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NDSBA
NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION

SEPTEMBER 2022

Excellence in North Dakota public education through local school board governance ■ VOL XLVII ISSUE 9

2022 School Law Seminar to Include Hot Legal Topics

School board members, superintendents, business managers, school district staff, and private sector attorneys are invited to attend the 2022 NDSBA School Law Seminar on Thursday, October 27 at the Bismarck Hotel (formerly Ramkota). NDSBA is excited to announce two featured sessions that are hot legal topics amongst school districts.

Jackie Gharapour Wernz will be joining us all the way from Houston, Texas to present **Title IX Redesigned AGAIN!** Title IX is an everchanging law



Jackie Gharapour Wernz

that directly effects the policies and guidelines of districts. Wernz is an expert on Title IX and aids school boards

with knowledge so they may be in compliance. The session will be packed with information and there is plenty of time for questions.

From our neighbor state to the east, Debra Schneider from Frederikson & Byron in Minneapolis, Minnesota will be presenting on the topic of foreign



Debra Schneider

teachers entering districts to help fill the teacher shortage. During **Hiring Foreign Teachers**, Schneider will cover the general process of attaining teachers from other countries, the lawful dos, and the don'ts to avoid. She will also provide information on attaining their services should a district need.

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The School Law Seminar will also include the following sessions:

School Elections for Board Members presented by NDSBA Legal Counsel, Amy De Kok; **Public Comment at Board Meetings and First Amendment Implications** presented by KrisAnn Norby-Jahner from Vogel Law Firm; and a **Breakout Session** that includes three topics for consideration – **School Transportation 101**, **School Law Legal Update**, and a presentation from **NDIRF**. See you there!



Annual Convention Registration Now Open!

Registration for the 2022 NDSBA Annual Convention is **NOW OPEN!** Registration is available online at www.ndsba.org. Each district should submit ONE registration prepared by the business manager. Early bird registration rates are only available until October 12!

Convention Reminders

Committees

NDSBA is still looking for board members to serve on the Credentials or Ballot Counting Committees. Please fill out the form at <https://forms.gle/PZhfMMTDLQwYhJy7> as soon as possible.

Convention Rooms

If you have sleeping rooms reserved at the Bismarck Hotel for the 2022 NDSBA Annual Convention, you must give them a specific name for each reserved room **by October 3** or the rooms will be released. Contact Bismarck Hotel reservations at (701)258-7700.

Convention Delegate Designation

Convention delegates and alternates **MUST** be clearly noted when registering. Registration must be completed **by October 12** in order to vote at Delegate Assembly. Only those registered as alternates **BY THIS DEADLINE** will be allowed to substitute for a registered delegate.

Board Member Service Awards

A copy of a qualifying board member's points form must be received in the NDSBA office by **Friday, September 23**, for board members to be recognized at the 2022 Annual Convention. Forms are available at www.ndsba.org under the "Resources" link. Also available on the webpage is a spreadsheet that may be useful to record board members' yearly activities.

State Law Requires New Board Members to Attend Seminar

North Dakota Century Code § 15.1-09-32 requires new school board members to attend an in-service training workshop hosted by the North Dakota School Boards Association or its designee within one year of assuming office. NDSBA will host a seminar for new board members on October 27, 2022.

Registration for the New Member Seminar is available at <https://www.ndsba.laventurellc.com/2022annualconvention/>





Legal Spotlight

Reporting Teacher Breach of Contract to ESPB

by Amy De Kok, NDSBA Legal Counsel

Over the past two weeks,

school districts across the state have welcomed back students and kicked off the 2022/2023 school year. This time of year is always busy and exciting, and the last thing that schools want to worry about is filling an unexpected teacher vacancy. Unfortunately, these situations do arise, almost every year in my experience. In these situations, the board typically receives a request from an individual teacher to be released from their contract. Individual teachers seek a release from their contracts for several reasons. This article discusses best practices to handle such requests as they arise and when it is appropriate to report breach of contract to the Education Standards and Practices Board (ESPB).

When a teacher seeks a release from their contract, they are essentially proposing to the school board to enter into an agreement to terminate the employment contract between the

teacher and the board. It is important to remember that teaching contracts have rights and obligations that flow both ways – to the individual teacher, as well as to the school board. The board has the right to expect that the teacher will provide the services they contracted to provide for which they receive compensation and other benefits. When an individual teacher under contract with a district fails to provide the contracted services without proper justification, the teacher is likely in breach of contract. A breach of contract could support a discharge for cause or even a lawsuit for damages.

If a teacher requests a release from contract, the board must agree to such release before the contract is terminated. The board generally has discretion whether or not to grant the requested release. If the board refuses to grant the release and the teacher fails to provide the services promised under the contract, the teacher will likely be in breach of contract. Some boards have adopted policies or procedures on handling teacher requests for release, some of which include a liquidated damages provision in the event of a release or a breach. The nature, scope and application of these liquidated damages provisions will vary depending on the language of the clause at issue. The general purpose of a liquidated damages provision is to set an agreed-upon damage amount when actual damages, though real, may be difficult or impossible to prove. In other words, it is an agreement between the parties that if the contract is breached, the liquidated damages amount will compensate the aggrieved party for that breach. Liquidated damages are not meant to be a penalty and, to be enforceable, must be reasonable in light of the anticipated or actual damages caused by the breach. Most liquidated damages provisions are negotiated into the district's negotiated agreement and include a progressive damage amount that increases the closer the request for release or breach occurs to the start of

the school year and as the school year progresses. Whether a district can or should assess liquidated damages in a particular situation will depend on the circumstances.

Generally, when a teacher is in breach of their contract with a district, the district may report this breach to ESPB. ESPB may pursue action against the teacher's license if the breach is without proper justification. In fact, NDCC 15.1-13-25 provides that ESPB may, after holding a public hearing in accordance with NDCC chapter 28-32, issue a written warning or reprimand the individual teacher, suspend the individual's teaching license, or revoke the individual's license if the individual has "breached a contract with a school district" or "refused to perform the duties of a teacher." Whether a board should report a breach to ESPB will depend on the circumstances. If the board has granted a release to an individual teacher, assessed liquidated damages, if any, pursuant to the negotiated agreement, and the teacher has paid the amount due, the board in such a situation should generally not report to ESPB. The reason is that there is likely not a breach of contract in such an instance. If, however, the board has granted a release to the teacher and properly assessed the liquidated damages amount pursuant to the contract, but the teacher refuses or fails to pay the amount without legal justification, the board may generally report the breach to ESPB (the breach being the failure to pay the properly assessed liquidated damages).

Again, whether it is appropriate to grant a release, assess liquidated damages, or to report a breach to ESPB will depend on the circumstances in a particular situation. I recommend districts work with their legal counsel when these situations arise to make sure you are handling them appropriately. As always, please feel free to contact NDSBA for additional information regarding this topic.

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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Government Affairs Committee Resolution Report

NDSBA's Government Affairs Committee (GAC) met on August 30, 2022, to act on resolutions for consideration by the Delegate Assembly at the Annual Convention. Participating committee members were: Holly Stromsodt, Chair (Finley-Sharon); Karl Lembke (Bismarck); Patti Stedman (West Fargo); Sonya Hansana (Hazen); Cynthia Schabb (Grand Forks); Mike Lautenschlager (Lewis & Clark); Collette Hertz (Harvey); and Robin Nelson (Fargo).

Resolutions remain as standing resolutions for four years unless significant legislative or staff action prompt an earlier review. At the end of four years, they are dropped unless readopted by the Delegate Assembly. Five resolutions were recommended for readoption, one resolution was recommended for readoption with amendments, and one new resolution was submitted in 2022. Following are recommendations of the GAC:

RESOLUTIONS THAT ARE FOUR YEARS OLD AND RECOMMENDED FOR READOPTION AS WRITTEN

1. COSTS ASSOCIATED WITH ENGLISH LANGUAGE LEARNERS.

NDSBA shall support the state ensuring program funding equity for school districts, including full funding of the costs associated with English language learners. *Adopted in 2014; readopted in 2018.*

2. SCHOOL CONSTRUCTION LOAN PROGRAM. NDSBA shall support increasing the total funds available for the School Construction Loan Program. *Adopted in 2014; readopted in 2018.*

4. EARLY CHILDHOOD EDUCATION. NDSBA shall support separate state funding for preschool programs meeting prescribed standards. *Adopted in 2010; readopted in 2014 and 2018.*

5. FUNDING ADEQUACY, BOARD TAXING AUTHORITY, AND PROPERTY TAX REDUCTIONS. NDSBA will support direct state funding of K-12 education at a level adequate to reduce reliance on local property taxes. *Adopted in 2006; readopted in 2010, 2014, and 2018.*

7. NORTH DAKOTA STATE STANDARDS. NDSBA shall support the ongoing implementation of North Dakota State Standards. *Adopted in*

2014; amended and readopted in 2018.

RESOLUTION THAT IS FOUR YEARS OLD AND RECOMMENDED FOR READOPTION AS AMENDED

**Items in green are additions and items in red are eliminations.*

3. TEACHERS' FUND FOR RETIREMENT AND PUBLIC EMPLOYEE RETIREMENT SYSTEM.

NDSBA shall support **adequate and sustainable funding for TFFR and PERS programs.** ~~any of the following solutions to help address this critical issue:~~

~~1) A separate state appropriation that gives each school district an annual amount equal to 5% of their certified staff payroll, until such time as the rollback occurs to the pre-2008 contribution levels.~~

~~2) A series of catch-up allocations from the state's general fund sufficient to fund the plan to 100%.~~

~~3) A rollback to the pre-2008 contribution levels when the TFFR plan is funded at 70% with the post-2008 increased contribution rates paid by state funds until the plan is 100% funded.~~

~~4) Agreement to study the present funding system for TFFR and explore other possible solutions with appropriate stakeholders. Comprehensive study should include potential costs considerations, funding sources, legal implications, and impact on employees, employers, and the state.~~

Adopted in 2014; readopted in 2018.

RESOLUTIONS THAT ARE FOUR YEARS OLD AND RECOMMENDED TO BE DROPPED

6. AFTER-SCHOOL PROGRAMMING. NDSBA will support legislation that will allow all school districts in North Dakota an equal opportunity to participate with after-school programming. *Adopted in 2006; readopted in 2010, 2014, and 2018.*

8. SCHOOL SAFETY. NDSBA shall support legislation that would expand the ability of school districts to discuss school safety and security in executive session. *Adopted in 2018.*

NEW RESOLUTION RECOMMENDED FOR ADOPTION

A resolution to expand the criteria for eligible individuals who can receive sign-on bonuses under the School Board authority provision granted in North Dakota Century Code

15.1-09-33.1.

WHEREAS, the current criteria for eligible individuals who can receive sign-on bonuses under current school board authority is limited to the position of a classroom teacher which does not delineate differing needs based on the role (defined as the grade-level and/or subject matter being taught); and

WHEREAS, the current criteria for eligible individuals who can receive sign-on bonuses under current school board authority does not allow current LEAs to recruit critically short and necessary non-classroom positions such as school psychologists; and

WHEREAS, historical data continue to show a consistent trend of data magnifying discrepancies in the ability to fill positions based on roles, not positions such as special education being harder to fill than general education; and

THEREFORE, BE IT RESOLVED that the North Dakota Schools Boards Association support legislation to expand the criteria for eligible individuals who can receive sign-on bonuses under the School Board authority provision granted in North Dakota Century Code 15.1-09-33.1



If your board votes to bring a resolution to the convention floor for consideration by the Delegate

Assembly, the following process must be followed:

1. Have 400 copies of your resolution ready to distribute at the close of the first Business Session on Thursday afternoon.

2. At the Second Business Session on Friday afternoon, the chair will ask if there are resolutions that were distributed on Thursday. At that time, a delegate from your board must come to the microphone and move the resolution. A delegate from a different board must make the second.

3. Once a motion and second have been made, your resolution will be discussed and voted on by the Delegate Assembly.



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Superintendent Evaluations

North Dakota law requires that school boards complete a formative evaluation of superintendents **ON OR BEFORE NOVEMBER 15** [NDCC § 15.1-14-03]. This evaluation must take place at an open public meeting. One purpose of the November evaluation is to highlight areas of performance in need of improvement and provide an improvement plan a timeline for expected enhance performance. The law regarding superintendent evaluations states that if the superintendent is found to be unsatisfactory in any area, the board shall detail its findings in the report and make recommendations. This process allows opportunity for professional growth before the superintendent's formal evaluation, which must be complete **ON OR BEFORE MARCH 15, 2023**. A sample evaluation form is available on NDSBA's website and www.ndsba.org under RESORUCES.

NDSBMCP to Host Training in October

The North Dakota School Business Manager Certification Program (NDSBMCP) will host a one-day training for business manager students in Bismarck on Wednesday, October 26, in Bismarck at the Bismarck Hotel and Conference Center (formerly Ramkota). Human Resources I and Open Records and Meetings will be taught to first-year students while Ancillary Services Management and Asset Management, Investing, and Bonding will be taught to second-year students. These classes are available only for current and graduate students of the program. Students can register by going to the NDSBMCP webpage at <https://www.ndsbmcp.org/> and selecting the NEWS tab at the top of the page.



mark your calendar

2022 NDSBA Annual Convention

October 27-28, 2022
Bismarck Hotel, Bismarck

2023 NDSBA Negotiations Seminar

February 2-3, 2023
Bismarck Hotel, Bismarck

2023 NDSBA Annual Convention

October 26-27, 2023
Bismarck Hotel, Bismarck



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Facebook!**



Follow us at [@ndschooolboards](https://twitter.com/ndschooolboards) (Twitter) and **North Dakota School Boards Association** (Facebook) for event, policy and other education-related updates.

2022 NDSBA ANNUAL CONVENTION

TENTATIVE PROGRAM
Bismarck Hotel, Bismarck

THURSDAY, October 27

PRE-CONVENTION SESSIONS

7:00-8:00 a.m.	Registration and Breakfast – Dakota Ballroom	3:00 p.m.
8:00-2:45	SCHOOL LAW SEMINAR – Lamborn/Patterson	
8:00-2:45	NEW MEMBER SEMINAR – Grand Pacific	4:30 p.m.

NDSBA CONVENTION

OPENING CONVENTION SESSION

Keynote: Kostas Voutsas
Conflict Management: Building Relationships One Pot at a Time

FIRST BUSINESS SESSION

FRIDAY, October 28

7:30-8:00 a.m.	Registration – Dakota Ballroom Exhibit Visitation - Courtyard (breakfast)	11:45-12:30
8:00-9:15	GENERAL SESSION Keynote: Dennis McIntee	
9:45-11:45	BUSINESS MANAGER SESSIONS	11:45-12:30
9:45-10:30	CLINIC SESSIONS <ul style="list-style-type: none">Hiring Foreign TeachersBe Legendary School Board Leadership Institute PanelMaking a Diploma More Accessible Utilizing GED TestsRiding the Waves of Communication and ChangeBoard and Superintendent RelationshipsSmall Organized Schools: North Dakota Center for Distance Education - Updates!	12:30-1:30 12:30-1:30 1:30-2:15
10:45-11:30	CLINIC SESSIONS <ul style="list-style-type: none">Reducing Health Insurance Premiums through Plan DesignNDSNA/Child Nutrition UpdateParliamentary Procedure: Roberts Rules of OrderIgnite Passion: Attacking Burnout and StressDennis McIntee Clinic SessionSmall Organized Schools: CareerViewXR: Exploring Careers in Virtual Reality	2:30-3:15

CLINIC SESSIONS

- NE Regional Meeting
- SE Regional Meeting
- NW Regional Meeting
- SW Regional Meeting

BUSINESS MANAGERS' LUNCH BUFFET

BUSINESS MANAGER TALK & FAQ

LUNCH BUFFET & EXHIBIT VISITATION

CLINIC SESSIONS

- Conflicts of Interest and Voting
- CREA Annual Meeting
- Student Board Representatives
- Developing Strategic and Other Long-Term Plans
- Grow Your Own Elementary Teachers with Umary
- Board Member Challenges Dealing with Roles & Responsibilities
- Trauma Informed Curriculum

CLINIC SESSIONS

- North Dakota Gift Clause Limitations
- Making a Foundation Work for Your District
- Conversations with Superintendent Baesler
- Legislative Panel
- Grow Your Own Superintendent
- Trauma Informed Curriculum Cont.

3:30 **SECOND BUSINESS SESSION AND DELEGATE ASSEMBLY**

4:30 **ADJOURN**

SCHOOL LAW SEMINAR – THURSDAY, October 27, 2022

TENTATIVE SCHEDULE

- 7:00 a.m. Registration and Continental Breakfast
Welcome
- 8:00-9:00 **School Elections for Board Members**
Amy L. De Kok, NDSBA Legal Counsel
- 9:00-10:30 **Title IX Redesigned, AGAIN!**
Jackie Gharapour Wernz, Thompson & Horton, LLP, Houston, TX
- 10:30-10:45 Break
- 10:45-11:45 **Public Comment at Board Meetings and First Amendment Implications**
KrisAnn Norby-Jahner, Vogel Law Firm, Bismarck, ND
- 11:45-12:45 Buffet Lunch (included in registration fee)
- 12:45-1:30 **BREAKOUT SESSIONS**
- SESSION 1: **School Transportation 101**
Amy L. De Kok, Legal Counsel, NDSBA
- SESSION 2: **School Law Legal Update**
Tara Brandner, District General Counsel, Fargo Public Schools
- SESSION 3: **NDIRF**
- 1:30-2:45 **Hiring Foreign Teachers**
Debra Schneider, Fredrikson & Byron, Minneapolis, MN
- 2:45 Conclusion of Seminar

Approved for __ CLE credits - State Bar Association of North Dakota

2022 NEW MEMBER SEMINAR

October 27, 2022 | 8 a.m. – 2:45 p.m.

Bismarck Hotel, Bismarck



Agenda

- 8:00 a.m. **Welcome and Overview of the Day**
Alexis Baxley, NDSBA Executive Director
- 8:05 a.m. **Welcome Video**
Kirsten Baesler, State Superintendent
- 8:25 **Board Leadership and Board Ethics**
Alexis Baxley, NDSBA Executive Director
- 9:45 a.m. **Break**
- 10:00 **School Finance**
Dr. Paul Stremick, Dakota Leadership Solutions
- 11:00 **Conflict of Interest, School Board Powers, Roles and Responsibilities,
and Chain of Command**
Alexis Baxley, NDSBA Executive Director
- 11:45 **Lunch**
- 12:45 p.m. **Open Records, Open Meetings and Executive Session**
Office of the Attorney General
- 2:00 **Experienced Board Member Q&A**
*Board members will separate into subgroups by region and meet with their NDSBA
Board of Directors representative.*
Grand Pacific: Northwest Region – Jim Rostad, Minot
Heart Room: Southwest Region – Lucas Greff, Mott-Regent
Cannonball Room: Northeast Region – Steve Halldorson, Devils Lake
Shenenne Room: Southeast Region – Nathan Berseth, Richland
- 2:45 p.m. **Adjourn**

North Dakota state law requires new school board members to attend this training (NDCC § 15.1-09-32). Participants who fail to be present for the full day will not meet the requirements of the training. A certificate of completion will be mailed to participants who complete the workshop.