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NDSBA
NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION

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Excellence in North Dakota public education through local school board governance ■ VOL XLIX ISSUE 4

NDDPI and NDSBA to Co-host Board Member Bootcamp

On Thursday, August 1, 2024, the North Dakota Department of Public Instruction (NDDPI) and the North Dakota School Boards Association (NDSBA) will host the seventh annual, one-day school board member training. This training opportunity provides insight and resources for both seasoned and new board members on educational topics and standards, school board responsibilities, and school district information.



This year, the bootcamp will take place virtually. Details are to come in the near future. Registration for the FREE training can be found at <https://forms.gle/7R9npcdHjSiMoAhr9>. We hope you will join us in Bismarck!

Please note: this training does not meet the new board member training required by law.

Elections Tips: School Board Elections Voter Qualifications

NORTH DAKOTA
SECRETARY OF STATE

To vote in a school board election, people must be at least 18 years old, a U.S. citizen, and a resident of the school district for at least 30 days preceding election day. The North Dakota Secretary of State would like school board election officials to be aware of the ND GIS Hub, which can be used to determine if a voter is within a school district's boundary.

To use this tool, go to <https://gishubdata-ndgov.hub.arcgis.com>. In the middle of the homepage, click on the Boundaries tile. On the next screen, select the Dataset NDGISHUB School Districts. You will see a ND state map. Click on the magnifying glass search icon in the upper right-hand corner of the screen and enter the voter's address. The address's location will be shown on the map. To see the school district information for the location, click on the shaded area the address is in. It is suggested that a computer or other device with Internet access be set up at the polling location to quickly verify addresses by using this tool during voter check-in.

Election officials and the North Dakota Secretary of State are your trusted source for election information. If you have questions about elections-related topics, visit vote.nd.gov, email soselect@nd.gov, or call 701-328-4146.



2024 IgniteND Conference

The IgniteND Conference will be held June 4-6, 2024, at Bismarck State College. The three day conference can be attended virtually or in-person. This is an opportunity for educators, administrators, tech coordinators, parents, and policymakers. Topics focus on education of computer science and cybersecurity curriculum. If your district is aiming to have every student cyber-educated, this is a great event to attend! The registration fee is \$149 per person; however, The North Dakota Department of Public Instruction has agreed to cover registration fees for ALL North Dakota teachers. For more information and registration go to <https://www.ignitend.com/>.



NDSBA Requesting Clinic Proposals

NDSBA is now accepting proposals for 2024 NDSBA Annual Convention clinic sessions. The proposal submission form can be found at www.ndsba.org under QUICK CLICKS.

What are the unique or successful ideas happening in your district? What speaker or topic would you like to see at the 2024 NDSBA Annual Convention?

Submissions are due by June 7, 2024.



Legal Spotlight

Navigating the Reference Minefield: Pitfalls for Employers in Providing Employment References

by Lexie Bergstrom, NDSBA Staff Attorney

School districts, like any other employer, are frequently asked to provide a reference to a prospective employer of a former employee. However, many employers make the mistake of not considering in advance how they will respond to such requests. Whenever one of your employees leaves, you likely will have to decide what to say to other employers who call for a reference and that decision should not be made on the fly. The decision is pretty straightforward if the employee left on good terms. In such a case, the employer and the former employee can come up with a mutually agreeable statement to explain the departure. Or the employer can simply tell the whole glowing truth to any prospective employer who calls for a reference. But if the employee does not leave on good terms (i.e. termination or resignation in lieu thereof), the employer faces a more

difficult task. Indeed, if the employer is not careful in its statements about former employees, the employer could very well find itself facing a defamation lawsuit.

To prove defamation, a former employee typically must show that the employer intentionally damaged his or her reputation by making harmful statements about the employee that the employer knew to be false. At first blush, it might seem like only the careless or spiteful employer would get caught in this trap. However, it is not as foolproof as one might think. In reality, most reasons for firing make the employee look bad, and an employer often cannot prove beyond all doubt what he or she strongly believes to be true -- that an employee is stealing, is incompetent, or lied about job qualifications, etc. An employer who makes such statements about a former employee could ultimately find itself involved in costly litigation.

So, what can and should employers say during a reference check? There are no federal laws that directly address what an employer can or cannot say about a former employee. Many states, including North Dakota, have enacted legislation that gives employers qualified immunity when providing information for a reference check. NDCC § 34-02-18 provides immunity from civil liability to an employer who "truthfully discloses dates of employment, pay level, job description and duties, and wage history about a current or former employee to a prospective employer." In addition, pursuant to section 34-02-18, an employer "who discloses information about a current or former employee's job performance to a prospective employer of the employee is presumed to be acting in good faith," and unless a lack of good faith is shown, the employer "is immune from civil liability for the disclosure and the consequences of providing that information." While this section does provide some protection to employers, it is important to keep in mind that it does

not provide the employer with complete immunity. The employer still could face a defamation (libel or slander) lawsuit from the employee or a negligent referral lawsuit from the prospective employer if care was not taken in limiting the type of information provided and making sure that the information was given to the correct person.

School districts should maintain control of the information that they give out and may do so by putting limits on who can give a reference or what information can be provided. NDSBA recommends the following practices when providing job references:

- **Designate one person to give references.** Choose one trusted person (typically an administrator or trained HR professional) to be responsible for all references and tell all of your employees to direct inquiries to that person. This person should make it a point to review the applicable state laws where the employee resides and where the prospective employer is located before providing the reference. Also, care should be taken to ensure that the same process is used for each job reference request to avoid any claims of discrimination.
- **Keep it brief.** Some employers adopt a policy of giving out only dates of employment, job title, and final salary/wage to prospective employers. If you choose to tell more, keep it to a minimum and be accurate.
- **Stick to the facts.** Provide only factual information and avoid giving opinions about the employee's suitability for a new job. Do not speculate about your former employee's bad qualities or opine on the reasons for his or her failure to perform. Limit your comments to accurate, easily documented information.
- **Do not give false flattery.** If you had to fire a really bad egg (for example, a worker who was violent in the workplace or threatened

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EDITOR

Taylor Lassiter

PUBLISHER

North Dakota School Boards Association
1224 West Owens Avenue
Bismarck, ND 58501

TELEPHONE 1-800-932-8791

LOCAL (701)255-4127

FAX (701)258-7992

WEBSITE www.ndsba.org

TWITTER @ndschooboards

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Legal Spotlight

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coworkers), don't lie about it. You may choose to give only name, rank, and serial number, but, if you give a more expansive reference, be truthful and straightforward.

- **Inform a difficult employee that your reference will not be good.**

The employee should know this already; however, you may be able to avoid problems at the outset by stating: "I cannot provide a positive reference for you."

Unlike private employers, school districts have a legal obligation to make their records open to the public upon request, except in limited circumstances specifically provided by law. This includes employment and personnel records. While this provides a different level of access to prospective employers than is otherwise available from private employers, it does not require school districts to verbally provide certain information in response to a reference check. It does, however, mean that school districts should make sure they are

being purposeful, accurate, and factual in documenting personnel issues and concerns throughout the employment relationship. Indeed, prospective employers often request a copy of a former school district employee's personnel file in order to get a better picture of the individual applying for a position.

In addition to the foregoing, school districts must adhere to certain other requirements when providing a reference for a former employer that has or may have engaged in sexual misconduct involving a minor. NDSBA has created template policy ABCE – Prohibition on Aiding Sexual Abuse. This policy addresses a federal requirement (20 U.S.C. 1232c) that prohibits any employee from assisting another school employee in obtaining a new job if the individual or district knows or has probable cause to believe that such school employee engaged in sexual misconduct regarding a minor or a student in violation of the law. An individual acting on behalf of the

district would not be prohibited from following routine procedures regarding the transmission of administrative or personnel files but would be prohibited from doing more than that to help the employee obtain new employment.

It is important that school districts that receive funds through the Elementary and Secondary Education Act (ESEA) comply with this provision set forth in federal law. Failure to do so may result in the U.S. Department of Education or the Department of Public Instruction taking appropriate enforcement actions. This may include placing appropriate special conditions on a district's Title I, Part A grant or withholding these funds by only confirming dates of employment and the reason why an employee was terminated will help the district comply with these federal requirements, minimize district liability, and provide a high-quality and safe education for all students.

Please feel free to contact NDSBA for further guidance on this issue.

HR Collaborative's 2024 Resilient HR Conference

HR Collaborative's 2024 Resilient HR Conference will take place April 17-18, 2024, at the Bismarck Hotel and Conference Center.

This conference is designed to support local government employees who perform human resource-related functions within their entities, including HR professionals, supervisors, and those interested in employee management and growth. All local government employees are welcome to attend.

Breakout sessions led by subject-matter experts will discuss emerging and trending human resource management topics, including attracting and retaining workforce, AI and more! This conference will also include our popular Building Your HR System series to help you refresh your knowledge of public processes and human resource management topics.

To register, go to www.NDIRF.com>HR Collaborative>2024 Conference Registration. All registrations submitted after March 31, 2024, will be charged \$199. If your entity is not an NDIRF member, the general registration cost is \$249.

Contact HRCollab@ndirf.com if you have any questions.



**We're on
Twitter &
Facebook!**



Follow us at [@ndschooboards](https://twitter.com/ndschooboards) (Twitter) and **North Dakota School Boards Association** (Facebook) for event, policy and other education-related updates.



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.

 **mark your calendar**

2024 HR Collaborative Conference
April 17-18, 2024
Bismarck Hotel and Conference
Center, Bismarck

2024 IgniteND
June 4-6, 2024
Bismarck State College, Bismarck

2024 NDSBA Annual Convention
October 24-25, 2024
Bismarck Event Center, Bismarck

2025 NDSBA Negotiations Seminar
February 6-7, 2025
BSC NECE, Bismarck

2025 NDSBA Annual Convention
October 9-10, 2025
Bismarck Event Center, Bismarck

 **superintendent
vacancies**

Elgin-New Leipzig School District
Jack Maus or Michael Heilman, DLS
701-341-0685
*jack.maus56@gmail.com or
mikeheilman1190@gmail.com*
Deadline: April 12, 2024
Position Begins: July 1, 2024

New Rockford-Sheyenne School District
Dr. Paul Stremick, DLS
701-520-5963
paul.stremick@outlook.com
Deadline: April 19, 2024
Position Begins: July 1, 2024

Bowman County School District
Debbie Bucholz
701-523-3283
debbie.bucholz@k12.nd.us
Deadline: Open Until Filled
Position Begins: July 1, 2024

Divide County School District
Stephanie Reistad
701-339-0630
stephaniereistad@hotmail.com
Deadline: Open until filled
Position Begins: July 1, 2024