



bulletin



NDSBA
NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION

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Excellence in North Dakota public education through local school board governance ■ VOL XLIII ISSUE 2

Legislative Halftime – What’s Left after Crossover?



When this edition went to print, there was less than one week left of the first half of the 66th Legislative Assembly of the State of North Dakota. February 22

is called “Crossover,” or the date by which all bills and resolutions must be out of their body of origin and sent to the other side. With a near-record number of House bills in 2019, the House has been putting in extra hours to meet the deadline, while the Senate was on pace to wrap up early. The Senate’s workload will likely pick up after Crossover when they receive all of the remaining House bills.

After all of the bills and resolutions had been submitted, NDSBA was tracking 111 bills or resolutions of primary importance. NDSBA testified against and worked to kill many of the bills that have been killed. Some of the ideas that will not advanced to the other side include:

- The ability to make up school days by offering instruction through virtual means
- A bill that would have permitted instruction on the strengths and weaknesses of scientific theories and controversies
- Unlimited access to school facilities and students during instructional time by “patriotic societies”
- Extending the time a teacher has to return their contract from 14 to 30 days
- A number of bills that would have further limited a district’s ability to increase their mill levy or locked in property valuations at current rates

- A bill that would have used the Common Schools Trust Fund to build, operate, and maintain school facilities while taking state ownership of all existing school facilities
 - A bill that would have allowed for drug testing of school board members and a bill that would have allowed for unlimited recall of school board members
 - Supersized local control that would have allowed for local licensing of teachers and setting of curriculum and graduation requirements
 - Savings accounts and tax credits for private and home education
- So, what’s left? Some of the key bills that remain are:

- A bill that would allow districts to levy 5 mills for safety and exempts safety plans from public record (SB 2052)
- The “armed first responder in schools” bill (HB 1332) – Passed the House 77-15 on February 19
- An increase in the bid thresholds (HB 1454)
- \$1.3 million for behavioral health grants for school districts (SB 2300)
- Foundation aid funding (SB 2265)

As you know, the legislature is constitutionally limited to 80 days. Right now, day 80 looks to be April 30, however many are anticipating that legislators will save a few days by not gaveling in the first few days after Crossover. If they do, that will give the 2019 Legislative Session the potential to last into the first week of May. While legislators always have the option to “save” a few of the 80 days, the current workload doesn’t make that seem a likely possibility.

Updates from the 2019 Legislative Session will continue to be sent to NDSBA members weekly by email. If you have not been receiving emails from NDSBA, please call Julie at 1-800-932-8791 to ensure we have the correct email address on file.

Winter Weather Closings – What Now?

Many districts across North Dakota have faced a significant number of weather-related closings due to extreme cold or hazardous travel conditions. In light of these closings, Governor Burgum and State Superintendent Baesler released a statement last month supporting the decisions of local districts.

Baesler said local school administrators decide whether to delay school openings, dismiss classes early, or cancel school days altogether. Some storm days are already required to be “built in” to a school district’s calendar.

“Each of our North Dakota school districts is different, and our local superintendents are in the best position to judge whether it is appropriate to hold classes on days when the weather is snowy or extremely cold,” Baesler said. “Our schools across the state are evaluating this new cold snap according to their local weather conditions, and that is how it should be.”

North Dakota Century Code 37-17.1-05 has been interpreted as giving the Governor authority to close schools statewide but only after first declaring a state of emergency through executive

Continued on page 3

Election Deadlines



North Dakota election laws are specific regarding dates and deadlines. Relevant election law is found in NDCC 15.1-09. Election deadline information and a sample calendar were included in the January *Bulletin* and are posted on NDSBA’s website under QUICK CLICKS.

Superintendent Evaluations

North Dakota law requires that a school board complete the superintendent’s evaluation **ON OR BEFORE MARCH 15**. A sample evaluation form is available on NDSBA’s webpage under RESOURCES.



Legal Spotlight

Drug Testing Your Employees: What is Legal?

by Amy De Kok, NDSBA Legal Counsel

Unlike private sector employers, public employers, such as school districts, that wish to implement drug testing policies must avoid infringing on their employees' constitutional rights, namely the Fourth Amendment's protection against unreasonable governmental searches and seizures. It is well established law that a governmental entity's collection of blood, breath, hair, or urine constitutes a search under the Fourth Amendment. Typically, an individual cannot be subject to search or seizure without a validly issued warrant. However, with respect to workplace drug testing, the U.S. Supreme Court has created two exceptions to the requirement that all searches be conducted pursuant to a warrant: if (1) the governmental entity can show a "special need" to conduct the drug test; or (2) there is "reasonable suspicion" of drug use by an employee.

In terms of the first exception, a "special need" arises when the position is one that is safety-sensitive, and the government's interest in conducting the test outweighs the individual's interests in being free from such testing. For employees in safety-sensitive positions, testing may be done randomly, across-the-board, or otherwise without

individualized suspicion of drug use. A safety-sensitive position is defined as one "fraught with such risks of injury to others that even a momentary lapse of attention [could] have disastrous consequences." Some examples of such safety-sensitive positions for which courts have upheld suspicionless testing are an elementary school custodian working with dangerous chemicals, a public works department employee who operates heavy equipment, or city sanitation workers operating heavy machinery. Another common safety-sensitive position in the education world are bus drivers or employees whose positions require a commercial driver's license or transporting students. However, simply because a position requires the operation of a specialized vehicle or working with children does not make it subject to suspicionless testing. Simply put, across-the-board, suspicionless drug testing is unconstitutional, unless the subject positions meet the special needs exception. This includes drug testing in the pre-employment context. In the absence of meeting the special needs exception, a government employer may legally test employees only if it has a reasonable suspicion that an employee is engaging in drug use or abuse while on the job.

Recently, the North Dakota Senate considered a bill that would have required school districts to drug test all employees. SB 2337 would have required the board of each public school district to adopt and implement a random, suspicionless drug testing program for all school district employees regardless of the nature of the position. In other words, the policy would require no "special need" for the drug testing of employees. NDSBA opposed SB 2337 because the drug testing policy it would have required schools to adopt and implement runs afoul of Fourth Amendment protections. Again, just because an employee works at a school with children does not in and of itself make him or her lawfully subject to suspicionless testing. In addition, even for those positions that are safety-sensitive, suspicionless drug testing should still be conducted in a particular way. For example, pre-employment drug testing should be done post-offer and prior to the start of employment. SB 2337 would have required drug testing of every individual seeking employment with the school district (again, regardless

of position) during the hiring process. A drug testing program for safety-sensitive positions should still be carefully crafted to account for not only pre-employment testing, but also reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and drug testing. SB 2337 does not cover any of these important elements.

In addition to the constitutional concerns, SB 2337 would have resulted in school districts incurring significant expense to implement the drug testing policy outlined in the bill. SB 2337 not only would have required pre-employment testing of each and every employee, including administrators, teachers, coaches, ancillary staff, and any other individual who receives remuneration for services provided to the school district, but it also would have required random testing of at least 10 percent of all employees in each 12-month period. Such a program would likely come with a high price tag. This is a heavy burden to place on districts already dealing with tight budgets, and SB 2337 contained no corresponding appropriation or funding source.

Finally, SB 2337 was unnecessary. NDSBA is not aware of any widespread growing concern with drug abuse among school district personnel in the state of North Dakota necessitating a state mandate for random, suspicionless drug testing of school district employees. SB 2337 was likely meant to be a statement that North Dakota does not condone drug abuse, and such a symbolic statement has been found to be insufficient justification for suspicionless testing. SB 2337 was also unnecessary because most districts already have policies in place regarding drug testing of safety-sensitive positions. Indeed, NDSBA has long been assisting school districts in adopting and implementing appropriate and lawful drug testing policies.

SB 2337 received a 6-1 Do Not Pass recommendation from the Senate Education Committee and failed on the Senate floor by a vote of 8-37. While this bill failed and will not add any new requirements for North Dakota school districts, it is important that districts review their drug testing policies and procedures to ensure that the above constitutional concerns are not implicated. As always, please contact NDSBA for assistance with your board policy needs.

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EDITOR

Alexis Baxley

PUBLISHER

North Dakota School Boards Association
PO Box 7128
Bismarck, ND 58507-7128

TELEPHONE 1-800-932-8791

LOCAL (701)255-4127

FAX (701)258-7992

WEB SITE www.ndsba.org

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Negotiations Seminar

The 2019 NDSBA Negotiations Seminar was held on February 7-8 at the Ramkota Hotel in Bismarck. Three early bird sessions were held on Thursday,

February 7, that addressed best practices in school board governance, misconduct investigations, and teacher nonrenewal. The Negotiations Seminar on Friday,

February 8, addressed negotiations basics and strategy, alternative school calendars, and finances. The seminar was informative and well attended.



Winter Weather Closings

Continued from page 1

order. This authority has very rarely been exercised, as the decision historically has been left to local superintendents. Of the four winter storm emergencies declared by executive order since 2010, none included an order to close schools.

However, on February 8 the Governor issued a statement that he may consider waving weather-related closure days on a case-by-case basis for school districts that have canceled school because of severe winter storms and dangerously cold temperatures provided certain criteria are met.

Under state law, if a school must close because of weather or other emergency situations, the district "shall make every effort to reschedule the remaining classes so that students receive at least the number of full instructional days required." [North Dakota Century Code 15.1-27-23(3)] This can be done in the following ways:

- Districts may schedule instructional days on the designated snow days that they are required by law to include in their school calendar and use if needed. **Make-up days cannot be considered as part of**

a waiver application and by law cannot be waived.

- Qualifying districts may utilize one allowed academic day (grace day). A qualifying district is one that schedules school days that are at least 30 minutes longer than required by law.
- Districts may make up missed instructional time by lengthening the school day, i.e., 30 minutes per day and/or scheduling an instructional day on Saturday and/or adding an instructional day to the end of the school year.

Under state law, any public school or school district for which the rescheduling of classes would create undue hardship may request that the Governor waive the rescheduling in whole or in part.

The Governor's Office has recently distributed a survey to school districts to understand the impacts of severe weather events on districts across the state. A waiver application period will open March 1 and close March 15. If additional severe winter weather occurs between now and March 15, the application deadline may be extended.

The Governor's Office will review each district's waiver application in the totality of their circumstances. The Governor will look at the number of major
Continued on page 4

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, 2019**. 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.



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■ Winter Weather Closings

Continued from page 3

weather incidents the districts/regions experienced and what efforts the district has made to ensure students receive as much of their legally mandated instruction as possible.

If and when school districts apply for a waiver, it will be essential to provide as much specificity as possible so the Governor can make an informed decision. Additionally, if districts demonstrate they are attempting to meet the law's intent of ensuring an effective education by utilizing alternative, non-timebound instructional strategies in place of adding days or hours to the calendar, that will also be taken into consideration.

More resources regarding weather-related school closings can be found on the Department of Public Instruction's website:

- Weather-related closing FAQ: <https://www.nd.gov/dpi/SchoolStaff/SAO/FAQ/closingfaq/>
- Background information about school closings: <https://www.nd.gov/dpi/SchoolStaff/SAO/weather/>



Twin Buttes School District

Contact: Alexis Baxley
Phone: 701-255-4127
Email: alexis.baxley@ndsba.org
Deadline: February 28, 2019
Position Begins: July 1, 2019

Bowman County School District

Contact: Debbie Bucholz, BsMgr
Phone: 701-523-3283
Email: debbie.bucholz@k12.nd.us
Deadline: February 22, 2019
Position Begins: July 1, 2019



2019 NSBA Annual Conference

March 30-April 1, 2019
Philadelphia, Pennsylvania

2019 NDSBA Annual Convention

October 24-25, 2019
Ramkota Hotel, Bismarck

2020 NDSBA Annual Convention

October 29-30, 2020
Ramkota Hotel, Bismarck

NSBA 2019 Annual Conference



The NSBA Annual Conference and Exposition will be held March 30-April 1 in Philadelphia, Pennsylvania. Register online at www.nsba.org/conference.

Legislative Updates



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