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MAY 2018

Excellence in North Dakota public education through local school board governance ■ VOL XLIII ISSUE 5

NDSBA and NDIRF Hosting Threat Assessment Training

The North Dakota School Boards Association and the North Dakota Insurance Reserve Fund have partnered to offer threat assessment training to member districts. This training will enable your district to establish a plan to identify, evaluate, investigate, and respond to threats with the goal of preventing threats from being carried out in our schools. Participants will participate in a mock investigation and receive support materials to take home. The training uses a team approach and encourages collaboration with local agencies. The training will be lead by Jeff Azure, retired law enforcement officer and school resource officer.

The first round of training will be held during the summer of 2018:

July 17, 2018 – Bismarck

July 18, 2018 – Emerado

August 9, 2018 – Williston

August 10, 2018 – Rugby

All training sessions will take place from 1:00 to 5:00 p.m. local time.

Each training session is limited to six school districts. The registration fee is \$25 per team member.

- School districts must register as a team. Teams should consist of no less than four individuals and must include:
 1. a member of administration,
 2. the school counselor, and
 3. the school SRO or law enforcement representative from

the jurisdiction in which the district is located.

Other team members may include the school social worker, district safety coordinator, special education coordinator, or other individuals as determined by a district.

- School board members are encouraged to attend the training with their district.
- If you have questions about the makeup of your team, please contact NDSBA at 1-800-932-8791. Further rounds of training may be offered based on interest.

To register, please print and complete the application form available at www.ndsba.org under QUICK CLICKS.

You're Invited: Governor's Summit on Innovative Education

The second Governor's Summit on Innovative Education is fast approaching, and Governor Doug Burgum would like to extend a special invitation to school board members. The summit will be held on June 7 from 8:00 a.m. to 4:30 p.m. at Northern Cass School near Hunter, North Dakota. The summit is free but pre-registration is requested. You can register at www.eventbrite.com/e/2018-governors-summit-on-innovative-education-registration-44263688885. The Governor's Office is excited to bring together educational leaders from across the state to share best practices and engage with educators, administrators, parents, and students.

Also presenting at the conference will be several fellows from the newly created K-12 Education Innovators Fellowship. The fellowship aims to provide fellows with the experience and expertise needed to advance evidence-based and community-derived initiatives

led by North Dakota educators, giving them access to a community of leaders working to address the biggest challenges and opportunities in education. If you are interested in joining the Fellowship, please contact Levi Bachmeier at lebachmeier@nd.gov as soon as possible.

In addition to the main event of the Governor's Summit on Innovative Education on June 7, the 30 Hour Challenge will begin at 9:00 a.m. on June 6 in Fargo. Fifty innovation champions will be given 30 hours starting at the beginning of the challenge to pitch ideas addressing current challenges in education, form groups to collaboratively develop solutions, and prepare a presentation for summit attendees. All that is needed to participate is a willingness to tackle today's most pressing issues in education. If you're interested in applying to participate, contact Levi soon.



Thank you for all of your work supporting education in North Dakota. Together we are creating a world-class education system to provide our students with the knowledge, skills and attributes they need to succeed and excel in the 21st century. We look forward to seeing you at the 2018 Governor's Summit on Innovative Education.

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

Recent Guidance Issued by the FPCO on Use of Recordings in Schools

by Amy De Kok, NDSBA Legal Counsel

This past April, the Family Policy Compliance Office (FPCO), a division of the U.S. Department of Education that has the authority to administer FERPA, issued guidance on the use of photographs and videos in schools. The guidance issued by the FPCO covered several common questions on the use of recordings in schools, and while it does not shed any new light, it does confirm the advice school law practitioners have been giving to their districts for some time now. I regularly receive questions from member districts regarding the use of recording devices in schools and how these are dealt with under FERPA. A common inquiry is: What are districts required or permitted to do when multiple students are captured in a recording? The guidance issued by the FPCO this past month touched on this issue in particular. Before addressing this specific issue, a reminder of the basic requirements of FERPA may be helpful.

FERPA is a federal law that protects the privacy of students' education records and the Personally Identifiable Information (PII) contained within such records. A school district is prohibited from disclosing student education records or the PII contained therein without prior written consent from the parent or eligible student, unless the disclosure meets an exception to FERPA's general consent requirement. FERPA neither allows nor prohibits recording in schools, but school districts must protect student PII. Under FERPA, a photo or video is an "education record" protected by FERPA when the photo or video is: (1) directly related to a student, and (2) maintained by an educational agency or institution or by a party acting for the agency or institution.

Whether a photo or video is "directly related to a student" depends upon the specific circumstances, and each photo or video must be examined on a case-by-case basis to determine if they directly relate to any of the students depicted in the photo or video. The FPCO guidance sets forth certain factors that should be considered when making this determination, including: (1) does the school district utilize the

photo or video for disciplinary action or other official purposes involving the student (either as a victim or perpetrator); (2) does the photo or video depict an activity or incident that results in the use of the photo or video for disciplinary action, shows a student in violation of local, state, or federal law, or shows a student getting injured, attacked, victimized, or having a health emergency; (3) the person or entity taking the photo or video intends to make the student a focus of the photo or video; or (4) the photo or video otherwise contains PII contained in a student's education record. If any of these factors are present, then the photo or video is likely "directly related to a student" depicted in the photo or video. According to the guidance, a photo or video that lacks at least one of these factors should not be considered "directly related to a student." In addition, a photo or video likely does not relate directly to a student when the student's image is incidental or only captured as part of the background.

In addition to a photo or video "directly relating to a student," it must also be maintained by the school district or a party acting for the school district in order to be protected by FERPA. A school district maintains a record when, for example, it stores the photo or video in a student's disciplinary file. However, if a school district has a designated law enforcement unit that creates and maintains records for law enforcement purposes, those records are not "education records" protected by FERPA. If the law enforcement unit provides the photo or video to the school district and it is maintained by the district, then the copy of the photo or video may become an education record if it otherwise meets the requirements.

A situation that arises quite frequently in our member districts is when the photo or video captures two or more students at the same time. These situations often add an additional level of complexity to the analysis of the disclosure requirements and limitations under FERPA. In order to be protected by FERPA, the photo or

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■ Legal Spotlight

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video must still meet the definition of “education record.” In other words, the video is “directly related” to and thus the “education record” of the students who are the focus or subject of the video and not the students merely in the background. For example, a surveillance video that shows two students fighting on a school bus, which the school uses and maintains to discipline the two students, would be “directly related to” and, therefore, the education record of both students. It would not be an education record of those other students who might be depicted in the video in the background.

When a photo or video is an education record of multiple students, FERPA requires a school district to allow, upon request, a parent of a student to whom the photo or video directly relates to inspect and review the photo or video. FERPA does not generally require the school district to provide a copy of the photo or video to the parent or eligible student. In addition, before providing the parent or eligible student with access, the school district is required to redact or segregate out the portions of the video directly related to other students if reasonable to do so and without destroying the meaning of the record. If, however, the redaction or segregation of the video cannot reasonably be accomplished, or if doing so would destroy the meaning of the record, then the school district would be required to allow the parent or eligible student access to the entirety of the video even though it also directly relates to other students. School districts may purchase software that allows for redaction or segregation. If a school district is required to redact or segregate by FERPA before providing access to a parent or eligible student, nothing in FERPA allows or permits the school district to charge parents or eligible students for fees or costs associated with exercising their right to access. FERPA generally allows a school district to charge parents or eligible students for the costs required to make a copy of the video if that is requested. FERPA does not allow a school district to charge for costs associated with the search for or retrieval of education records. The costs associated with redacting or segregating education records are akin to the costs to search and retrieve education records

that may not be charged to parents or eligible students, rather than the costs for copies that generally may be charged. If, however, a fee for copies effectively prevents a parent or eligible student from exercising their right to inspect and review his or her education records, a school district would be required to provide copies at no charge.

While the recent guidance issued by the FPCO falls in line with how video surveillance has been handled under FERPA for the last several years, it did highlight the importance of proper analysis of these situations when they arise. Each situation must be considered on its own in order to ensure the school district upholds the protections afforded by FERPA. When your district is tasked with determining whether a photo or video is an education record protected by FERPA and whether and to whom it can be disclosed, I encourage you to contact NDSBA for assistance.

Baesler Seeks Public Comment On New Academic Standards

State Superintendent Kirsten Baesler is inviting North Dakotans to comment on the first drafts of new North Dakota academic standards for health, science, arts, and early learning. Since January, separate groups of North Dakota educators have been writing new standards for each of the four subject areas. The Department of Public Instruction is asking North Dakotans to review the standards and offer their thoughts on whether specific standards should be kept, revised, or deleted.

“These standards are what North Dakota educators are going to be using when they teach early learning, arts, health, and science,” Baesler said. “For the sake of openness and transparency, it is important that North Dakota parents and taxpayers have ample opportunity to examine them, suggest improvements, and register any objections that they have.”

You can comment on the standards at <https://www.nd.gov/dpi/SchoolStaff/Standards/>. All survey responses are anonymous. **Please submit your comments by May 25.** The standards writing committees expect to offer the second drafts of their work for another round of public comment in July. A third, and possibly final, draft of the standards should be completed by August.

NDSBA Releases Naloxone Policy

Recent concerns surrounding the nationwide opioid epidemic have sparked discussions among local and state agencies and the North Dakota School Boards Association on the acquisition and administration of the opioid antidote Naloxone (Narcan) in North Dakota schools. Districts are not required by law to carry or administer Naloxone on school property but many are choosing to be prepared and have obtained the antidote.

In an effort to help reduce the liability to the districts, NDSBA has developed a policy for the administration of Naloxone along with procedures on the acquisition, storage, and disposal of the antidote. You can obtain these documents by calling the NDSBA office at 1-800-932-8791.

Questions on the acquisition of naloxone or training can be directed to the Department of Human Services at 701-328-8919. Additional resources can also be found on the North Dakota Prevention Resource and Media Center webpage at <https://prevention.nd.gov/stopoverdose>. Whether a district chooses to carry Naloxone or not, it is important that staff always follow their emergency medical procedures and promptly dial 911 in the event of any medical emergency on school property.

NDSBA and ND DPI to Host New Board Member Workshop

The North Dakota School Boards Association and the North Dakota Department of Public Instruction are partnering to host a one-day workshop for school board members. The workshop will be held on July 27, 2018, from 10 a.m. to 2 p.m. at the State Capitol in Bismarck. The event is aimed at newly elected board members, but all board members are welcome to attend.

Topics discussed will include school finance, state reporting, instructional waivers, AdvancED, ESSA updates, and innovative education updates. This training does NOT meet the requirements for the new board member training mandated by state law but will provide board members with basic knowledge on many topics. Please watch NDSBA and ND DPI communications and webpages for information on how to register.

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2018 Governor's Summit on Innovative Education
June 6-7, 2018
Northern Cass School, Hunter, ND

DPI & NDSBA Workshop for New School Board Members
July 27, 2018
State Capitol, Bismarck

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

2019 NSBA Annual Conference
March 30-April 1, 2019
Philadelphia, Pennsylvania

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



Mott-Regent School District
Contact: Alexis Baxley
Phone: 701-255-4127
Email: alexis.baxley@ndsba.org
Application: www.ndsba.org
Deadline: Open until filled
Position Begins: July 1, 2018

Ellendale School District
Contact: Lana Norton
Phone: (701)349-3232
Email: lane.norton@ellendale.k12.nd.us
Application: <http://www.ellendale.k12.nd.us/employment/>
Deadline: Open until filled
Position Begins: July 2, 2018

