



NDSBA

**NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION**



SCHOOL BOARD MEMBER TOOLKIT



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1 WHERE AND HOW TO BEGIN

Congratulations on being elected to serve on your local school board! We applaud your willingness to dedicate yourself to serve the children of your community. As a school board member, you are now a leader of the district, a steward of public funds, policymaker, and an advocate for public education.

FIVE KEY FUNCTIONS

A good way to begin your service as a new school board member is to have a general understanding of the **key functions** of a local school board. There are generally five ongoing key functions the board serves in providing guidance and direction to the district:

- Adopting a vision and goals and evaluating progress and results
- Adopting board policies required by law and in alignment with district vision and goals
- Hiring and evaluating a district superintendent
- Adopting a budget and levying taxes
- Communicating with the community

RESOURCES

To carry out these key functions effectively and successfully, you must be prepared for and attend all board meetings, follow all applicable laws and regulations, understand school finance, and receive frequent training and professional development. The board president can answer questions on protocol and procedure, as well as issues facing the board. The district superintendent is also a good source of information. Other board members, both current and past, are good resources. You should also familiarize yourself with the board's policy manual, as this is the most important document guiding the school district. Many districts provide access to board policies via the district website.





The North Dakota School Boards Association (NDSBA) is also here to help. Incorporated in 1967, NDSBA was established to bring together school board members from all parts of the state and to stimulate their interest in matters pertaining to public schools, including their ongoing improvement. NDSBA provides various opportunities for professional development through its annual events, publications, and other services. The Legal Services Program is designed to prevent school districts from becoming involved in litigation and to put districts in the best position to win if sued. Policy Services is available on a subscription basis to support and improve policymaking by school boards. Legislative advocacy for local school board issues is provided on the state and federal level.

NDSBA is governed by a seven-member board of directors elected by delegates at the annual convention. Members include a president, vice president, past president, and four regional directors. NDSBA staff members have many years of experience in school-related work and are available to answer a vast array of questions. Many problems are averted before they materialize because of timely response to questions.

SCHOOL BOARD SERVICE

You will be expected to make decisions on major issues that affect the students and citizens of your community. You will be asked to vote publicly on matters that you may know little about. As with every new job, it takes time to learn the ropes. You will be expected to attend board meetings, participate on committees, attend school functions, keep yourself informed about issues, pursue professional development opportunities, and interact with your fellow board members and administrator(s). You should not hesitate to ask questions as no one expects you to have all the answers.

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North Dakota law requires that each newly elected school board member attend an inservice training workshop hosted by NDSBA ***within the first year of assuming office.*** The workshop must include presentations on the role of a school board member, duties of a school board, and education finance. NDSBA provides this new school board member training each year at its annual convention in late October. In addition to the required topics, NDSBA provides training and professional development on a number of other valuable topics.

School board service requires a time commitment, and the time required to complete your responsibilities will likely vary by the time of year. North Dakota law requires a school board to hold an initial meeting during the month of July following the annual election. Once a month thereafter, the board must hold a regular meeting for the transaction of business. Special meetings may be called by the board president or by any two members of the board. The time commitment will depend on how many meetings are scheduled, which committees you serve on, and what issues are going on in the district at the time. For example, if the district has an ongoing building project, hiring a superintendent, or conducting negotiations with certified staff, the time needed for board meetings will likely be more extensive.





2 BASICS OF SCHOOL BOARDS

WHERE DID SCHOOL BOARDS COME FROM?

Since education was not one of the functions delegated to the national government by the U.S. Constitution, it has remained the basic responsibility of individual states. Article VIII of the North Dakota Constitution is devoted entirely to education. Section 2 of that article mandates that the legislative assembly provide for a uniform system of free public schools throughout the state. This system is to serve students in early primary grades and is to continue through college and university levels. It is the legislature that has the power and authority and with which the responsibility resides. The North Dakota legislature has created a system whereby school boards made up of local citizens are elected by voters in each school district to oversee educational programs.

HOW MANY MEMBERS ARE ON A LOCAL BOARD?

Five (and almost all have five), unless a district has increased its members to seven or nine.

HOW LONG IS THE TERM OF A SCHOOL BOARD MEMBER IN NORTH DAKOTA?

The basic term is three years. Exceptions exist when a board has taken action to extend the term to four years.

WHEN ARE SCHOOL BOARD MEMBERS ELECTED?

School board members are elected at the annual school election held between April 1 and June 30 or at a special election.

WHO IS ELIGIBLE TO RUN FOR A POSITION ON THE SCHOOL BOARD?

Any person who is a qualified elector in the district. There may be additional eligibility requirements in tribal districts.





WHEN DO NEWLY-ELECTED BOARD MEMBERS TAKE OFFICE?

The term of each newly-elected board member begins at the start of the annual meeting of the board in July, after taking the oath of office as prescribed for all elected officials in North Dakota. This oath can be found in NDCC 44-01-05 and in Section 4 of Article XI of the North Dakota Constitution and must be taken within ten (10) days after being notified of election. Board members will hold office until a successor has been elected and qualified.

HOW MANY TERMS MAY ONE PERSON SERVE ON A SCHOOL BOARD?

There is no statutory limit to the time a person may serve as a school board member.

HOW MUCH ARE SCHOOL BOARD MEMBERS PAID IN NORTH DAKOTA?

Each school board may set compensation for its members and this is typically done via board policy. Board members may also be reimbursed for out-of-pocket expenses incurred while engaging in school board business. Travel, lodging, etc., are covered at state rates as prescribed in NDCC 44-08-03, 44-08-04, and 54-06-09.

HOW ARE VACANCIES FILLED THAT OCCUR BETWEEN ELECTIONS?

If a school board member is unable or unwilling to serve, a vacancy exists. In addition, NDCC 44-02-01 sets forth a list of circumstances and situations that cause a vacancy to arise by operation of law, including, but not limited to: failure to discharge the duties of office for at least sixty (60) consecutive days unless by unavoidable cause; failure to qualify as provided by law; cease to be a resident of the school district; be convicted of a felony or any offense involving a violation of the person's official oath; or cease to possess any of the qualifications of office prescribed by law. Vacancies must be filled by the board through appointment or by special election. The member appointed or elected at a special election serves only until the next regular school board election. At that time, district voters will elect a successor who will serve the remainder of that particular term.





WHY ARE TERMS OF BOARD MEMBERS STAGGERED?

This is done so there will be continuity on the board. Theoretically, a majority of the board will be carried over into the following year. An exception occurs when someone has vacated a seat during the term, which must be voted on in addition to regularly scheduled vacancies. The other exception occurs when a district has converted to four-year terms and holds elections every two years.

CAN A MEMBER OF THE SCHOOL BOARD BE RECALLED FROM OFFICE?

Yes, and the process is not difficult. A petition stating the reason(s) for the recall must be signed by a number of electors equal to twenty-five percent (25%) of those who voted in the last election at which that person to be recalled was elected. Reasons are not specified in law. If a petition is deemed valid, the name of the board member to be recalled is placed on a ballot unless that person resigns within ten (10) days after the petition is certified. A separate petition must be filed for each board member to be recalled. A board member whose office is on the ballot at a regularly scheduled election occurring within one year is not subject to recall if the recall special election would occur within one year of the next regularly scheduled election in which the board member could be re-elected.

WHAT DO SCHOOL BOARDS DO?

WHAT IS AN ANNUAL MEETING?

An annual meeting is required by law and may be held anytime during the month of July following the annual election. It is at this meeting that new members' terms begin and the board organizes itself.

WHAT IS A REGULAR MEETING?

Each board must hold a regular meeting once during each month following the annual meeting for the transaction of business. Most action of a school board takes place at regular meetings, but occasionally, significant or unexpected issues are handled at special meetings. Typically, minutes from previous meetings and bills to be paid are approved at regular meetings.





WHAT IS A SPECIAL MEETING?

A special meeting is called to address a specific issue(s). Action by the board is limited to the issue(s) for which the meeting was called and the items set forth in the meeting notice. The board president or any two members of the board may call a special meeting. There is a requirement of written notice to board members, notifying the official newspaper and county auditor, and posting at the school office and at the meeting place.

WHAT KIND OF MAJORITY IS NECESSARY TO PASS A MOTION?

In nearly all actions of the school board, an ordinary (simple) majority of the quorum is all that is necessary to pass a motion. There are exceptions, however, and two examples are cited below:

- If a teacher is to be suspended from teaching in the classroom, pending a discharge hearing, a unanimous vote is required from the board.
- In order for a board member to participate in discussion or vote on an item for which that member has a conflict of interest as defined in NDCC 15.1-07-17, a unanimous vote of the rest of the board is required.

HOW IS THE SCHOOL BOARD ORGANIZED?

At the annual meeting of the board, members will select one of their number to be president who will then serve a term of one year in that office. Although it is not prescribed in law, it is strongly recommended by NDSBA that a vice president be selected at this time also. In addition to its officer(s), the board employs a business manager.

WHAT ARE DUTIES OF THE BUSINESS MANAGER?

Two of the most important functions are serving as treasurer of the district and being responsible to keep minutes of meetings. The business manager, however, fulfills numerous other responsibilities, including several prescribed by North Dakota law. Districts throughout the state regard the position of business manager differently. For a few, it is a part-time job that is filled only a few hours each month. For most, it is a full-time position.





WHAT ARE DUTIES OF THE BOARD PRESIDENT?

The president presides over all meetings of the board, appoints committees (subject to board approval), cosigns all checks issued by the board (the business manager, serving as district treasurer, is the other cosigner), and will perform other duties as prescribed by law. The vice president takes over the president's duties when the president is unable to perform required tasks.

HOW DOES THE BOARD PRESIDENT ACTUALLY CARRY OUT THE PRESIDING FUNCTION AT MEETINGS?

The president must maintain control at all times during the meeting and must see that an agenda is followed. At the same time, there is a responsibility to be responsive to the public--particularly when they attend meetings. The most important thing for the president to remember, along with all who are in attendance, is that the meeting is **NOT** a public meeting. Rather, it is a business meeting that is held in public. The public does not have an automatic right to participate—only to have access to the meeting and observe. The board may adopt a policy that permits for some public participation or comment.

HOW MUCH POWER AND AUTHORITY DOES AN INDIVIDUAL SCHOOL BOARD MEMBER HAVE?

Unless sitting as a board member at an official meeting of the school board, individual members **have absolutely no more (nor less) authority than any other citizen** of the district. The fact that board members still have the same rights as anyone else is often overlooked.



3 ETHICS FOR SCHOOL BOARD MEMBERS

While North Dakota law does not prescribe a set of ethical standards for public school boards, many local boards have adopted a code of ethics for their members. Having a set of ethical standards will not only set expectations for individual board member behavior, but will also guide the board in being ethical role models for staff, students, and community members.

Following is a summary of ethical and unethical behaviors for school board members:

ETHICAL BEHAVIOR FOR BOARD MEMBERS

- Being respectful of others
- Acting in the best interest of the school system
- Following the chain of command/understanding roles and responsibilities of the board and superintendent
- Working as part of a team
- Possessing integrity and honesty
- Knowing and following proper governing procedures

UNETHICAL BEHAVIOR FOR BOARD MEMBERS

- Promoting a personal agenda
- Micromanaging staff
- Violating the trust of fellow board members
- Attacking others in public
- Using the office for personal gain
- Discussing executive session business with school staff or the community





SUPERINTENDENT BEHAVIOR THAT CAN DAMAGE THE BOARD'S EFFECTIVENESS

- Not providing adequate information to board members or not providing the same information to all board members
- Campaigning for or against current board members
- Developing weak meeting agendas that encourage micromanagement by board members
- Surprising board members with last minute additions to the board meeting agenda
- Showing favoritism
- Verbally attacking or criticizing board members in public

If your local board has not yet adopted a set of ethical standards for its members and staff and is interested in doing so, please contact NDSBA's Policy Services for information on policy templates addressing this important issue.



4 ROLES AND RESPONSIBILITIES

Local school boards are generally not directly responsible for managing school district operations. Instead, the board hires and evaluates the work of a licensed superintendent who acts as the chief executive officer of the district and oversees the day-to-day management of district operations. More effective boards focus on governance (i.e., planning, policy, and promotion) rather than taking a managerial role (i.e., personnel, purchasing, and problem solving). To be effective, board members should have a firm understanding of the board's role and responsibilities, as compared to those of the superintendent. The Board/Superintendent Relationship is addressed in detail in Chapter Five.

ROLE OF THE BOARD

The National School Boards Association suggests the following four major areas of leadership for local school boards:

VISION—Creating a Shared Vision

- Board keeps students as the focus of the work of schools.
- Board adopts a shared vision based on community beliefs to guide local education.
- Board demonstrates its strong commitment to the shared vision and mission by using them to guide decision making and communicating to others.

STRUCTURE—Establishing a Structure to Achieve the Vision

- Board employs a superintendent and establishes a district management system that enables all people to contribute meaningfully to achieve the vision.
- Board establishes district processes to use information and make effective decisions.

The School Board DOES NOT run the schools... It sees that they are run well.





- Board ensures that long- and short-term plans are developed and annually revised through a process involving extensive participation, information gathering, research, and reflection.
- Board makes decisions that support student learning when it reviews and adopts policies and allocates resources.
- Board sets high instructional standards based on the best available information on the knowledge and skills students will need in the future.
- Board encourages an environment conducive to innovative approaches to teaching and learning.

ACCOUNTABILITY—Developing Accountability to Measure and Communicate How Well the Vision is Being Accomplished

- Board receives regular reports on student progress and needs based on a variety of assessments in order to evaluate the quality and equity of education in the district.
- Board evaluates both superintendent and board performance.
- Board evaluates progress toward achievement of district long- and short-term goals and ensures that policies and allocation of resources effectively support district vision.
- Board periodically reports district progress to community and parents.

ADVOCACY—Championing the Vision

- Board seeks others who can help expand educational opportunities and meet the needs of the whole child.
- Board advocates for children and families and establishes strong relationships with parents and other mentors to help support students.
- Board leads in celebrating the achievements of students and others in education.
- Board promotes school board service as a meaningful way to make long-term contributions to society.



RESPONSIBILITIES OF THE BOARD V. SUPERINTENDENT

Below is a general summary of the responsibilities of the board, as compared to the superintendent, followed by a more detailed breakdown of each area.

ROLES/RESPONSIBILITIES	SCHOOL BOARD	SUPERINTENDENT
1. General	Governs the District	Advises the Board – Manages the District
2. Policy	Adopts	Suggests and Implements
3. Board Meetings	In charge of	Serves as a resource
4. Budget/Finance/Audits	Adopts and monitors	Prepares, administers, monitors, details
5. Instruction/Curriculum	Establishes criteria, approves, and monitors	Recommends, oversees staffs' efforts
6. Personnel	Establishes criteria, approves, or rejects	Interviews, recommends, hires, evaluates, promotes, trains
7. Community Relations	Creates a positive image for District	Creates a positive image for District, directs communications
8. Labor Relations	Provides guidelines, ratifies contracts	Monitors process within guidelines
9. Student Services	Adopts policies for care and control	Recommends, implements, directs
10. Facilities/Food Services/Transportation	Develops policy on use of	Implements policy, writes procedures, makes recommendations





GENERAL AREAS

SCHOOL BOARD

- Establishes rules and policies for the governance of the school district.
- Approves a planning process to include stakeholders in developing a comprehensive plan for student achievement.
- Invests the superintendent with those powers and duties in accordance with board policy and state and federal laws.
- Requires professional leadership from the superintendent.
- Participates in educational conferences, workshops, trainings, and professional organizations.

SUPERINTENDENT

- As the chief executive officer of the Board, the superintendent is responsible for implementing board policies and directives.
- Recommends a comprehensive planning process for student achievement.
- Coordinates operation of the schools, supervision of the instructional programs, and management of district personnel.
- Provides educational leadership to the Board, staff, students, and community.
- Identifies needs of the district and reports them to the Board.
- Keeps the Board aware of statewide and national educational developments and changes.
- Continually upgrades his/her professional knowledge and qualifications through membership and participation in professional associations, conferences, and workshops.





POLICY

SCHOOL BOARD

- Clarifies for the superintendent the intent of the Board and actions necessary for implementation of Board policy.
- Reviews and evaluates Board policies on an ongoing basis.

SUPERINTENDENT

- Acts as advisor to the Board on areas needing policy development or revision.
- Drafts written policy and provides the Board with necessary data and information for policy adoption.
- Maintains a current, up-to-date manual of adopted policies.
- Develops rules and procedures necessary to implement the Board's policies.
- Identifies policy areas that the Board should revise, rewrite, or repeal as needs of the district or laws and rules change.

BOARD MEETINGS

SCHOOL BOARD

- All duties imposed upon the Board are performed at a public board meeting.
- The Board refrains from misuse of executive session provisions as defined in NDCC chapter 44-04.
- The Board establishes, through policy, operational guidelines or practices for meetings.
- The Board chair/president, in consultation with superintendent, develops the meeting agenda.
- The Board identifies, for superintendent, information needed for decision making.
- Board members receive their agenda materials in adequate time for review before scheduled Board meetings.





SUPERINTENDENT

- Serves as an advisor to the Board during regularly scheduled meetings.
- Ensures compliance with all legal requirements relative to posting of notices and maintenance of meeting records.
- Identifies areas of business that the Board should address at meetings.
- Prior to meetings, provides Board members with sufficient information for decision making.
- Implements Board decisions and instructions developed at meetings.
- Ensures that Board meetings, including executive sessions, meet the requirements of the law.

BUDGET/FINANCE/AUDITS

SCHOOL BOARD

- Establishes priorities for financial management of the district.
- Approves the decision to ask voters to pass a supplemental levy.
- Provides the superintendent with the Board's priorities in development of budget.
- Explores with the district business manager the internal controls of the district.
- Reviews the budget on a monthly basis and makes adjustments as needed.
- Reviews and approves monthly bills.

SUPERINTENDENT

- Prepares a detailed budget based on Board priorities and parameters.
- Presents a budget to the Board and/or budget committee for consideration and approval.
- Makes a recommendation to the Board about the need for and amount of a supplemental levy.
- Administers the budget ensuring that expenditures of district funds are within legal requirements of the budget.
- Acts as a resource to the Board within the framework of district audits.





INSTRUCTION/CURRICULUM

SCHOOL BOARD

- Establishes educational philosophy, goals, and objectives for instructional program of the district.
- Adopts and/or changes standards and instructional programs as necessary or as recommended by the superintendent.
- Regularly reviews student achievement data.
- Reports to the community the status of education in the district.
- Identifies and adopts graduation requirements.
- Periodically requests reports from professional staff relative to assessments and instructional programs.

SUPERINTENDENT

- Provides leadership to the Board and staff in the continuous development, implementation, and evaluation of the instructional program.
- Recommends appropriate graduation standards and methods to measure attainment.
- Assigns staff to instructional areas and informs the Board.
- Regularly schedules presentations and reports by staff on various segments of assessments and instructional programs as requested by the Board.
- Recommends and implements policy on selection of instructional materials and equipment.

PERSONNEL

SCHOOL BOARD

- Employs certified and classified staff members based on recommendation of the superintendent.
- Promotes good working relations with staff through the district's chain of command (see Chapter 6).
- Adopts policy on evaluation of personnel.





- Receives and acts on personnel recommendations from the superintendent.
- Conducts required evaluations of the superintendent.

SUPERINTENDENT

- Recommends to the Board employment or dismissal of all certified and classified staff.
- Responsible for supervision of all employees of the district.
- Establishes job descriptions for all positions.
- Serves as Board liaison with staff.
- Fosters good working relationships with staff members.
- Develops a systematic plan for evaluating performance of all district personnel.
- Delegates authority to staff members, as appropriate.
- Conducts evaluations of administrators under his/her supervision.

COMMUNITY RELATIONS

SCHOOL BOARD

- Represents public education serving as liaison between the school district and the community.
- Maintains an awareness of community values, concerns, and interests.
- Actively participates in programs that build good community relations.
- Appoints advisory committees when necessary and outlines responsibilities.
- Appoints district spokesperson(s) to deal with news media.
- Channels complaints or grievances through established channels.

SUPERINTENDENT

- Informs and interprets school programs and activities to the community.
- Serves as Board liaison with appointed advisory committees.
- Establishes a working relationship with news media.
- Makes recommendations to the Board for resolution of complaints that cannot be resolved at administrative level.





LABOR RELATIONS

SCHOOL BOARD

- Establishes guidelines and criteria for salary and benefit discussions for certified personnel.
- Reviews offers submitted by local teachers association and makes counteroffers.
- Ratifies final Negotiated Agreement/Master Contract.

SUPERINTENDENT

- Provides factual data to the Board about implications of salary and benefit increases and staffing considerations.
- Assists with negotiations by sitting at negotiating table.
- Provides the Board with all offers being presented by local teachers association.
- Administers individual teacher contracts in accordance with Negotiated Agreement/Master Contract as appropriate.

STUDENT SERVICES

SCHOOL BOARD

- Adopts policies for provision of student services including admission, attendance, activities, rights and responsibilities, discipline, and welfare.
- Adopts policies necessary to ensure safety and health needs of students.

SUPERINTENDENT

- Recommends and implements policies and rules to maintain adequate services and control of students.
- Develops and implements procedures to deal with health and safety emergencies.
- Provides for direction and supervision of student activities.





FACILITIES/TRANSPORTATION/FOOD SERVICES

SCHOOL BOARD

- Adopts policies governing use of public buildings, grounds, and equipment.
- Prioritizes construction and/or building renovation needs of the district.
- Approves the decision to ask voters for a bond and/or levy for facility needs.
- Adopts policies to provide student transportation needs.
- Adopts policies to provide food services.

SUPERINTENDENT

- Arranges for maintenance of facilities and equipment.
- Prioritizes long-range plans for preventive maintenance of buildings, grounds, and equipment.
- Makes a recommendation to the Board regarding need for and amount of a bond and/or levy for facility needs.
- Recommends and supervises public use of buildings, facilities, and equipment.
- Supervises transportation needs of the district, assigning staff as appropriate.
- Supervises food services program, assigning staff as appropriate.



5 BOARD/SUPERINTENDENT RELATIONSHIP

All school districts in the state are regarded as corporate bodies. This means school districts possess all powers and must perform all duties usual to corporations for public purposes or conferred upon them by law. For example, a school board may legally enter into contracts and own real estate. As a public corporation, however, a school district's powers are more limited than those of a private corporation. The legal authority vested in a school district rests primarily with the school board, so the board is always ultimately responsible. Yet the board has the right to delegate some of its powers, and it usually does so to the district's superintendent.

The school district superintendent reports and answers directly to the school board. The superintendent acts as the chief executive officer of the school district responsible for day-to-day operations of the school. In other words, while the school board is responsible for setting the vision and goals of the district, the superintendent implements policies to accomplish the goals and vision set by the board. Suffice to say, the relationship between the school board and its superintendent is key to the success of the school district and its students. The board cannot be effective unless the superintendent is fulfilling his/her responsibilities.

Under North Dakota law (NDCC 15.1-14-01), a school district superintendent has six statutorily required duties:

1. Supervise the general operation of the school district.
2. Supervise the provision of education to students.
3. Visit the schools of the district.
4. Supervise school personnel.
5. Prepare and deliver reports required by the board of the district.
6. Perform any other duties requested by the board.

A current and accurate job description is essential to appropriately define the relationship between the board and superintendent and to create the foundation for evaluation of the superintendent's performance. Before beginning their term on the board, all board





members should review the superintendent's job description and have a firm understanding of the role of the superintendent in the district.

WHAT SHOULD THE SUPERINTENDENT EXPECT FROM THE BOARD?

- To keep the children the center of the decision-making process
- To recognize that policy is the core of effective school governance
- To accept consequences of board policy
- To evaluate performance of the superintendent
- To operate efficiently
- To maintain two-way communication
- To support the staff
- To refuse to yield to external pressures that challenge the role of the superintendent
- To represent the entire community, not a section, clique, or group
- To require and rely upon professional judgments of school staff

WHAT SHOULD THE BOARD EXPECT FROM THE SUPERINTENDENT?

- Integrity and honesty
- Ability to withstand pressure
- Firm and definite recommendations
- An understanding of the pressures on the board
- To communicate clearly
- High competency in finance, business, personnel management, and school law
- Accurate evaluations of personnel and programs of the district
- Ability to be open-minded and avoid becoming involved in personality conflicts
- Commitment to keeping the public informed
- Professional growth
- Willingness to bring educational issues before the board for evaluation and study





COMMUNICATION WITH SUPERINTENDENT

The superintendent is the board's principal advisor – identifying operational needs of the district and making recommendations to the board regarding policies and board action. Open and regular communication between the board and the superintendent is key to the relationship. Board members should generally feel comfortable communicating with the superintendent regarding board business when needed or desired. Usually, the superintendent should be more than willing to meet with individual board members, discuss issues and answer questions by phone, or respond by e-mail. Before a board member contacts the superintendent about district operations, the board member should consider if he/she is getting too involved in management of the school district. Board members should take time to learn about the school environment and issues that may be unique to their district prior to making suggestions and trying to effect change.

In addition, board members must be aware of the open meetings requirements and how they may impact their ability to communicate with the superintendent. Board members should not use the superintendent as a conduit to discuss board business with fellow board members outside of a public meeting. Also, it may be important to insulate the board from certain information unless and until an issue comes before the board for action.

SUPERINTENDENT CONTRACT

Superintendents may be offered up to a three-year contract under North Dakota law. The contract may be renewed at the end of the contract term. It is generally recommended that a board offer a superintendent a one-year contract the first year. The contract for the superintendent must be specific to the superintendent. It is not appropriate to use a standard teacher contract for the agreement with the superintendent. The terms of the superintendent contract will generally be different from the terms of the teacher contracts. The contract should specifically state the number of months, start date, end date, and number of vacation days, if any. The superintendent is not covered by the terms of the negotiated agreement, therefore, the benefits need to be specified in the superintendent contract.





North Dakota law restricts how and when superintendent contracts may be terminated or nonrenewed. Please contact NDSBA or your district legal counsel for more information regarding superintendent contracts.

SUPERINTENDENT EVALUATION

One of the most important functions of a school board is the evaluation of its superintendent. Evaluating the superintendent is the key to documentation of unsatisfactory performance and is required in order to pursue nonrenewal of the superintendent's contract, if desired.

Under North Dakota law, all superintendents must receive two written performance reviews each year based on the job description and any other performance standards established by the board. The first evaluation is a formative evaluation of the superintendent's performance and must be completed and adopted by a majority vote of the school board **on or before November 15**. The second evaluation is a formal evaluation of the superintendent's performance and must be completed and adopted by a majority vote of the school board **on or before March 15**.

Each board member should individually evaluate the superintendent. NDSBA recommends that the board president give an evaluation instrument to each board member prior to the evaluation deadline. Board members should rate the superintendent's performance as either satisfactory or unsatisfactory in each area of performance identified in the job description. If a board member rates the superintendent as unsatisfactory in any area, the board member should provide an explanation and recommendations for improvement in the evaluation. Even in areas where a board member rates the superintendent as satisfactory, it is appropriate to provide comments and recommendations for improvement, if any.

Individual comments from each board member should be compiled onto one collective evaluation form prior to discussion of the evaluation at an upcoming meeting of the board. The evaluation must be voted on by members of the board. Any discrepancies among board members about the superintendent's rating in any of the performance areas evaluated should be discussed during the open meeting and a decision reached through





roll call vote. If an unsatisfactory rating is given by the board in any area, the board should detail its findings and provide recommendations for improvement. If an improvement plan or professional development plan is needed, this can be done after the evaluation is completed and approved by the board. The improvement plan should detail each area that needs improvement and provide recommendations and goals for improvement.

Approval of the evaluation must be by a simple majority vote of the board at the open meeting at which the evaluation is discussed. The board **SHOULD NOT** give the superintendent an overall rating. Upon approval of the evaluation, the board president shall present it to the superintendent. A copy of both the formative and formal evaluation should be placed in the superintendent's personnel file and a copy should be provided to the superintendent. After receiving the evaluation, the superintendent may provide a written response to the board. The superintendent's response must be placed in the superintendent's personnel file.

The statutory evaluation requirements should be viewed as minimum, not maximum, standards. The purpose of the first evaluation should be to place the superintendent on notice as to deficient or unacceptable performance and areas for improvement, while the second should document the continued existence or correction of those deficiencies. NDSBA recommends adoption of a policy on superintendent evaluation to guide boards through this process.

NDSBA also offers an online superintendent evaluation service to assist boards in completing this key function. Please contact NDSBA for further information if your district is interested in this service.



6 CHAIN OF COMMAND

WHAT IS A CHAIN OF COMMAND AND WHY IS IT IMPORTANT FOR SCHOOL BOARDS?

Local school boards should strive to respond to stakeholder (i.e., parents, community members) concerns and/or questions as quickly and effectively as possible. The primary way boards accomplish this is through an established “chain of command.” The “chain of command” generally refers to communication levels of authority in a school district.

School districts institute the chain of command to provide stakeholders at all levels with a person they may ask questions or report complaints. The value of having an established chain of command is an efficient tool that provides a roadmap when reporting concerns or communicating with school staff members.

Many parent and community questions are easily and completely answered by communicating directly with the educator in charge of the class or program. Generally, each situation should first be addressed at the level the initial action was taken with the appeals moving on to the next level on the chain of command.

School administration should make a point to teach school staff, parents, students, and community members about the proper chain of command. A problem should stay at the level at which it occurs unless there is some valid legal or ethical reason not to do so.

Then leaders should frequently revisit this topic throughout the school year so that everyone knows its importance and knows that these expectations are necessary to the smooth operation of the school district.

WHAT IT IS NOT

A properly implemented chain of command process is not a way to stall someone who has a complaint. It is simply an avenue that properly provides a process whereby employees closest to the problem have an opportunity to know about the problem, a





chance to work on the problem, and are able to effectively work out a solution to the problem that is agreeable to all involved.

EFFICIENCY

An effectively established chain of command creates efficiency when reporting problems. As an example, if a school employee communicates a problem to his/her supervisor's boss (rather than directly to the supervisor), then that supervisor does not have an opportunity to correct the problem. It is much more efficient to direct complaints to the immediate supervisor in order to have that particular problem worked on at the lowest level before escalating the issue to upper management.

EMPLOYEE MORALE

When employees frequently ignore the chain of command, it can negatively affect the climate and morale within the school district. No one likes to find out from their supervisor that a problem occurred at their level that they did not know about or did not have a chance to work on or solve ahead of time. Organizations that don't properly adhere to the chain of command create an atmosphere of uncertainty and chaos, which, in turn, negatively affects employee morale. Poor climate and poor morale within a school district can lead to low productivity and high employee turnover.

THE BOARD AND THE CHAIN OF COMMAND

As an individual school board member:

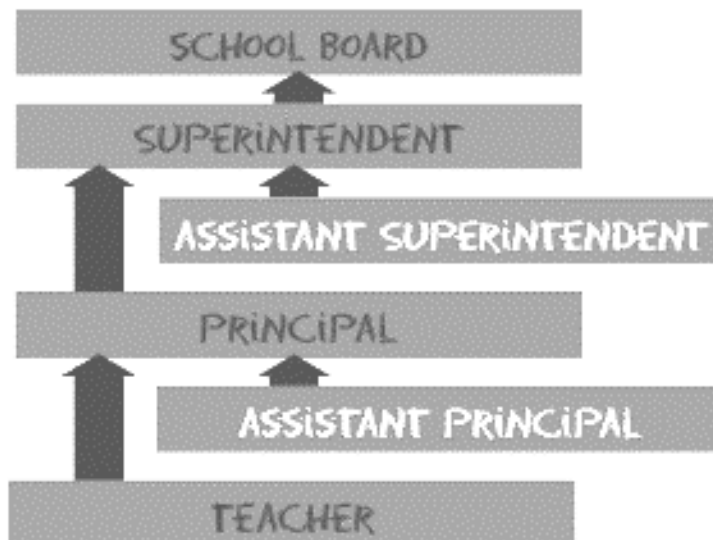
- You have power only when sitting together with the rest of the board. You have NO power when by yourself.
- When you are alone, you are just another citizen. You have no authority to request special reports from the staff, call a meeting of employees, stop school activities, or make purchases for the district. Your friends, colleagues, teachers, and family might not understand this.
- Trying to exert individual power can get you in legal trouble without any protection.



- You are encouraged to listen to concerns and complaints of district patrons. You should:
 1. Listen! Many times disgruntled parents/patrons just want to be heard.
 2. Encourage the individual to follow established process for handling concerns.
 3. Express appreciation to the individual for voicing concerns.

Words of caution:

- Saying, “I’ll take care of that” indicates you are willing to fight a patron’s battles personally.
- Saying, “Call me and let me know how that came out,” lets a patron know you care, but you are not willing to fight his/her battles.
- Agreeing with a complainer might put you in an embarrassing position when the issue comes before the board.
- Unofficial meetings: A yellow CAUTION flag should go up if an influential person in your community calls you and wants to schedule a meeting with you and a couple of other board members.



7 SCHOOL BOARDS AND THE LAW

Sources of authority that influence the duties and responsibilities of the local school board include state and federal constitutions, legislative enactments, rules and regulations promulgated by the U.S. Department of Education and the state board of education, and legal interpretations by judges, attorneys general, and administrative agencies. A school board functions locally, within the confines of the state's delegation of power and the geographical boundaries of the district, but is a legal agency of the state and thus derives its power from the state's constitution, laws, and judicial decisions.

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.

School board members must also have a general understanding of the various school law issues that impact public education in North Dakota. "School law" includes a broad range of legal topics and sources of law affecting numerous and varied aspects of public school operations, mandates, and liability exposure. Topics that fall under the general scope of "school law" include:

- Constitutional law and civil rights
- Special education and disability rights
- Labor and employment
- Contracts, procurement, construction
- Zoning, real property
- Parliamentary procedure
- Open meetings and open records





Most of the statutory provisions relating to public education are set forth in Title 15.1 of the North Dakota Century Code; however, there are provisions throughout the Code that apply to school board service and the various functions of school boards.

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:

15.1-07-17. School district contracts - Conflict of interest - Penalty.

1. A school board member or other school officer who has a conflict of interest in any contract requiring the expenditure of school funds shall disclose the conflict to the board and may not participate in any discussions or votes regarding that contract without the consent of all other board members.
2. For purposes of this section, a conflict of interest means the personal, professional, or pecuniary interest of an individual, the individual's spouse or relative, or the individual's business or professional associate.
3. Any person who violates this section is guilty of a class A misdemeanor.

44-04-22. Conflict of interest law.

A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

NDCC 15.1-07-17, above, 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 (e.g., 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.

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).

ARE THE FOLLOWING MEETINGS SUBJECT TO THE OPEN MEETINGS LAW?

- **Attendance at meetings of any national, regional, or state association: No.** Such gatherings are expressly excluded from open meeting requirements by NDCC 44-04-17.1
- **A meeting held for fact gathering purposes: Yes.** The North Dakota Attorney General has determined that “the gathering of the members of a governing body or committee is a meeting, even when no motions are made and no action is taken.” (N.D.A.G. 98-O-16).
- **Board retreats: Yes.** North Dakota law expressly includes work sessions (retreats) in its definition of meetings (NDCC 44-04-17.1).
- **Chance or social gatherings of a quorum: No.** Such gatherings are excluded from open meetings requirements by NDCC 44-04-17.1. However, once any public business is discussed, the gathering becomes a meeting subject to the open meetings requirements.



- **Committee meetings:** **Yes**, if a committee (a group composed of more than one person is delegated authority by a governing body (e.g., a school board), then the committee’s meetings are subject to the open meeting law (*ND AG Open Meeting Manual*, p. 9-10). The ND Attorney General has ruled that a school superintendent’s cabinet meetings (meetings with principals) are not subject to the open meeting law if the cabinet is not created by a school board and not delegated authority by a school board (N.D.A.G. 98-O-02).
- **Emergency operations during a disaster or emergency:** **No**, if the following is true:
 1. The situation is formally declared a disaster/emergency under state law or local ordinance; and,
 2. Board members are not discussing public business as the full governing body or as a task force or working group.
- **Interviews:** **Depends**. See the above rules governing committee meetings. If the board has delegated authority to interview to one person, open meeting requirements do not apply. If the board has delegated interview authority to two or more people (i.e., committee), open meeting laws **do** apply (*ND AG Open Meeting Manual*, p. 9-10).
- **Negotiations sessions:** **Depends**. A board can go into executive session (a closed meeting) to discuss negotiations strategy if doing so is necessary to protect the financial interest/bargaining position of the school district (NDCC 44- 04-19.1 (9)). Negotiation sessions between board negotiators and teacher representatives are subject to the open meeting law. However, board negotiators may meet in executive session to discuss negotiation strategy (NDCC 15.1-16-22).

HOW ARE BOARD MEMBERS AND THE PUBLIC NOTIFIED OF A MEETING?

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 noted below, notice must contain the **date, time, and location** of the meeting and, if practicable, the **topics to be considered**. Notice need not be published in the newspaper, but must be posted as follows:

- Notice must be filed with the county auditor OR published on the district’s website.
- Notice must be posted at the district’s main office.





- Notice must be provided to anyone who has requested it. Members of the public may make an annual request to receive notice throughout the year.
- For special meetings, also notify the district's official newspaper and any members of the media that have requested notice of special meetings. This notice must include the time, place, date, and topics to be considered at the meeting. In addition, written notice of a special meeting must be given to each member of the board of a public entity.

WHEN MUST NOTICE BE PROVIDED?

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.

CAN A MEETING AGENDA BE AMENDED AT THE MEETING?

For **regular meetings, yes**, usually by a majority vote of the board (check applicable board policy); for **special meetings, no**.

WHAT INFORMATION MUST BE INCLUDED IN THE MINUTES?

The minutes of meetings are public records and must be provided to anyone upon request. Draft minutes should be made available to the public even if the minutes have not been approved. Minutes must include, at a minimum:

- Names of the members attending the meeting;
- Date and time the meeting was called to order and adjourned;
- List of topics discussed regarding public business;
- Description of each motion made at the meeting and whether the motion was seconded;
- Results of every vote taken at the meeting; and,
- Vote of each member on recorded roll call vote.





This requirement applies to all governing bodies, including committees and subcommittees.

WHEN CAN A BOARD MEET IN EXECUTIVE SESSION?

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). The legal reasons for an executive session are:

- Student Records: NDCC 44-04-19.2(1); Family Education Rights and Privacy Act (FERPA)
- Nonrenewal Hearing: NDCC 15.1-15-06(6)
- Discharge Hearing: NDCC 15.1-15-08(3)
- Suspending a licensed employee during pursuit of discharge: NDCC 15.1-15-10
- Public employment hiring process: NDCC 44-04-18.27
- Negotiations Strategy: NDCC 44-04-19.1(9)
- Negotiations Caucus: NDCC 15.1-16-22
- Security Plans: NDCC 44-04-26
- Attorney Consultation: NDCC 44-04-19.1(2)

If there is no express legal authority to close a meeting, the meeting **must** be open.

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. (NDCC 44-04-18) “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). The following include those most relevant to school board service:

- Attorney work product and consultation is exempt (NDCC 44-04-19.1).
- Computer passwords and network security plans are confidential (NDCC 44-04-27).
- Criminal history background check records are confidential (28 CFR 50.12b).
- Electronic mail addresses or telephone numbers of individuals that are provided to a public entity for the purpose of, or in the course of, communicating with that public entity is exempt (NDCC 44-04-18.21).
- Executive session tapes are confidential.
- If a complaint is filed concerning a school district employee and an administrative investigation is conducted, any record or document generated as part of the administrative investigation is confidential until the investigation is completed. The investigation and any determination of disciplinary action may not exceed sixty days from the date the complaint is filed (NDCC 15.1-07-25).
- Lists of minors are exempt (NDCC 44-04-18.13).
- Public employee's home address; home telephone number or personal cell phone number; photograph; medical information; motor vehicle operator's identification number; public employee identification number; payroll deduction information; name, address, telephone number, and date of birth of any dependent or emergency contact; any credit, debit or electronic transfer card number; and any account number at a bank or other financial institution are exempt (NDCC 44-04-18.1).
- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, communications, or consultations or portions of any such plan relating directly to the physical or electronic security of a public facility are exempt. This includes threat assessments, vulnerability and capability assessments conducted by a public entity or any private entity, threat response plans, and emergency evacuation plans (NDCC 44-04-24).
- School resource officer records related to students are confidential with certain exceptions as listed in law (NDCC 15.1-19.14).
- Student educational records are confidential with limited exceptions (FERPA).



BIDDING REQUIREMENTS

Even when exercising its express powers under NDCC 15.1-09-33, a school board must still comply with bidding requirements set forth in NDCC 15.1-09-34 when entering into contracts. This section requires, with a few exceptions, that the board of a school district may enter into a contract involving the expenditure of **an aggregate amount great than \$50,000** unless the board has given ten (10) days' notice by publication in the official newspaper of the district, received sealed bids, and accepted the bids of the lowest responsible bidder. There are several delineated exceptions to this requirement, including:

- Personal services of school district employees (i.e., employment contracts).
- Textbooks and reference books.
- Articles not sold on the open market.
- Patented, copyrighted, or exclusively sold devices or features.
- Building construction projects under NDCC chapter 48.1-02.
- School transportation services under NDCC 15.1-30-11.
- Vehicle fuel purchased under NDCC 15.1-09-34.1.
- Heating fuel purchased under NDCC 15.1-09-34.1.
- Purchase of a used motor vehicle intended primarily for transportation of students.
- Cooperative purchases made with office of management and budget under NDCC chapter 54-44.4.
- Purchase of products from prison industries under NDCC chapter 12-48.
- Purchase of products from work activity centers under NDCC chapter 25-16.2.
- Cooperative purchases made pursuant to a joint-powers agreement under NDCC chapter 54-40.3.

Certain of these exceptions require a bidding procedure different than the general bidding requirements set forth in NDCC 15.1-09-34. A board member who participates in a violation of the bidding requirements set forth in NDCC 15.1-09-34 is guilty of a class B misdemeanor.





The North Dakota School Boards Association is a leading advocate for public education. NDSBA is governed by a board of seven local school board members elected by their peers. Staff members have many years of experience in school-related work and, by working cooperatively with school board members around the state, combine to form an effective voice for public education. NDSBA exists to serve the needs of school leaders in areas of board training, information, and presentations.

Visit NDSBA's website www.ndsba.org where you can find information about:

- Business Manager Certification Program
- Legal Services
- Policy Services
- Superintendent Search
- NDUC Group Account
- NDSBA conventions and seminars
- NDSBA publications
- NDSBA's monthly *Bulletin*
- Legislative advocacy
- Other helpful resources

You can also stay in touch with NDSBA via twitter @NDSchoolBoards.





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