation Group Account

All political subdivisions, including school districts, are required to provide unemployment insurance coverage. At the present time, NDSBA handles unemployment insurance matters for approximately 125 districts through the North Dakota Unemployment Compensation Group Account. Membership in NDSBA is the only requirement for participation in the NDUC Group Account.

Through the Group Account, NDSBA's approach to unemployment compensation is twofold:

1. Seeking legislative remedies where it is necessary to change law
2. Monitoring claims so that only those qualified for benefits receive them

Some suggestions to better manage the amount spent for unemployment claims include:

- A. A careful process of hiring. Make sure you need the person and that the person is capable of meeting your expectations.
- B. Look for flexibility when hiring teachers. Should your district's needs change, be certain staff can adapt.
- C. Be certain you know employment history that can alert you to potential problems.
- D. If it becomes necessary to terminate an employee, become familiar with which types of terminations qualify for unemployment. Have the courage to terminate for cause when it is appropriate. Document events preceding and surrounding the termination. Be aware that good cause does not always constitute misconduct under unemployment compensation laws. If you accept a resignation in lieu of nonrenewal **for cause**, do **not** agree to any conditions that restrict the district's right to oppose an unemployment claim.
- E. When notice of an unemployment claim comes in, do not assume it's automatic. Read it carefully to determine if you have a legitimate appeal. Respond to every claim even if you believe it is justified. Remember, an unemployment claim can be a substantial cost to a district.
- F. It is extremely important that school district business managers accurately report Social Security numbers as well as wages. Wrong numbers can result in wages being attributed to an employee who never worked for the district.
- G. Board members are elected officials and should not be included on the unemployment report.**

- H. If you decide to appeal a claim, you may wish to contact the NDSBA office for assistance.
- I. Bear in mind the law requires some good faith effort on the part of the ex-employee to actively seek work.
- J. Learn what breaks in employment actually constitute unemployment and don't make the district liable for those times that aren't covered. Be sure to give reasonable assurance in the spring if reemployment in the fall is anticipated. Verbal assurance is acceptable but written is better.
- K. Districts that are dissolving or reorganizing are required to contact Job Service for an estimate of the potential obligation for unemployment compensation.

Job Service North Dakota is a source of information and assistance. You may also call the NDSBA office.

Leaves

Because of the vital function of schools, laws are structured to allow for replacing persons who have long-term or permanent disabling conditions. The focus of leaves, however, is usually for a shorter or definite period of time.

The legislature has made a significant comment on leaves by enabling exceptions to the continuing contract for persons who were filling in for teachers on leave.

Leave policies should be designed to temporarily relieve from duty those persons who are physically or mentally unable to carry out their responsibilities. This means that, in addition to physical health of the staff, the leave policy may consider psychological factors of morale and intangibles, *along* with considerations of costs and ease of administration.

Paid Leave

There are many ways to classify paid leaves. For the purposes of this handbook, they are in four categories with three of them addressed in separate sections:

- A. Personal Leave
- B. Sick Leave (06-75)
- C. Pregnancy Disability Leave (06-78)
- D. Professional Leave (06-79)

Personal leave is defined as “absence with pay for some personal reason other than illness, pregnancy leave, or professional leave.”

Most people involved in policy writing or negotiating would agree that “if it’s personal, it doesn’t have to be justified.” In other words, the limit on personal leave should be on duration, not on reason.

Other mandated leaves include military leave and leave for jury duty.

Unpaid Leave

Some districts also grant unpaid leaves for such things as childcare, going back to school, or trying a different career. Employers with 50 or more employees are required by the federal Family Medical Leave Act (FMLA) to grant eligible employees 12 work weeks of leave in a 12-month period for the birth of a child and to care for the newborn child within one year of birth, care of family members who have a serious health condition, for the employee’s own serious health condition, for placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement, and for a qualifying military exigency.

FMLA also requires employers with 50 or more employees to provide eligible employees 26 workweeks of leave during a single 12-month period to care for a covered servicemember’s serious illness or injury. If an employee qualifies to take leave to care for a covered

servicemember and qualifies for another form of FMLA leave, the employee is only entitled to take a combined total of 26 workweeks of leave during the 12-month period.

FMLA leave may be coordinated with any paid leave that the employee has available, with the employee being required to use the paid leave first and the remainder of the weeks being unpaid, provided proper notice is given to the employee in writing.

A checklist for board use in drafting leave provisions is provided in the *North Dakota Public School Employers Handbook* (available under Resources on the NDSBA Website).

Sick Leave

Statute requires school districts to pay teachers' sick leave; NDCC 15.1-16-19 provides for at least ten days of sick leave per school year without loss of pay. Teachers may accumulate sick leave and carry over from year to year at least 30 days of accumulated unused sick leave.

Sick leave programs for teachers are usually included as part of the negotiated agreement. Most are in excess of the required provisions of NDCC 15.1-16-19.

Often the same or similar sick leave policies that apply to teachers are extended to classified employees. It is very important, however, that each district create sick leave programs that are in writing and specifically tailored to their conditions.

The Family and Medical Leave Act of 1993 requires public school districts, among others, to grant a total of 12 weeks of unpaid leave annually for the following reasons:

1. Birth of a son or daughter and to care for the newborn child within one year of birth
2. Placement with the employee of a son or daughter for adoption or foster care and to care for the newly placed child within one year of placement
3. Care for the employee's spouse, son, daughter, or parent with a serious health condition
4. Serious health condition that makes the employee unable to work
5. Qualifying military exigency

FMLA also requires school districts with eligible employees to provide 26 workweeks of leave during a single 12-month period to care for a covered servicemember's serious illness or injury. If an employee qualifies to take leave to care for a covered servicemember and qualifies for another form of FMLA leave, the employee is only entitled to take a combined total of 26 workweeks of leave during the 12-month period.

To be eligible for any FMLA leave, an employee must work for a district that employs 50 or more employees at a worksite or within 75 miles of that worksite. Paid sick leave may be simultaneously counted as unpaid FMLA leave if the purpose of the leave would be covered by the district's sick leave policy and if proper and timely written notice is provided to the employee.

Pregnancy Disability Leave

No person can be denied the opportunity to perform professionally because of pregnancy. Pregnancy disability leave should be treated as any other sick leave—limited to the actual period of disability. Marital status has no bearing on the granting of the leave.

Unpaid childcare leave cannot replace paid pregnancy disability leave unless the employee voluntarily elects to do so.

The Family and Medical Leave Act of 1993 mandates unpaid leave to care for a newborn child or a child placed for adoption or foster care in some cases (see [Section 06-75](#)). Existing childcare leave policies should be coordinated with the requirements of this law.

Professional Leave

Short-term paid absences for attending educational meetings, visiting schools, or engaging in other approved professional activities are generally addressed in leave policies and programs. Since the purpose of such leaves is improvement of classroom instruction, a careful matching of the person and the event must be made. There is an abundance of activities going on that are labeled “educational.” Not all of them are valid, and certainly not all of them are appropriate to each teacher. It is vital that some selection process be in place to prevent a waste of time and money.

It is ideal if attendance at professional activities is planned by the faculty as a whole, and those who attend should be assigned some reporting back responsibility. Also, as part of an evaluation for growth program, it may be appropriate to assign certain persons to attend specific professional activities.

Extended leaves for professional reasons (normally called sabbatical) are usually accompanied by certain obligations on the part of the teacher. There is a time-in-service requirement. Historically, seven years (hence “sabbatical”) was the standard, but that has been modified in both directions. If the teacher is paid by the school district during the leave, the program which the teacher intends to pursue must normally be approved in advance by the board, and there is usually the requirement that the teacher return to the district and perform for a specified time. If this is not done, some sort of payback feature should be included in the original agreement. Also, there should be a limit as to how many people can be out of the district at any given time.

Long-term educational leaves, which hold a place on staff for the teacher but do not require the same obligation for the teacher to return, should be without pay.

It is imperative that boards distinguish in their leave programs between professional leave and time to engage in organizational activities—which may be completely in opposition to the board’s interests. Sometimes districts will pay salary and expenses for an employee to come to the legislature to testify and then that person will testify contrary to what is in the district’s best interest. This should not be regarded as “professional” and should be done at the person’s own expense.

Contract Termination for Licensed Personnel

North Dakota teachers, principals, assistant/associate superintendents, superintendents, and multidistrict directors are typically subject to continuing contract laws (NOTE: certain exceptions apply as outlined below), meaning that their contracts automatically renew from school year to school year (see 06-25). There are three ways to terminate a continuing contract:

1. Resignation (see 06-84)
2. Nonrenewal (see 06-90 and 06-92)
3. Discharge (see 06-93 and 06-94)

Each of these methods of contract termination carries with it a set of mandatory procedural requirements. These requirements are summarized in more detail in each applicable section of this handbook.

Continuing contract laws **do not apply** in the following instances:

1. Replacement for a teacher on leave: NDCC 15.1-15-12(3) excludes a teacher from continuing contract rights when s/he is “replacing a teacher on leave of absence or sabbatical leave.” In order to avoid any misunderstanding by a replacement teacher, it is recommended that this “replacement” status be documented in the teacher’s individual contract.
2. Teachers hired after January 1: Continuing contract laws do not apply to teachers, principals, assistant and associate superintendents hired after January 1 so long as the term of employment does not extend beyond June 30 of the same school year (NDCC 15.1-15-12(4)). It is recommended that the teacher’s individual contract include language reflecting this exclusion from the continuing contract law.

Teacher Resignation and Contract Breach

There are basically two types of resignations:

- A. Resignation that is to take effect within the contract period, which is actually a request by the teacher to be released from an existing contract. This arrangement is allowable, but boards should check policy and the negotiated agreement to determine if these documents in any way restrict board action concerning resignation.

Should the board refuse to grant this request and if the teacher fails to carry out contractual duties, one of the options available to the board is to file a breach of contract complaint with the Education Standards and Practices Board (ESPB) pursuant to NDCC Section 15.1-13-25.

- B. Voluntary resignation that is to take effect at the end of the school year and that may be structured with continued health insurance coverage until the anniversary date of the policy.

Agreements to reduction-in-force or cause nonrenewals are not properly considered resignations but are alternative ways to terminate the employment contract.

NDSBA provides further guidance on the resignation process, including sample board motions and forms, in its *Nonrenewal and Discharge of Teachers Handbook*, available for purchase through NDSBA.

Nonrenewal of Teachers

For the purposes of this section, the term “teacher” includes teachers, principals, and assistant/associate superintendents (NDCC 15.1-15-04). It does not include superintendents and chief administrators of multidistrict units.

Nonrenewal of a teacher is occasioned by only one of two reasons:

1. Reduction in force (RIF): Nonrenewals based on the needs of the district such as lack of funds, declining enrollment, and other good faith reasons that are consistent with the district’s RIF policy and negotiated agreement.
2. Performance nonrenewals: Nonrenewals based on performance reviews (evaluations) of teacher performance, documenting deficiencies in the ability, competence, or qualifications of the teacher.

Laws concerning nonrenewal of teachers are found in NDCC Ch. 15.1-15. Nonrenewals generally follow the procedure below:

1. Identifying the need (usually the superintendent’s responsibility)
2. Pre-meeting process (i.e., the board votes to contemplate nonrenewal and sets hearing date)
3. Notice of contemplated nonrenewal presented to teacher (superintendent’s responsibility): Must be presented to the teacher no earlier than **March 1 and no later than April 15** (NDCC 15.1-15-05)
4. Decision-making nonrenewal hearing (a hearing of the board): Must be held **on or before April 21** (NDCC 15.1-15-05) except for first year teachers
5. Issuance of written decision to teacher (superintendent’s responsibility): Must be received by the teacher on or before **May 1** (NDCC 15.1-15-06)

In order to successfully execute a nonrenewal, districts must strictly adhere to nonrenewal deadlines in law as indicated above. NDSBA has developed a handbook that provides further guidance on the nonrenewal process, sample motions, and nonrenewal forms. The *Nonrenewal and Discharge of Teachers Handbook* is available for purchase by contacting NDSBA.

It is important to note that different nonrenewal deadlines and procedures apply to first-year teachers.

A first-year teacher is an individual who has not previously been employed as a licensed teacher in North Dakota or elsewhere. First-year teachers have fewer nonrenewal rights than their more experienced colleagues. These limited rights are as follows:

- Reasons for nonrenewal need not be substantiated by administration
- No continuance rights at the decision-making nonrenewal meeting
- The board must meet with the teacher in executive session to discuss the reasons for nonrenewal--this meeting is not a hearing

The basic procedure for nonrenewing a first-year teacher is as follows:

1. Superintendent makes recommendation to contemplate nonrenewal: NDSBA recommends that this step occur **after the March 15 evaluation**
2. Board takes action on superintendent's recommendation and sets decision-making meeting date
3. Board reviews teacher's evaluations (and, if applicable, the district's RIF policy) before the board meets with the teacher
4. Notice of contemplated nonrenewal presented to teacher (superintendent's responsibility)
5. Decision-making nonrenewal meeting: Must be in executive session, and board must discuss the reasons for nonrenewal
6. Issuance of written decision to teacher (superintendent's responsibility): No **earlier than April 15 and no later than May 1** (NDCC 15.1-15-02)

NDSBA offers further guidance on nonrenewal of first-year teachers in its *Nonrenewal and Discharge of Teachers Handbook*, available for purchase through the NDSBA office.

Nonrenewal of Superintendent or Multidistrict Director

When a North Dakota school board decides to contemplate the nonrenewal of its superintendent, multidistrict special education director, or area career and technology center director (hereinafter “superintendent”), the sole responsibility for both documentation and procedural correctness lies directly with the board. NDCC Ch. 15.1-14 contains all procedural requirements related to the nonrenewal of a superintendent, including mandatory evaluation requirements. It is essential that boards considering nonrenewal of the superintendent become familiar with legally mandated procedural requirements early in the school year to ensure that the entire process (which begins with the December evaluation) is executed in compliance with law. It is also recommended that the board consider retaining legal counsel if a less than amicable separation is anticipated.

Boards should also be aware that while all superintendents are entitled to two evaluations each school year, not all are entitled to an evidentiary hearing before being nonrenewed. A superintendent is employed on a “probationary” status until he or she has been employed in that school district as a superintendent for at least two years. NDCC Section 15.1-14-12 describes this in more detail.

NDSBA has developed a handbook that provides in-depth guidance and sample forms to assist boards with nonrenewal of superintendents. The *Superintendent Selection, Evaluation, Nonrenewal, and Discharge Handbook* is available for purchase by contacting the NDSBA office.

Discharge of Teachers

For the purposes of this section, the term “teacher” includes teachers, principals, and assistant/associate superintendents. It does not include superintendents or chief administrators of multidistrict units.

The process of discharging a teacher during the term of a contract, commonly referred to as “firing,” is complex and fraught with potential for litigation. Statutory protections, as amended in 2009, are broad and numerous (including Chapter 15.1-15, and much of Chapter 28-32 of the North Dakota Century Code), while the permitted causes for discharge are narrow and limited. For all of these reasons, **it is strongly recommended the school board obtain legal counsel PRIOR to initiating any action to discharge licensed personnel.**

The board of a school district may dismiss a teacher prior to expiration of the individual’s contract for any of the following causes:

1. Immoral conduct
2. Insubordination
3. Conviction of a felony
4. Conduct unbecoming the position held by the individual
5. Failure to perform contracted duties without justification
6. Gross inefficiency that the individual fails to correct after written notice
7. Continuing physical or mental disability that renders the individual unfit or unable to perform the individual’s job duties

Administrators sometimes identify the need for recommending discharge of teachers as a result of investigating a patron complaint. It is highly recommended that all complaints about licensed personnel be referred to their supervisor, pursuant to NDSBA’s policy on patron complaints about personnel. The board should not hear “evidence” prior to a discharge hearing.

The procedure for discharging a teacher is intended to assist school boards and their administrators in working with legal counsel in this delicate and demanding process. To summarize:

- a. The decision to contemplate discharge must be made by a school board at an open meeting (NDCC 44-04-19).
- b. Once a board has voted to contemplate discharge, **it must petition the Office of Administrative Hearings for appointment of an administrative law judge (ALJ)**, who sets the time and place of the discharge hearing and presides over the hearing.
- c. The board must send a list of charges to the employee being considered for discharge at least five days before the hearing (NDCC 15.1-15-08), as directed by the ALJ.
- d. The hearing should be held in a closed meeting (NDCC 15.1-15-08) unless both parties agree to an open meeting.

- e. After the hearing is complete, the board is required to make a decision concerning discharge and issue findings of fact and conclusions of law within thirty days (NDCC 28-23-39).

A resignation, voluntarily made and then accepted by the board, would serve to eliminate the need for a hearing. The board should carefully review any conditions attached to a voluntary resignation. Going through the discharge hearing, as unpleasant as that may be, is preferable to agreeing to conditions that are not in the best interests of the district.

For a detailed explanation of the discharge procedure and more specific requirements and recommendations pertaining to discharge, refer to the NDSBA *Nonrenewal and Discharge of Teachers Handbook*, available for purchase from NDSBA.

Discharge of Superintendents

For the purposes of this section the term “superintendent” includes superintendent, multidistrict special education director, and area career and technology center director.

North Dakota law gives the superintendent a high degree of protection. Removal from the job during the effective period of a contract is an act of considerable consequence, which is why NDSBA recommends that a school board **retain an attorney to assist with the entire procedure.**

The board of a school district may dismiss a superintendent prior to the expiration of the individual's contract for any of the following **causes**:

1. Immoral conduct
2. Insubordination
3. Conviction of a felony
4. Conduct unbecoming the position of superintendent
5. Failure to perform contracted duties without justification
6. Gross inefficiency that the superintendent has failed to correct after written notice
7. Continuing physical or mental disability that renders the superintendent unfit or unable to perform the superintendent's duties

The initial decision of intent to discharge is made by the board at an **open public meeting before** the discharge hearing is held. The board must discuss and agree upon a written description of its causes and reasons and then approve its intent to discharge for those reasons by majority vote at this initial open public meeting. (See Sections 15.1-14-05, 15.1-14-15, and 15.1-14-25, NDCC.) Since the discussion of causes and reasons for discharge must occur at an open meeting of the board, there is no protection for board members from libel and slander for statements made at the open meeting.

If the board approves its intent to discharge a superintendent for cause, it must provide the superintendent with a written description of the causes and reasons and written notice of the date and time at which the board will conduct a hearing regarding the discharge. That hearing must be held in executive session, absent mutual agreement to open it to the public.

NDSBA provides more detailed guidance on discharging superintendents in the *Superintendent Selection, Evaluation, Nonrenewal, and Discharge Handbook*. This guide is available for purchase by contacting the NDSBA office.

Pupil Personnel Services

Over the past decades, schools have been assuming an increasing number of functions that previously were handled by family, church, community, or, in many cases, were not handled at all.

Counseling, Guidance, and Testing

Most districts permit academic guidance of students such as what courses to take, vocational guidance, and college counseling.

Counselors working in North Dakota schools must possess a North Dakota Teacher License.

Student Health Services

More and more students require medication and/or treatment during the day in order to remain in school. NDCC Section 15.1-19-23 addresses medication programs in schools. Schools may establish policies for providing medication to students that conform to the requirements of the law. Some schools employ a school nurse to develop and oversee health plans for students who have chronic health conditions.

Food Services

Providing a noon meal for students is a common practice in school districts. There are two philosophies that operate in this area. One is that the cafeteria is operated as a convenience to parents and that it should be self-supporting. The other is that the purpose is to provide a nutritious meal for every student and to teach nutrition by example. Most districts receive reimbursement or commodities from the federal government. Some schools also serve breakfast. For further discussion of food service, see Section 04-40.

Student Insurance

Some districts provide accident insurance for their students--especially for the athletic program. Others provide a group through which parents may purchase accident or dental insurance.

Student Assistance Programs

Another area of student services is the Student Assistance Program (SAP). The goal of a SAP is to assist students who have problems that may affect their school performance by providing confidential, prompt, and diversified assistance through the use of a Core Team and to motivate students to seek help at an early stage and get confidential assistance through qualified professional referrals. The purpose is to maintain or restore productivity through early identification of problems and to maintain a school atmosphere conducive to learning. These programs most often deal with alcohol and other drug abuse but may also be valuable in addressing violence, harassment, and teen suicide.

Pupil Control – Discipline

The most common cause for failure of a classroom teacher is the inability to maintain control of students. The most common cause for failure of a building administrator is the inability to maintain discipline in the schools. Rarely, if ever, is anyone fired for being too good at discipline.

Recognizing that different persons may have children under their control at various times, lawmakers provided for those adults to have the necessary authority to control and discipline. An example is NDCC 15.1-30-13 which empowers bus drivers to maintain discipline on the bus.

The board has the ultimate responsibility for governing all aspects of the district under the provisions of NDCC Chapter 15.1-09. Every school board is required to adopt policies regarding suspension and expulsion and possession of weapons (NDCC 15.1-19-09 and -10).

There are also other areas where boards must document that certain behavior is not acceptable, such as sexual harassment and drug and alcohol use. NDSBA recommends policies that clearly define conduct that violates school rules and the discipline that can be expected.

Corporal punishment in North Dakota public schools is prohibited by law. Staff members may use physical force only to protect themselves, protect others, or to remove an unruly student. The law requires each school board to develop policies defining expected student behavior (NDCC 15.1-19-02).

Alcohol and Other Drug Abuse

Drug **use** is when a person takes a drug for its intended purpose and in the appropriate amount, frequency, strength, and manner. **Abuse**, on the other hand, is taking a substance for its intended purpose, but not in the appropriate amount, frequency, strength or manner.

Regarding substance abuse, there are two distinct areas of concern to schools—prevention and intervention.

Substance abuse information is an important part of a comprehensive health education program. The annual Roughrider Health Promotion Conference provides inservice for teachers, administrators, board members, and others charged with this responsibility.

Federal law requires school districts to establish a drug-free workplace. Federal money is available for districts that wish to develop and maintain drug-free school programs. Assistance in program development is available from the Department of Public Instruction and policy samples are available through NDSBA Policy Services. Student assistance programs are another way to help students with chemical abuse.

Programs and policies suggested for the schools should be reviewed carefully to determine what future obligations and costs may be incurred before the board decides whether to adopt and implement them. Adopted policies need to be evaluated annually for effectiveness.

Evaluating Students' Work (Grading)

Grading is the usual process by which a student's performance is translated into a tangible statistic.

Grading of students based upon establishment of mutually agreed upon objectives is a relatively new, but increasingly popular, approach. This is in line with the Individualized Educational Plan (IEP) approach used now in special education.

Standing in class and grade point averages are very significant for scholarships and admission to certain colleges and special programs.

Accountability of educators is addressed in part through measurement of pupil progress if:

- A. Specific desired outcomes are clearly defined and identified.
- B. Standards have been developed by which these outcomes can be measured.
- C. These standards are then applied to the outcomes.
- D. A reward/penalty system evolves to acknowledge the results of Item C, above (recognition, merit pay, advancement, etc.).

Federal legislation (No Child Left Behind Act of 2001) mandates testing to determine proficiency in selected subjects. Schools whose students do not show adequate yearly progress will be given assistance to improve their program.

Community Relations

School boards are elected to make policy decisions for their districts. Those decisions should be made with consideration given to the best interests of students, teachers, administrators, and the community.

NDSBA Policy Services provides sample policies related to several issues of community relations. Specific issues are discussed elsewhere in this section of the handbook, but following are four suggestions for your consideration:

1. Use all available channels of communication to inform citizens about policies, programs, problems, and planning of the school system.
2. Recognize the right of news media to inquire, research, and report to the public any information about the school system—assist the media in so doing.
3. Conduct all board business in public sessions except for those matters to be discussed in properly convened executive sessions in accordance with law.
4. Invite and encourage advice and counsel of citizens at all times and facilitate this by scheduling public hearings when required. You might choose to receive input through public forums or through appointed advisory committees or focus groups.

Goals of School/Community Relations

The ultimate goal of school/community relations is to improve the quality of education for all children. In order to achieve this goal and evaluate progress, the following objectives are suggested:

- Develop public understanding of all aspects of school operation and ascertain public attitudes toward issues in education. Along with the community, define aspirations for the education of children in your district.
- Promote advocacy for adequate financial support for a sound education program.
- Help citizens feel a more direct responsibility for the quality of education provided by their schools. Earn good will, respect, and confidence of the public with regard to the school's staff and services.
- Foster public understanding of the need for constructive change and solicit public advice on how to achieve education goals.
- Involve citizens in the work of the school and solving educational problems.
- Promote a genuine spirit of cooperation between the school and community. Set up channels for sharing leadership.

School/Community Relations: Responsibilities of the School Board

The primary responsibility of the school board is transformation of educational ideals, values, and goals of the community into an active educational program. Effective two-way communication between the board and the public is essential for the public to maintain an interest in school programs and a high level of confidence in the school and administration.

The board should make sure the public and media always feel welcome to attend and observe official meetings of the school board. When and how the public may address the board during a meeting should be defined in district policy. Boards may receive comments and petitions at official meetings; however, it is not advisable for individual board members to hear complaints about school personnel or engage in dialogue with patrons. The board should allow patrons to present their views, thank them, and return to the agenda. If action is warranted, the board may refer it to the superintendent for investigation or to bring more information to a later meeting.

The district should have clearly defined policies regarding procedures for community input and patron complaints. Individual board members should know and abide by those policies.

Citizens should feel free to discuss non-personnel school issues with individual members of the school board. However, the board member must make it clear before responding that he/she speaks only as an individual and not for the board or administration. The board member is obligated to explain that he/she can do no more than call the issue to the attention of the administration or the board.

How well an individual board member can explain policies and processes to the public and the way citizen input is handled at meetings will form the basis of the board's community relations.

School/Community Relations: Responsibilities of the Superintendent

The superintendent shares with the school board a responsibility to establish and maintain effective relations with the public. As executive officer for the board and chief administrator for the public school system, the superintendent is responsible for implementing the board's public relations policies and assuming leadership in the school's community relations program.

The superintendent is responsible to compile and present accurate information about plans, challenges, and operation of the schools and to disseminate appropriate reports through a variety of communications media.

The superintendent is responsible for interpreting board policies to the public. His/her reception of and responses to the public should be cordial and informative. If the school district does not have a public relations officer, this becomes one of the superintendent's most important duties.

The way in which the superintendent handles patron complaints is probably THE most important public relations tool. Patrons who feel their concerns are not taken seriously can do much to damage the school's reputation and image. On the other hand, a superintendent who makes sure that staff members respond promptly and in a positive manner will ensure public support for the school.

School/Community Relations: Responsibilities of School Staff

A good public relations program is made possible through the efforts of all school district personnel. All employees can be expected to use tact and tolerance in their relationships with students, parents, and the general citizenry.

Staff must be well informed on the policies, procedures, and programs of the district. If staff members have concerns about any of these, they should speak first with their immediate supervisor and follow established procedure if not satisfied. The worst thing for a district's community relations is to have the staff speaking critically in public.

The instructional staff should be expected to become sufficiently well informed to explain the school's program and its strengths, as well as its needs, to the community.

Volunteers in the School

Volunteers often perform important and necessary work in a school district such as assisting with coaching, supervising playgrounds, serving as crossing guards, and chaperoning field trips. Volunteer programs allow community members to develop a vested interest in schools and share their unique talents and abilities with students and staff. This not only benefits the overall educational program but also helps bridge the relationship between the school district and the broader community. However, volunteer programs also pose a number of challenges and legal risks.

Districts must comply with criteria established under the Fair Labor Standards Act for volunteers. These criteria are contained in 29 C.F.R. 553.101-103. Districts that fail to follow these regulations may be required to treat volunteers as employees, pay them back wages, and may be subject to fines by the Department of Labor.

School districts are liable for money damages resulting from injuries caused by a volunteer acting within the scope of his/her duties (NDCC Ch. 32-12.1). Because of this law, school districts should develop job descriptions for volunteers. This helps ensure that volunteers are aware of the scope of their duties. It may also help a district determine if a volunteer is acting outside the scope of his/her duties.

Schools districts are required to comply with a North Dakota law banning sexual offenders from school property. Consequently, schools should screen volunteers prior to allowing them to work in schools. The North Dakota Attorney General has ruled that schools have legal authority to run criminal history record checks on volunteers, and NDSBA strongly recommends conducting such checks. Districts should reference existing policies on conducting criminal history record checks on school employees when establishing screening procedures for volunteers. NDSBA has also developed a sample policy on criminal history record checks for school volunteers.

Complaints

While parents enjoy a unique relationship with schools and are recipients of special communications concerning their child's progress, the same channels of processing complaints should be used by parents as by other citizens. Community relations are best preserved when school policy is followed consistently without exception.

Resolution procedures should be clearly delineated in school board policy with all complaints directed through prescribed channels. This includes complaints concerning personnel, instructional materials, and school programs.

Administration should develop a procedure, in line with board policy, for receiving complaints courteously and replying to each complainant.

Complaints should be addressed at the lowest level of authority. If resolution of a problem cannot be resolved at the classroom or building level, either party should be encouraged to refer the matter to the superintendent for review.

Only after all remedies have been exhausted should the board consider hearing **non-personnel** complaints. All non-personnel complaints should be presented in writing and included in agenda materials provided to the board prior to the meeting. Generally all parties involved, including the appropriate administrators, should attend such a meeting for purposes of presenting additional facts and clarifying issues. The board should not consider or act on complaints that have not been explored at the appropriate administrative level or complaints for which established policy does not include board review.

Complaints concerning **personnel** should be directed to the principal or other supervisor directly responsible for supervision of that employee. That supervisor should:

1. Investigate the complaint
2. Schedule a meeting of the employee, the complainant, and the supervisor, if appropriate
3. Provide a prompt response to the complainant
4. Notify the employee if the complaint is to be placed in the employee's personnel file

If either party is not satisfied with the handling of the complaint, the matter can be appealed to the superintendent for final resolution. When personnel issues are brought to public meetings, there is a risk of libel and slander action against the patron bringing the complaint and any board member participating in discussion. It is best for staff and community relations when personnel issues can be resolved at the administrative level. This is a major function of administration and performance in this area should be part of all administrators' evaluations.

Media Relations

Public schools belong to and are operated for the benefit of the citizens of the community. Therefore, information concerning the school district is public information. News media represent the public interest in reporting information. It is in the interests of both the education community and other citizens that there is free and open communication with the news media.

The board and administration should assist the press and other communications media in providing accurate and adequate coverage of programs, challenges, planning, and activities of the school. Taking extra time to make sure reporters have a good background and historical perspective on the issue is a good investment.

In keeping with their responsibilities as a representative public body, the board should present a unified front on issues that have been decided by majority of the board. Public relations is enhanced when the board president acts as the official spokesperson for the board, unless this duty is delegated to the superintendent.

Individual school board members must use caution when responding to the media. For instance, it is unwise to indicate to the media how you intend to vote on an issue before the board has officially discussed the matter. Board members speak only as individuals and not in any official capacity outside of duly convened board meetings. The quickest way to undermine your local board's credibility and public relations is to have individual board members publicly criticizing action taken by the board as a whole. When board members become critical of one another, the media and public inevitably take sides.

Normally, the superintendent will be the district liaison with the media. All contacts and news releases concerning district policies, matters of district-wide interest, or potentially controversial topics should be handled or cleared by the superintendent.

Principals are the primary contacts for their buildings. They should make available information about the school, its programs, and operations except as prohibited by board policy, administrative regulations, and federal or state laws. If principals have questions about releasing information, they should contact the superintendent. Principals should inform the superintendent about media contacts, existing or potential problems of public concern, and any criticisms or commendations.

Any staff member contacted by a media representative should follow established policies and procedures. Staff members should be encouraged to respond to questions from the news media within the scope of their jobs and to the extent they possess accurate information. They should not attempt to answer questions about policies or practices outside the scope of their jobs or knowledge.

Convening the Community

Convening the community can take many forms and serve a variety of purposes. A board can use community meetings to share information concerning the district or to solicit patron input on critical issues facing the school. You may choose to hold large meetings or several smaller meetings. Focus groups work well when gathering input, information, and suggestions. Remember that community meetings are just as effective to discuss successes and exciting new projects as they are to begin tackling difficult challenges.

Whether your district is large, small, or in between, keeping the public involved is crucial to survival of locally controlled public schools. North Dakota law requires each school district to develop a long-range plan each even-numbered year and submit it to the Department of Public Instruction. The plan must include participation by the community.

Due to declining enrollments and limited resources (both human and monetary), school districts large and small may have to face in-district boundary changes, reorganization, consolidation, or dissolution processes (see Section 02-90). This can be an exciting, yet stressful, time for the community, parents, board members, and students.

The most critical element to a successful change is trust. Trust is nurtured by honest, realistic sharing of facts and thoughts. Steps school boards can take to build trust within and among communities include:

- Involve the community in the creation of a vision for your school and your students—what they want their education experience to be.
- Create and share educational goals of your district with the community.
- Work realistically with your community to predict the viability of sustaining quality standards for your students.
- Explore options for cooperating and/or consolidating with surrounding communities for the purpose of improving educational opportunities for all students.

It is critical these discussions center on providing the highest quality educational opportunities for students. While boards must be sensitive in acknowledging the understandable trepidation of parents and taxpayers, the board is entrusted with the duty of establishing educational goals and recommending the most realistic means to achieve them. Involving the community at all levels of the process and providing straightforward information will help direct everyone's thinking toward the same goal.

Curricular Requirements

Local school districts may choose their own curriculum within specifications of state standards. North Dakota law prescribes required subject offerings for elementary, middle, and high school. In addition, the state sets specific high school graduation course requirements.

Requirements for Kindergarten

School districts shall either provide at least a half-day kindergarten program or pay tuition required for the student to attend kindergarten in another school district. Foundation aid for kindergarten is paid on a pro-rated basis up to full-time. Requirements for kindergarten are found in NDCC 15.1-22.

Requirements for Elementary and Middle School Offerings

State approval standards require specific subject matter offerings for elementary and middle school found in NDCC 15.1-21-01. Required minutes of instruction are included in accreditation standards set by the Department of Public Instruction.

Requirements for High School Offerings

NDCC 15.1-21-02 prescribes courses that must be made available to each high school student.

High School Graduation Requirements

The state legislature sets course requirements for high school graduation. School boards should refer to NDCC Ch. 15.1-21 for diploma and scholarship requirements and to ensure their course schedules provide students with opportunities necessary to meet these requirements.

Other Curricular Requirements

State standards for curriculum content can be found at:

www.dpi.state.nd.us/standard/content.shtm.

Instructional time requirements and minimum requirements for alternative high school courses are found in NDCC 15.1-21-03 and 04.

Definitions of instructional days for kindergarten through high school are found in NDCC 15.1-06.

Text and Material Selection

The board is legally responsible for all textbooks and other educational materials used in the school system. It should be board policy to provide educational materials and equipment that support and enrich the curriculum and help achieve district instructional goals.

The board delegates responsibility for selection of educational materials to professionally trained personnel within the school system according to procedures established by the superintendent, subject to official board adoption of textbooks and the board's policy on challenged materials.

Bidding procedures prescribed for most school contracts (NDCC 15.1-09-34) do not apply to textbooks and reference books. This means that once the selection of a particular title is made, books can be purchased without going through the bidding procedure.

Additional questions about selection and purchase of textbooks should be directed to the Department of Public Instruction.

Early Childhood Education

Early Childhood Education

NDCC 15.1-09-58 allows school districts to use local, state, and federal dollars to fund early childhood education programs approved by the Department of Public Instruction.

Special Education

Since 1985, mandated programming of early childhood education for children with disabilities ages 3-5 has been a reality (NDCC Ch. 15.1-32). Providing special care for young children with disabilities has long been recognized as sound planning. Early stimulation, preventive physical treatment, general medical and health care, and specialized educational programming have been recommended at as early an age as possible by public and private agencies.

North Dakota's Children's Services Coordinating Council has developed a broad-based interagency agreement including state and regional agencies that provide early intervention services to young children with disabilities and their families. The agreement helps clarify roles of agencies that provide aspects of the continuum of services needed by young children and especially those with disabilities.

In addition, three state agencies (Health, Human Services, and Public Instruction) have developed the North Dakota Early Childhood Tracking System for young children from birth through five who are at risk for developmental delays due to biological, environmental, or developmental factors. The interagency tracking system monitors the young child's development through parent-completed questionnaires or screenings. Concerns are referred to appropriate agencies for follow-up. The interagency teams that carry out the tracking process have been able to resolve interagency issues/concerns for the betterment of services to children.

Kindergarten

Chapter 15.1-22 of the Century Code is devoted to details of kindergarten. Law requires each school district to either: (a) provide at least a half-day kindergarten program, or (b) pay tuition for a student to attend kindergarten in another school district.

NDCC 15.1-22-02 mandates a developmentally appropriate curriculum be submitted to the superintendent of public instruction. A kindergarten program shall equal at least 50 percent of full-time instructional days in accordance with NDCC 15.1-06-04.

Any person who teaches in a kindergarten that is part of the public school program must be licensed to teach by the Education Standards and Practices Board or approved by that board.

A board has the power to discontinue kindergarten by its own resolution (NDCC 15.1-22-04).

Law

Everything a school board can do is rooted in law. Since the board is a creature of the law, it is not surprising that its actions are prescribed and limited by law.

Most laws governing schools are found in North Dakota Century School Code and its most recent supplement. These code volumes can be obtained from the Department of Public Instruction and should be at the heart of each district's resource library.

If a power is not granted to school boards in law, the power does not exist. It is not a matter of "if it doesn't say we can't, we can"; but rather, "if it doesn't say we can, we can't."

In no case should a board or an individual try to wrestle through legal activity without competent help. We strongly recommend all local boards rely heavily on their attorneys for assistance in legal procedures and interpretations. NDSBA and its Legal Services Program are available to assist (but not replace) your local attorney.

School board powers and duties are defined by:

1) Legislation

Federal and state laws govern everything a school board does, including establishing curriculum, hiring teachers, building schools, and everything in between.

2) Opinions rendered by the North Dakota Attorney General

Questions of legislative intent and proper application of law occasionally arise. Before going to court for a determination, the issue may be presented to the North Dakota Attorney General for an opinion.

Request for an opinion must come from the governor, a state agency, a county state's attorney, or a legislator.

An Attorney General's Opinion prevails on the issue until it is overturned by a later AG's opinion, a court of competent jurisdiction, or the law is changed.

3) Court Decisions

Court Decisions carry the weight of law until overturned by a higher court or if the law is changed.

Current Attorney General Opinions are available online at:
<http://www.ag.nd.gov/opinions/opinions.htm>

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If you are in doubt about the propriety of what you are doing or are about to do, call NDSBA Legal Services or your board attorney. Legal exposure of the school district is the responsibility of the school board.

Negotiations

North Dakota Century Code 15.1-16-07 through 19 requires direct dialogue between school boards and teachers on salary and benefit matters when requested by a representative unit or the board. It is a unique relationship in the governmental structure—it is the ONLY case in this state where elected officials must negotiate directly with employees of the political unit.

Boards may negotiate directly or appoint or hire a negotiator. This is an important process and, if you intend to do it yourselves, training is critical. NDSBA presents an annual seminar early each year in an attempt to prepare board members for the upcoming negotiations season. A *Negotiations Basics Handbook* has been developed by NDSBA and is used at the seminar. It may also be purchased by member school boards through NDSBA.

Several general tips to prepare for negotiations are:

- A. Read and listen to all you can about the process and appropriate techniques.
- B. Learn as much as you can about specific characteristics of North Dakota and your local district.
- C. Have a broad and thorough knowledge of school finance or at least a good resource to call upon.
- D. Be aware that the language in an agreement can be more expensive than the salary items.
- E. Show respect for people representing teachers and always be courteous.
- F. Don't take things personally. Statements will be made and emotions may flare, but you must keep focused on what you're trying to accomplish.
- G. Avoid too much out-of-session talking. Nothing is settled until an agreement is reached. Sometimes real progress is reversed because someone makes an incorrect or premature comment away from the table.
- H. Be very familiar with the structures and language of negotiated agreements. That's the final product of your efforts and, once ratified, CANNOT be changed without ratification by both parties.
- I. Allow only one spokesperson for the board—at the table and with the news media.
- J. Call NDSBA with any questions you have.

Board members are essentially volunteers and certainly are not experts in the negotiations process. They are forced into a very sensitive and important procedure without many of the

protections that should accompany such a venture. NDSBA is the ONLY advocate for school boards in this process.

This advocacy is addressed in several ways:

- A. NDSBA seeks new legislation and modification of existing legislation so that boards are not so restricted when negotiating.
- B. Through its publications, especially the *Bulletin*, NDSBA attempts to keep current information regarding negotiations in the hands of the membership.
- C. NDSBA has a toll free number (800-932-8791) and is available to answer questions during negotiations.

NDSBA encourages board members who become experienced at the process to stay with it. After "learning by doing," good board negotiators can become mentors to new and inexperienced board negotiators.

Negotiated Agreement

A “negotiated agreement” is an agreement above and beyond the individual teacher’s employment contract. As defined by law, it covers all teachers within the district and includes refinements, details, and dimensions not addressed in the regular teacher’s employment contract.

In order to effectively negotiate, boards must be fully aware and knowledgeable of the language used in negotiated agreements. There is a whole body of information on contract language. However, no amount of written material should be regarded as a substitute for professional assistance when such assistance is indicated.

The less complex the negotiated agreement, the better. We suggest that nothing be a part of the agreement that is not specifically required by NDCC 15.1-16-13, as defined by the case of *Fargo Education Association vs. Fargo Public School District #1* (1980). Good faith negotiations, as stated therein, should lead to agreement on terms and conditions of employment, formation of a contract, employee/employer relations, and interpretation of an existing agreement. It is further specified that the parties must execute a written contract incorporating any agreement if requested by either party.

Some of the provisions that may be included, but not necessarily recommended, are:

- A. A preamble describing parties to the agreement and the purpose.
- B. Recognition of the representative organization by the board.
- C. A simple statement of rights of the board, such as: “All terms and conditions of employment not covered by this agreement shall continue to be subject to the board’s exclusive direction and control and shall not be the subject of negotiations during the term of this agreement.” There has been some indication that the courts will rely on a management rights clause to uphold the board’s right to make certain changes in working conditions.
- D. A grievance procedure can be part of the negotiated agreement or it can be a policy of the board. Remember, board policies can be changed without negotiating. A more detailed description of grievance procedures is presented at Section 06-12.
- E. A section on employment practices may be included, but don’t negotiate away the board’s rights.
- F. There’s always a section on compensation. This may be the heart of the agreement and presents the most roadblocks. It includes the salary schedule and how persons are placed on it. It can include extracurricular pay, advancement procedures, credit transfers, and any other monetary benefits the board pays to teachers.
- G. The negotiated agreement can include conditions for leaves.

- H. There is a certificate that specifies the term of the agreement and includes signatures of authorized representatives of teachers and the board. There may also be a savings clause to protect the board in the event part of the agreement is found to be statutorily flawed.

- I. Two-year agreements may include a reopening clause only for salary and benefits in the event state funding is cut in the second year.

Impasse and Fact Finding

Impasse occurs when a school board and teacher representatives cannot reach an agreement during the negotiations process.

When it becomes apparent that a mutually acceptable settlement is not likely to occur at the table, it is recommended that board negotiators seek the following instructions and authority from their full board:

1. A final offer before impasse, which may or may not include some room for further movement after receipt of third-party input
2. Authority to waive mediation unless the district's negotiated agreement requires it
3. Authority to declare impasse, preferably by mutual declaration, but unilaterally if the board team deems it necessary

North Dakota Education Fact Finding Commission

The Education Fact Finding Commission is the group appointed to make findings and issue recommendations when impasse exists between a school board and teachers.

The Fact Finding Commission is composed of three individuals: one appointed by the Governor, one by the Attorney General, and one by the Superintendent of Public Instruction. The latter appoints the chair. Members serve three-year terms that are repeatable with no term limits. Terms begin on July 1.

Mediation

Mediation has been defined as the introduction of a third party (one or more persons) for the purpose of assisting two groups to reach an agreement. The mediator, in theory, does not make judgments concerning either party's bargaining position. The mediator attempts to clarify the unresolved issues; draws the parties into productive discussion concerning the issues; acts as an intermediary in investigating with the parties possible avenues for resolution of issues; and, in many cases, deals with emotionally charged issues so that bargaining can continue to successful resolution. The mediator, therefore, functions not as a judge but as a catalyst to assist parties in finding their own solutions to their bargaining problems.

Mediation is not a substitute for use of the Fact Finding Commission but a voluntary intermediate step that may or may not resolve the impasse (see Section 11-50). Some districts have negotiated agreements that require mediation before fact finding, which NDSBA typically does not recommend. Mediation as a remedy for controversy should be pursued only when the two sides are fairly close together and when it is likely that a mutually acceptable agreement will be formulated.

The law gives the prerogative of going directly to fact finding without mediation as a prerequisite. **We have generally advised boards that unless mediation is likely to produce results, it is probably better to call in the Fact Finding Commission.**

Sexual Offenders on School Property

NDCC 12.1-20-25 prohibits a sexual offender who committed certain crimes against a minor and/or has been required to register as a sex offender from entering school property. An individual violating this law is guilty of a class A misdemeanor. Certain exceptions apply. Under law, offenders are permitted to enter school property to vote and attend open meetings. Sexual offenders, including those who are also parents, guardians, and/or relatives, may enter school property under conditions listed in NDCC 12.1-20-25, unless a board has implemented a policy with stricter limitations.

NDSBA recommends that your board create and adopt a policy detailing which offenders can enter school property and under what circumstances. This would give each board the power to decide which allowances and prohibitions are in the best safety interests of its school(s).

When writing policy, boards must be aware that state and federal law afford certain sexual offenders rights that a policy cannot infringe upon. All offenders have the right to vote and attend open meetings (NDCC 12.1-20-25). Student offenders have the right to a free, public education (NDCC 15.1-06-01). Disabled offenders have the right to a free and appropriate education under the Individuals with Disabilities Education Act. Under No Child Left Behind, parents (even those convicted of a sexual offense) have the right to be partners in their children's education, meaning that they have the right to attend parent-teacher conferences and other parental involvement meetings. Parents of disabled students have even more rights, such as attending Individual Education Plan (IEP) meetings. Boards should become familiar with laws referenced above before writing policy.

Attempting to make policy decisions about which prohibitions infringe on offenders' rights and which allowances merely serve as increased liability risks poses a daunting challenge to boards. Equally challenging is the task of enforcing this policy once established. Each board is encouraged to seek assistance from a school attorney or NDSBA when drafting policy. Boards should also determine how to inform the public about this policy and how it can best be enforced through administrative regulations.

Criminal History Records Checks

NDCC 15.1-06-06 requires that all school employees hired after June 30, 2011, who have unsupervised contact with students undergo a criminal history record check. For teachers, this requirement is met if the individual has undergone a criminal history record check through the Educational Standards and Practices Board (ESPB) or other state licensing board. NDSBA recommends the following procedure when school districts are responsible for conducting criminal history record checks:

Screening Process

When completing a criminal history record check, boards should follow the process outlined below:

1. Adopt a background check policy with general suitability requirements. Policies cannot bar applicants from employment simply because they have a conviction record.
2. Select an adjudicator, usually the superintendent, to oversee the screening process and rule on applicant's suitability.
3. Obtain criminal history record check request forms and fingerprint cards from the ND Bureau of Criminal Investigation (BCI).
4. Receive final applicant's consent to conduct a check and instruct him/her to be fingerprinted by an entity designated by the school board. The board may wish to establish a reasonable deadline by which this must be done to expedite the process.
5. Applicant or fingerprinting entity (NDSBA recommends the latter) returns fingerprint cards to the district.
6. Submit request form, fingerprint cards, and payment to BCI.
7. Adjudicator reviews records, allows applicant to explain and appeal information contained in the records, and rules on applicant's suitability based on standards in the district's policy.
8. State and federal criminal history records should be sealed, marked confidential, placed in an area separate from personnel files, and retained as long as reasonably necessary.

Criminal history records do not contain driving records, information on civil proceedings, or credit histories. Separate federal and state laws apply to such information, and the process for obtaining it varies from the procedure above. If your board wishes to check non-criminal history records, contact NDSBA for guidance.