

# bulletin



**NDSBA**  
NORTH DAKOTA SCHOOL  
BOARDS ASSOCIATION

NOVEMBER 2020

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

## Election and Delegate Assembly Results

At the election held prior to NDSBA's Delegate Assembly on October 30, the following members were elected to serve on NDSBA's Board of Directors: Karl Lembke (Bismarck) – President; Patti Stedman (West Fargo) – Vice President; Jim Rostad (Minot) – Northwest Director; and Robert Toso (Jamestown) – Southeast Director. Completing the board is



*Karl Lembke, NDSBA President*

Holly Stromsodt (Finley-Sharon) – Past President; Lucas Greff (Mott-Regent) – Southwest Director; and Steve Halldorson (Devils Lake) – Northeast Director.

Additionally, the Delegate Assembly adopted eight resolutions as recommended by the Government Affairs Committee. The titles of those resolutions are below. Full text can be found at [www.ndsba.org](http://www.ndsba.org).



*Patti Stedman, NDSBA Vice President*

1. State aid for growing school districts
2. State funding of special education and gifted and talented programs
3. Collective bargaining
4. State technology infrastructure maintenance and operation
5. Business Manager Certification Program
6. School lunch program
7. Posting of bills in an alternate format
8. Deadline for negotiations



*Robert Toso, NDSBA Southeast Director*

## Board Members Receive Awards at Annual Convention



Three school board members were recognized during NDSBA's 2020 Virtual Delegate Assembly.

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." The following individuals received service awards:

**Veteran Board Members:**  
**Lavern Johnson, Grenora**

**Rick Foss, Grenora**  
**Shane Aadnes, Stanley**

Additionally, **Northern Cass Board President Susie Carlson** received the 2020 Barb Norby Scholarship Award.



*Susie Carlson, Northern Cass*

Carlson has been a board member at Northern Cass School District since 2009. During her tenure on the board, she has been instrumental in passing a bond for an addition to the building and a levy for the building fund, assisting the district in shifting toward a personalized, competency-based system, and being an advocate for a learner-centered organization. She

has been an advocate for innovative education not only at Northern Cass but throughout the state.

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.

Congratulations to all award winners!



**NDSBA is Now on Twitter!**

Follow us on Twitter at [@ndschoollboards](https://twitter.com/ndschoollboards) for event, policy, and other education-related updates.



# Legal Spotlight

## Five Common Legal Issues Faced by Board Members

by Amy De Kok, NDSBA Legal Counsel

School board members new to the role often are surprised and overwhelmed at the breadth of legal issues and concepts school boards must face on a regular basis in carrying out their duties. By state legislative enactment, school boards are delegated power and authority to develop policies, rules, and regulations to control the operation of the schools, including system organization, school site location, school finance, equipment purchase, staffing, attendance, curriculum, extracurricular activities, and other functions essential to the day-to-day operation of schools within the district's boundaries. Boards are also authorized by the state legislature to levy taxes, invest resources, initiate eminent domain proceedings, acquire land, and assume bonded indebtedness. This article outlines five of the most common legal issues faced by board members.

**1. Conflict of Interest:** One of the most common legal issues that board members must deal with during their service is whether a conflict of interest

exists in a given situation. Conflict of interest is addressed in two provisions in the North Dakota Century Code: NDCC 15.1-07-17 and 44-04-22. NDCC 15.1-07-17 applies solely to school board members and will apply in most circumstances where a potential conflict of interest exists. NDCC 44-04-22 has broader application in that it applies to any person acting in a legislative or judicial capacity for a political subdivision (i.e., a public school district). Whether a conflict of interest exists under either of these provisions will depend on the particular circumstances and will need to be determined on a case-by-case basis.

Both provisions require the person for whom a conflict exists to declare or disclose the conflict to the board and prohibits that person from participating in any vote or discussion without the consent of the board. NDCC 15.1-07-17 requires the consent of all remaining board members, while NDCC 44-04-22 only requires consent of a majority of the remaining board members. Any person who is found to be in violation of either of these provisions may be subject to a criminal penalty.

**2. Open Meetings:** In North Dakota, an open meeting is a meeting held in public. All public entities (including public school boards) are required to follow North Dakota's open meeting laws. These laws, contained in NDCC chapter 44-04, require that a quorum of a governing body hold all formal and informal gatherings in public, with limited exceptions. A majority of elected board members constitutes a quorum. A meeting means any gathering of a quorum of the members of a governing body of a public entity regarding public business. It includes committees and subcommittees, informal gatherings or work sessions, and discussions where a quorum of members are participating by phone or any other electronic communication (either at the same time or in a series of individual contacts).

North Dakota law requires that notice be posted for all meetings of a public entity, including executive sessions, conference calls, and video conferences. Unless otherwise provided by law, notice must contain the **date**, **time**, and **location** of the meeting and, if practicable, the **topics to be considered**. Notice must be provided

in advance of all meetings of the school board. Notices should be given as early as possible, but there is no mandatory minimum notice period. Rather, North Dakota law simply requires that notice be provided at the same time the governing body's members are notified of a meeting. Even if the governing body has not yet prepared an agenda for its meeting, if the governing body knows the meeting date, notice should be provided informing the public of the meeting date.

If there is no express legal authority to close a meeting, the meeting must be open. It is important to remember that a board can only go into executive session if legal authority exists. The remainder of the meeting must be open to the public. There is no legal authority to go into executive session for salary issues, superintendent evaluations, or to discuss personnel issues (unless this discussion is part of a nonrenewal/discharge hearing).

**3. Open Records:** Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. "Record" means recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business. This applies to emails and attachments, voicemails, text and instant messaging such as social media postings, videos, call logs, spreadsheets, word processing documents, information stored in databases, etc. "Record" does not include unrecorded thought processes or mental impressions but does include preliminary drafts and working papers.

North Dakota law lists a number of records that are either **exempt** (can be released at the district's discretion) or **confidential** (cannot be released unless law contains a mechanism for securing permission to release). Most of these provisions are found in NDCC chapter 44-04.

**4. Board Meeting Procedure:** As  
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## Legal Spotlight

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discussed above, all duties imposed upon a school board are performed at a public board meeting. School boards establish, through policy, operational guidelines or practices for conducting meetings. Typically, the board president, in consultation with the superintendent, develops the meeting agenda. Board members should receive their agenda materials in adequate time for review before scheduled board meetings. If the school board has adopted the NDSBA model policy language, the school board chair works with the superintendent to set the agenda. All school board members may provide input and, if the items offered are not included on the agenda, may move for an addition to the agenda before it is approved. This motion requires a second and a majority vote of approval before the addition can be made. Additions to the agenda may only occur at regular meetings; the agenda cannot be changed during special meetings.

Most boards adhere to *Robert's Rules of Order* in conducting their meetings. When rules of parliamentary procedure conflict with North Dakota law, the law controls. The board president presides

over school board meetings. This means the board president moves the agenda along, makes decisions on issues of parliamentary procedure, and keeps the discussion on the point raised. All school board members should be given an opportunity to provide input.

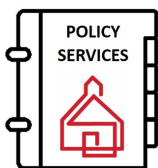
**5. Policy:** A primary responsibility of school board members focuses on school district policies. Developing school district policies is a challenging task. For this reason, most North Dakota school districts subscribe to NDSBA's Policy Services, which include template policies on virtually every issue that school districts must resolve. NDSBA creates and regularly updates the template policies to reflect recent court rulings and federal and state law changes. At the close of each North Dakota legislative session, NDSBA reviews the new laws and makes appropriate revisions to the templates.

School board members can save themselves time and effort by becoming familiar with their own school district's policies. They do not have to make a new decision if a policy already covers a question. They can simply

follow the existing policy or direct the administration to do so. School board policy needs to be followed by the school board. If policy is out of date with current practice, the policy must be repealed or revised.

At times, school boards consider whether they should draft their own district policy. A caution is appropriate here and, for a few reasons, school districts should proceed slowly. First, an existing policy often addresses the concern. Districts should contact NDSBA to determine whether a model policy is available to resolve the question. Second, the reality may be that an administrative regulation, handbook language, or another approach will accomplish the goal. Regulations, handbooks, and similar district documents set forth the methods, steps, and details needed to implement policy. This is a preferable route given that policy development can be a lengthy process and district policy is less amenable to quick revision than administrative procedures.

Please feel free to contact NDSBA for additional information.



## Policy Motions for Substantive and Non-Substantive Changes

The September *Policy Ponderings* contained updates to policy language and descriptor codes. These changes

have sparked questions on how the board should proceed with the adoption of the policy or board regulations. The Policy Services *Sample Motions for Policy Adoption* resource, found on our Policy Services website at <http://policy.ndsba.org/> under the Resources tab, is a wonderful guide that provides helpful suggestions on board policy motions. It addresses what a board should do when there are substantive language changes and when there are non-substantive changes, such as to the title, descriptor code, date reviewed, or grammatical corrections but not the content of the policy. What should a board do when both are changed simultaneously in their policy? Here are a couple options that boards can take when updating policy language and descriptor code changes.

The first option is for your board to make a motion to rescind or remove the district's current policy and adopt the new policy. Rescinding a policy is necessary when the district no longer needs the policy, the policy is outdated,

or there are multiple changes required to make the policy compliant. Rescinding a policy requires only one reading; whereas, adopting or amending policy requires two readings unless an expedited process is deemed necessary by the board per policy **BDA, Procedure for Adopting Board Policy**.

Your board can choose to take action in one single motion or two separate motions with this option. Sample motions to rescind a district policy and adopt a new policy on first and second reading can be found in *Sample Motions for Policy Adoption*. It is generally clearer and cleaner if your board makes two separate motions when multiple policy actions are taken, but there is nothing that says your board can't combine the motion into one. A sample motion that includes both actions would be, "I move to rescind [Name of District's] current policy ABCC, Wellness Policy, and to approve first reading of the new policy ABEA, Wellness Policy, as presented."

The new policy will need to be placed on a subsequent board meeting agenda for second reading and approval per your district policy.

If your board needs to expedite the policy adoption process, policy BDA

authorizes the board to adopt policy on first reading when the board deems this action necessary. Prior to waiving a second reading on any policy, policy BDA must be adopted by your board and requires a first and second reading.

A sample motion would be, "I move to rescind [Name of District's] current policy ABCC, Wellness Policy, and to adopt the new policy ABEA, Wellness Policy, as presented on first reading, and waive the second reading per policy BDA."

These suggested motions do not need to use this exact language, but they should reflect both changes and cite policy BDA whenever an expedited process is deemed necessary by the board.

So often boards adopt NDSBA templates in their entirety, but they have not rescinded the old policy or compared it to the district's current policy. This results in the district having two policies in effect. Duplicate and obsolete policies cause confusion and are a liability to the district. To avoid this, the board should rescind the old policy at the same meeting that the new policy is adopted. If that doesn't happen, the board will need to rescind the outdated policy at a future meeting.

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## ■ Policy Motions

Another option for your board is to adopt the district's policy with proposed amendments. When amending policies, districts should always remember to compare their current board policy with the most recent NDSBA policy template. Policy Services has created step-by-step instructions on this process. *Comparing Multiple Policy Templates with Microsoft Word* is available on the Policy Services website at <http://policy.ndsba.org/> under the Resources tab or by contacting our office.

A sample motion to adopt the amended policy language and the descriptor code would be, "I move to amend policy ABCC, Wellness Policy, with the new policy descriptor code ABEC and recommended language changes."

Again, the motion does not need to use this exact language, but it should reflect both the language change and the new descriptor code. This motion would require two readings by the board, unless an expedited process is deemed

*Continued from page 3*

necessary per policy BDA.

Any changes to district administrative regulations or exhibits should not be adopted by the board but updated and implemented by the superintendent. However, the board reserves the right to review and veto any administrative regulations or exhibits should they, in the board's judgment, be inconsistent with the policies adopted by the board. NDSBA recommends that the board adopt policy **CBAA, Administrative Regulations** which provides procedures for the implementation and retention of administrative regulations and exhibits. A suggested motion can be found in the *Sample Motions for Policy Adoption* resource. This process should be reviewed at least annually and adopted by the board.

Districts are encouraged to contact the NDSBA office at 800-932-8791 or [rebecca.duben@ndsba.org](mailto:rebecca.duben@ndsba.org) for additional information and guidance on the policy adoption process.

## NDSBA Seeks Student Artwork

NDSBA is seeking winter-themed student artwork to be featured on our holiday cards. Artwork should be landscape-oriented and 5.5x4.75 inches. The student whose artwork is chosen will be recognized in the December issue of the *Bulletin* and receive a \$50 Barnes & Noble gift card. NDSBA will also make a \$200 donation to the student's classroom.

Artwork can be submitted in two ways:

1. Original artwork can be mailed to NDSBA, PO Box 7128, Bismarck ND 58507.
2. High quality scans (300 dpi or greater) of original artwork can be emailed to [linnae.brew@ndsba.org](mailto:linnae.brew@ndsba.org). Submissions should include name and grade of the student, name of the student's teacher, and the school district. Artwork must be received in the NDSBA office by **December 1**.