2018 NDSBA Annual Convention – Request for Clinic Topics

The 2018 Annual Convention Clinic Session proposal form is available online at www.ndsba.org under Quick Clicks. Please use this form to submit proposals for a convention clinic session and/or presenter. The deadline for session proposals is May 1, 2018. For additional information, please contact Alexis Baxley at alexis.baxley@ndsba.org.

North Dakota Board Members and NDSBA Staff Attend NSBA Conference

A number of school board members from North Dakota, NDSBA board members, and NDSBA staff attended the National School Boards Association Annual Conference in San Antonio, Texas, on April 7-9. Attendees had the opportunity to attend more than 250 education programs and hear from keynote speakers Terry Bradshaw, Ann Compton, and Julián Castro.

NDSBA President Jim Johnson, NDSBA Vice President Mike Lautenschlager, and NDSBA Executive Director Alexis Baxley also had the opportunity to participate in the NSBA Delegate Assembly. Board members from across the country debated and adopted beliefs and resolutions to guide NSBA for the coming year. Additionally, Frank C. Pugh, California, was officially named as NSBA president for the coming year.

If your board is interested in attending next year’s NSBA Annual Conference, please mark your calendars for March 30-April 1, 2019, in Philadelphia, Pennsylvania.

Legal Spotlight
Practical Tips for Investigating Employee Misconduct
by Amy De Kok, NDSBA Legal Counsel

Our public schools are tasked with one of the most important responsibilities in our society—educating our nation’s youth. This responsibility should take center stage and requires our best efforts. However, at the same time, our public schools are often the largest employer in their communities, and this brings a whole host of other responsibilities and obligations that require a significant amount of attention. Just like any other employer, public or private, public schools need to be prepared to deal with employee misconduct.

There comes a time for every school district when it becomes aware of a complaint or an accusation of employee misconduct. No employer is immune. Indeed, I receive inquiries on a daily basis from our member districts dealing with some type of employee misconduct that they must address. School officials should have a working knowledge of the process of handling allegations of employee misconduct and, preferably, before receiving such a complaint or accusation. School districts, like any other employer, have a legal obligation to take prompt and appropriate action to correct confirmed inappropriate conduct on the part of their employees. This includes conducting an effective investigation. School districts should investigate all complaints, even when the complainant does not want the employer to investigate. Indeed, most school boards have adopted policies that require school officials to conduct prompt investigations upon becoming aware of a complaint of misconduct.

The subject matter of misconduct investigations is diverse, encompassing topics such as sexual harassment or assault, discrimination, embezzlement or employee theft, misuse of the district’s computer system or other property, harmful or inappropriate social media posts, and rules/policy violations. Regardless of the subject matter involved, the ability to conduct a prompt, thorough investigation will help the school district resolve the complaint in such a way as to maintain a positive and productive work environment and reduce school district liability.

The main goal of an investigation is to gather all relevant factual information to get as close as possible to discovering what happened to enable the school district to reach a conclusion that leads to an appropriate employment decision, a response to an agency, or to prepare a defense to a lawsuit. An investigation, done correctly, can serve other goals as well, including: (1) prevent an internal problem from becoming an external one; (2) allow the school district to self-monitor its managers, supervisors, and employees to ensure they are complying with applicable law and school board

Continued on page 2
Business Manager Certification Program Accepting Applications

The North Dakota School Business Manager Certification Program is now accepting applications for new students to begin courses this summer. Application forms are available online at http://ndsbmcp.org/index.php/handbooks-and-forms/ and will be accepted until June 1, 2018. For more information on the program, including cost of tuition, prospective students may download a program brochure at http://ndsbmcp.org/index.php/handbooks-and-forms/. Please contact rebecca.duben@ndsba.org regarding the program.

Legal Spotlight  Continued from page 1

policies; (3) demonstrate to employees that the school district takes policies seriously but takes disciplinary action only after giving the accused/affected employee an opportunity to be heard; (4) encourage employees to report misconduct; (5) reduce the liability of the school district; and (6) protect the rights of each person involved.

In addition, there are several key elements that every investigation should have. First, the investigative process should be fair and open-minded. The school district should give both the complainant and the accused full opportunity to be heard without prejudice. Second, it is important to be prompt. A slow investigation causes anger, creates the impression that the district does not care, and increases the risk of litigation. Third, thoroughness is key. The district should interview the parties and important witnesses about the facts, including names of other witnesses, dates, times, and exact descriptions of what happened. Finally, if you remember nothing else, you should remember this: It is very important to document the investigation.

The school official conducting the investigation should document all of the witness interviews, as well as the steps taken during the investigation. The investigation notes should be kept in a separate file (not in the personnel file) and should remain confidential during the duration of the investigation. Pursuant to NDCC § 15.1-07-25(2), if a complaint is filed concerning a school district employee and an administrative investigation is conducted, any record or document generated as part of the administrative investigation is confidential and not subject to open records requirements until the investigation is completed. The investigation and any determination of disciplinary action may not exceed sixty (60) days from the date the complaint is filed. If students are interviewed during the investigation, the records related to such interviews may continue to be confidential and protected from disclosure under FERPA, depending on the situation.

Generally speaking, every investigation will include several important steps:

• First and foremost, school officials should consider the need for interim remedial action first. Too often, it is easy for school districts to shift focus on what remedial action to take after the investigation is complete. Depending on the circumstances, the school district may need to take temporary remediation measures prior to or during the investigation. The most common type of interim remedial measure is to place the employee on administrative leave with pay. This removes the employee from school property to reduce the risk of any further misconduct and allows school officials to conduct an investigation without the potential for direct interference by the accused. Also, if the conduct involves child abuse or neglect, any school official with knowledge is required to promptly report such conduct to Social Services pursuant to NDCC ch. 50-25.1. Finally, you may need to take measures to protect any alleged victims, including other employees or students.

• Second, school officials will need to determine who should investigate the misconduct. Often times, this will be set by the school board. However, absent a policy instructive on this point, the school district may need to choose an appropriate investigator. In short, an appropriate investigator should be neutral and objective and not appear biased. The investigator should also have strong interviewing skills and the ability to ask difficult questions while being sufficiently sensitive to obtain honest, factual answers. The investigator should not have a vested interest in the outcome of the investigation. Ordinarily, the superintendent will conduct an investigation of employee misconduct. If the superintendent is the alleged wrongdoer, then typically the school board president will conduct an investigation.

• Third, before commencing the investigation, the investigator should plan the investigation and develop a strategy. To this end, the investigator should identify and review applicable policies, rules, and documents. He/she should become familiar with the issue(s) to be investigated and determine which witnesses should be interviewed and in what order. In addition, the investigator may need to determine if additional personnel or consultants are needed (i.e., an independent auditor or forensic accountant).

• Next, the investigator should conduct the interviews. Generally, the investigator should first interview the complainant(s), then the alleged wrongdoer(s), and after
Legal Spotlight

Continued from page 2

that, any person with relevant information in order of importance. However, depending on the circumstances, it may make more sense to interview witnesses before you interview the accused. Interviews should generally be conducted in a quiet, private setting away from distraction. The investigator may choose to record the interviews; however, this can create apprehension and may create records that are eventually subject to disclosure under the open records laws. If tape recording is not preferred or appropriate, the investigator may ask another school official to sit in on the interviews to take notes and to witness the interviews. With only a few exceptions, parents or legal guardians should be present when interviewing students.

• As indicated previously, documenting the investigation is key. The investigator should take detailed notes about when the interviews are conducted, who is present, and what is said. Notes should stick to the facts and should not include statements that may demonstrate bias and subjectivity. When making conclusions about a witness’s credibility, the investigator should set forth the objective basis for this determination. Depending on the circumstances, obtaining witness statements may be appropriate. Again, all documentation should be kept in a separate investigation file and should remain confidential until the investigation is complete.

• Finally, after the investigator gathers all of the evidence, reviews the relevant information and makes credibility determinations, he/she must come to a conclusion as to what happened and under what circumstances. The investigator will need to decide on an appropriate response, including any discipline or remedial action. In the school district setting, many times this determination will be guided by school board policy. It is important that school officials are aware of their options in this regard.

As indicated, most investigations will include these key steps; however, it is important to follow all applicable school board policies, which may include specific procedural requirements in terms of conducting an investigation. Also, the school district should consider whether to involve or consult with outside legal counsel prior to and during the investigation.

The specific course of action a school district may take in any investigation may vary depending on the facts and circumstances. There is no question, however, that an internal workplace investigation, done correctly, can help manage misconduct, avoid litigation, demonstrate to the workforce that the school district takes workplace concerns seriously, and potentially provide a defense to a future lawsuit. An improperly conducted investigation, on the other hand, can be costly in terms of litigation costs and disruption to the school district. If your district finds itself presented with a complaint or accusation of employee misconduct, please feel free to contact NDSBA for guidance on how to conduct a thorough and effective investigation.

Bring Most Likely To Succeed to your School Board

Most Likely To Succeed is a thought-provoking documentary feature film that reveals the growing shortcomings of conventional education methods and explores compelling new approaches that aim to revolutionize education as we know it and inspires school communities to reimagine what students and teachers are capable of doing.

The purpose of watching the film is to foster meaningful discussion among school board members about how current obstacles can be overcome and how steps toward change can be taken on a local level. Share Most Likely To Succeed for FREE with your school board and bring an inspired discussion of your school’s future to initiate change. If you’d like to screen the film, please contact Renee Jardine at 801-615-0711 or renee@riverwoodstrategies.com.

Invite Superintendent Baesler to Your District

Superintendent Baesler and others in the NDDPI recently had the pleasure of participating in several school visitations, as well as some regional events, where districts shared what is happening in their schools. Participating

Superintendent Baesler visits with students in Scranton, ND

in these events has only reiterated that our schools in North Dakota are doing many innovative and exciting activities.

With this thought in mind, NDDPI has created a special email address, dpisiteinvite@nd.gov, and encourages any school/district that is proud of the innovative initiatives going on in their buildings to submit a request to invite Superintendent Baesler or other members of NDDPI for a site visit to share, showcase, and highlight the great things going on in their schools.

NDSBA Seeking Threat Assessment Training Hosts

The North Dakota School Boards Association and North Dakota Insurance Reserve Fund have partnered to provide threat assessment training to all interested school districts in North Dakota beginning this summer. Many training options and strategies relating to school violence focus on building safety, police response to active shooters, or lockdowns and shelter-in-place drills. Threat assessment training instead focuses on stopping a potential attack before it happens using a team approach. If your district is interested in participating and/or hosting a training session, please let us know by emailing Julie at julie.steidler@ndsba.org.
superintendent vacancies

Williston School District
Contact: Ray and Associates
Phone: 319-393-3115
Email: glr@rayassoc.com
Application: www.rayassoc.com
Deadline: April 30, 2018
Position Begins: July 1, 2018

Richland School District
Contact: Kendra Dockter
Phone: 701-372-3713
Email: kendra.l.docpter@k12.nd.us
Application: https://richland44schooldistrict.weebly.com
Deadline: May 1, 2018
Position Begins: July 1, 2018

Hope-Page School District
Contact: Alli Roller
Phone: 701-945-2473
Email: alli.roller@k12.nd.us
Application: http://www.hope-page.k12.nd.us
Deadline: May 1, 2018
Position Begins: July 1, 2018

Enderlin Area School District
Contact: Tammy Boeder
Phone: 701-437-2240
Email: tammy.boeder@k12.nd.us
Application: http://www.enderlin.k12.nd.us
Deadline: May 1, 2018
Position Begins: July 1, 2018

Leeds School District
Contact: Maria Dunlap
Phone: 701-466-2461
Email: maria.m.dunlap@k12.nd.us
Application: edjobsnd.com
Deadline: May 1, 2018
Position Begins: July 1, 2018

LaMoure School District
Contact: Holly Braun
Phone: 701-371-6405
Email: holly.braun@k12.nd.us
Application: https://phl.appitrack.com/ndseecc.onlineapp/
Deadline: May 4, 2018
Position Begins: July 1, 2018

Wilton School District
Contact: Jenna Kirchmeier
Phone: 701-734-6331
Email: jenna.kirchmeier@k12.nd.us
Application: www.wilton.k12.nd.us
Deadline: May 9, 2018
Position Begins: July 1, 2018

Midkota School District
Contact: Alexis D. Baxley
Phone: 701-225-4127
Email: alexis.baxley@ndsba.org
Application: www.ndsba.org
Deadline: May 21, 2018
Position Begins: July 1, 2018

Burke Central School District
Contact: Julie Kreklau
Phone: 701-933-2821
Email: julie.kreklau@k12.nd.us
Application: www.burkecentral.k12.nd.us
Deadline: Open Until Filled
Position Begins: July 1, 2018

2018 NSBA Annual Conference
April 7-9, 2018
San Antonio, Texas

2018 NDSBA Annual Convention
October 25-26, 2018
Ramkota Hotel, Bismarck

2019 NDSBA Annual Convention
October 24-25, 2019
Ramkota Hotel, Bismarck