



bulletin



NDSBA
NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION

DECEMBER 2019

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

Negotiations Seminar 2020

NDSBA's 2020 Negotiations Seminar will be held at the National Energy Center of Excellence on the Bismarck State College Campus on Friday, February 7. Three early-bird sessions and a threat assessment training will be held on Thursday, February 6. Session and registration information will be available at www.ndsba.org and emailed to business managers in the near future.

NEGOTIATIONS SEMINAR Negotiations Basics + Preparation & Strategy

Friday, February 7
8-9:45 a.m.

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

Negotiations Seminar

Friday, February 7
10 a.m. – 4:30 p.m.

Topics include the “days-to-hours” transition, benefits package negotiations, funding Q&A with state legislators, ND Education Fact Finding Commission, and negotiation scenarios with experienced negotiators. There will also be an interactive question-and-answer panel to conclude the seminar.

EARLY BIRD SESSIONS FERPA Training for Board Members and Administrators

Thursday, February 6
9:30 – 11 a.m.

Amy De Kok, NDSBA Legal Counsel, will train on FERPA requirements, how they apply to board members, and how violation puts your board at risk.

Intro to BoardBook Premier

Thursday, February 6
11:15 a.m. – 12 p.m.

Alexis Baxley, NDSBA Executive Director, will introduce BoardBook Premier--a paperless board meeting software now being offered to school

districts through NDSBA.

Teacher Nonrenewal

Thursday, February 6
1:30 – 4:30 p.m.

Amy De Kok, NDSBA Legal Counsel, will walk participants through teacher nonrenewal procedures and touch on the discharge

process. The presentation will include:

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

THREAT ASSESSMENT TRAINING

Thursday, February 6
1:30 – 4:30 p.m.

North Dakota Association of School Resource Officers president Josh



Brown will help participants understand what threat assessment is, how to make it a part of your district's safety plan, and how to implement. Attendees will participate in a hands-on, mock assessment. You may register in district teams or individually. For more information on registering as a team, please contact NDSBA.

We have reserved room blocks at the Hampton Inn & Suites (701-751-5656) and the Home2 Suites (701-751-3400). **Be sure to request rooms in the NDSBA block.** Call to make your reservations now!

Happy Holidays!

The North Dakota School Boards Association team would like to wish you a happy and joyous holiday season. We would also like to congratulate **Claire Powell**, an eighth-grade student at Valley City Public Schools. Her artwork will be featured on the front of NDSBA's 2019 holiday cards. Claire is the student of Mrs. Stephani Krueger. Congratulations, Claire, and thank you to all of the students who submitted artwork – we received 139 entries!





Legal Spotlight

Must a School Board Hold Its Meetings Within District Boundaries?

by Amy De Kok, NDSBA Legal Counsel

Recently, the North Dakota Office of Attorney General

(OAG) issued an opinion (2019-O-18) regarding whether a governing body of a public entity must hold its meetings within the entity's jurisdiction in order to be in compliance with the open meetings requirements. Specifically, the OAG considered whether the Minot City Council meeting outside of city limits violates NDCC 44-04-19 because the location is inaccessible to the public. The OAG concluded that the Minot City Council violated the open meeting requirements of the Century Code by holding a meeting outside of city limits. To be clear, there is nothing in the North Dakota Century Code that expressly requires the governing body of a public entity to hold its public meetings within the boundaries of its jurisdiction. So, how did the OAG come to this conclusion?

Before answering this question, we must be reminded that, except as otherwise specifically provided by law, all meetings of a public entity must be open to the public. In other words,

the meeting must be accessible to the public in order to comply with the open meetings law. The OAG started with this premise in analyzing whether the Minot City Council acted in accordance with open meeting requirements. The OAG recognized that "the proximity of the public entity's meeting place to the people affected by the public entity's decisions is not specifically addressed" in NDCC 44-04-19. However, the opinion goes on to say that, although location of the meeting is not specifically addressed in law, holding a meeting a substantial distance away from the public entity's jurisdiction could result in the denial of the public's access to the meeting.

In this instance, the Minot City Council held a special meeting, noticed as an "executive retreat," in the city of Washburn located approximately 70 miles south of Minot. The Council took no action and made no final decision at the retreat but, rather, broadly discussed topics as a way of providing guidance to the city manager. The Council had previously met outside of city limits for a yearly retreat and chose the off-site location of Washburn to break out of normal routines and to limit city council members' distractions from everyday life so that members could focus solely on the agenda items. The OAG admitted that all of the reasons given for holding the meeting at the site in Washburn were reasonable and appreciated the concept of holding retreats for member of governing bodies to facilitate the free-flow of thoughts and discussions. However, the OAG went on to say that the countervailing and weighty consideration must be the right of citizens to attend the meeting and that the reasons given, however sound, do not outweigh the potential inconvenience and expense for Minot citizens whose business the Council conducts. In coming to his conclusion, the OAG found it relevant that no options were provided for Minot citizens to access the meeting remotely (e.g., video or telephone conference) and no transportation aids were set up or offered to allow citizens to attend the meeting in person.

So, what are the takeaways from the opinion? First, it is important to note that this opinion is directly applicable to a municipal governing body that has

a limited jurisdiction. Because of this, when a meeting of a municipal governing body occurs outside of this limited jurisdiction, the purpose and need for the meeting will be closely scrutinized. The OAG has not analyzed this issue for school boards.

The OAG has issued prior opinions on this issue with respect to state-level governing bodies and in those situations considered and analyzed the following factors: "the jurisdiction of the public entity, the proximity of the meeting place to the persons affected by the public entity's decisions, and the purpose behind the choice of location." In those prior opinions, the state-level governing body meetings complied with the open meetings requirements in large part because of the expanded jurisdiction of the entities involved, as well as the purpose of the meetings. This highlights the second takeaway: In considering whether a meeting held outside of the jurisdiction of the public entity violates open meetings law, the OAG is going to consider a variety of factors. While the OAG has not yet analyzed this issue for school boards, they caution boards from meeting outside their jurisdiction unless the board has provided options for members of the public to participate in that meeting or there is a need to hold the meeting outside of jurisdiction limits.

The OAG has provided a list of factors they would likely consider in analyzing this issue in the future:

- Where is the public that you serve, i.e., city, state, school district?
- How accessible was the meeting to the public and was there a platform where your constituents could watch or listen to the meeting?
- Did the public entity provide transportation to citizens to attend the meeting in person?
- What was the reason for the meeting?
- Was there a need to have the meeting outside of the entity's jurisdiction (e.g., meet with state legislators)?

NDSBA recommends that boards carefully consider all of these factors and the OAG's prior opinion prior to scheduling a meeting outside of district boundaries. If a board decides to hold a meeting outside of jurisdictional limits, NDSBA recommends the board provide a means of public access

Continued on page 3

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

EDITOR

Alexis Baxley

PUBLISHER

North Dakota School Boards Association
PO Box 7128
Bismarck, ND 58507-7128

TELEPHONE 1-800-932-8791

LOCAL (701)255-4127

FAX (701)258-7992

WEBSITE www.ndsba.org

TWITTER @ndschoollboards

EXECUTIVE DIRECTOR

Alexis Baxley, Bismarck

OFFICERS

PRESIDENT

Holly Stromsodt, Finley-Sharon

VICE PRESIDENT

Karl Lembke, Bismarck

PAST PRESIDENT

Jim Johnson, Fargo

DIRECTORS

Lucas Greff, Mott-Regent
Steve Halldorson, Devils Lake
Jim Rostad, Minot
Patti Stedman, West Fargo

FLSA Final Rule Updates

The Fair Labor Standards Act generally requires covered employers to pay their employees at least the federal minimum wage for all hours worked and overtime premium pay of at least 1.5 times the regular rate of pay for all hours worked over 40 in a workweek. There are, however, a number of exemptions from the FLSA's minimum wage and overtime requirements. Generally, in order for one of the exemptions to apply, employees must meet each of three tests: (1) the salary basis test; (2) the salary level test; and (3) the duties test. If the employee meets all three requirements of one or more of the exemptions, the employee is considered an exempt employee and is not subject to the FLSA's minimum wage and overtime pay requirements.

Employees that do not meet each of the three requirements under an exemption are considered non-exempt and must be paid at least the federal minimum wage as well as overtime pay at 1.5 times their regular hourly rate for any hours worked in excess of 40 hours in a workweek.

The Department of Labor (DOL) recently issued a final rule effective January 1, 2020, increasing the salary level for exempt executive, administrative, and professional employees from the current level of \$455 per week (\$23,660 per year) to \$684 per week (\$35,568 per year). The final rule does not make any changes to the duties test. Because teachers, administrators, counselors, or other employees with a teaching certificate working in a position that requires certification are generally not required to meet the salary basis test, the new rule should have no impact on these employees. However, the new rule likely would affect para-professionals, cooks, janitors, secretaries, business managers, etc. The final rule is estimated to extend non-exempt status to more than one million employees who are currently classified as exempt under the FLSA and related regulations.

In addition to increasing the standard salary level, the DOL's final rule also:

- Increases the total annual compensation level for a "highly compensated

Continued on page 4

Gary R. Thune

May 18, 1942 - December 1, 2019

Gary R. Thune, age 77 of Fargo, passed away peacefully early Sunday, December 1, surrounded by family. Gary was instrumental in creating the North Dakota Council of School Attorneys in 1980



and served as the attorney for NDSBA from 1982-2012. Gary also served as president of the National Council of School Attorneys (COSA) and received the COSA Lifetime Achievement award in April 2013. He retired from the Pearce Durick Law Firm in December 2014.

Over the years, Gary became North Dakota's go-to person in the field of education law. His integrity, expertise, and good humor enhanced the reputation of NDSBA during his tenure as NDSBA's legal counsel. His presentations at NDSBA functions were always spot-on legally, but in addition, he was able to make complicated legal situations and state law easy for a lay person to understand. He will always be remembered and missed by NDSBA staff, board members, and school administrators.

His full obituary can be found at <https://boulgerfuneralhome.com/obituaries/gary-r-thune/>.

Legal Spotlight

Continued from page 2

(e.g., livestream, video conference, or telephone conference) and that the board have a reasonable purpose for holding the meeting offsite. To be clear, holding meetings offsite should be an infrequent occurrence and should never be done in an effort to curb public access.

Please feel free to contact NDSBA for additional information regarding open meetings requirements.

School District Long-Term Planning Process

Between January 1 and June 30 of every even-numbered year, the board of each school district is required to invite the public to participate in a planning process that addresses the effects of demographics on the district for the next three and five years. The planning process must specifically address potential effects on:

- Academic and extracurricular programs
- Instructional and administrative staffing
- Facility needs and utilization
- District tax levies

Holding an open public forum is one way to meet this requirement. It is recommended that the district provides frequent and ample notice of the forum to its patrons. Notice of the planning meeting, at a minimum, should be published in the district's official newspaper.

Open meeting laws will need to be followed if a quorum of board members is present at the open public forum.

School boards are also required to prepare a report, publish notice in the official district newspaper indicating that the report is available, and make the report available upon request at the conclusion of the planning process. The report does not need to be submitted to the Department of Public Instruction; however, districts will need to acknowledge compliance with this requirement in STARS.

NDSBA has created a Three- and Five-Year Plan template to assist districts in complying with this obligation. The template can be found on the NDSBA website under Resources at <http://ndsba.org/index.php/resources/> or can be requested by calling our office at 1-800-932-8791.



NSBA 2020 Annual Conference Registration and Housing

The NSBA Annual Conference and Exposition will be held April 4-6 in Chicago, Illinois. Join us in Chicago for a robust offering of over 250 educational programs that will give you new ideas and tools to help drive your district forward.

Conference registration and housing reservations are now open. Register online at <https://www.nsba.org/Events/NSBA-2020-Annual-Conference-and-Exposition>.



PO Box 7128
Bismarck, ND 58507-7128

PRE-SORTED
STANDARD
U.S. POSTAGE
PAID
PERMIT NO. 6
NEW SALEM, ND
58563

RETURN SERVICE REQUESTED

superintendent vacancies

Devils Lake School District

Contact: Kristel Peterson

Phone: 701-662-7640

Email: Kristel.peterson@dlschools.org

Application: Contact Kristel for application package.

Deadline: January 31, 2020

Position Begins: July 1, 2020

Leeds School District

Contact: Maria Dunlap

Phone: 701-466-2461

Email: maria.m.dunlap@k12.nd.us

Application: Email resume to above, or mail to PO Box 189, Leeds ND 58346

Deadline: Open until filled

Position Begins: Immediately

Follow NDSBA on Twitter!



Follow us at @[ndschoollboards](https://twitter.com/ndschoollboards) for event, policy, and other education-related updates.



BoardBook Premier Now Available!

NDSBA has recently partnered with the Texas

Association of School Boards (TASB) to make BoardBook Premier available to North Dakota school districts. BoardBook Premier is a paperless meeting and document storage program designed by school boards for school boards and is the new standard in board agenda preparation and decision making. See *Bulletin* insert or visit www.ndsba.org for more information.



mark your calendar

2020 NDSBA Negotiations Seminar

February 6-7, 2020

BSC National Energy Center of Excellence, Bismarck

2020 NSBA Annual Conference

April 4-6, 2020

Chicago, Illinois

2020 NDSBA Annual Convention

October 29-30, 2020

Ramkota Hotel, Bismarck

Final Rule Updates

Continued from page 3

employee" from \$100,000 to \$107,432 per year;

- Allows employers to use nondiscretionary bonuses, incentive payments, and commissions (all paid at least annually) to satisfy up to 10 percent of the standard salary level; and
- Revises special salary levels for workers in U.S. territories and in the movie business.

It is important to remember that non-exempt is the default classification under the FLSA and the employer is ultimately responsible for proving that the employee meets the requirements of a particular exemption. Misclassification under the FLSA can be a costly error. Schools are encouraged to periodically review their employee classifications to ensure compliance with the FLSA and any applicable state or local laws.

For more information on the FLSA exemptions and the salary base requirements, go to https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fs17a_overview.pdf or contact NDSBA at 1-800-932-8791.

NEW from NDSBA

BoardBook® Premier

NDSBA recently partnered with the Texas Association of School Boards to make **BoardBook® Premier** available to our members! **BoardBook® Premier** is a paperless meeting and document storage software. It was made BY school boards FOR school boards and has become the standard in board agenda preparation and decision making. Program features include:

- Instant Access to Meeting Information
- Secure Document Management
- Goal-Oriented Decision-Making Support
- Intuitive Board Experience
- Seamless Cloud-Based Interaction
- Online Policy Management

Manage your meetings from start to finish

BoardBook® Premier is the meeting preparation software you need to make board meetings easy. The platform boosts the efficiency of your meetings, improves collaboration, and enhances communication among board members.

With **BoardBook® Premier** you can reduce the time-consuming work of compiling and distributing notices, gathering support materials, and publishing agenda packets—while organizing and streamlining meetings for board members, too.

BoardBook is helping organizations across North America

Join more than 1,700 organizations throughout the United States and Canada already using BoardBook, including:

- School boards
- Colleges and universities
- Cities and counties
- Public libraries
- Businesses
- Government agencies
- Associations and nonprofit organizations

BoardBook® Premier is available from NDSBA in two tiers (see reverse for more information). Subscriptions are sold on an annual basis, billed on January 1, and can be prorated for new subscriptions of less than one year. Training and tech support are provided with subscription. Contact NDSBA for more information or to sign up today!



NDSBA
NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION

Tier 1

\$2,000/yr

Tier 2

\$3,000/yr

Tier 2

Non-Member

\$5,000/yr

BoardBook® Program Comparison Chart

	Tier 1	Tier 2
Program Features	BoardBook Premier	BoardBook Premier
Browser-Based Access	x	x
Users	Unlimited	Unlimited
Viewer Groups (Committees)	4	11
Permission Levels	13	13
Agenda Preparation Features	BoardBook Premier	BoardBook Premier
Automatic PDF Conversion	x	x
Customizable Meeting Documents	x	x
Supplemental Documents	x	x
Board Member Email Notification	x	x
Multi-Location Selection	x	x
Simultaneous Attachment Uploads	x	x
In-Meeting Features	BoardBook Premier	BoardBook Premier
Electronic Voting	Manual	Automated
Electronic Attendance	x	x
Follow the Leader	x	x
Hand Raising	x	x
Public Projector	x	x
Personal Notes	x	x
Organizational Features	BoardBook Premier	BoardBook Premier
Website Integration	x	x
Searchable Meeting Database	x	x
Functional Calendar	x	x
Public Subscription Option	x	x
Goals Planning/Tracking		x
Online Policy Documents		x
Organization Branding		x
Resources		x
Books & Documents		x