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Excellence in North Dakota public education through local school board governance ■ VOL XLVI ISSUE 9

School Law Seminar to Feature Clark, Exciting Legal Topics

NDSBA invites school board members, superintendents, business managers, school staff, and public and private sector attorneys to attend the 2021 NDSBA School Law Seminar on Thursday, October 28 at the Ramkota Hotel in Bismarck. The seminar will feature Sara Clark, Chief Legal Counsel at the Ohio School Boards Association, and numerous exciting school law topics.

Ms. Clark provides technical assistance and consultation services to Ohio's school boards to help members understand their responsibilities in an increasingly complex legal environment. Sara is a frequent presenter and lecturer in the area of school law throughout the United States and has authored several articles in various state and federal publications. Sara has expertise in FERPA requirements, student data privacy in the digital age and protecting privacy while using online educational services.

Ms. Clark will present a session entitled, **Safeguarding Student Privacy and Data During a Pandemic.**

As schools continue to start school virtually or develop virtual contingency plans, many are adopting new or relying on existing technology platforms to deliver educational services. When developing plans for safely returning to school in-person, schools are

making broad requests for sensitive information from students and staff. Additionally, many schools are incorporating technology programs that collect sensitive information to prevent the spread of COVID-19. This session will discuss these issues and provide practical pointers on how to navigate this new world in public education.



Sara Clark

The School Law Seminar will also include the following sessions: **COVID-19 Legal Considerations for School Boards**

This session will address the ever-evolving myriad of legal issues faced by school districts and their boards while dealing with the ongoing COVID-19 pandemic, including testing and screening procedures, masking requirements, and vaccinations. It will also address the extent to which schools may be held liable for transmission or outbreaks on school property. This session will be presented by **KrisAnn Norby-Jahner**. KrisAnn is an attorney with the Vogel Law Firm in its Bismarck office and concentrates her practice in employment law, education law, and ERISA compliance and litigation.

Superintendent Panel – Recruiting, Hiring and Retaining Quality Teachers in Challenging Times

Join this panel discussion with superintendents as they share their thoughts and ideas on how to recruit and hire teachers during a teacher shortage likely made more challenging during the pandemic.

Legal Cannabis and Public Schools

This session will include a brief overview of existing state law on medical cannabis, the trend toward expanded legalization, and the potential for possession and use of medical cannabis and cannabidiol (CBD) in schools by students or staff. **Tara Brandner**, District General Counsel for Fargo Public Schools, will present this session. Prior to joining Fargo Public Schools, Tara served in several roles including assistant attorney general at the North Dakota Attorney General Office in Bismarck, North Dakota where she was instrumental in drafting the Medical Marijuana provisions in North Dakota Century Code.

Educating English Learners: Do You Know Your Obligations?

Under Title IV of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974, public schools must ensure that English learner students can participate meaningfully and equally in educational programs. This session will review these obligations of public schools and what this looks like in practice. This is an important refresher considering the recent 2020 census numbers. **Rachel Bruner**, attorney at the Pearce Durick law firm, will present this session. Rachel focuses her practice on representing public school districts and has had the privilege of representing or presenting to many North Dakota public school districts over her career.

Open Enrollment and Tuition Agreements: Educating Students from Other Districts and Out-of-State

This session will cover the common situation experienced by most districts of educating students from outside your district. Specifically, the discussion will include a comparison of open enrollment versus tuition agreements under ND law, as well as practical advice on how to handle these situations as they arise and options available to districts.



Annual Convention Registration— Now Open!

Registration for the 2021 NDSBA Annual Convention will is **NOW OPEN!** Registration is available online only at www.ndsba.org. Each district should submit ONE registration prepared by the business manager. Please remember that early bird registration rates are only available until October 13!



Legal Spotlight

New Resources Issued by U.S. Department of Education

by Amy De Kok, NDSBA Legal Counsel

Just this past month, the U.S. Department of Education issued a series of new resources for use by public school districts, their staff and students in preparation for and during the 2021-2022 school year. The first resource is a new Q&A on public school IDEA (Individuals with Disabilities in Education Act) responsibilities. The document is part of the Department's "Return to School Roadmap" and its stated purpose is to ensure children with disabilities and their families have successful early intervention and educational experiences in the 2021-2022 school year. The guidance focuses on the importance of appropriate implementation of IDEA's child find obligations, which require the identification, location and evaluation, of all children with disabilities, including those younger than school age and those who

do not attend public schools. The guidance notes that schools may use federal COVID-19 relief funding provided through the American Rescue Plan to help address a backlog of evaluations. And schools may need to make extra efforts to locate and identify children who didn't enroll in the 2020-21 school year to ensure their needs are addressed. The Department makes clear that the pandemic and the challenges it has presented did not alter IDEA's guarantee of FAPE. The guidance also specifically mentions that long COVID or other post-COVID conditions could meet the definition of "disability" under IDEA.

The Department also issues a new Fact Sheet about public schools' obligations relating to English Learners. The resource reaffirms that "all children in the United States have an equal right to enroll and participate in public schools without regard to their or their parents' or guardians' immigration status." The Fact Sheet further provides:

- **Public school districts may not deny access to an education to any child based on immigration status.** It is a violation of federal law for districts to prohibit or discourage children from enrolling in public schools because the children or their parents or guardians are not U.S. citizens or do not have immigration documentation.

- **Public schools must offer language assistance services to all students with limited English proficiency** and identify these students as English learners so that all students can meaningfully participate in all educational programs.

- **Public schools must communicate information** about enrollment, classes, and other educational programs and activities **in a language that all parents, guardians, and sponsors**

can understand. Schools can accomplish this by translating information or providing qualified interpreters

The Fact Sheet confirms that the U.S. Department of Justice's Civil Rights Division and the Department's Office of Civil Rights are prepared to identify and investigate alleged denial of equal access to education because of national origin or immigration status.

Finally, the Department and the U.S. DOJ issued a joint resource regarding anti-LGBTQI harassment in schools. The two-page document lists examples of anti-LGBTQI harassment and suggests actions student can take if they believe they've been a target of such harassment.

All three resources are available on the Department's website (www.ed.gov). Please contact NDSBA or your district's legal counsel for further guidance on these issues.

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.

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BoardBook Premier

BoardBook Premier is available to North Dakota school districts, political subdivisions, and businesses. BoardBook Premier is a paperless meeting and document storage program designed by school boards and is the new standard in board agenda preparation and decision making. Visit www.ndsba.org for more information.

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Follow us at

[@ndschoollboards](https://twitter.com/ndschoollboards) (Twitter)

and **North Dakota School**

Boards Association (Facebook) for event, policy and other education-related updates.

Government Affairs Committee Resolutions Report

NDSBA's Government Affairs Committee (GAC) met on August 31, 2021, to act on resolutions for consideration by the Delegate Assembly at the Annual Convention. Participating committee members were: Holly Stromsodt, Chair (Finley-Sharon); Karl Lembke (Bismarck); Patti Stedman (West Fargo); Shane Aadness (Stanley); Sonya Hansana (Hazen); Dianne Hensen (Glenburn); Lisa Maki (Garrison); Lauren Vengels (Minot); and Robin Nelson (Fargo).

Resolutions remain as standing resolutions for four years unless significant legislative or staff action prompt an earlier review. At the end of four years, they are dropped unless readopted by the Delegate Assembly. No new resolutions were submitted in 2021. Following are recommendations of the GAC:

RESOLUTIONS THAT ARE FOUR YEARS OLD AND RECOMMENDED FOR READOPTION AS WRITTEN

1. **REGIONAL EDUCATION ASSOCIATIONS.** NDSBA shall support the

State of North Dakota providing separate and additional funding to REAs and work toward expanding resources available to these REAs so educational opportunities for students and professional development for staff all across the state can be improved.

Adopted in 2005; amended and readopted in 2009; amended and readopted in 2013; amended and readopted in 2017.

2. **TAXING AUTHORITY OF THE STATE.** NDSBA shall oppose any attempt to limit the taxing authority of the state.

Adopted in 2005; readopted in 2009, 2013, and 2017

3. **TAXING AUTHORITY OF SCHOOL BOARDS.** NDSBA shall oppose any attempts to further limit or eliminate the taxing authority of school districts.

Adopted in 2005; readopted in 2009 and 2013; amended and readopted in 2017.

State Law Requires New Board Members to Attend Seminar

North Dakota Century Code § 15.1-09-32 requires new school board members to attend an in-service training workshop hosted by the North Dakota School Boards Association or its designee within one year of assuming office. NDSBA will host a seminar for new board members on October 28, 2021. Topics will include

the role of a school board member, the duties of a school board, and school finance. A panel of experienced school board members will also present their experiences.

Registration for the New Member Seminar is available at <https://www.ndsba.laventurellc.com/2021-ndsba-annual-convention/>.

NDSBMCP Fall Training to Be Held in Bismarck

North Dakota School Business Manager Certification Program students may now register for classes, which are to be held on Wednesday, October 27, at the Bismarck Public Schools Career Academy (1221 College Drive). First-year students will learn the basics of Open Records and Meetings and Human Resources I, while second-year students will be taught key principals of Ancillary Services Management and Asset

Management, Investing, and Bonding. Graduates of the business manager certification program may take any of the offered courses at a discounted rate and can earn continuing education credits for each class taken.

Interested business managers can learn more about these trainings by going to the NDSBMCP website at www.ndsbmcp.org and clicking on the NEWS tab or by calling the NDSBA office at 1-800-932-8791.



If your board votes to bring a resolution to the convention floor for consideration by the Delegate

Assembly, the following process must be followed:

1. Have 400 copies of your resolution ready to distribute at the close of the first Business Session on Thursday afternoon.
2. At the Second Business Session on Friday afternoon, the chair will ask if there are resolutions that were distributed on Thursday. At that time, a delegate from your board must come to the microphone and move the resolution. A delegate from a different board must make the second.
3. Once a motion and second have been made, your resolution will be discussed and voted on by the Delegate Assembly.



Convention Reminders

Convention Rooms

If you have sleeping rooms reserved at the Ramkota Hotel for the 2021 NDSBA Annual Convention, you must give them a specific name for each reserved room **by October 4** or the rooms will be released. Contact Ramkota Hotel reservations at (701)258-7700.

Convention Delegate Designation

Convention delegates and alternates must be clearly noted when registering. Registration must be completed **by October 13** in order to vote at Delegate Assembly. Only those registered as alternates **BY THIS DEADLINE** will be allowed to substitute for a registered delegate.

Board Member Service Awards

A copy of a qualifying board member's points form must be received in the NDSBA office **by Monday, September 20**, for board members to be recognized at the 2021 Annual Convention. Forms are available at www.ndsba.org under the "Resources" link. Also available on the webpage is a spreadsheet that may be useful to record board members' yearly activities.

Barb Norby Scholarship

If you would like to nominate a board member for this award, please email a short paragraph describing why your nominee is deserving to Alexis at alexis.baxley@ndsba.org **by Monday, September 20**.



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Superintendent Evaluations

North Dakota law requires that school boards complete a formative evaluation of superintendents **ON OR BEFORE NOVEMBER 19** [NDCC § 15.1-14-03]. This evaluation must take place at an open public meeting. One purpose of the November evaluation is to highlight areas of performance in need of improvement and provide an improvement plan a timeline for expected enhance performance. The law regarding superintendent evaluations states that if the superintendent is found to be unsatisfactory in any area, the board shall detail its findings in the report and make recommendations. This process allows opportunity for professional growth before the superintendent's formal evaluation, which must be complete **ON OR BEFORE MARCH 15, 2022**. A sample evaluation form is available on NDSBA's website and www.ndsba.org under RESOURCES.



mark your calendar

ND Rural School Summit

October 27, 2021
State Capitol, Bismarck

2021 NDSBA Annual Convention

October 28-29, 2021
Ramkota Hotel, Bismarck

2022 Negotiations Seminar

February 3-4, 2022
BSC National Energy Center of
Excellence, Bismarck

2022 NSBA Annual Conference & Exposition

April 2-4, 2022
San Diego, CA

2021 NDSBA ANNUAL CONVENTION

TENTATIVE PROGRAM
Ramkota Hotel, Bismarck

PRECONVENTION SESSIONS THURSDAY, October 28

7:00-8:00 a.m. Registration and Continental Breakfast – Dakota Ballroom
8:00-2:45 **SCHOOL LAW SEMINAR** – Lamborn/Patterson
8:00-2:45 **NEW MEMBER SEMINAR** – Grand Pacific

NDSBA CONVENTION THURSDAY, October 28

3:00 p.m. **OPENING CONVENTION SESSION**

4:30 p.m. **FIRST BUSINESS SESSION**

FRIDAY, October 29

7:00-8:00 a.m. Registration – Dakota Ballroom
Exhibit Visitation – Courtyard (breakfast available)

8:00-9:15 **GENERAL SESSION**

Dr. Jim Mahoney

9:45-11:45 Business Manager Sessions

9:45-10:30 **CLINIC SESSIONS**

- NDIRF Update
- Conversations with State Superintendent Kirsten Baesler
- CREA Annual Meeting
- NDSBA Legal Direct
- Federal Funding Update
- Small Organized Schools: Can Online Learning Work for Kids?

10:45-11:30 **CLINIC SESSIONS**

- Updates to ND Academic and CTE Scholarship Program
- Tenet Leaderships
- Crossing the Streams: The Merging of School Districts in the Wild West
- ND Full-Service Community Schools Consortium
- PERS Panel
- Small Organized Schools: Who We Are and What We Do!

11:45-12:30

CLINIC SESSIONS

- CTE Grants
- Competency Framework
- Facilitating Rich Dialogue for School Boards
- Legislative Panel
- Small Organized Schools: Annual Meeting

11:45-12:30

Business Managers' Lunch Buffet

12:30-1:30

Lunch Buffet & Exhibit Visitation

1:30-2:15

CLINIC SESSIONS

- Organizing the Board
- Intro Into Coherent Governance
- Personalized Learning: A Rural District's Journey to Innovation
- Strategic Planning and Implementation
- Hot Topic Round Tables
- NDHSAA Update

2:30-3:15

CLINIC SESSIONS

- Health Insurance and NDFIT
- Diving Deeper Into Coherent Governance
- Strategic Planning and Implementation 2.0
- Lessons Learned from a Successful Bond Referendum
- TFFR Update

3:30

SECOND BUSINESS SESSION AND DELEGATE ASSEMBLY

4:30

Adjourn

SCHOOL LAW SEMINAR – THURSDAY, October 28, 2021

TENTATIVE SCHEDULE

| | |
|-------------|--|
| 7:00 a.m. | Registration and Continental Breakfast Welcome |
| 8:00-9:00 | Safeguarding Student Privacy and Data During a Pandemic <i>Sara Clark, Chief Legal Counsel at the Ohio School Boards Association, Columbus, OH</i> |
| 9:00-9:45 | COVID-19 Legal Considerations for School Boards <i>KrisAnn Norby-Jahner, Vogel Law Firm, Bismarck</i> |
| 9:45-10:00 | Break |
| 10:00-11:00 | Superintendent Panel – Recruiting, Hiring and Retaining Quality Teachers in Challenging Times <i>Various ND District Superintendents</i> |
| 11:00-11:45 | Legal Cannabis and Public Schools <i>Tara Brander, District General Counsel for Fargo Public Schools</i> |
| 11:45-12:45 | Buffet Lunch (included in registration fee) |
| 12:45-1:30 | Educating English Learners: Do You Know Your Obligations? <i>Rachel Bruner, Pearce Durick Law Firm, Bismarck</i> |
| 1:30-2:15 | Open Enrollment and Tuition Agreements: Educating Students from Other Districts and Out-of-State |
| 2:15-2:45 | School Law Legal Updates <i>Amy L. De Kok, NDSBA Legal Counsel</i> |
| 2:45 | Conclusion of Seminar |

CLE Credit Information Pending

2021 NEW MEMBER SEMINAR

October 28, 2021 | 8 a.m. – 2:45 p.m.

Ramkota Hotel, Bismarck



Agenda

- 8:00 a.m. **Welcome and Overview of the Day**
Alexis Baxley, NDSBA Executive Director
- 8:05 a.m. **Welcome**
Kirsten Baesler, State Superintendent
- 8:25 **Board Leadership and Board Ethics**
Alexis Baxley, NDSBA Executive Director
- 9:45 a.m. **Break**
- 10:00 **School Finance**
Dr. Paul Stremick, Former Superintendent
- 11:00 **Conflict of Interest, School Board Powers, Roles and Responsibilities,
and Chain of Command**
Alexis Baxley, NDSBA Executive Director
- 11:45 **Lunch**
- 12:45 p.m. **Open Records, Open Meetings and Executive Session**
Annique Lockard, Office of the Attorney General
- 2:00 **Experienced Board Member Q&A**
*Board members will separate into subgroups by region and meet with their NDSBA
Board of Directors representative.*
Room TBD: Northwest Region – Jim Rostad, Minot
Room TBD: Southwest Region – Lucas Greff, Mott-Regent
Room TBD: Northeast Region – Steve Halldorson, Devils Lake
Room TBD: Southeast Region – Nathan Berseth, Richland and Patti Stedman,
West Fargo
- 2:45 p.m. **Adjourn**

North Dakota state law requires new school board members to attend this training (NDCC § 15.1-09-32). Participants who fail to be present for the full day will not meet the requirements of the training. A certificate of completion will be mailed to participants who complete the workshop.