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NDSBA
NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION

DECEMBER 2023

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

Negotiations Seminar 2024

The 2024 Negotiations Seminar will be held February 1-2, 2024. Registration will open on January 4, 2024, at www.ndsba.org. Districts are encouraged to register early; registration fees will increase on January 25, 2024.

NEGOTIATIONS SEMINAR (\$225/\$250)

Thursday, February 1

Pre-Conference Sessions | 1-4 p.m.

Previously, these sessions were separate from your Negotiations Seminar registration and required an additional fee. They are now included in your seminar registration fee, and Negotiations Seminar registrants may attend any preconference sessions that they wish at no extra cost. We do ask that you indicate which you wish to attend when registering so that we can plan accordingly. Topics will be announced by January 1.

Happy Holidays!

The North Dakota School Boards Association staff would like to wish you a happy holiday season. We would also like to congratulate our two winners of the 2023 NDSBA holiday card cover contest, **Katelyn Schempp**, a sophomore student at West Fargo School District, and **Spring Nitschke**, a third grade student at Edgeley school district. Katelyn is a student of Lindsay Opp and Spring is a student of Alison Hermes. Their artwork will be featured on the front of NDSBA's 2023 holiday cards. Congratulations, Katelyn and Spring, and thank you to all of the students who submitted artwork – they were all fantastic and it was a fun and challenging decision!

Negotiations Basics | 4-6 p.m.

This session is a primer geared for first-time negotiators or those looking for a refresher.

Networking Social | 6-7:30 p.m.

All attendees are welcome to join us for an opportunity to network with school board members from across North Dakota.

Friday, February 2 | 8 a.m. – 2 p.m.

Friday will feature opening and closing general sessions as well as two rounds of concurrent sessions where attendees can choose which negotiation or personnel-focused presentation interests them the most. The day will touch on statewide issues, J-1 Visa teachers, PERS, non-certified staff “negotiations”, communication strategies, negotiation scenarios, and more. A full agenda will be announced soon.

A room block has been reserved at the Hampton Inn and Suites, and

another at Home2Suites, both under NDSBA. Please make arrangements according to the needs of your district.

Reservations for the Hampton Inn and Suites can be made by going to <https://tinyurl.com/hamptin2024>, and must be made by January 9, 2024. Reservations for Home2Suites can be made by going to <https://tinyurl.com/homesuites2>, and must be made by December 28, 2023.

Elections Training

NDSBA will hold Elections Training on Thursday, February 1, 2024, at the Bismarck State College National Energy Center of Excellence. Sessions will not be recorded but presentations will be available online after the seminar. A detailed agenda and registration information will be available at <https://www.ndsba.org/wp/resources/school-board-elections-training/>.



Scan QR code to view the 2023 NDSBA holiday card covers.



We're on
Twitter &
Facebook!



Follow us at @ndsba (Twitter) and North Dakota School Boards Association (Facebook) for event, policy and other education-related updates.



Legal Spotlight

Employee Misconduct Investigations and Potential Disciplinary Actions

by Lexie Bergstrom, NDSBA Staff Attorney

Schools play a crucial role in shaping the future of young minds, and the safety and well-being of students are paramount. Unfortunately, just like in any other workplace, complaints of employee misconduct do arise, and how a school handles those complaints is important to ensure a secure learning environment. School officials should have a working knowledge of the process of handling allegations of employee misconduct and preferably, before receiving such a complaint or accusation.

School districts have a legal obligation to take prompt and appropriate action to correct confirmed inappropriate conduct within the workplace; this includes conducting an effective investigation. The subject matter of misconduct investigations is diverse, encompassing topics such as sexual harassment or assault, discrimination, embezzlement or employee theft, misuse of the district's computer system or other property, harmful or inappropriate social media posts, and other rules/policy violations.

Regardless of the subject matter involved, the ability to conduct a prompt, thorough investigation will help the school district resolve the complaint in such a way as to maintain a positive and productive work environment, reduce school district liability, and continue to effectively provide a secure learning environment.

When a complaint of employee misconduct arises, school officials should first consider the need for interim remedial action. Too often, it is easy for school districts to shift focus on what remedial action to take after the investigation is complete. Depending on the circumstances, the school district may need to take temporary remedial measures prior to or during the investigation. The most common type of interim remedial measure is to place the employee on administrative leave with pay. This removes the employee from school property reducing the risk of any further misconduct and allows school officials to conduct an investigation without the potential for direct interference by the accused. Also, if the conduct involves child abuse or neglect, any school official with knowledge is required to promptly report such conduct to social services pursuant to NDCC ch. 50-25.1. Finally, school officials may need to take measures to protect any alleged victims, including other employees or students.

Second, school officials will need to determine who should investigate the misconduct. Often times, this will be set by school board policy. However, absent a policy instructive on this point, the school district may need to choose an appropriate investigator. In short, an appropriate investigator should be neutral and objective, and not appear biased. The investigator should also have strong interviewing skills and the ability to ask difficult questions while being sufficiently sensitive to obtain honest, factual answers. The investigator should not have a vested interest in the outcome of the investigation. Ordinarily, the superintendent or other appropriate administrator will conduct an investigation of employee misconduct. If the superintendent is the alleged wrongdoer, then typically the school board president

will conduct an investigation.

Third, before commencing the investigation, the investigator should plan the investigation and develop a strategy. To this end, the investigator should identify and review applicable policies, rules and documents. He/she should be become familiar with the issue(s) to be investigated and determine which witnesses should be interviewed and in what order. In addition, the investigator may need to determine if additional personnel or consultants are needed (i.e. an independent auditor or forensic accountant).

Next, the investigator should conduct the interviews. Generally, the investigator should first interview the complainant(s), then the alleged wrongdoer(s), and after that, any person with relevant information in order of importance. However, depending on the circumstances, it may make more sense to interview witnesses before you interview the accused. Interviews should generally be conducted in a quiet, private setting away from distraction. The investigator may choose to record the interviews; however, this can create apprehension and may create records that are eventually subject to disclosure under the open records laws. If tape recording is not preferred or appropriate, the investigator may ask another school official to sit in on the interviews to take notes and to witness the interviews. With some exceptions, parents or legal guardians should be present when interviewing students.

Documenting the investigation is key. The investigator should take detailed notes about when the interviews are conducted, who is present, and what is said. Notes should stick to the facts and should not include statements that may demonstrate bias and subjectivity. When making conclusions about a witness' credibility, the investigator should set forth the objective basis for this determination.

Depending on the circumstances, obtaining witness statements may be appropriate. All documentation should be kept in a separate investigation file and should remain confidential until the investigation is complete.

Finally, after the investigator gathers all of the evidence, reviews the relevant

Continued on page 3

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Become an Expert in Playground Safety

Submitted by North Dakota Recreation and Park Association

The North Dakota Recreation & Park Association (NDRPA) is holding its 22nd annual Certified Playground Safety Inspector (CPSI) Course March 19-21, 2024, in Bismarck.

Participants will learn about the latest developments in playground safety through classroom instruction during this two-day course. Individuals interested in becoming a certified playground safety inspector may take the optional exam on the third day.

Sponsorships from the North Dakota

Parks and Recreation Department and the North Dakota Insurance Reserve Fund (NDRIF) make this first-class course, hosted by the Bismarck Parks and Recreation District, possible.

Limited scholarships are available to NDRIF and NDRPA members who register for both the course and the exam. The scholarship (\$425 value) will cover the cost of course registration. Members receiving a scholarship pay only \$120 for the exam fee.

The scholarship is limited to three people per agency and distributed on a first-come, first-served basis. If

an agency submits more than three scholarship requests, additional requests will be placed on a waiting list to be awarded on a first-come, first-served basis after Jan. 26, 2024.

The final registration deadline for the course is Feb. 16. The course schedule and registration details are available at www.ndrpa.com.

For more information, contact NDRPA at 701-355-4458 or ndrpaoffice@gmail.com.

Legal Spotlight

Continued from page 2

information, and makes credibility determinations, they must come to a conclusion as to what happened and under what circumstances. The investigator may need to decide on an appropriate response, including any discipline or remedial action. In the school district setting, many times this determination will be guided by school board policy. It is important that school officials are aware of their options in this regard. School district legal counsel should be consulted before taking any adverse employment action.

Most investigations will include these key steps; however, it is important to follow all applicable school board policies, which may include specific procedural requirements in terms of conducting an investigation. Also, depending on the circumstances, a lengthy investigation may not be warranted or necessary. A brief gathering of information to understand the nature and extent of the conduct at issue may be sufficient to

make a determination on any corrective or responsive action.

The specific course of action a school district may take in any investigation may vary depending

on the facts and circumstances. The investigator may:

- Find no wrongdoing has occurred.
- Recommend that a memo be placed in the personnel file reminding the employee of the district policy and the obligation to comply with it.
- Recommend a letter of reprimand.
- Recommend a plan of improvement.
- Make a recommendation for nonrenewal if the complaint concerns a licensed teacher or administrator, is related to a reason for nonrenewal under state law, and if the recommendation falls within the statutory deadlines for nonrenewal under law.
- Make a recommendation to discharge a teacher or administrator if the misconduct meets a statutory reason for discharge under state law. There

are several procedural steps, including a due process hearing overseen by an administrative law judge, before a board can vote on discharging a teacher or administrator. Legal counsel should be retained if discharge is recommended.

- Recommend termination of employment in accordance with district policy if the complaint concerns a classified staff member.

If disciplinary action is deemed warranted at the completion of the investigation, the District should take appropriate action up to and including termination of employment in accordance with law and/or reporting such activity to appropriate state licensing and/or law enforcement officials. If a plan of improvement is deemed necessary, the principal/supervisor should have a one-on-one meeting with the employee. During this meeting, the principal/supervisor should address the areas the employee needs to improve upon, as well as any

Continued on page 4



NDSBMCP Course Updates

Online Winter Training for First Year Students Only

Registration for the *Introduction to Accounting* and *Introduction to Payroll* online courses for first year students is open, and includes test-out registration option. The deadline to register for the test-out option AND take the test-out exam is January 1, 2024. The courses will begin on January 2, 2024. This online training

is available to both current and graduate students. Graduates of the business manager certification program will receive a discounted rate and earn 1.5 continuing education credits for each class taken.

January Training for First and Second Year Students

Registration for the *Budget, Budget Forecasting and School Accreditation* and *School Law for Business Managers* for first year students and *Business Manager's Role in Negotiations* and

Data Driven Decision Making and Board Reporting courses for second year students is now open. The classes will be held on January 31, 2024, at the Bismarck Career Academy. Graduates of the business manager certification program will receive a discounted rate and earn continuing education credits for the completed courses. A room block has been reserved for January 30 at the Hampton Inn and Suites under NDSBA at <https://tinyurl.com/hamptin2024>.



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superintendent vacancies

Underwood School District

Dr. Brian Duchscherer
701-321-5719
dduchscherer.brian@gmail.com
www.dakotaleadershipsolutions.com
Deadline: February 2, 2024
Position Begins: July 1, 2024

Richardton-Taylor School District

Alexis Baxley
701-255-4127
alexis.baxley@ndsba.org
www.ndsba.org

mark your calendar

Elections Training

February 1, 2024
BSC NECE, Bismarck

2024 Negotiations Seminar

February 1-2, 2024
BSC NECE, Bismarck

2024 COSSBA Annual Conference

February 22-25, 2024
Dallas, TX

2024 NSBA Annual Conference

April 6-8, 2024
New Orleans, LA

2024 NDSBA Annual Convention

October 24-25, 2024
Bismarck Event Center, Bismarck

■ Legal Spotlight

Continued from page 3

positive areas of the employee's work. A timeline should be created, indicating when a follow-up meeting will occur, and what the employee must complete before that subsequent meeting. The district may consider having a witness present during the meeting to avoid any "he said/she said" situations.

Just as documenting the investigation is key, documenting disciplinary action is also key.

There is no question that an internal workplace investigation, done correctly, can help manage misconduct, avoid litigation, demonstrate to the workforce that the school district takes workplace concerns seriously, and potentially provide a defense to a future lawsuit. If your district finds itself presented with a complaint or accusation of employee misconduct, please feel free to contact NDSBA for guidance on how to conduct a thorough and effective investigation.