



# bulletin



**NDSBA**  
NORTH DAKOTA SCHOOL  
BOARDS ASSOCIATION

SEPTEMBER 2020

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

## 2020 NDSBA School Law Seminar to Feature Five Virtual Sessions

The 2020 NDSBA School Law Seminar will be held virtually. Five sessions will be offered over the course of five days: October 26-30. Sessions will be held at 1 p.m. Central Time and will be 1-1.5 hours in duration. Sessions are FREE to school board members with the purchase of at least one staff registration. The following is a list of anticipated topics for the 2020 School Law Seminar:

- What School Officials Need to Know About New Title IX Regulations
- Employee and Student Free Speech Rights in the Current Politicized and Polarized Environment

- School Board and Administrator Roles in Providing FAPE During a Pandemic
- Panel Discussion: Practical Discussion on Board Compliance with Open Meetings and Conflicts of Interest Requirements
- Alternative Options for Teacher Contracts and Extracurricular Assignments

Featured speakers included KrisAnn Norby-Jahner, Vogel Law Firm; Rachel Bruner, Pearce Durick; and Meredith Vukelic, Pearce Durick. For more information on how to register visit [www.ndsba.org](http://www.ndsba.org).

## NDSBMCP Fall Virtual Trainings

Registration is now open for the following ND School Business Manager Certification Program classes: Open Records and Meetings; Human Resources I; Ancillary Services Management; and Asset Management, Investing, and Bonding. Classes will be held virtually via Zoom during the months of October and November. Students re-taking a class for continuing education credit will receive a discounted rate and can earn up to 2 credits per class. Business managers can learn more about these trainings by going to NDSBMCP website [www.ndsbmcp.org](http://www.ndsbmcp.org) and clicking on the NEWS tab or by calling the NDSBA office at 1-800-932-8791.



## Election Reminder

Registered delegates should have already received or will soon receive their ballot for the 2020 NDSBA Board of Directors election. Please complete your ballot promptly, seal it in the provided security envelope, and return it to your business manager as soon as possible. Ballots must be return postmarked to NDSBA **by October 15** to be counted. Candidate information can be found at [www.ndsba.org/index.php/bodelection/](http://www.ndsba.org/index.php/bodelection/).

## 2020 Virtual Delegate Assembly Participation Information

Resolutions approved by the GAC are available for review at [www.ndsba.org/index.php/delegateassembly](http://www.ndsba.org/index.php/delegateassembly) and in this issue of the *Bulletin*. **Newly submitted resolutions will be considered individually during Delegate Assembly. Older resolutions up for re-adoption will be considered as a group.**

• Any delegate wishing to pull an old resolution up for re-adoption for individual consideration should submit their request in writing to Linnae Brew at [linnae.brew@ndsba.org](mailto:linnae.brew@ndsba.org) by **5 p.m. Central Time on October 1**. Delegates wishing to pull a resolution for separate consideration should be prepared to speak to their rationale during Delegate Assembly.

• Any delegate wishing to propose an amendment to any resolution should submit that amendment in writing to Linnae Brew at [linnae.brew@ndsba.org](mailto:linnae.brew@ndsba.org) by **5 p.m. Central Time on October 1**. Delegates proposing amendments should be prepared to speak to their rationale during Delegate Assembly.

• **October 7:** Any proposed amendments will be posted to the website above. Delegates should review the amendments prior to Delegate Assembly.

• **October 19:** Delegate Assembly training session. Participation is only possible via computer or smart device.

**Link:** <https://zoom.us/j/98474022321?pwd=RWpuV3dsejA4ZW52UnU2NTdSbHRqZz09>

**Webinar ID:** 984 7402 2321

**Passcode:** 437229

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## Registration Now Open!

Registration for the 2020 School Law Seminar and New Member Seminar is **NOW OPEN!** Registration and agendas are available online at [www.ndsba.org](http://www.ndsba.org).

SEPTEMBER 2020



# Legal Spotlight

## K-12 School Personnel as Essential Critical Infrastructure Workers

by Amy De Kok, NDSBA Legal Counsel

The K-12 Smart Restart Guidance requires schools to comply with federal, state, and local public health recommendations and guidance when making decisions relating to staff and students who test positive or are exposed to a positive case of COVID-19. Currently, CDC and ND DOH guidance recommends that individuals who have been in close contact with a positive case of COVID-19 quarantine away from school and work for a period of 14 days from last contact. School districts incorporated such guidance into their health and safety plans as required by the Restart Guidance. In anticipation of the likelihood of staff having to quarantine away from work for several days through the school year, district employers are making efforts to make sure they have adequate staffing (e.g., substitute teachers) to cover for quarantined staff. Despite these efforts, district employers are becoming increasingly concerned whether they will have adequate staff to continue with operations that are

already stressed during the pandemic. One potential option available to district employers is to permit staff members who are under quarantine as household contacts of positive cases, but who are asymptomatic, to return to the workplace assuming certain protocols are followed. This article is intended to provide more information about this option and to provide general guidance a district employer may want to consider when approaching these staffing decisions.

On April 10, 2020, the State Health Officer issued Order 2020-06 addressing the issue of household contact with a positive case and ordered that individuals who have household contact with a positive case must immediately quarantine in their home or residence for a period of 14 days since last contact with the contagious person. Household contacts are individual who have been or may have been exposed to a positive case based on residence in the same household or residential premises. Public health officials believe household contacts pose a substantial risk in terms of transmission because of the close and frequent contact with the positive case in the household. Non-household close contacts are not subject to a similar order; however, federal, state, and local public health officials strongly recommend that such individuals still undergo a 14-day quarantine. Again, the Restart Guidance requires that schools comply with this recommendation in terms of staff and students who have been identified as close contacts by public health officials.

Order 2020-06 provides an exemption to the quarantine requirement for household contacts that qualify as essential critical infrastructure workers so long as such individuals remain asymptomatic and additional precautions, as recommended by the CDC, are implemented to protect the worker and the community. The Order incorporates the list of Essential Critical Infrastructure Workers from the U.S. Department of Homeland Security. Such workers include those who support the education of preschool, K-12, college, university, career and technical education, and adult education students, including teachers, teacher

aides, special education and special needs teachers, ESOL teachers, para-educators, and specialists. In addition, the list includes as essential workers: (1) workers who provide services necessary to support educators and students including, but not limited to, administrators, administrative staff, IT specialists, media specialists, librarians, guidance counselors, school psychologists and other mental health professions, school nurse and other health professionals, and school safety personnel; (2) workers who support the transportation and operational needs of schools including bus drivers, crossing guards, cafeteria workers, cleaning and maintenance workers, bus depot and maintenance workers, and those that deliver food and supplies to school facilities; (3) workers who support the administration of school systems including school superintendents and their management and operational staff; and, (4) educators and operational staff facilitating and supporting distance learning. In short, the list incorporates all preschool and K-12 staff. This means that district employers have the option, pursuant to Order 2020-06, to return to work district staff who are household contacts of a positive case but remain asymptomatic and follow delineated protocols.

Although the option exists, it may not be appropriate in a given circumstance to return a worker to the school environment. In making these decisions, the district employer should consider several factors including, but not limited to: (1) whether the individual is part of a population more vulnerable to COVID-19 (e.g., adult over 65 or with an underlying health condition); (2) whether the district can fill the position with or assign duties to other available staff; (3) whether the individual's position requires the individual to have close contact with others in the workplace including those who are more vulnerable; (4) whether the individual's position allows for the option to telework from home; (5) ability of the district to put in place the required protocols as recommended by the CDC; and (6) whether the individual is willing

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

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# Government Affairs Committee Resolutions Report

NDSBA's Government Affairs Committee (GAC) met on August 31, 2020, to act on resolutions for consideration by the Delegate Assembly. Participating committee members were: Jim Johnson, Chair (Fargo); Shane Aadness (Stanley); Susie Carlson (Northern Cass); Sonya Hansana (Hazen); Dianne Hensen (Glenburn); Karl Lembke (Bismarck); Lisa Maki (Garrison); Holly Stromsodt (Finley-Sharon); and Lauren Vengels (Minot-MAFB).

Resolutions remain as standing resolutions for four years unless significant legislative or staff action prompt an earlier review. At the end of four years, they are dropped unless readopted by the Delegate Assembly. One new resolution was submitted by the NDSBA Board of Directors. Following are recommendations of the GAC:

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

**1. STATE AID FOR GROWING SCHOOL DISTRICTS.** NDSBA shall support legislation that modifies the Foundation Aid Program to allow the use of fall enrollment to provide adequate state support to districts with increasing enrollment.

*Adopted in 2012; readopted in 2016.*

**2. STATE FUNDING OF SPECIAL EDUCATION AND GIFTED AND TALENTED PROGRAMS.** NDSBA supports the state ensuring program funding equity and full funding of special education costs to districts including gifted and talented education and to provide a permanent mechanism for the distribution

of any surplus special education dollars.

*Adopted in 2004; readopted in 2008 and 2012; amended and readopted in 2016.*

**3. COLLECTIVE BARGAINING.** NDSBA shall oppose legislation mandating school boards to collectively bargain with employees other than those currently required by 15.1-16-01: "...public school employee(s) licensed to teach by the ESPB or approved to teach by the ESPB and employed primarily as a classroom teacher."

*Adopted in 2008; readopted in 2012 and 2016.*

**4. STATE TECHNOLOGY INFRASTRUCTURE MAINTENANCE AND OPERATION.** NDSBA believes the cost of maintaining, supporting, and enhancing this system should continue to be financed with state dollars and there should be no transfer of the cost associated with this network back to the local school districts.

*Adopted in 2004; readopted in 2008, 2012, and 2016.*

**5. BUSINESS MANAGER CERTIFICATE PROGRAM.** School boards support the Business Manager Certificate Program by providing financial support through the use of school district funds to encourage business managers to participate in this voluntary professional development opportunity.

*Adopted in 2012; readopted in 2016.*

**6. SCHOOL LUNCH PROGRAM.** NDSBA shall work with the North Dakota Department of Agriculture, the North Dakota Department of Public Instruction, and the North Dakota Congressional Delegation to encourage the USDA to amend their federal regulations related to the School Lunch Program, School Breakfast Program, and "a la carte" food sales to allow for local control.

*Adopted in 2012; amended and readopted in 2016.*

**7. POSTING OF BILLS IN AN ALTERNATE FORMAT.** NDSBA shall support state law changes to allow school districts the flexibility to post their bills using an electronic format such as the district's Website.

*Adopted in 2004; amended and readopted in 2008; readopted in 2012 and 2016.*

## NEW RESOLUTION RECOMMENDED FOR ADOPTION

Submitted by NDSBA Board of Directors:

A resolution stating that NDSBA shall support legislation that would require and/or encourage contract negotiations to be pursued in good faith, diligently, and within a reasonable period of time in order to have an agreement reached between the school board and recognized representative organization by a specified deadline or impasse will be automatically declared.

**WHEREAS**, North Dakota Century Code § 15.1-16-13 requires the board of a school district or its representatives and a representative organization or its representatives to negotiate in good faith if so requested by either entity;

**WHEREAS**, Good-faith negotiations must begin no later than the thirtieth day after the representative organization is recognized by the board of the school district unless otherwise mutually agreed;

**WHEREAS**, School districts approve budgets during the month of July and shall provide to the county auditor in each county in which the taxing district has taxable property on or before August tenth of each year a preliminary budget statement, which it may not increase or decrease after October 10 of the current fiscal year;

**WHEREAS**, Drawing out or delaying the negotiating process will negatively impact a district's ability to be fiscally responsible to both its students and its taxpayers;

**WHEREAS**, Beginning a school year without teachers or administrators under contract may negatively impact students, staff, and the district as a whole;

**THEREFORE BE IT RESOLVED** that NDSBA shall support legislation that would make appropriate amendments to the negotiation process set forth in NDCC chapter 15.1-16 and any other relevant provisions of the NDCC that would require and/or encourage negotiations to be pursued in good faith, diligently, and within a reasonable period of time in order to have an agreement reached between the school board and recognized representative organization by a specified deadline or impasse will be automatically declared.

## Awards Reminders

### Board Member Service Awards

A copy of a qualifying board member's points form must be received in the NDSBA office by **Wednesday, September 30**, for board members to be recognized in 2020.

### Barb Norby Scholarship

NDSBA is still accepting nominations for the Barb Norby Scholarship award. Nominations should be sent to [alexis.baxley@ndsba.org](mailto:alexis.baxley@ndsba.org) as soon as possible.



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## ■ Legal Spotlight

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and able to return to the workplace. It is further recommended that district employers consult with and follow the advice of local public health officials in making these decisions. District employers should also document their decision-making process and communications with local public health in such situations in the event the district must defend its decisions at a later date.

Please note that there does not currently appear to be a similar exemption to the quarantine requirement for essential workers who are non-household close contacts. NDSBA is aware of this and has been in touch with state officials on this issue. In the event there is a change to the guidance in this regard, we will inform our members.

Please feel free to contact NDSBA or your school attorney for further information regarding this issue and any other COVID-19 concerns.

## ■ Delegate Assembly

*Continued from page 1*

- **October 26** (and later when necessary): Delegate Assembly login information will be emailed to delegates and business managers.

- **October 30** by NOON Central Time: Deadline to swap alternates for delegates. Contact Julie at [julie.steidler@ndsba.org](mailto:julie.steidler@ndsba.org) to swap.

- **October 30** at 3 p.m. Central Time: Delegate Assembly takes place.

Full text of draft Standing Rules for the 2020 NDSBA Delegate Assembly is available at [www.ndsba.org/index.php/delegateassembly](http://www.ndsba.org/index.php/delegateassembly). Standing Rules will be adopted at the start of the Delegate Assembly. No proxy voting will be allowed, and delegates must participate via computer or smart device. A streaming link will be provided for others wishing to observe.



mark  
your calendar

**2020 NDSBA New Member Seminar**  
October 5, 9, 13, or 15, 2020  
Virtual Event

**2020 NDSBA School Law Seminar**  
October 26-30, 2020  
Virtual Event

**2020 NDSBA Delegate Assembly**  
October 30, 2020 - 3:00 p.m.  
Virtual Event

**2021 NDSBA Negotiations Seminar**  
February 4-5, 2021  
National Energy Center of Excellence, Bismarck

**2021 NDSBA Annual Convention**  
October 28-29, 2021  
Ramkota Hotel, Bismarck