

To: Dickinson Public School Board  
From: Tanya Rude, board member  
Date: February 25, 2016

## **NDSBA 2016 Law Seminar and Convention Report**

As I begin the report, I would like to thank the school board for the opportunity to attend the 2016 NDSBA Law Seminar and Convention held on October 27-28, 2016, at the Grand Dakota, Bismarck. The following is some of the information I gained from attending the seminar and convention. (Some information may have been taken directly from handouts given or a summary of handouts and/or speakers.)

### ***Thursday, October 27<sup>th</sup>, 2016***

#### **Law Seminar**

**Immigration and Education: What school districts need to know about the laws regarding new citizens, non-citizens, and ELL's**, presented by *Erin Gilsback, Director of Professional Education and Policy Development Kin, Spry, Herman, Freund, and Faul; Bethlehem, PA*

- Educate all students; let the INS, ICE, Social Services decide what and how they need to deal with the undocumented immigrants. Beware of interactions with immigration and customs because voluntary reporting of undocumented families by the school COULD be viewed as violating access to education.
- ELL requirements: access and identify, provide language assistance and instruction. Schools may NOT recommend that parents opt out of ELL. When student is exiting out of program, follow the state guidelines and the school must follow for 4 years for progress.
- ICE: investigations should not occur on school property; access to student records requires parental consent; when/if school receives valid subpoena then schools are required under FERPA to make *limited* access to records.
- Homeless students often intersect with immigration; still must educate.
- Districts should establish/create a **CULTURE OF TOLERANCE**: by **Recognizing** the problems, **Educating** ALL the community, **Develop** policies and procedures, Establish opportunities to report, **Investigate** all reports and complaints, **Coordinate** with others, **Collaborate** with other schools, **Review** process and procedures periodically.

**“Hot button” labor issues ranging from the U.S. Department of Labor’s new overtime rule to discrimination issues and retaliation claims by employees** by *Troy Seibel, North Dakota Labor Commissioner*

- There are four primary exemptions: Administrative employees, Executive employees, Professional employees, and Highly compensated employees.
- Administrative is defined by someone who came up with or creates policies, runs the organization, and uses good discretion and independent judgement. N.D.A.C. 46-02-07-01(1)
- Executive employees are those who manages the company/enterprise, directs work of two or more employees, and has the authority to hire, fire, and promote employees (or substantially influences decision). N.D.A.C. 46-02-07-01(16)
- Professional employees are those whose work requires advanced knowledge by prolonged course of specialized instruction and study, work requires consistent exercise of discretion and judgment, and is predominantly intellectual and of such character that product or results accomplished cannot be given to a period of time. N.D.A.C. 46-02-07-01(10)
- Highly Compensated employees are those who are paid annually over \$100,000, receives at least \$455/week, and their primary duties consist of office or non-manual work. N.D.A.C. 46-02-07-01(7) This is the safe harbor. Both state and federal law have this—however, after December 1, 2016, federal law will be work over \$134, 004.
- Where the courts in America have said same-sex marriages are to be allowed, the ND legislature has **not** amended the ND Human Rights Act by adding sexual orientation/gender identity as protected categories. It is important to know what our school district policy says on this because we do have it in our policy.
- One other note from this speaker was that there is an increase in retaliation cases across the country. It is believed to be because managers get fed up with constant complaining and when it has gone on and on, people retaliate to try to make the constant complaining stop.

**Laying the Groundwork for a Successful Non-renewal or Discharge** presented by *Rachel Bruner-Kaugman and Meridith Vukelic, Attorneys at Law, Pearce & Durick, Bismarck*

- Discharge is based on NDCC 14.1-15-07, they must be given a notice of contemplated discharge, there could be a hearing before the board, but ALJ must be hired to oversee procedure, the Rules of Evidence apply, and the employee can be terminated immediately at hearing.
- Non-Renewal: based on evaluations (or RIF)-reasons come from ability, qualified, and competence of individual; a

Notice of contemplated non-renewal must be given no earlier than March 1 and no later than April 15<sup>th</sup>, there can be a hearing before the board, rules of evidence don't necessarily apply, and the employee will hold the job until the end of the school year (this completes current school year contract). Important to know that certified/licensed staff have continuing contracts.

- Secret Files on Teachers is prohibited. Personnel Files should contain: contracts, evaluations, written observations/walk-through's (if not included in evaluation), improvement plans, letters of reprimand, other disciplinary documents (usually attached to evaluation, improvement plan or letter of reprimand), and determination letters (patron complains, nondiscrimination investigations).
- Certified staff with performance issues should have potential improvement plan being worked on months in advance.

**Teachers and Administrators—Licenses, endorsements, and credentials** presented by *Mari Fridgen, Assistant Director, ND Education Standards and Practices Board (ESPB)*

- This presentation was short with a basic overview of ESPB and licensing requirements.
- Personal take home: I could be a substitute teacher, just not in Dickinson Public Schools because I am a board member, or if I want to volunteer to substitute teach.

**Understanding the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act** presented by *Robin Tschider, Special Education Regional Coordinator, ND Department of Education*

- The presenter basically talked about IDEA, Section 504, and the Americans with Disabilities Act (ADA).
- The IDEA is an Education Act, works with Individual Education Plans (IEP), for children from 3-21 that fit 1 or more of 13 categories laid out, this is STUDENT FOCUSED, funding comes from grants that we fill out, and requires parental involvement by written notice. Enforcement of this law is by the United States Office for Civil Rights (OCR).
- Section 504 is a Civil Rights Law, it is an anti-discrimination law with a school focus, student has substantial impairments which limit one or more of major life activities, no federal funding, parents and school personnel must be notified as to who is the 504/ADA coordinator, certain procedural requirements must be followed, remember that an impairment in and of itself is not a disability, if there is no relationship between the disability and the behavior, the school can expel the student, and districts are required to develop and provide grievance procedures for parents, students and employees. Enforced by the U.S. Department of Education, Office of Special Education Programs (OSEP), but compliance is monitored by State Department of Education.
- ADA is also a Civil Rights Law with a community focus protecting individuals with a disability from being discriminated against with public transportation, public buildings, telecommunications, and businesses. Enforcement of this law is by the OCR, the U.S. Equal Employment Opportunity Commission (EEOC), or the U.S. Department of Justice (DOJ), depending on the issue involved.

**Juvenile Court Services in North Dakota: Working with schools to help students succeed** presented by *Kerry Gullickson, Juvenile Court Officer, Bismarck and Carrie Hjellming, Juvenile Court Officer, Dickinson*

- In Juvenile Courts the focus is on treatment and rehabilitation by: evaluation and assessment of risk, classes to increase skills, counseling, restitution, community services, probation, and placement outside of the home for treatment.
- Nuts and bolt of juvenile system
  - basic rights cannot be denied
  - all trials are bench trials: no jury, no public trial, no grand jury, no release system
  - age range from 7-17 years old
- Child legal categories
  - Delinquency (NDCC 27-20-02)-can be charged with criminal act under the law.
  - Unruly (NDCC 27-20-02)-based on status and age, means a child who:
    - is habitually and without justification truant from school;
    - is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian and is ungovernable or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;
    - has committed an offense applicable only to a child, except for an offense committed by a minor 14 years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution;
    - has committed an offense in violation of section 5-01-08; or is under the age of 14 and has purchased, possessed, smoked or used tobacco, tobacco-related products, electronic smoking devices, or alternative nicotine products in violation of subsection 2 of section 12.1-31-03; and
    - "willfully" has the meaning provided in section 12.1-02-02.

- Deprived (NDCC 27-20-02) -parental issues involved. Means a child who:
  - is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;
  - has been placed for care or adoption in violation of law;
  - has been abandoned by the child's parents, guardian, or other custodian;
  - is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent;
  - is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court;
  - was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;
  - is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-22.2;
  - is a victim of human trafficking as defined in title 12.1.
- Trend is that in 5-7 years of deprived category the child will move to delinquent and/or unruly.
- Child is referred to the courts from: law enforcement, schools, parents, social service agencies, and in theory– anyone....
- Most common ND juvenile crimes: alcohol, drugs, theft, criminal mischief, disorderly conduct, and unruly/disobeying parents.

**Preparing for the 2017 Legislative Session – Anticipated Legislation** presented by *L. Anita Thomas, NDSBA General Counsel*

Basically, NO ONE knows what this legislative session holds.

**NDSBA Convention**

**Recharge, Reenergize, and Refocus: At Our Best and Leading the Way!** Presented by *Murray Banks*

Mr. Banks had a lot of different things to say, almost all from things he learned while in education. The following are only a few of his comments:

Longest stretch in education is March, April and May!

“Showtime” is every day! We need to fire on all cylinders, everyday.

Who you are may be as important as what you know.

Your life comes to work with you each day and leaks out all day.

Never get set in your ways. Psychosclerosis is hardening of attitude!

What we focus on ... **expandS**. Best teachers teach the tough kids. Spend 10% of time on problem and 90% of time on the solution.

Sometimes you have to get into something before you see the way out. Visual helps understand this: In the middle of steep terrain, snow abounding and cannot see the way down, once he got down a little ways he could see the tracks to go down further.

From the handout: Top leaders don't think outside the box...they don't have a box, instead they are bold, agile, no-limits, disruptive, imaginative, intuitive, versatile, inquisitive, introspective and strive to be disciplined yet adaptable, professional yet friendly, and data driven with common sense.

***Friday, October 28<sup>th</sup>, 2016***

**Evolving Benefits for students with implementation of the Flex Mod Schedule** presented by *Legacy High School, Bismarck*

Flex Mod scheduling is a very schedule that is hard to describe, somewhat difficult to follow if an outsider, but easy for students and teachers to get used to. There is no bell in use, students use either chrome books or time table application to keep up on their schedule, Legacy uses Power School for most of their purposes. They offer tours every other Monday. They first toured West Side Omaha, which is a traditional building school and it works well for them. I think this would work for our high school, especially since there are various subjects that still need more than sixty minutes to be useful, such as band. It offers specific time for help centers and some large group labs. Time works in 20 minute increments and so there is always movement in the school. I personally would like to go visit, but with some high school teachers and an administrator. I would

like to hear their comments and understand how they view it.

**Superintendent, Business Manager, and Board Evaluation** presented by *Jeff Fastnacht, Ellendale Superintendent, and Dan Martin, Rocky Mountain Evaluations*

After seeing the introduction in February I was looking to this session to learn more about the electronic device that the NDSBA in conjunction with Rocky Mountain Evaluations came up with. I was pleasantly surprised that we could use all of the questions as they are, use some of the questions and change other questions, or come up with our own questions to fit our needs. I also like the ability to fill out a self evaluation, and to give instant feedback to the superintendent and/or the president after a meeting.

**Investigation: Role of the School Administrator and the School Board** presented by *Lisa Kudelka, Human Resources Manager, Bismarck Public Schools*

This presentation was a review of when we had a teacher needing to be dismissed a year ago. It was interesting to me to see that other individuals do the investigative needs within a district. After seeing this presentation, there are more investigations done within a district than what most of the school board is aware of. It was interesting to learn that for Bismarck Public, the Business Manager or the HR director do a lot of the investigations, and there are times that they have hired an attorney.

**From Kid to Rocketman and Beyond: One little step at a time** presented by *Story Musgrave, astronaut who holds 7 graduate degrees and awarded 20 honorary doctorates* [storymusgrave@hotmail.com](mailto:storymusgrave@hotmail.com)

- Learn from everything
- Explore
- Had to figure it out, get it done and move on – expand horizons
- Discipline has to happen, responsibility goes with discipline.
- If it's tough, get out, there are other alternatives.
- Factors identify outcome
- Don't give up on investments made.
- What you want to do, go do it.

**AVID: Advancement Via Individual Determination** presented primarily by *Six different students answering questions, Bismarck High School*

The AVID classroom is an elective class, but appears to be offered to certain students that meet a profile of: 2.0-3.5 GPA, individual determination, college potential, will thrive-not buckle-with rigor, good attendance, first generation college goer, and ideally remains in the program 9th-12th grade. This is a direct support structure for students in the academic middle. The AVID mission is to close the achievement gap by preparing all.

- AVID is used in 47 states and 16 countries.
- Students learn to: organize- by using very detailed binders, create class norms, take Cornell notes, use Costa's level of questioning, grow into critical thinkers, engage in tutorial process, and set goals for college.
- 40,000+ AVID seniors: 96% took college entrance exams, and 92% completed 4 year degree
- Students are expected to take more rigorous classes
- Students said it has helped them mostly learn to organize and have confidence in speaking

AVID has expenses with it, but there are grants to help get started and somewhat help keep it going. Even with grants it is an extra expense to help the academic middle students who are looking to go to college, but it helps students succeed!