



# bulletin



**NDSBA**  
NORTH DAKOTA SCHOOL  
BOARDS ASSOCIATION

NOVEMBER 2018

*Excellence in North Dakota public education through local school board governance* ■ VOL XLIII ISSUE 11

## NDSBA 2018 Election Results



At the election held on Friday, October 26, the following members were elected to serve on the NDSBA Board of Directors (from left to right): Steve Halldorson (Devils Lake) – Northeast Director; Patti Stedman (West Fargo) – Southeast Director; Karl Lembke (Bismarck) – Vice President; Holly Stromsodt (Finley-Sharon) – President; Lucas Greff (Mott-Regent) – Southwest Director; Kim Bernstein (Bottineau) – Northwest Director. Completing the NDSBA board is Jim Johnson (Fargo) – Past President (far right).

## Sonia Meehl Receives Barb Norby Scholarship



Oakes School Board President Sonia Meehl received the 2018 Barb Norby Scholarship Award at the North Dakota School Boards Association Annual Convention on October 25, 2018.

Sonia is a 1981 graduate of Oakes High School. She is a second generation board member. Mrs. Meehl is a farmer, former business owner, and volunteers on multiple boards and civic organizations.

Sonia filled a vacancy on the Oakes

Public School Board in 2012 and has been the president since 2015. She serves on the district's negotiations, strategic planning, and curriculum committees. Additionally, Sonia serves as a member of the Board for Career and Technical Education and the State



Barb Norby (left) and Sonia Meehl

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## Resolutions Passed by NDSBA Delegate Assembly

The Delegate Assembly voted on proposed resolutions during this year's Annual Convention. Below are resolutions adopted by delegates at the business meeting on October 26.

### **RESOLUTIONS READOPTED AS WRITTEN:**

#### 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.

#### SCHOOL CONSTRUCTION LOAN PROGRAM

NDSBA shall support increasing the total funds available for the School Construction Loan Program.

#### TEACHERS' FUND FOR RETIREMENT

NDSBA shall support 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

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## NSBA 2019 Annual Conference Registration

The NSBA Annual Conference and Exposition will be held March 30-April 1 in Philadelphia, Pennsylvania. Join us in Philadelphia for a robust offering of over 250 educational programs that will give you new ideas and tools to help drive your district forward.

Conference registration and housing reservations are now open. Register online at [www.nsba.org/conference](http://www.nsba.org/conference).



# Legal Spotlight

## How to Avoid the Potential Pitfalls of Providing Employment References

by Amy De Kok, NDSBA Legal Counsel, and Rebecca Duben, Policy Services Director

School districts, like any other employer, are frequently asked to provide a reference to a prospective employer of a former employee. However, many employers make the mistake of not considering in advance how it will respond to such requests. Whenever one of your employees leaves, you likely will have to decide what to say to other employers who call for a reference and that decision should not be made on the fly. The decision is pretty straightforward if the employee left on good terms. In such a case, the employer and the former employee can come up with a mutually agreeable statement to explain the departure. Or, the employer can simply tell the whole glowing truth to any prospective employer who calls for a reference. But if the employee does not leave on good terms (i.e., termination or resignation in lieu thereof), the employer faces a more difficult task. Indeed, if the employer is not careful in statements about former employees, the employer could very well be facing a defamation lawsuit.

To prove defamation, a former employee typically must show that the

employer intentionally damaged their reputation by making harmful statements about the employee that the employer knew to be false. At first blush, it might seem like only the careless or spiteful employer would get caught in this trap. However, it is not as foolproof as one might think. In reality, most reasons for firing make the employee look bad, and an employer often cannot prove beyond all doubt what they strongly believe to be true -- that an employee is stealing, is incompetent, or lied about job qualifications, etc. An employer who makes such statements about a former employee could ultimately end up involved in costly litigation.

So what can and should employers say during a reference check? There are no federal laws that directly address what an employer can or cannot say about a former employee. Many states, including North Dakota, have enacted legislation that gives employers qualified immunity when providing information for a reference check. NDCC § 34-02-18 provides immunity from civil liability to an employer who "truthfully discloses date of employment, pay level, job description and duties, and wage history about a current or former employee to a prospective employer." In addition, pursuant to section 34-02-18, an employer "who discloses information about a current or former employee's job performance to a prospective employer of the employee is presumed to be acting in good faith," and unless a lack of good faith is shown, the employer "is immune from civil liability for the disclosure and the consequences of providing that information." While this section does provide some protection to employers, it is important to keep in mind that it does not provide the employer with complete immunity. The employer still could face a defamation (libel or slander) lawsuit from the employee or a negligent referral lawsuit from the prospective employer if care was not taken in limiting the type of information provided and making sure that the information was given to the correct person.

School districts should maintain control of the information that they give out and may do that by putting limits on who can give a reference or what information can

be provided. NDSBA recommends the following practices to help avoid legal liability when providing job references:

- **Designate one person to give references.** Choose one trusted person (typically an administrator or trained HR professional) to be responsible for all references, and tell all of your employees to direct inquiries to that person. This person should make it a point to review the applicable state laws where the employee resides and where the prospective employer is located before providing the reference. Also, care should be taken to ensure that the same process is used for each job reference request to avoid any claims of discrimination. You may want to adopt a policy of providing references only in writing so you'll have proof of exactly what was said.

- **Keep it brief.** Some employers adopt a policy of giving out only dates of employment, job title, and final salary/wage to prospective employers. If you choose to tell more, keep it to a minimum.

- **Stick to the facts.** Provide only factual information and avoid giving opinions about the employee's suitability for a new job. Do not speculate about your former employee's bad qualities, or opine on the reasons for failure to perform. Limit your comments to accurate, easily documented information.

- **Do not give false flattery.** If you had to fire a really bad egg (for example, a worker who was violent in the workplace or threatened coworkers), don't lie about it. You may choose to give only name, rank, and serial number; but, if you give a more expansive reference, don't hide the bad news. You may find yourself in legal trouble for failing to warn the new employer if these serious problems resurface in the employee's next job.

- **Inform a difficult employee that your reference will not be good.** The employee should know this already, however, you may be able to avoid problems at the outset by stating: "I cannot provide a positive reference for you."

Unlike private employers, school districts have a legal obligation to make their records open to the public upon request, except in limited circumstances specifically provided by law. This includes employment and personnel records. While this provides a different level of access to prospective employers than is otherwise available from private employers, it does not require school

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## Legal Spotlight

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districts to verbally provide certain information in response to a reference check. The foregoing recommendations apply to both private and public employers. It does, however, mean that school districts should make sure they are being purposeful, accurate, and factual in documenting personnel issues and concerns throughout the employment relationship. Indeed, prospective employers often request a copy of a former school district employee's personnel file in order to get a better picture of the individual applying for a position.

In addition, school districts must adhere to certain other requirements when providing a reference for a former employer who has or may have engaged in sexual misconduct involving a minor. Recently, NDSBA released Policy ABCE – Prohibition on Aiding Sexual Abuse. This policy addresses a federal requirement (20 U.S.C. 1232c) that prohibits any employee from assisting another school employee in obtaining a new job if the individual or district knows or has probable cause to believe that such school employee engaged in sexual misconduct regarding a minor or a student in violation of the law. An individual acting on behalf of the district would not be prohibited from following routine procedures regarding the transmission of administrative or personnel files but would be prohibited from doing more than that to help the employee obtain new employment.

It is important that school districts that receive funds through the Elementary and Secondary Education Act (ESEA) comply with this provision set forth in federal law. Failure to do so may result in the U.S. Department of Education or the Department of Public Instruction taking appropriate enforcement actions. This may include placing appropriate special conditions on a district's Title I, Part A grant or withholding these funds.

School districts need to ensure that all students are safe in their schools so that they may receive the best education possible and go on to succeed in college and careers. By only confirming dates of employment and the reason why an employee was terminated will help the district comply with these federal requirements, minimize district liability, and provide a high-quality and safe education for all students. Please feel free to contact NDSBA for further guidance on this issue.

## Resolutions

*Continued from page 1*

possible solutions with appropriate stakeholders. Comprehensive study should include potential costs considerations, funding sources, legal implications, and impact on employees, employers, and the state.

### EARLY CHILDHOOD EDUCATION

NDSBA shall support separate state funding for preschool programs meeting prescribed standards.

### 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.

### 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.

### **RESOLUTION READOPTED AS AMENDED:**

#### NORTH DAKOTA STATE STANDARDS

NDSBA shall support the ongoing implementation of North Dakota State Standards.

### **NEW RESOLUTION ADOPTED:** SCHOOL SAFETY

NDSBA shall support legislation that would expand the ability of school districts to discuss school safety and security in executive session.

## Board Members Receive Service Awards



(L to R back row) Mike Schwehr, Barnes County North; Supt. Jeff Larson accepting for Tor Bergstrom and Don Nygaard, Finley-Sharon; Brad Brummond, Park River Area; Roger Haut, Jamestown; Scott Wertz, Ellendale; Mike Lautenschlager, Lewis & Clark. (L to R front row) Diana Hahn, Park River Area; Mark Qual, Lisbon; Holly Stromsodt, Finley-Sharon. Not pictured: Larinda Velure, Litchville-Marion; Dinah Goldenberg, Fargo

NDSBA recognizes board members for their professional development and service on two levels: Veteran Board Member and Master Board Member. A point system has been adopted whereby each opportunity carries a specific value. When a board member has earned 100 points, a certificate is awarded designating the individual as a Veteran Board Member. When 200 points are earned, the designation is Master Board Member and a certificate and lapel pin are awarded. Board members who participate in national meetings earn their certificate "with distinction."

### **2018 Service Award Recipients**

**Veteran Board Members:** Tor Bergstrom, Finley-Sharon; Brad Brummond, Park River Area; Roger Haut, Jamestown; Don Nygaard, Finley-Sharon; Mark Qual, Lisbon; Larinda Velure, Litchville-Marion; Scott Wertz, Ellendale

**Veteran Board Member with Distinction:** Holly Stromsodt, Finley-Sharon

**Master Board Members:** Diana Hahn, Park River Area; Mike Schwehr, Barnes County North

**Master Board Member with Distinction:** Dinah Goldenberg, Fargo; Mike Lautenschlager, Lewis & Clark

## Sonia Meehl Receives Barb Norby Scholarship

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Board of Public School Education. Her dedication to detail and continuous improvement is unparalleled.

The Barb Norby Scholarship Award was created by the North Dakota School Boards Association Board of Directors in tribute to Barb Norby's valuable service

to the association and honors a board member each year who demonstrates admirable school board leadership. The scholarship provides registration and an expense allowance to attend the National School Boards Association Annual Conference held each spring.



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## Baesler Seeks Insight on Computer Science, Social Studies Learning Standards

State Superintendent Kirsten Baesler is asking for North Dakotans to step forward to serve as independent reviewers of new state academic learning standards for social studies, computer science, and cybersecurity.

Two separate groups of public reviewers will be assembled to scrutinize drafts of the standards. The academic content standards are being written by two committees of North Dakota educators who are experts in cybersecurity/computer science and social studies.

Baesler said she hoped parents, business people, educators, community leaders, and anyone with an interest in education would consider applying to join one of the two review groups. Applications for each group are on the Department of Public Instruction's website. **The application deadline is Friday, November 23.**

North Dakota's social studies standards were last updated in 2007. The computer science and cybersecurity standards are the first ever written in the state. Academic

content standards are intended to show what a student should know and be able to do at certain points while progressing through elementary and secondary school.

The first draft of the computer science/cybersecurity and social studies standards will be completed soon and available for public comment. After the public comment period ends, the two sets of standards will go to their respective independent review committees. The review panels will go over the standards and offer suggestions on how they could be improved or clarified.

The application to be a member of the computer and cybersecurity standards review group is here: <https://www.nd.gov/dpi/uploads/1569/CCSReviewApplication.pdf>

The application to be a member of the social studies review group is here: <https://www.nd.gov/dpi/uploads/1569/SSReviewApplication.pdf>

***NDSBA strongly encourages board members to apply to participate.***



mark your calendar

### **2019 School Leadership Day**

January 28, 2019  
State Capitol, Bismarck

### **2019 NDSBA Negotiations Seminar**

February 7-8, 2019  
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

