



# bulletin



DECEMBER 2020

*Excellence in North Dakota public education through local school board governance* ■ VOL XLV ISSUE 12

## Virtual Negotiations Seminar 2021

NDSBA's 2021 Virtual Negotiations Seminar will be held on Friday, February 5. Three early-bird sessions will be held on Thursday, February 4. Sessions will be recorded and available for paid registrants to watch later. Session information will be available at [www.ndsba.org](http://www.ndsba.org) and emailed to business managers in the near future. Registration will open on January 4, 2021, at [www.ndsba.org](http://www.ndsba.org). Districts are encouraged to register early; registration fees will increase on January 27, 2021.

### NEGOTIATIONS SEMINAR (\$145/\$170)

#### Negotiations Basics + Preparation & Strategy

Friday, February 5  
9 - 10:45 a.m.

These sessions are primers geared for first-time negotiators or those looking for a refresher. Registration for this session is included in the full Negotiations Seminar fee.

## Art Contest Winner

The North Dakota School Boards Association would like to congratulate **Vivian Schlafmann**, a sixth-grade student at the Turtle Lake-Mercer School District for winning our holiday art contest. Her little red school house and depiction of fun with friends was a hit amongst the NDSBA staff. Her artwork will be featured on the front of NDSBA's 2020 holiday cards. Congratulations, Vivian, and thank you to all the students who submitted artwork!

## Happy Holidays!

The North Dakota School Boards Association team would like to wish you a happy and healthy holiday season. We look forward to serving you in the New Year!

Sincerely,  
Alexis, Amy, Julie, Linnae, Patty, and Rebecca

### Negotiations Seminar

Friday, February 5  
11 a.m. – 4:30 p.m.

Topics may include a budget and legislative update, negotiation scenarios with experienced negotiators, and more. Registration for this session is included in the full Negotiations Seminar fee.

### EARLY BIRD SESSIONS Refresher on Certified Staff Contracts

Thursday, February 4 (\$55/\$80)  
8:30 – 10 a.m.

This session will start with an overview of certified staff contracts, including common provisions and considerations. The session will then cover special circumstances that arise with contracts, such as interim contracts, partial-year contracts, leaves of absence and the like.

### Overview of Employee Leave Considerations

Thursday, February 4 (\$55/\$80)  
10:30 a.m. – 12 p.m.

This session will cover the various types of employee leave in the K-12 setting, including employer-provided paid leave as well as job-protected leave provided by federal and state law. There will also be a practical discussion on how to address leave issues as they arise.

### Teacher Nonrenewal

Thursday, February 4 (\$105/\$130)  
1:30 – 4:30 p.m.

This session will walk participants through teacher nonrenewal procedures and touch on the discharge process. Participants will receive a copy of NDSBA's Nonrenewal, Resignation, and Discharge Handbook. The presentation will include:

- Evaluation of licensed personnel
- Nonrenewal procedures
- Performance nonrenewals
- First-year teacher nonrenewals
- RIF nonrenewals
- Resignation and contract breach
- Pros and cons of including extra-curricular assignments in contract





# Legal Spotlight

## NSBA Issues New Legal Guide on Protections for LGBTQ Employees and Students

by Amy De Kok, NDSBA Legal Counsel

This past month, the National School Boards Association (NSBA) issued an updated legal guide regarding the protections available for LGBTQ employees and students in public schools. The guide was issued following the U.S. Supreme Court's recent landmark decision in *Bostock v. Clayton County, Georgia*, which legal experts say will have enormous implications for expanding protections for LGBTQ citizens. In its June 2020 decision (which covered three related cases), the Court ruled that discrimination on the basis of sexual orientation or gender identity is necessarily also discrimination "because of sex" as prohibited by Title VII of the Civil Rights Act of 1964. In this regard, the Court explained: "An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII

forbids." So, what does this mean for public school districts? NSBA's legal guide addresses this question in detail as it relates to employees and students. The following are a few excerpts from NSBA's legal guide that begin to highlight the broad implications of the Court's decision as it pertains to LGBTQ school staff and students.

### What specific protections are available to LGBTQ employees under *Bostock*?

After *Bostock*, it is a clear violation of Title VII for an employer with more than 15 employees to fire an employee based on his or her status as gay or transgender. It is likely that federal courts will apply *Bostock* to situations where someone is alleged to have been fired based on his or her status as bisexual or questioning/queer, as well, though the Court did not address those terms specifically. Courts also are likely to apply *Bostock* in cases alleging other types of discrimination, in addition to firing, based on LGBTQ status. Just how or in what contexts remains to be seen.

*Bostock* likely opened the door for LGBTQ employees to assert all of the protections of Title VII, though the decision addressed only firing. Title VII prohibits employers from discriminating against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), or national origin. Title VII covers most employers in the public and private sector that have at least 15 employees, and it is applicable to most labor unions, employment agencies, and the federal government. The law protects employees from discrimination in hiring, firing, promotions, training, and benefits. It also protects employees from harassment and retaliation based on one of the listed characteristics or participating in a proceeding that addresses discrimination.

### Under *Bostock*, are LGBTQ employees eligible for the same benefits to which other employees are eligible?

Yes. It is very likely that the Equal Employment Opportunity Commission (EEOC) and federal courts will interpret *Bostock* as prohibiting employers from discriminating against LGBTQ persons

in employment generally, which would include benefits.

### Are school districts required to allow transgender employees to use bathrooms of the gender with which they identify?

It depends on the law in your jurisdiction. The *Bostock* decision does not address numerous specific issues in workplaces such as dress codes, bathroom access, locker room access, religious liberty rights, First Amendment speech and religious freedom rights, Religious Freedom Restoration Act protections, and Title VII exemptions for religious employers. Bathroom access for transgender employees is one area that continues to challenge employers and employees alike. The Occupational Safety and Health Administration (OSHA) requires employers to provide employees reasonable access to restrooms; and although federal law has not specifically addressed the issue, OSHA has developed A Guide to Restroom Access for Transgender Workers, which encourages employers to allow transgender persons to use bathrooms consistent with their gender identity.

School leaders should consult with your state school boards association and COSA member attorney to determine how the law in your jurisdiction affects your districts' policies and practices on employee restroom use.

### Does the *Bostock* decision address discrimination against LGBTQ students?

No, but it will affect decisions in cases about student rights. The ruling in *Bostock* is limited to Title VII of the Civil Rights Act of 1964, which addresses discrimination in employment. "In Title VII, Congress adopted broad language making it illegal for an employer to rely on an employee's sex when deciding to fire that employee," the Court said. "We do not hesitate to recognize today a necessary consequence of that legislative choice: An employer who fires an individual merely for being gay or transgender defies the law." Although *Bostock* arose in the Title VII (employment) context, federal courts frequently use Title VII case law to

*Continued on page 3*

The *Bulletin* is the official newsletter of the North Dakota School Boards Association. It is published twelve times each year and is mailed as third class mail from New Salem, North Dakota.

#### 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

WEBSITE [www.ndsba.org](http://www.ndsba.org)

TWITTER @ndsba

#### EXECUTIVE DIRECTOR

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## Legal Spotlight

Continued from page 2

interpret Title IX, part of the Federal Education Amendments enacted in 1972. Title IX prohibits discrimination based on sex in educational programs that receive federal money.

### Have courts ruled that school districts must allow transgender students to use the bathroom and locker room facilities of their gender identity?

Yes, several have. The U.S. Courts of Appeals for the 3rd, 4th, 6th, 7th, and 11th Circuits have held that under Title IX, transgender students can use sex-segregated facilities at schools based on gender identity. Courts issuing these rulings have explained that bathroom policies requiring transgender students to use a restroom corresponding to their biological sex, or a separate restroom apart from other students, discriminate against them based on sex. In addition, several U.S. District courts have ruled that transgender students have a right to use sexsegregated restrooms and locker rooms at school based on gender identity.

### What should schools take into consideration as they develop policies and procedures that address the issue of transgender athletics?

Ideally, a transgender student should have the same opportunities to participate in competitive athletics as non-transgender students. However, a school board developing a policy on transgender students' participation in athletics must carefully consider social, community, and legal issues related to privacy, safety, and constitutional protections.

In those sports not governed by the state's athletic association, a transgender student should, in general, be permitted to participate consistent with the student's gender identity at school. This is particularly true where state statutes or regulations or local policies prohibit discrimination on the basis of transgender status. However, before adopting such a policy, school boards should be aware that the participation of a transgender student on the team aligned with the student's gender identity may raise concerns from parents, students, and opposing teams who cite safety issues or complaints of unfair advantage. For sports governed by the state's athletic association, participation rules are likely to be regulated by the association. Some state athletic associations have policies

or regulations permitting transgender athlete participation on a team for the gender with which they identify. Some require a doctor's verification. Other states permit their participation only on the team that coincides with their birth-assigned sex or the sex that appears on their birth certificate. Some states have no policy at all for the participation of transgender students.

The NSBA legal guide addresses numerous additional questions regarding the impact of the Bostock decision. We strongly recommend that our member districts review the guide in order to gain a more comprehensive understanding of these implications. You may find the guide on our website ([www.ndsba.org](http://www.ndsba.org)) under the Resources page or on NSBA's website ([www.nsba.org](http://www.nsba.org)) under the Resources tab. NDSBA is in the process of reviewing relevant policy templates in light of the Bostock decision; however, we do not anticipate significant updates will need to be made immediately. We will keep our members updated in this regard. In the meantime, and as always, please feel free to contact NDSBA for additional information.



## Policy Manual Adoption/Implementation Record

As important as it is for your board to adopt policy, it is equally important to keep accurate record of when the policies were adopted. Failure to do

this causes confusion, duplicate and obsolete policies, and a liability to the district. Board minutes are a valuable record and required by law to document board actions such as policy changes; however, they can be cumbersome to sort through and may not always reflect past policy action. A more convenient and user-friendly option is having a table listing all district policies, regulations, and exhibits along with their adoption and implementation dates.

As a reminder, adopting, amending, reaffirming, or rescinding policy or board regulation is the responsibility of the board; whereas, the superintendent generally oversees the implementation and deletion of administrative regulations and exhibits. A hard copy and/or electronic manual should be maintained in a secure location for policies and board regulations, as well as a separate manual for administrative regulations and exhibits. Additional guidance on the

policy process can be found in policy **BDA, Procedure for Adopting Board Policy**.

Policy Services has created a color-coded spreadsheet listing all available policies, regulations, and exhibits as a resource to our members. This spreadsheet also includes the policy template descriptor code, type of template, when it was last updated by our office, and a column for when the district adopted or implemented the template. Not all policies may be applicable to your district, and you may even have some unique policies. This spreadsheet is editable to add and remove templates as needed. Districts are encouraged to regularly review the *Policy Ponderings* newsletter and update their chart as templates are modified. Having this record in place will help foster awareness and accuracy of the districts policies and provide a helpful reference guide not only for the board, but also administration and staff.

A sample **District Policy Manual Adoption/Implementation Date** spreadsheet is available in the RESOURCES section of *Policy Ponderings*. Districts may also contact our office at 1-800-932-8791 to receive this resource. This sam-

ple template will be updated each month to reflect our current NDSBA templates and is available in *Policy Ponderings* for download to our members.

## Board Members Selected to Serve on Legislative Committee

The following school board members were selected to serve on NDSBA's 2021 Legislative Committee:

### Northwest Region

Dustin Hager – Rugby  
Blaine Huff - Kenmare  
Emily Ramage Geltel - Williston

### Southwest Region

Sonya Hansana – Hazen  
Karl Lembke, NDSBA President - Bismarck

### Northeast Region

Cynthia Shabb – Grand Forks  
Marlana Knudson – Mayport-CG  
LeeAnn Johnston – Devils Lake  
Holly Stromsodt, NDSBA Past President – Finley-Sharon

Continued on page 4



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## ■ Legislative Committee

*Continued from page 3*

### Southeast Region

Robin Nelson – Fargo  
Patti Stedman, NDSBA Vice President –  
West Fargo

The legislative committee will meet weekly during the 2021 Legislative Session. Please thank and congratulate these members for their commitment to serving North Dakota school districts!

## NSBA Launches Annual Conference Virtual Experience

NSBA is pleased to announce the transformation of its in-person NSBA 2021 Annual Conference & Exposition to the NSBA 2021 Online Experience. This experience will bring world-class programming, inspirational keynotes, top education solution providers, and plentiful networking opportunities. The event will take place on April 8-10, 2021. Registration and other information can be found at <https://nsba.org/Events/NSBA-2021-Online-Experience>.



mark  
your calendar

**2021 NDSBA Negotiations Seminar**  
February 4-5, 2021 • Virtual

**2021 NSBA Annual Conference**  
April 8-10, 2021 • Virtual

**2021 NDSBA Annual Convention**  
October 28-29, 2021  
Ramkota Hotel, Bismarck



superintendent  
vacancies

### **Harvey School District**

Contact: Alexis Baxley  
Phone: 701-255-4127  
Email: [alexis.baxley@ndsba.org](mailto:alexis.baxley@ndsba.org)  
Application: [www.ndsba.org](http://www.ndsba.org)  
Deadline: February 1, 2021  
Position Begins: July 1, 2021

### **Hatton Eielson School District**

Contact: Dr. Paul Stremick  
Website:  
[www.dakotaleadershipsolutions.com](http://www.dakotaleadershipsolutions.com)  
Phone: 701-520-5963  
Email: [Paul.Stremick@outlook.com](mailto:Paul.Stremick@outlook.com)  
Deadline: February 12, 2021  
Position Begins: July 1, 2021