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NDSBA
NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION

AUGUST 2020

Excellence in North Dakota public education through local school board governance ■ VOL XLV ISSUE 8

NDSBA Cancels Annual Convention In-Person Activities, Moves Events Online



The North Dakota School Boards Association has had to make the unfortunate decision to cancel all in-person activities associated with the Annual Convention, School Law Seminar, and New Member Seminar scheduled for October 29-30, 2020, due to the ongoing pandemic.

While we had looked forward to seeing members, we've shifted a number of the planned events to a virtual platform:

School Law Seminar

NDSBA's School Law Seminar will be hosted virtually and will feature the same great, informative content that you're used to. We'll hold the seminar in five 1-1.5 hour sessions over the course of five days: October

26-30. Registered attendees will receive access to all five sessions; registration for individual sessions will not be available.

Thanks to a generous sponsorship from the North Dakota Insurance Reserve Fund, we are able to offer school district employee registration at a low rate of \$100. Additionally, school districts are able to register ALL school board members for no cost with at least one paid employee registration.

New Member Seminar

Newly elected school board members are required by law (NDCC §15.1-09-32) to complete training within their first year of service. NDSBA's New Member Seminar fulfills that requirement. This year, the seminar will be offered in four half-day sessions. Board members need only attend ONE session to meet the requirement. Attendance and participation will be checked at multiple times throughout the session to ensure the legal requirements are met. Each of the four sessions will be designated for one of NDSBA's four regions. We encourage new board members to attend their region's session as a way to meet

other board members in their area, however, board members are welcome to register for whichever session best fits their schedule.

The registration fee is \$100, and sessions will be held on the following days:

- October 5, 1-5 p.m.
SW Region
- October 9, 9 a.m.-1 p.m.
NW Region
- October 13, 9 a.m.-1 p.m.
SE Region
- October 15, 1-5 p.m.
NE Region

Registration for both the School Law Seminar and New Member Seminar will open at noon on September 1 at www.ndsba.org. School business managers should complete registration for their district in one transaction. School board members should not register themselves without speaking to their business manager.

Additionally, Delegate Assembly will be held virtually on October 30 at 3:00 p.m. Central Time. Please watch your email for more details about Delegate Assembly and the School Law Seminar agenda.

Convention Reminders

Convention Rooms

If you had previously reserved rooms for the 2020 Annual Convention at the Ramkota Hotel they have been automatically cancelled. If you reserved rooms at other hotels, you will need to make those cancellations individually.

Convention Delegate Designation

Convention delegates and alternate forms must be completed by **September 10** in order to participate in the NDSBA Board of Directors election and vote at Delegate Assembly. Only those registered as delegates BY THIS DEADLINE will receive election ballots. Only those registered as alternates BY THIS DEADLINE will be allowed to substitute for a registered delegate at Delegate Assembly.



Legal Spotlight

Extracurricular Positions and COVID-19

by Amy De Kok, NDSBA Legal Counsel

As public school districts in North Dakota are busy finalizing their Health and Safety Plans and preparing to start the 2020-21 school year during this unprecedented time, one of many issues to be raised is how to handle extracurricular positions. Specifically, districts want to know what options they have to terminate or modify such positions due to COVID-19 concerns or in response to an outbreak and, if terminated or modified, what compensation may need to be paid to the individual coaches or advisors.

As an initial matter, extracurricular positions are typically at-will in nature, meaning that the position may be modified or terminated by either employer or employee at any time with or without cause. A district employer may change the at-will nature of an extracurricular position by making a promise of duration of employment to the individual or by entering into an employment contract for the position.

If either of these occur, the district employer may only be able to modify or terminate the position when there is just cause or pursuant to the specific terms of the employment contract.

Generally, school districts maintain the authority to determine whether to continue with extracurricular activities as planned—especially during the pandemic in which we all find ourselves. In addition, the NDHSAA has authority to determine whether its sponsored activities will continue as planned or be modified in light of the pandemic and the status of cases in North Dakota. Thus, the issue regarding extracurricular positions typically boils down to whether the district must compensate the individual coaches or advisors as expected when a season or activity is cut short or cancelled altogether. The answer to this question depends on how the school district structures its extracurricular positions and the type of employees that are filling those positions.

If a district enters into employment contracts with its extracurricular coaches and advisors that have a particular term (e.g., the 2020-21 football season), the terms and conditions of the individual contracts will likely determine whether and how the individual coach or advisor must be compensated if the activity is cancelled or cut short. It may require proration of the compensation or stipend promised through the date of cancellation. Again, the specific terms will likely control. NDSBA generally recommends that districts not enter into employment contracts with extracurricular coaches or advisors in order to maintain the at-will nature of such positions and to give the district as much flexibility to make necessary changes. In that case, the district likely has the flexibility and discretion to cancel an activity before it begins and would likely not owe any compensation or stipend to the individual coach or advisor.

The reality in most districts is that

a good number of extracurricular positions are filled by teachers and/or administrators. Those individuals often depend on the extra compensation paid from these positions from year to year. NDSBA generally recommends that extracurricular assignments and positions be documented separately from the individual teacher or administrator contracts, and many districts have chosen to transition to separate documentation based on this recommendation. However, it is still common for districts to address extracurricular positions in the negotiated agreement and individual teacher contracts. Districts should also be aware of how extracurricular positions are addressed in the district's negotiated or master agreement with its teachers. Such agreements could limit the district's options in making decisions on extracurricular assignments and any compensation paid to individual teachers filling those positions. Additionally, NDSBA recommends that districts include language in the individual contracts confirming that such assignments are not subject to continuing contract rights and may be modified or terminated at the discretion of administration at any time with or without cause. Typically, if this type of language is included, the district will have the necessary flexibility to modify or terminate the position/assignment without having to utilize the nonrenewal procedures set forth in ND Century Code. Better yet, if the extracurricular assignment/position is documented separately in a job sheet or other written documentation and language confirming the at-will nature of the position is also included, the district should have the discretion to terminate or modify as it sees fit. Regardless of how the position or assignment is documented (in the individual teacher contract or separately), language regarding whether and how compensation due and owing will be determined in light

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The *Bulletin* is the official newsletter of the North Dakota School Boards Association. It is published twelve times each year and is mailed as third class mail from New Salem, North Dakota.

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Legal Spotlight

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of a cancellation should be included. Typically, compensation is prorated through the date of cancellation.

NDSBA strongly recommends that districts work with their school attorney to structure their extracurricular positions in such a manner as to give districts the flexibility needed to make necessary decisions, especially during the COVID-19 pandemic and other emergency situations. Please feel free to contact NDSBA for further information regarding this issue and any other COVID-19 concerns.

NDSBA to hold Board of Directors Election by Mail-In Ballot

Each year members of the North Dakota School Boards Association elect representatives to serve on the NDSBA Board of Directors at the Annual Convention in October. Due to the cancellation of in-person activities associated with the convention, the 2020 election will be held by mail-in ballot.

NDSBA staff will work with business managers to certify delegates from each district. Candidate biographies and video statements will be made available to delegates online. On September 15, 2020, each district's business manager will be mailed a ballot and security envelope for each delegate. Delegates should complete their ballots, place them inside the security envelope, and return the sealed security envelope to their business manager. Business managers must return the completed ballots to NDSBA by mail, postmarked by October 15, 2020. Any ballots not postmarked by October 15 or not contained within a security envelope will not be counted.

On October 29 the Ballot Counting Committee will convene at the NDSBA office. They will remove the ballots from the security envelopes and tally the votes. The chairman of the Ballot Counting Committee will present the election results during the 2020 Virtual Delegate Assembly on October 30.

Please contact Alexis at 800-932-8791 or 701-255-4127 with any questions.

AUGUST 2020

NDSBA Launches Lunch & Learn Webinar Series



The North Dakota School Boards Association is excited to announce its recently launched webinar series: NDSBA Lunch & Learn.

These FREE monthly webinars will be held on the third Wednesday of each month at 12:00 p.m. CT. Grab your lunch and tune in to learn about issues important to school boards. Webinars will feature hot topics like COVID-19 issues and classic board development topics like roles and responsibilities. The hour-long webinars will include presentations from NDSBA staff and partner organizations; be open to board members, administrators, and business managers; and be recorded for later

viewing.

The first webinar, titled *Returning District Employees to Work During COVID-19*, was held on August 19 and is available for playback at www.ndsba.org/resources/lunch&learn. Additionally, we've scheduled the following:

- September 16: School Liability and Insurance Overview
- October 21: Title IX Check-In

Future webinar topics and registration can be found at the link above. If you have a topic you'd like to see covered during a Lunch & Learn, please let us know. We are excited to provide more quality professional development to our members, and we hope you'll join us next month!

NDSBA Service Award Program



NDSBA recognizes board members for their professional development, service, and participation. Awards are made in two categories based on a point system: Veteran Board Members (100 points) and Master Board Members (200 points). Members who have participated in National School Boards Association events receive their award "with distinction." This year, awards will be mailed and recipients will be recognized during the virtual Delegate Assembly on October 30, 2020.

Business managers should maintain points forms for board members and update them each year. Business managers should send a copy to NDSBA when 100 and 200 points have been earned. Forms are available at www.ndsba.org under the "Services" link. Also available on the webpage is a spreadsheet that may be useful to record board members' yearly activities. Some service activity or participation areas may not be listed on the form. If you have a board member who participates in something that is not listed or you have other questions about point categories, please call the NDSBA office.

A copy of the qualifying board member's form must be received in the NDSBA office by **Wednesday, September 30**.

NDSBA Now Accepting Barb Norby Scholarship Nominations

Each year NDSBA awards the Barb Norby Scholarship to one North Dakota school board member who has demonstrated exceptional board service and commitment to their district. Scholarship recipients receive registration and an expense allowance to attend the following year's National School Boards Association Annual Conference. This event is an outstanding professional development and networking opportunity for new and veteran board members alike. If the NSBA Annual Conference is cancelled

due to COVID-19, NDSBA will apply the scholarship to the 2022 conference.

If you would like to nominate a board member for this award, please email a short paragraph describing why your nominee is deserving of the scholarship to Alexis at alexis.baxley@ndsba.org by Wednesday, September 30.

The Barb Norby Scholarship Award was created by the NDSBA Board of Directors in tribute to Barb Norby's many years of valuable service to the association.



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COVID-19 Resources

A COVID-19 Resources page with the latest information and guidance can be found on the NDSBA homepage under Quick Clicks. It can be accessed at www.ndsba.org. Resources include remote meetings guidance, elections guidance, and more.



mark your calendar

2020 NDSBA New Member Seminar
October 5, 9, 13, or 15, 2020
Virtual Event

2020 NDSBA School Law Seminar
October 26-30, 2020
Virtual Event

2020 NDSBA Delegate Assembly
October 30, 2020
Virtual Event

2021 NDSBA Negotiations Seminar
February 4-5, 2021
National Energy Center of Excellence, Bismarck

2021 NDSBA Annual Convention
October 28-29, 2021
Ramkota Hotel, Bismarck



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