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Excellence in North Dakota public education through local school board governance ■ VOL XLIII ISSUE 3

North Dakota is First State Allowed to Use ACT



State Superintendent Kirsten Baesler said that 17 North Dakota school districts have been cleared to use the ACT exam

in place of a required state math and English achievement test for high school students. The districts had asked for approval to make the switch.

According to Baesler, some North Dakota students will take one less standardized test in high school as a result of the change. Many parents and teachers have expressed concern about the frequency of school testing. The change means students in the 17 districts will no longer have to take the North Dakota State Assessment in high school. Instead, they will take the ACT in the 11th grade. Both the State Assessment and the ACT measure a student's proficiency in math and English.

Baesler said students are more likely to give their best effort on the ACT because they generally regard it as more important than the state assessment. The ACT is a widely used college entrance exam, and North Dakota students must earn a composite ACT score of 24 or greater to



qualify for up to \$6,000 in state college scholarship aid. North Dakota is the first state in the nation to obtain permission to use the ACT, instead of a separate state test, as a locally selected measurement of student math and English proficiency.

"Any time we can take fewer tests in high school, that means our students are spending more time learning in our classrooms, rather than being tested," Baesler said.

Seventeen North Dakota school districts, including six of its seven largest districts, intend to use the ACT test to measure the math and English proficiency of their 11th graders, instead of giving the separate North Dakota State Assessment. The 17 districts have 3,735 students in the 11th grade, or 50 percent of the 7,533 high school juniors in the state. The group includes North Dakota's four largest districts – Bismarck, Fargo, West Fargo and Grand Forks – as well as Williston (6th), Mandan (7th) and Wahpeton (13th).

Other districts planning to use the ACT this spring are Beulah, Dakota Prairie (based in Petersburg, about 40 miles east of Devils Lake), Fordville-Lankin, Goodrich, Harvey, Larimore, Lidgerwood, Sargent Central, White Shield, and Zeeland.

State and federal law require schools to administer periodic tests to measure student proficiency in math, English, and science. North Dakota law also requires 11th graders to take the ACT. As a result, North Dakota high school students have

been taking both the ACT and the North Dakota State Assessment during their junior year. The State Assessment is called an "accountability" test, because it is intended to show whether students meet a number of state learning standards.

A comprehensive 2015 federal education law, called the Every Student Succeeds Act, said local schools could use a nationally recognized test – rather than a test developed for their own states – to measure whether students met their state's learning standards. The North Dakota Department of Public Instruction advertised this option to local schools, and a number of them jumped at the opportunity.

The change needed approval from the U.S. Department of Education. On January 29, a department assistant secretary denied North Dakota's request, saying the state had not demonstrated that using the ACT would produce accountability results similar to the North Dakota State Assessment.

Baesler vigorously disputed the department's conclusions and began an advocacy effort to ask for reconsideration. As part of that appeal, Baesler enlisted the help of North Dakota's congressional delegation and the chairs of the U.S. Senate and House education committees, Sen. Lamar Alexander, R-Tenn., and Rep. Virginia Foxx, R-N.C.

The department then decided to grant the state's request. Baesler thanked Education Secretary Betsy DeVos personally for the decision during a meeting of top state education officials in Washington, D.C.

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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.

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 Performance Nonrenewal or Discharge for Cause: What is the Right Path?

by Amy De Kok, NDSBA Legal Counsel

It is that time of year again—contract renewal season. For the most part, districts need only concern themselves with making sure they meet the statutory deadlines for teacher and administrator evaluations and issuance of individual contracts. However, it is also a time when many districts have to make some tough decisions, namely, whether to terminate the employment of a teacher or administrator. Over the past several weeks, I have received numerous telephone calls from board members and superintendents wrestling with this very issue.

Sometimes the decision whether to nonrenew or discharge is clear and it is just a matter of making sure you meet the proper deadlines for notice and hearing. However, more often than not, the decision of whether nonrenewal or discharge is the right decision is illusive. To complicate things a bit further, it is not always clear which of the two is the right path once the decision to end the employment relationship is made. Rather, there is often a discussion of whether nonrenewal is appropriate versus discharge for cause, and unfortunately, the line between the two is not always the model of clarity.

Before I jump into a discussion of nonrenewal versus discharge, I think it is important to review some fundamental concepts. Like many states, upon signing an employment contract with a North Dakota public school district, teachers and administrators have job protected status (i.e., continuing contract rights) and their employment can be terminated only under limited circumstances and after providing the individual due process. A school district cannot attempt to extinguish or override continuing contract rights by placing language in a negotiated agreement or individual teaching contracts. The only way to terminate a continuing contract is through discharge, nonrenewal, voluntary resignation agreed to by the teacher and the school board, or when an individual fails to return the individual contract by the required deadline.

With the exception of teachers whose contracts have been nonrenewed and those that have voluntarily resigned, teachers are entitled to individual

teaching contracts annually. State law contains deadlines for school districts to issue, and teachers to accept, contracts. No earlier than March 1 nor later than May 1, a school board must issue individual teaching contracts and provide notification of the date by which teachers must accept or reject their contracts. Districts must allow the teachers at least 14 days after actual receipt of the individual contracts to accept or reject the contract. In order to accept an offer to renew a contract, teachers must provide written notice of acceptance to the board on or before the date required by the board or May 15, whichever is earlier. If the individual fails to provide written notice of acceptance or rejection of an offer to renew a contract, the board is relieved of any continuing contract obligations.

In addition to individual contract issuance deadlines, North Dakota law also provides deadlines for teacher evaluation. NDCC 15.1-15-01 requires two written performance reviews of each individual employed as a teacher, principal, or assistant or associate superintendent during each of the first three years an individual holds such a position—the first evaluation must be available to the individual on or before December 15 and the second available to the individual on or before April 15. Beginning with the fourth year of an individual's employment as a teacher, principal, or assistant or associate superintendent, at least one written review must be completed and made available to the employee on or before April 15 each year. These mandatory evaluations are very important as it relates to performance nonrenewal. Reasons for nonrenewal must be supported by documentation contained in these evaluations. NDCC 15.1-15-05 states the reasons for a decision to nonrenew a teacher's contract "must originate from specific findings documented in the report of the individual's performance." This statutory requirement reflects the mandated correlation between evaluations and the board's decision to nonrenew. In short, if the reasons supporting nonrenewal are not documented in the written evaluations required by North Dakota law, a board

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■ Legal Spotlight Continued

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cannot proceed forward with performance nonrenewal.

The decision to recommend nonrenewal of a teacher generally rests with the district superintendent. If a decision is made by the superintendent to recommend to the board to contemplate nonrenewal, the reason(s) for that recommendation must be based on written evaluations only as they relate to the reasons contained in NDCC 15.1-15-05 (2)—ability, competence, or qualifications. If the concerns regarding a particular teacher stem more from misconduct, as opposed to performance-based reasons, performance nonrenewal may not be the right path to extinguish the continuing contract obligations. Rather, discharge for cause may be more prudent.

The process of discharging a teacher during the term of a contract is complex and fraught with potential pitfalls. It is imperative that districts follow proper procedure, as well as have a proper basis for discharge. The permitted causes for discharge are listed in NDCC 15.1-15-07, the most common of which include “conduct unbecoming the position of the individual,” “immoral conduct,” and “failure to perform contracted duties without justification.” Similar to performance nonrenewal, the recommendation to discharge a teacher for cause pursuant to North Dakota law typically comes from the district superintendent. The conduct that could support such a recommendation can vary significantly from situation to situation. A single

incident or pattern of behavior involving misconduct by a teacher can support a recommendation for discharge. Each situation is unique. However, there should be consistency on two fronts. First, the district, upon becoming aware of misconduct, should conduct a thorough investigation of the allegations. Second, the incident(s) and resulting investigation should be well documented. Like nonrenewal, documentation is important in the discharge process. It not only assists the board in receiving evidence of the underlying misconduct at the due process hearing, but it also creates an adequate record for a potential appeal if the board’s decision is subsequently challenged.

As indicated previously, the decision of whether a district should pursue performance nonrenewal versus discharge for cause is not always clear. The most common such situation is when a teacher has failed or is unable to form appropriate, productive relationships with students and staff, which leads to issues in the classroom and workplace. Many times in this type of scenario, the teacher will have incidents of rude or aggressive interactions with others that constitute misconduct, but such interactions are not so severe or outrageous that make discharge for cause the clear path. Again, each such situation is unique and must be considered on its own. This is, however, an example of a situation where either performance nonrenewal or discharge for cause could be pursued. On the one hand, a key quality for a teacher to be successful in the classroom and in the workplace is to form appropriate relationships with students and coworkers. An inability to do so

could certainly support a recommendation for performance nonrenewal. On the other hand, a pattern of inappropriate, rude, or aggressive conduct toward students or other staff could also support a recommendation to discharge for cause (i.e., conduct unbecoming the position of a teacher).

If you find yourself in a situation where you are considering either performance nonrenewal or discharge for cause, NDSBA strongly encourages you to contact our office for guidance and resources. With careful and thoughtful consideration and planning, your district can approach these often difficult situations with confidence and knowledge that will lead to more sound and informed decisions.

Building HR Together



Building HR Together - The 5th Human Resource Conference for Local Governments will be held on April 18-19,

2018, at the Ramkota Hotel in Bismarck. Registration is available at <http://www.hrndgov.org/>. Please share with others in your organization who could be interested in HR issues.

This conference offers many great presentations on both technical HR issues/rules/policies and sessions on how to empower employers and supervisors to strengthen the work environment.

New at this year’s conference will be three panel discussions on emerging HR issues that local governments are facing. The first will be a discussion on how to assess and develop high quality HR services. Practical tools will be shared. The second panel will focus on the complex process of FLSA exempt and non-exempt classification. HR staff from both schools and counties will share their practices for evaluating positions and examples of difficult situations that they have addressed. At the end of the conference, a third session will be an open-ended HR Q&A. This is your time to bring any specific concerns that haven’t been addressed.

The conference will offer a range of topics for individuals with full- or part-time HR responsibilities, including technical requirements such as FLSA exempt/non-exempt status or time reporting to motivational topics like “Building a Culture that Transforms a Workplace” and leadership topics like “The Heart of Change.” Remember to register for the conference and to get regular HR updates here: <http://www.hrndgov.org/>.

NDSBA and NDIRF to Host Threat Assessment Training for School Districts

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. In most cases, attackers exhibit warning signs prior to a violent attack. This training will help guide school officials and their local law

enforcement in establishing the policies and procedures necessary to do a timely and in-depth assessment and intervention.

Training will be conducted by a former law enforcement officer and school resource officer. Training sessions will be held across the state. The program is still in the early planning stages, and more detailed information will be available soon. As we begin choosing dates and locations for the training, it’s helpful to know which districts may participate. 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.



RETURN SERVICE REQUESTED

Baesler Seeks Feedback on Learning Standards



State School Superintendent Kirsten Baesler has asked parents, teachers, business people, and other education

advocates to consider serving as independent reviewers of proposed new North Dakota learning standards for health, science, early learning, and the arts.

Later this month, groups of North Dakota educators will finish the first drafts of updated class content standards. Once completed, they will be forwarded to independent citizen committees for review and comment, Baesler said. The draft standards will also be opened for general public comment.

Baesler is seeking applicants for the independent review committees for the arts, science, health, and early learning standards. Each subject will have its own review committee. The panels will review all drafts of the standards and suggest changes. The standards are being written by four separate groups of North Dakota teachers.

Application forms are available on the Department of Public Instruction's website at <https://www.nd.gov/dpi/SchoolStaff/Standards/>. **Applications are due April 10.** Baesler said the committees are expected to meet at least twice during May and July.

"In crafting these new standards, we are using a transparent process that gives North Dakotans a number of opportunities to suggest changes and improvements," Baesler said. "We want North Dakota parents and taxpayers to have a voice in what these standards say."

Baesler said the process is similar to what was used in writing North Dakota's new classroom content standards for math and English. Baesler approved those new standards last April, and they are now being used in North Dakota schools.

"We want to give North Dakotans who are interested in education the opportunity to have a hand in writing these new standards for health, science, early learning, and the arts," Baesler said.

NDSBA encourages school board members interested in content standards to apply for the review committees and offer feedback during the public comment period.

■ ND Allowed to Use ACT

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"This was a concerted effort on our part in North Dakota, at the Department of Public Instruction, to ensure that we as states were leading – for our schools, and our districts, and our students," Baesler said. "This decision certainly gives more control to our local district leaders. They can work with their parents, teachers, and students to make the best decisions for their students in their communities."



mark your calendar

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

2018 NDSBA Annual Convention Ramkota Hotel, Bismarck

CLINIC SESSION PROPOSAL

for presentations on Friday, October 26, 2018

Deadline: May 1, 2018

Use this form [also available in a fillable form at www.ndsba.org under Quick Clicks] to suggest a possible clinic session that you think would be of interest to school board members, administrators, and business managers. All presentations must be educational in nature and not for the purpose of selling a product or service. **Presenters are required to bring their own laptop or tablet. NDSBA will have a projector in each of the meeting rooms, but no technical assistance will be provided.** Internet access is available at the hotel. NDSBA is not able to reimburse clinic presenters for expenses.

Clinic Session (45-minute sessions)	
Title of clinic session:	_____
Description of clinic session:	_____ _____ _____
Suggested presenter(s):	_____
Position/Title:	_____
School District/Organization:	_____
Address:	_____ City, ST Zip _____

Person submitting form:

Name: _____ Title: _____

School District/Organization _____

Address: _____ City, ST Zip _____

Phone: _____ E-mail: _____

Return by May 1, 2018

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NDSBA reserves the right to reject presentations that are not in keeping with the educational character of the convention.