

## PROVISIONS OF NORTH DAKOTA CENTURY CODE TITLE 15 WHICH RELATE TO ELEMENTARY AND SECONDARY EDUCATION - PART II BACKGROUND MEMORANDUM

House Concurrent Resolution No. 3007 (1999) (attached as an appendix) directs the Legislative Council to continue its study of those provisions of Title 15 of the North Dakota Century Code (NDCC) which relate to elementary and secondary education for the purpose of recommending changes to laws that are found to be irrelevant, duplicative, inconsistent, illogically arranged, or unclear in their intent and direction.

### LEGISLATIVE BACKGROUND

Section 11 of 1995 Senate Bill No. 2013 directed the State Auditor to conduct a performance audit of the Department of Public Instruction. Upon completion, the audit was presented to the 1995-96 Legislative Audit and Fiscal Review Committee. Because it addressed a number of issues relating to educational programs and to the administration of such programs, the Legislative Council chairman, at the request of the Legislative Audit and Fiscal Review Committee, directed that the 1995-96 interim Education Finance Committee review the audit and make recommendations. The Education Finance Committee found that certain sections within the title were duplicative while others were inconsistent. Some were merely unclear in their intent or in their requirements. Some sections and chapters were illogically arranged. The committee determined that these shortcomings, when coupled with the issues highlighted in the audit, indicated a pressing need to review all the provisions of NDCC Title 15 which related to elementary and secondary education.

The 1995-96 interim Education Finance Committee concluded that a title rewrite was a project of considerable scope that would require a significant time commitment on the part of a committee, together with significant input from parties having legal, educational, and administrative expertise. The committee therefore determined that the most desirable course of action would be the recommendation of a Legislative Council study to undertake such a task. The task was assigned to the 1997-98 interim Education Services Committee.

### WORK OF THE 1997-98 INTERIM EDUCATION SERVICES COMMITTEE

The 1997-98 interim Education Services Committee reviewed NDCC Chapters 15-01 through 15-67 and made the determination that those chapters that did not relate directly to K-12 education would remain in NDCC Title 15 while chapters that did

relate directly to K-12 would become part of the new Title 15.1. This determination also created an opportunity for the committee to arrange the chapters in what the committee members believed to be a conceptually appropriate manner.

### OBJECTIVES AND SCOPE OF 1997-98 INTERIM EDUCATION SERVICES COMMITTEE'S EFFORTS

The 1997-98 interim Education Services Committee determined that the rewrite of Title 15 would necessarily include addressing laws found to be irrelevant, duplicative, inconsistent, illogically arranged, or unclear in their intent and direction. However, the committee also determined that an equally important objective was to ensure that the rewritten sections accurately reflected the manner in which business was conducted at the school level, the school district level, and within the Department of Public Instruction. The committee determined that the ultimate objective was to craft a document that would clearly indicate rights, duties, obligations, and consequences with respect to the provision of elementary and secondary education in the state. Because the committee discovered that the scope of the undertaking would preclude its completion without compromise of the stated objectives, the committee determined that only a portion of the title should be addressed during the 1997-98 interim. Of the 36 chapters proposed by the 1997-98 interim Education Services Committee, 16 were rewritten. The remaining 20 chapters were set aside for consideration by the 1999-2000 interim Education Services Committee. The following table reflects the chapter numbers for the 16 rewritten chapters and illustrates the chapters that were reserved for later review:

PROPOSED CHAPTERS TO NDCC TITLE 15.1	
15.1-01	State Board of Public School Education
15.1-02	Superintendent of Public Instruction
15.1-03	Department of Public Instruction
15.1-04	Compact for Education
15.1-05	North Dakota Educational Telecommunications Council
15.1-06	Schools
15.1-07	School Districts
15.1-08	School Districts on Military Installations
15.1-09	School Boards
15.1-10	County Committees
15.1-11	County Superintendents

15.1-12	Annexations, Reorganizations, and Dissolutions
Reserved	Education Standards and Practices Board
Reserved	Administrators' Professional Practices Board
Reserved	Teacher and Administrator Dismissal
Reserved	Teacher Employment Contracts
Reserved	Teacher Personnel Issues
Reserved	Teacher Qualifications
15.1-19	Students and Safety
Reserved	Compulsory Attendance
Reserved	Courses and Curriculum
Reserved	Kindergartens
Reserved	Home Education
15.1-24	Chemical Abuse Prevention Programs
15.1-25	Postsecondary Enrollment Options
15.1-26	Adult Education
Reserved	School Finance
Reserved	State Tuition Fund
Reserved	Payment of Tuition
Reserved	Transportation
Reserved	Open Enrollment
Reserved	Special Education
Reserved	Multidistrict Special Education Programs
Reserved	Boarding Homes
Reserved	Textbook Purchases
Reserved	School Construction

## RESERVED CHAPTERS

Those chapters reserved by the 1997-98 interim Education Services Committee include the following:

- **Compulsory Attendance** - Chapter 15-34.1 sets forth the requirements for school attendance. It also includes the sections relating to home-based education.
- **Teachers' Certificates** - Chapter 15-36 authorizes the Education Standards and Practices Board to determine the criteria for teacher certification and to set and charge fees for the issuance of teacher's certificates. The chapter also includes provisions regarding the suspension, revocation, and annulment of a teacher's certificate.
- **Teachers' Oaths** - Chapter 15-37 requires applicants for teachers' certificates to swear or affirm support of the Constitution of the United States and of the state of North Dakota. It requires the same oath of professors, instructors, and teachers employed by any public university, college, or normal school in this state and provides for alternate oaths if such persons are not citizens of the United States.
- **Teachers' Representation and Negotiation** - Chapter 15-38.1 creates an education fact-finding commission and provides for the compensation of its members and any fact-finders appointed by the commission. The chapter contains provisions allowing teachers

to organize and providing for the selection of representative organizations. The chapter includes requirements for good-faith negotiations and provides for impasse procedures.

- **Teachers' Personnel Files** - Chapter 15-38.2 relates to the placement of materials in teachers' personnel files and the right to review and object to the material.
- **State School Aid** - Chapter 15-40.1 addresses per student payments, the equalization factor, supplemental payments, payments to reorganized and cooperating school districts, weighting factors, payments to small but necessary schools, application for payments, eligibility for payments, fractional payments, federal funds, and state transportation payments.
- **Transfer of Students and Nonresident Tuition** - Chapter 15-40.2 addresses nonresident tuition payments, residency determinations, attendance in bordering states, and reciprocal master agreements.
- **Open Enrollment** - Chapter 15-40.3 sets forth the procedure to be followed by a student who wishes to participate in open enrollment and the adoption of open enrollment policies by local school boards.
- **Child Nutrition and Food Distribution Programs** - Chapter 15-54 relates to the administration of federal child nutrition and food distribution programs and to the expenditure of federal funds for such programs by the state educational agency.
- **Special Education of Children** - Chapters 15-59 through 15-59.3 set forth legislative intent with respect to the education of children with disabilities, provide for a director of special education, require the provision of special education services, address the provision of funding for such services, allow for multidistrict special education programs, and set standards for the boarding home care of children with disabilities.
- **State School Construction Fund** - Chapter 15-60 authorizes the Board of University and School Lands to make loans from moneys deposited in the coal development trust fund for the financing of school construction or improvement projects.

## UNINCORPORATED SECTIONS

In addition to the NDCC chapters that have been reserved for review this interim, the 1999-2000 Education Services Committee will have to make determinations regarding a number of sections from NDCC Title 15 which were not incorporated in the initial rewrite of Title 15.1. The most frequent reason for this lack of incorporation was a finding by the

committee that the concepts were inappropriately placed within Title 15. However, incorporating the concepts into a compatible chapter was not possible because that compatible chapter was not addressed during the first phase of the rewrite. The unincorporated sections include the following:

**15-21.1-08. Teacher - Duty to notify principal.** Any teacher who knows or has reason to believe that a student is using, possessing, or transferring alcohol or a controlled substance while on the school premises or involved in school-related activities shall immediately notify the school's principal. Nothing in this section prevents a teacher or any other school employee from reporting to a law enforcement agency any violation of law occurring on school premises or at school-sponsored events.

**15-29-08.5. Goals 2000 - Participation voluntary.** The school board of any school district may, on behalf of the district it represents, choose to participate or not to participate in Goals 2000 Educate America Act [Pub. L. 103-227; 108 Stat. 125; 20 U.S.C. 5801 et seq.]. Any school board that chooses to participate and directly or indirectly receives federal funds for its participation shall expend such funds in the manner it determines best meets the goal of educational enhancement in the school district, in accordance with the district's locally developed goals 2000 educational improvement application plan. The superintendent of public instruction may not impose any financial penalty or other sanction on a school or school district if the school board chooses, at any time, to terminate participation in goals 2000.

**15-29-08.6. School-to-work - Student participation voluntary.** Before any elementary or secondary school student may participate in any course, program, or project offered under the auspices of the School-to-Work Opportunities Act of 1994, [Pub. L. 103-239; 108 Stat. 568; 20 U.S.C. 2394 et seq.], the student's school principal shall obtain the written consent of the student's parent or legal guardian. Participation by a student is voluntary and may not be deemed a condition of graduation. Neither school personnel, school district personnel, nor the superintendent of public instruction may impose any academic penalties or any other sanctions on a student for failure to participate. A student's participation in a course, program, or project offered under the auspices of the School-to-Work Opportunities Act of 1994 is subject to all state and federal child labor laws.

**15-34.2-01. Vehicular transportation or lodging may be furnished at option of**

**school board.** The school board of any school district in the state, in its discretion, may furnish to each family living in the district:

1. Vehicular transportation; or
2. The equivalent of the payments received from the state as determined under subsection 2 of section 15-40.1-16, in lodging at some other public school if the same is acceptable to the family.

The board may not accord the benefits of either subsection 1 or subsection 2 to any family which is receiving payments under section 15-34.2-03. In the event any school board elects to furnish vehicular transportation by public conveyance, the distance that each student must reside from the school in order to be entitled to such transportation may be determined by the school board in each district, but all students in the district must be treated on the same basis in accordance with such determination. The furnishing of benefits under this chapter may be extended to families living in the district for the purpose of transporting students to another school district or county agricultural and training school within the state, or another school district outside the state, if the attendance of such students in the other districts is in accordance with the provisions of this title governing the same.

**15-34.2-03. Transportation - Payment optional with school board.** The school board of any school district in the state may pay to each family living more than two miles [3.22 kilometers] from a school in the district which is taught the required length of time, a reasonable sum per day for each day's attendance of a student or students of such family, when transported by an adult member of the family or by a conveyance furnished or paid for by the family, or when the family has paid for lodging for the child, according to the distance between the home of the family and the school. Such distance must be measured by the route from the front door of the school attended to the front door of the family's residence according to the most convenient public course of travel.

**15-34.2-04. Demand for payment - Waiver.** Demand for any payments authorized by a school board under the provisions of this chapter must be made by the family entitled thereto before the close of the school year, or the same must be deemed to be waived. Any payment which has not been made within one year following the date of the demand must be deemed to have been refused and the claim to have expired.

**15-34.2-05. Transportation expense - Report of business manager of the school district.** The business manager of the school

district shall include an item in his annual statement setting forth any amounts spent for transportation of students or in making any payment in lieu of transportation.

**15-34.2-06. Payment of board and lodging for high school students permitted - Levy.** If more convenient or economical, any school district may pay a reasonable allowance instead of providing vehicular transportation for eligible high school students residing in the district to attend a high school in another district. Any school district that furnishes either transportation or an allowance for board and lodging for students attending high schools in another district may levy a tax pursuant to subdivision a of subsection 1 of section 57-15-14.2 for such purposes.

**15-34.2-06.1. Charge for bus transportation optional.** The school board of any school district which has not been reorganized may charge a fee for schoolbus service provided to anyone riding on buses provided by the school district. For schoolbus service which was started prior to July 1, 1981, the total fees collected may not exceed an amount equal to the difference between the state transportation payment and the state average cost for transportation or the local school district's cost, whichever is the lesser amount. For schoolbus service started on or after July 1, 1981, the total fees collected may not exceed an amount equal to the difference between the state transportation payment and the local school district's cost for transportation during the preceding school year. Any districts that have not previously provided transportation for pupils may establish charges based on costs estimated by the school board during the first year that transportation is provided.

**15-34.2-07. Vehicular transportation - Bids, contracts, bonds.** The school board of any school district which furnishes vehicular transportation to any of its schools, prior to the opening of school each year, shall enter into written contracts for the furnishing of such transportation for the ensuing school year. If the vehicle furnished is privately owned, the owner or lessee of the vehicle and the school board may enter into a contract, which may not exceed seven years' time. Except as otherwise provided in section 15-34.2-07.1, the board shall give at least ten days' notice of the time and place of the letting of such contracts and shall call for sealed bids therefor by publication in the official newspaper of the school district. The notices must describe the route to be covered by each contract and must state that the board reserves the right to reject any and all bids, that a bond submitted in a separate

envelope will be required of each successful bidder in the sum of five hundred dollars or such greater sum as may be set by the board, conditioned for the faithful performance of the duties prescribed by the contract, and that the bids submitted must name the person or persons who will operate the vehicle and describe the nature of the vehicle.

**15-34.2-07.1. School transportation contracts - Direct negotiation.** Notwithstanding sections 15-34.2-07 and 15-34.2-08, a contract for the transportation of schoolchildren which was originally bid by and let to a contractor may be renewed by direct negotiation with that contractor provided that two or more written quotations are obtained for the service when possible, or upon sealed bids. At least thirty days before awarding a directly negotiated contract, the school district shall, by published notice, request quotations for the service to be provided. All quotations obtained must be kept on file for a period of at least one year after their receipt. If a contract is made by direct negotiation, all quotations must be maintained as public information. If a contract is made upon sealed bids, the procedure for advertising and awarding bids must conform to the provisions of section 15-34.2-07 except as otherwise provided in this section. A directly negotiated contract may only be entered into at a public meeting of the school district board during which meeting the patrons of the school district are given an opportunity to appear and comment. Notice of the school board meeting must be published at least one week prior to the meeting in the official newspaper of the school district.

**15-34.2-07.2. School fuel contracts.** A school board may purchase transportation fuel or heating fuel as needed by obtaining written quotes from all vendors who have registered with the school district for that school year. School districts must publish registration information at least once each year and may register interested vendors throughout the year.

**15-34.2-08. Contract for vehicular transportation - Conditions for granting.** The school board shall let the contract, in each case except as otherwise provided in section 15-34.2-07.1, to the lowest responsible bidder who furnishes a bond as described in section 15-34.2-07, which will be approved by the board, and who agrees to use a vehicle which, in the judgment of the board, meets standards imposed by the superintendent of public instruction under sections 39-21-27 and 39-21-27.1, is a safe, comfortable, and suitable vehicle for the purpose, and who names one or more drivers who, in the judgment of the board,

are competent and responsible. No contract may be entered into with any member of the board, but a member of the board may be designated in the contract as the operator of a vehicle.

**15-34.2-09. Contents of vehicular transportation contract - Restrictions.** The superintendent of public instruction shall prepare a standard form of contract for the furnishing of vehicular transportation and shall distribute copies thereof, upon request, to the various school districts. A contract for the furnishing of vehicular transportation must:

1. Provide for the operation of any vehicle used in such transportation by the person or persons named in the contract.
2. Describe the vehicle or vehicles which must be used for the transportation.
3. Describe the route or routes as fixed by the school board which the vehicle or vehicles described in the contract shall cover, and provide for the amount of compensation to be paid for transportation.
4. Provide that in case it becomes necessary to change in any particular the route or routes specified in the contract, an equitable adjustment of the compensation payable under the contract must be made by the board and the contractholder.

The contract is assignable only upon the written approval of the board. No vehicle other than one described in the contract may be used to transport students and no person other than the persons named in the contract may operate any schoolbus without the written permission of the school board. In temporary emergencies, the president of the board may grant such permission in writing, but permission given by the president of the board under this section is valid only until the next regular or special meeting of the board.

**15-34.2-10. Arbitration of disagreement as to compensation on change of route.** In case of a change in the route or routes specified in a vehicular transportation contract and the failure of the school board and the contractholder to agree on an adjustment of the compensation specified in the contract, the matter must be submitted to arbitration. One arbitrator must be appointed by the board, and one must be appointed by the contractholder. The two arbitrators thus appointed shall appoint a third arbitrator. The award of the arbitrators must adjust the compensation of the contractholder to meet the changed situation and is binding upon the district and the contractholder.

**15-34.2-11. Transportation of students - Authority over drivers and students.** The operator or operators of vehicles used in the transportation of students under a contract entered into as provided in this chapter are under the supervision and direction of the board, superintendent, principal, and teachers of the schools at all times while on duty. The disciplinary authority of the schools exists over all students while being transported to and from the schools, and the operator is charged with their control and discipline while they are being transported.

**15-34.2-12. School boards' authority to purchase schoolbus equipment.** Repealed by S.L. 1999, ch. 196, § 17.

**15-34.2-13. Storage facilities for buses.** Repealed by S.L. 1999, ch. 196, § 17.

**15-34.2-14. Qualifications, character, and age of schoolbus and school vehicle drivers.** Repealed by S.L. 1999, ch. 196, § 17.

**15-34.2-15. Transportation of students outside state by schoolbus - When permitted.** A school district may extend its route into a bordering state for the purpose of transporting students from such bordering state when the superintendent of public instruction has entered into a reciprocal agreement with such bordering state as provided in chapter 15-40.2.

**15-34.2-16. Transportation of nonpublic elementary and high school students - Comprehensive transportation services - Conditions.**

1. When authorized by the school board of a public school district providing transportation for public elementary and high school students, elementary and high school students attending nonpublic schools may be transported on public schoolbuses to and from the point or points on established public schoolbus routes on such days and during the times that the public school district may authorize and agree to the transportation of such students only when there is passenger room available on such buses, according to the legal passenger capacity for such buses, when such buses are scheduled according to this section; provided, however, no payments may be made from state funds for any mileage costs for any deviation from the established public routes which may be caused by any agreement entered into pursuant to this subsection.
2. The school board of a public school district providing transportation for public elementary and high school students

may utilize the authority conferred by article VII, section 10 of the Constitution of North Dakota and section 54-40-08 to enter into agreements with other political subdivisions, the state, or the federal government for the joint provision and integration of transportation services to the public. All safety requirements imposed by law for schoolbuses and school vehicles apply to transportation services to students provided pursuant to such an agreement, including requirements imposed by title 39 and requirements for schoolbus drivers set forth in section 15-34.2-14. Transportation services to students provided pursuant to this subsection qualify for state aid for transportation pursuant to chapter 15-40.1; however, no payments may be made from state funds for any mileage costs for any deviation from the established schoolbus routes, which may be caused by any agreement entered into pursuant to this subsection.

**15-35-01.1. Approval required for certain school district construction projects.**

1. Notwithstanding the powers and duties of school boards provided by law, all construction, purchase, repair, improvement, renovation, or modernization of any school building or facility within a school district estimated by the school boards to cost in excess of twenty-five thousand dollars may not be commenced unless approved by the superintendent of public instruction.
2. The superintendent of public instruction may not approve the construction, purchase, repair, improvement, renovation, or modernization of any school building or facility unless the school district proposing the project:
  - a. Demonstrates the need for the project, the educational utility of the project, and the ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project, or demonstrates potential utilization of the project by a future reorganized school district; and
  - b. Demonstrates the capacity to pay for the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32 after receiving input from the state board of public school education.

3. In the event of disagreement between the superintendent of public instruction and the school board applying for approval of a construction project under this section, the school board may appeal the application to the state board of public school education and the decision of the state board approving or disapproving the application is final.
4. For purposes of this section, "facility" includes a parking lot, athletic complex, or any other improvement to real property owned by the school district.
5. This section does not apply to any construction, purchase, repair, improvement, renovation, or modernization required as part of a plan of correction approved by the state fire marshal under section 15-35-01.2, unless the cost of the improvements exceeds seventy-five thousand dollars.

**15-35-15. Duty of superintendent of public instruction to enforce statutes.** The provisions of this chapter must be enforced by the superintendent of public instruction or some person designated by him for that purpose.

**15-35-16. Penalty for improper erection of school building.** Any architect or other person who draws plans or specifications for, or who superintends the erection of, a public school building, or who erects or constructs a public school building in violation of the provisions of this chapter, is guilty of an infraction.

**15-35-17. Penalty for violating provisions of chapter.** Any person who violates any of the provisions of this chapter, and each member of any board concurring in any such violation by such board, is, unless another penalty is specifically provided in this chapter, guilty of an infraction.

**15-38-01. Superintendent of schools - Powers and duties.** The superintendent of schools, in districts where a superintendent is employed, shall supervise the administration of the courses of study, visit schools, examine classes, and have general supervision of the professional work of the schools, including the holding of teachers' meetings and the classification of teachers, all of which are subject to the final authority of the school board. From time to time, he shall make reports to the board embodying recommendations relative to the employment of teachers and janitors, the adoption of textbooks, changes in the courses of study, enforcement of discipline, and school matters in general. He shall make such other reports and perform such other duties as the board may direct and delegate. The superintendent of schools shall furnish to the school

district a bond conditioned that he will honestly and faithfully discharge the duties of his office and that he shall safely keep and render a true account of all funds and property that come into his hands. Such bond must be in an amount set by the school board but may not be less than the maximum amount of money that shall be subject to the superintendent's control at one time. Such bond must be written through the state bonding fund and must be at the expense of the school district.

**15-38-07. Required subjects in all schools.** The following subjects must be taught in all public and private schools to pupils who are sufficiently advanced to pursue the same: spelling, reading, writing, arithmetic, language, English grammar, geography, United States history, civil government, nature study, and elements of agriculture. Physiology and hygiene also must be taught, and in teaching such subject, the teacher shall:

1. Give special and thorough instruction concerning the nature of alcoholic drinks and narcotics and their effect upon the human system.
2. Give simple lessons in the nature, treatment, and prevention of tuberculosis and other contagious and infectious diseases.
3. Give, to all pupils below the high school and above the third year of schoolwork, not less than four lessons in hygiene each week for ten weeks of each school year from textbooks adapted to the grade of the pupils.
4. Give, to all pupils in the three lowest primary school years, not less than three oral lessons on hygiene each week for ten weeks of each school year, using textbooks adapted to the grade of the pupils as guides or standards for such instruction.

**15-38-08. Study of Constitution of the United States.** In all public and private schools in the state, regular courses of instruction in the Constitution of the United States must be given, beginning not later than the opening of the eighth grade and continuing in the high school, to an extent to be determined by the superintendent of public instruction.

**15-38-09. Physical education to be taught in all schools.** Physical education must be taught as a regular subject to all pupils in all departments of the public schools and offered in all educational institutions supported wholly or in part by money from the state. All school boards and boards of educational institutions receiving money from the state shall make provision for instruction in all the schools and

institutions under their respective jurisdictions and shall adopt such methods as will adapt progressive physical exercises to the development, health, and discipline of the pupils in the various grades and classes of such schools and institutions.

**15-38-10. Moral instruction.** Moral instruction tending to impress upon the minds of pupils the importance of truthfulness, temperance, purity, public spirit, patriotism, international peace, respect for honest labor, obedience to parents, and deference to old age, must be given by each teacher in the public schools.

**15-38-11. Teaching humane treatment of animals.** Oral instruction in the humane treatment of animals must be given in each public school.

**15-38-12. Reading of Bible optional.** The Bible may not be deemed a sectarian book. At the option of the teacher, it may be read in school for not to exceed ten minutes daily, but no sectarian comment may be made thereon. No pupil may be required to read it or to be present in the schoolroom during the reading thereof contrary to the wishes of his parents or guardians or other person having him in charge.

**15-38-16. Responsibilities of the teaching profession.** The legislative assembly hereby declares the profession of teaching in the public schools of this state to be a profession affected by high public interest, and that it is in the best interest of the state that such profession be recognized and that it accept its professional responsibilities in the development and promotion of high standards of ethics, conduct, and professional performance and practices. For the purposes of sections 15-38-16 through 15-38-19, the "profession of teaching" or "teaching profession" means persons engaged in teaching in the public schools and persons providing related administrative, supervisory, or other services in the public schools requiring licensure from the education standards and practices board.

**15-38-17. Education standards and practices board and administrator's professional practices board.** The education standards and practices board consists of nine members. The governor shall appoint four classroom teachers from public schools, one classroom teacher from a private school, one school board member, two school administrators, and one dean of a college of education. The superintendent of public instruction or the superintendent's designee shall serve as a nonvoting ex officio member. The administrator's professional practices board consists of five members

from the education standards and practices board. The administrator's professional practices board includes the two school administrators who are members of the education standards and practices board, the one school board member who is a member of the education standards and practices board, and two teacher members who are members of and are selected by the education standards and practices board. The term of office of members of the education standards and practices board and the administrator's professional practices board shall be three years commencing on July first of the year of the appointment. Vacancies must be filled for an unexpired term in the same manner as original appointments. A person may not serve for more than two consecutive terms as a member of either board. Members of the current teachers' professional practices commission may serve out their remaining terms.

The education standards and practices board and the administrator's professional practices board shall each annually select a chairman and vice chairman, and the executive director of the education standards and practices board or the executive director's designee shall serve as secretary. Meetings of either board must be held after ten days' notice to all members at the call of the chairman or upon request in writing of a majority of either board. A majority constitutes a quorum and a majority of the quorum has authority to act upon any matter properly before either board. Each board shall adopt its own rules of order and procedure not inconsistent with sections 15-38-16 through 15-38-19 and shall hold meetings pursuant to the provisions of sections 15-38-16 through 15-38-19.

The members of each board are entitled to receive twenty-five dollars for each day actually engaged in the service of the appropriate board and must be paid actual and necessary traveling and other expenses at the same rate as for employees of the state. A member of either board may not lose the member's regular salary or the above compensation while serving on official business of the appropriate board.

**15-38-18. Duties of the education standards and practices board.** It is the duty of the board to supervise the licensure of teachers; to set standards for and approve teacher preparation programs; to issue minor equivalency endorsements; to develop and revise, consistent with state law, professional codes or standards relating to ethics, conduct, and professional performance and practices; and to provide recommendations for in-service education of persons engaged in the profession

of teaching in the public schools. In the development of professional codes and standards, the board shall solicit the assistance of members of the teaching profession and representatives of school administrators, school board members, teacher education professors, and other interested citizens. The board shall adopt approved or revised codes and standards as rules in accordance with chapter 28-32. The board may enter into agreements with other states to acquire reciprocal approval of teacher preparation programs, apply for and receive federal or other funds on behalf of the state for purposes related to its duties, and to perform any other duty that relates to the improvement of instruction through teacher education, professional development, and continuing education programs. The board has the powers and privileges of a corporation, including the right to sue and be sued in its own name as the board. The venue of all actions in which the board is a party must be Burleigh County, North Dakota. The board shall appoint an executive director to serve at its discretion. The executive director shall perform the duties assigned by the board. The board shall authorize the employment of staff necessary for the sound and economic administration of its duties, responsibilities, and functions. The executive director shall hire the staff, subject to the approval of the board.

**15-38-18.1. Education standards and practices board - Certification of North Dakota American Indian language instructors.** The education standards and practices board may certify an individual as an instructor of North Dakota American Indian languages and culture if the individual is recommended for certification to teach North Dakota native languages by the indigenous language boards created by the four North Dakota tribal governments of this state's reservations and if the individual:

1. Displays competence in North Dakota American Indian languages and culture and has successfully completed a three-semester-hour course in classroom instruction at a tribal college or other institution of higher education; or
2. Holds a baccalaureate degree and has knowledge of and experience in North Dakota American Indian languages and culture.

**15-38-18.2. Education standards and practices board - Initial licensure of teachers - Application fee - Background - Provisional teaching certificates.** The education standards and practices board may charge an application fee established by the

board by rule. The education standards and practices board shall check, or cause to be checked, the background of each applicant for initial licensure as a teacher. The board shall require each applicant for licensure to file a complete set of the applicant's fingerprints, taken by a law enforcement officer, and all other information necessary to complete a state and nationwide criminal history check with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing. All costs associated with the background check and with obtaining and processing the fingerprints are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may only be used by the board for determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure. The board may adopt by rule, procedures for issuing forty-day provisional teaching certificates to applicants for initial licensure pending completion of the background check. A provisional teaching certificate may be renewed upon approval of the board. An applicant for a provisional teaching certificate may be charged a fee established by the board by rule, but no fee may be imposed for the renewal of a provisional teaching certificate.

**15-38-19. Complaints against teachers and school administrators.** The education standards and practices board or the administrator's professional practices board shall accept complaints against any member of the teaching profession engaged in teaching or administration alleging a violation of rules adopted in accordance with section 15-38-18 or alleging grounds as set forth in section 15-36-15. The complainant shall prepare and file a clear and concise complaint with the appropriate board. The complaint must contain a concise statement of the claims or charges upon which the complainant relies. The complaint must be signed and may include supporting documentation. Upon the filing of the complaint with the appropriate board, that board shall serve a copy of the complaint and any supporting documentation upon the teacher or administrator personally or by certified mail. Within twenty days of the receipt of the complaint by the teacher or administrator, the teacher or administrator may file with the appropriate board a clear and concise answer to the complaint. The answer may include supporting documentation. If the teacher or administrator fails to file an answer with the appropriate board, the allegations in the

complaint will be deemed admitted and the appropriate board shall proceed to hold a hearing pursuant to section 15-36-16. If an answer is submitted by the teacher or administrator, the appropriate board shall hold a meeting for the purpose of reviewing and discussing the documentation submitted by the respective parties. No testimony by any witnesses may be permitted at this meeting. Following the meeting, the board may dismiss a complaint as unfounded, issue a written warning and reprimand, or, upon the determination that sufficient evidence exists to sustain the charges, order a hearing pursuant to section 15-36-16.

**15-41-06. High school courses - Requirements - Credits - Alternative curriculum plans.** Four units of high school work must be considered the minimum number of any year from the ninth grade through the twelfth grade. However, students in their fourth year of standard high school coursework may be enrolled in fewer than four units if the students require fewer than four units for graduation and if the school board of their school district of attendance has adopted an alternative high school senior curriculum plan. An alternative high school senior curriculum plan may be adopted by board action, and must contain specifically described criteria under which high school seniors may be enrolled in fewer than four units. An alternative high school curriculum plan of coursework becomes effective only following formal approval by the superintendent of public instruction, and no student is eligible to be enrolled in fewer than four units of coursework in his or her twelfth-grade year unless that student can graduate during that same school year while carrying fewer than four units. A school board is not obligated to adopt an alternative high school senior curriculum plan, but once having adopted such a plan, a district must permit high school seniors satisfying criteria set forth in the plan to be enrolled in fewer than four units in accordance with this section. All unit courses must be taught a minimum of forty minutes a day for at least one hundred eighty days, subject to the provisions of section 15-47-33, except that all natural science courses must exceed forty minutes to such an extent as may be determined by the superintendent of public instruction. In all high schools and in all schools maintaining any of the grades from the ninth to the twelfth and doing high school work, it must be made possible for each grade to complete four units of work each year. The work which is done by pupils in any school which does not conform to the requirements contained in this

section may not be accredited by the superintendent of public instruction through state high school examinations or otherwise.

**15-41-24. High schools - Minimum curriculum.** The following units of study must be made available to all students in each public and private high school in this state at least once during each four-year period, and each private high school shall comply with the requirements of this section if such high school is to receive approval by the department of public instruction:

1. English, four units.
2. Mathematics, three units.
3. Science, four units.
4. Social studies, three units. Effective July 1, 1994, social studies must include one unit of world history and one unit of United States history, each of which must be integrated with a strong geography component.
5. Health and physical education, one unit.
6. Music, one unit.
7. Any combination of the following course areas: business education, economics and the free enterprise system, foreign language, industrial arts, vocational education, six units. For purposes of this subsection vocational education includes home economics, agriculture, office education, distributive education, trade industrial, technical, and health occupations.

Each public or private high school may count for purposes of compliance with this section those vocational education courses which are offered through cooperative arrangements approved by the state board for vocational and technical education.

**15-41-25. High schools - Teacher qualification.** Except as provided in subsection 21 of section 15.1-09-33, every teacher in any high school in this state teaching any of the course areas or fields mentioned in section 15-41-24 must have a valid professional teaching license and must have a major or minor or a minor equivalency endorsement issued by the education standards and practices board in the course areas or fields that the teacher is teaching if the high school is to receive any approval by the department of public instruction. However, a teacher granted a license to teach in the disciplines of trade, industrial, technical, or health under chapter 15-20.1 and possessing neither a major nor a minor in the field in which the teacher is employed does not affect the approval of the employing school district. Any minor equivalency previously granted by the

superintendent of public instruction remains valid.

**15-41-28. American sign language - High school elective.** American sign language may be offered as an elective at the high school level, in accordance with rules adopted by the superintendent of public instruction.

**15-43-01. Textbooks - Statement and bond required as a condition to sale.** Before any person, firm, corporation, or limited liability company shall offer for selection, adoption, contract, sale, or exchange any school textbook or book for use in the schools of this state, such person, firm, or corporation shall:

1. File in the office of the superintendent of public instruction a sworn statement setting forth the published list price and the lowest wholesale price at which books are sold to any school board, school corporation, or school commission anywhere in the United States, and the lowest price at which the book is exchanged for an old book in the same subject of like grade and kind but of a different series, based upon three-year and five-year contract periods.
2. File with the superintendent of public instruction a bond running to the state of North Dakota, with a surety company authorized to do business in this state as surety thereon, in a penal sum of not less than two thousand dollars nor more than ten thousand dollars, the sum to be determined by the superintendent, conditioned as follows:
  - a. That any book listed in the statement, and in any other statement subsequently filed by the person, firm, corporation, or limited liability company, shall be supplied by the publisher to any school district in the state of North Dakota at the price and terms contained in the statement.
  - b. That the price and terms filed are to be reduced automatically in North Dakota whenever reductions are made by the publisher elsewhere in the United States so that at no time shall any book so filed and listed be sold to district school boards, or to their authorized purchasing agents, at a higher price than is received for the book by the publisher elsewhere in the United States.
  - c. That in case an abridged or special edition of any book shall be prepared, the person, firm, corporation, or limited liability company

manufacturing the same shall sell the special edition to district school boards in this state, or to their authorized purchasing agents, at the same wholesale price as that for which the book is sold elsewhere.

- d. That such person, firm, corporation, or limited liability company will not enter into any understanding, agreement, or combination to control prices or restrict competition in the sale of school textbooks.

**15-43-02. Approval of bond for sale of textbooks - License by superintendent of public instruction.** The bond described in section 15-43-01 must be approved as to form by the attorney general, and upon approval, the person, firm, corporation, or limited liability company filing the bond may be licensed by the superintendent of public instruction to sell in this state the book or books as set forth in the published list price filed in the office of the superintendent.

**15-43-03. Breach of conditions in bond - Proceedings to collect on bond.** If any person, firm, corporation, or limited liability company supplies to any district school board, or any purchasing agent thereof, books at a higher price than in the published list price filed in the office of the superintendent of public instruction or charged elsewhere in the United States, the county superintendent of schools, on written complaint filed by the school board, shall inform the superintendent of public instruction of the breach of the terms of the bond. The superintendent shall notify the person, firm, corporation, or limited liability company of the complaint, and if the entity disregards the notice or fails to comply with the terms of the agreement filed with the superintendent, the bond must be forfeited, and the attorney general, on written request of the superintendent of public instruction, shall proceed to collect the full amount thereof.

**15-43-05. Inducements to purchase textbooks prohibited - Sample copies.** No person, firm, corporation, or limited liability company shall obtain or attempt to obtain within this state the adoption, selection, or purchase of, or contract for, any school textbook by making any reward or promise of a reward to any teacher or school officer. No person, firm, corporation, or limited liability company shall offer or give emoluments, money, or any valuable thing, promise or employment, or any other inducement, to any teacher or school officer in any school district for any vote or promise of vote, or for his influence, for the selection of any schoolbook for use in this

state. This section shall not prohibit any person, firm, corporation, or limited liability company from giving, or any school officer or teacher from receiving, a reasonable number of sample schoolbooks for examination. Any school officer or teacher who receives sample books for examination shall deliver the samples to the business manager of the school district after such examination, and the books then shall become the property of the district.

**15-43-12. Penalty.** Any person violating any of the provisions of this chapter is guilty of an infraction.

**15-44-01. State tuition fund - Source.** The net proceeds arising from all fines for violation of state laws, from leasing the school lands, and the interest and income from the state permanent school fund must be paid into the state treasury and constitutes the state tuition fund.

**15-44-02. Reports of county treasurer.**

The county treasurer shall receive from the proper officers the net proceeds of fines for violation of state laws, and all moneys arising from leasing of school lands within the county, and shall forward a detailed statement of moneys so collected, specifying the amount received from each source, to the state treasurer by the fifteenth of each month.

**15-44-03. Certificate by office of management and budget - Apportionment by superintendent of public instruction - Warrant - Payment.** The office of management and budget on or before the third Monday in February, April, August, October, and December in each year, shall certify to the superintendent of public instruction the amount of the state tuition fund. The superintendent shall apportion such fund among the several school districts of the state in proportion to the number of children of school age residing in each as shown by the last enumeration provided for by law, and shall pay the amount apportioned to the respective school districts. Payments from the state tuition fund must be combined with and paid at the same time as per student payments pursuant to section 15-40.1-05.

**15-45-01. Establishing kindergartens - Election on mill levy.** The school board of any school district may, upon its own motion, establish free public kindergartens in connection with the public schools of the district for the instruction of resident children below school age during the regular school term. A school board which establishes free kindergartens may levy a tax pursuant to subdivision p of subsection 1 of section 57-15-14.2. On a petition signed by qualified electors of the school district comprising at least five percent of the number

of persons enumerated in the school census for that district for the most recent year such census was taken, but in no case less than twenty-five qualified electors, the school board must submit the question of establishing a kindergarten program at the next annual or special school election. The question must be approved by the qualified electors of the district by the respective margins of electorate approval as provided for in section 57-15-14.

**15-45-02. Kindergarten curriculum - Approval requirements.** All public kindergartens must comply with the following requirements:

1. All kindergarten teachers must hold valid licenses issued under rules adopted by the education standards and practices board as provided in chapter 15-36.
2. The governing body of each kindergarten shall submit to the superintendent of public instruction and must follow a curriculum providing developmentally appropriate skills in the areas identified in section 15-38-07 and promulgated under subsection 4 of section 15-29-08.
3. All kindergartens shall provide the equivalent of a minimum of thirty full days of instruction. The school board shall determine whether kindergarten shall be provided on a half-day or a full-day basis.
4. All kindergartens shall comply with all municipal and state health, fire, and safety laws.
5. No kindergarten may enroll a child who is not five years old by midnight August thirty-first of the year of enrollment, except a child who by reason of special talents or abilities as determined by a series of developmental and readiness screening instruments approved by the superintendent of public instruction and administered by the persons operating the kindergarten. A child who has been enrolled in another approved kindergarten program may be enrolled at a younger age. However, no child may start kindergarten in any year unless that child is five years old by the following January first.

Any person operating a private or parochial kindergarten may seek approval from the superintendent of public instruction and those programs must meet the requirements of this section in order to be approved. Only programs receiving approval from the superintendent of public instruction may be called approved kindergartens.

**15-45-03. Accreditation rules.** The superintendent of public instruction may adopt rules for the accreditation of all kindergartens operated in this state. All kindergartens that comply with these rules are accredited kindergartens.

**15-45-04. Discontinuance of kindergartens.** Kindergartens may be discontinued by resolution of the school board.

**15-47-00.1. Definition.** In this title, unless the context or subject matter otherwise requires, "vocational education" means vocational and technical education.

**15-47-26. Teacher defined.** The term "teacher", as used in section 15-47-28, includes all teachers, principals, and superintendents in all public school districts within this state, and all persons employed in teaching in any state institution, except institutions of higher education, the North Dakota youth correctional facility, the school for the deaf, and the school for the blind. The term "teacher", as used in sections 15-47-27 and 15-47-38, includes all teachers, principals, assistant superintendents, and all persons employed in teaching in any state institution, except institutions of higher education, the North Dakota youth correctional facility, the school for the deaf, and the school for the blind. For purposes of the sections above referenced, the term "teacher" does not include teachers who are replacing teachers on leave of absence or sabbatical leave or, for purposes of nonrenewal, teachers who are in their first year of teaching and teachers who are employed after January first as to that school year. A teacher hired after January first has all the rights provided in section 15-47-27.1 except that only one evaluation is required during that school year.

**15-47-27. Time for renewal of teachers' contracts.** Any teacher who has been employed by any school district in this state during any school year, must be notified in writing by the school board not earlier than March first and not later than May first in the school year in which that teacher has been employed to teach, of the determination not to renew the teacher's contract for the ensuing school year, if the determination has been made; and failure to give written notice on or before that date constitutes an offer to renew the contract for the ensuing school year under the same terms and conditions as the contract for the then current year. On or before May first in any year and not earlier than March first, all teachers must be notified of a date, which must not be less than thirty days after the date of the notice, upon which they shall accept or reject proffered reemployment, and failure by the teacher to accept the offer within that time

is a rejection of the offer. Any teacher accepting the offer of reemployment, either by the action or nonaction of the school board on or before May first, as herein provided, is entitled to the usual written contract for the ensuing school year under law and shall notify the school board in writing of the teacher's acceptance or rejection on or before the date specified or before June first, whichever is earlier. Failure by the teacher to provide that notification relieves the school board of the continuing contract provision of sections 15-47-26 through 15-47-28. This section does not repeal or limit the operation of any existing law with reference to the dismissal of teachers for cause. Each district shall have an established system through which two written evaluations are prepared for every teacher employed by the district for each of the first three school years the teachers are employed by the school district. These written performance reviews must be completed and made available to the teacher no later than December fifteenth for the first review and March fifteenth for the second review each year. After three years of employment by a school district, each teacher must be evaluated at least once every school year, and the written performance review must be completed and made available to the teacher no later than March fifteenth.

**15-47-27.1. First-year teachers - Evaluation - Renewal and nonrenewal of contracts.**

Each school district in this state shall have an established system through which two written evaluations are prepared during each school year for every teacher in his or her first year of teaching. The evaluation must be in the form of written performance reviews, and the first review must be completed and available to first-year teachers no later than December fifteenth and the second review must be completed and made available no later than March fifteenth of each year. A school board contemplating not renewing the contract of a first-year teacher shall, after reviewing the evaluations, meet in an executive session with the teacher to discuss the reasons for the proposed nonrenewal. The teacher may be represented at the meeting by two representatives of the teacher's own choosing and the teacher's spouse or one other family member of the teacher's choice.

No claim for relief for libel or slander may be brought for any statement expressed either orally or in writing at any executive session of the school board held pursuant to this section.

If a school board determines not to renew the contract of a first-year teacher, written notification of the decision of nonrenewal must be given to the teacher no earlier than April

fifteenth nor later than May first. Failure by a school board to provide written notification of nonrenewal to a first-year teacher by May first constitutes an offer to renew the contract of the teacher for the ensuing school year under the same terms and conditions as the contract for the current year. The notification of nonrenewal given to a first-year teacher must contain a detailed description of the reason or reasons for the nonrenewal.

**15-47-27.2. Teachers employed by the North Dakota youth correctional center, school for the deaf, and school for the blind.**

1. The term "teacher", as used in this section, means a contracted state employee licensed by the education standards and practices board to teach in this state, whose primary task is to provide direct instruction in a classroom, or on an individualized basis, and whose work schedule must be in accordance with the school calendar, guidance counselors, school librarians, itinerant outreach teachers, and vocational and other technological resource personnel who are required to meet the same teaching and licensure requirements. The term does not include superintendents, assistant superintendents, principals, supervisory personnel, substitutes, and all paraprofessionals.
2. The superintendent of public instruction for the school for the blind and the school for the deaf, and the director of the division of juvenile services with the approval of the director of the department of corrections and rehabilitation for the North Dakota youth correctional center in administering the schools under their authority shall develop contracts for employment of teachers in their departments and establish teacher personnel policies needed for administration of the schools. The contracts may include assignment of job duties, teacher salaries, hours, and job titles, a school calendar, and a salary schedule. The personnel policies adopted under this section must include job descriptions and nonrenewal, discipline, and dismissal procedures, and must seek to harmonize the rights of teachers with law governing state employees. The superintendent of public instruction and the director of the division of juvenile services with the approval of the director of the department of corrections and rehabilitation shall work together in the development of personnel policies for teachers employed

by their respective departments. Each teacher is entitled to receive a printed copy of a master agreement, which consists of a policy manual and an individualized contract specifying the annual school calendar and each teacher's contracted hours, rate of pay, job title, salary schedule, applicable benefits, and other details pertinent to a teacher's employment.

**15-47-28. Suspension of professional teaching license for breach of contract.** In the event of breach of contract on the part of a teacher or administrator, the education standards and practices board or the administrator's professional practices board shall suspend the individual's professional teaching license for a period not to exceed one year, during which time it is unlawful for such teacher or administrator to receive payment for teaching or administration in the public schools of North Dakota.

**15-47-34. Education of deaf-blind children.** The superintendent of public instruction, after consulting with the superintendents of the school for the blind, the school for the deaf, and the developmental center at westwood park, Grafton, shall determine whether those children under the age of twenty-one, who are deaf and blind, should be sent to the school for the blind, the school for the deaf, or the developmental center at westwood park, Grafton. If, in the judgment of the superintendent of public instruction, there are not adequate facilities for the education of deaf-blind children in this state, the superintendent of public instruction may determine whether the deaf-blind children should be sent to any school or institution outside of North Dakota providing a qualified program of education for deaf-blind children.

The superintendent of public instruction may pay for the education of those children in out-of-state institutions within the limitations of legislative appropriations for that purpose. The funds may be spent for room, board, tuition, transportation, and other items necessarily relevant to the education of the children.

In interpreting and carrying out the provisions of this section, the words "deaf-blind child" wherever used, include any child whose combination of handicaps of deafness and blindness prevent the child from profiting satisfactorily from educational programs provided for the blind child or the deaf child.

The superintendent of public instruction may make rules necessary and proper for carrying out this section.

**15-47-35. Ten days' annual sick absence - Cumulative.** The employment contract of any

teacher, as defined in section 15-47-26, shall provide for at least ten days' permissible absence annually due to sickness, without loss in pay for the period; and shall further provide for any unused portion of such annually permissible absence to be cumulative from year to year, with a minimum accumulation of thirty days.

**15-47-38. Legislative intent in employment of teachers - Notification of discharge or failure to renew - Hearing.**

1. The legislative assembly, in recognition of the value of good employer-employee relationships between school boards of this state and the teachers employed in the school systems, the need to recruit and retain qualified teachers in this state, and further in recognition of the many intangibles in evaluating the performance of individual members of the teaching profession, urges that each school board of this state ensure through formally adopted policies, that channels of communication exist between the board, supervisory personnel, and teachers employed within its school system. In the very sensitive area of discharge of teachers for cause prior to the expiration of the term of the teachers' contracts, or in decisions not to renew the contracts of teachers, school boards shall give serious consideration to the damage that can result to the professional stature and reputation of such teachers, which stature and reputation were acquired only after the expenditure of substantial time and money in obtaining the necessary qualifications for such profession and in years of practicing the profession of teaching; and that in all decisions of school boards relating to discharge or refusal to renew contracts, all actions of the board be taken with consideration and dignity, giving the maximum consideration to basic fairness and decency.
2. The school board of any school district contemplating discharging a teacher for cause prior to the expiration of the term of the teacher's contract shall notify the teacher in writing of that fact at least ten days prior to the date of contemplated discharge. The teacher must be informed in writing of the time and place for a special meeting of the school board to be held on the question of the teacher's discharge prior to a final decision on the matter. The teacher must also be informed in writing of the teacher's right to demand a specification

of the reasons for discharge, which must, upon receipt of the demand of the teacher, be furnished not less than five days prior to the meeting to be held on the question of the teacher's discharge. The reasons must be sufficient to justify the contemplated action of the board and may not be frivolous or arbitrary. At the meeting with the board, if the teacher has informed the board in writing at least two days prior thereto that the teacher will contest the charges brought against the teacher, the board must sustain the charges with evidence produced at the hearing with witnesses who are subject to cross-examination by the teacher or the teacher's representative. A witness, if a minor, must be accompanied by a parent or parents, legal guardian, or legal counsel, if requested by the minor or the minor's parents. The teacher may then produce witnesses as may be necessary to refute the charges, which witnesses are subject to cross-examination. All procedures relative to evidence, subpoena of witnesses, oaths, record of testimony, decision, rehearing, appeals, certification of record, scope and procedure for appeals, appeals to the supreme court, and other administrative procedures must be conducted in accordance with chapter 28-32. The meeting must be an executive session of the board unless both the school board and the teacher requesting the meeting shall agree that it is to be open to other persons or the public. The teacher may be represented at the meeting by two representatives of the teacher's own choosing; and the teacher's spouse, or one other family member of the teacher's choice, may also attend the meeting if the teacher so desires. In addition to board members, the business manager of the school district, and the superintendent, the school board may be represented by two other representatives of its own choosing at such executive session. If the teacher so requests, the board must grant a continuance of not to exceed seven days unless good cause is otherwise shown. No cause of action for libel or slander may be brought for any statement expressed either orally or in writing at any executive session of the school board held for the purposes provided for in this section.

3. A school board may dismiss a teacher, effective immediately, for any of the following causes:
  - a. Immoral conduct, insubordination, or conviction of a felony.
  - b. Conduct unbecoming a teacher which requires the immediate removal of a teacher from the teacher's classroom duties.
  - c. Failure without justifiable cause to perform contracted duties.
  - d. Gross inefficiency which the teacher has failed to correct after reasonable written notice.
  - e. Continuing physical or mental disability which renders the teacher unfit or unable to perform the teacher's duties as a teacher.

A school board dismissing a teacher for cause under this subsection shall report the dismissal to the teachers' professional practices commission.
4. The school board by unanimous vote may suspend the teacher from regular duty if such action is deemed desirable during the process of determining if cause for dismissal exists. A school board shall address the matter of a teacher's suspension in an executive session, unless both the teacher and the school board agree that the matter may be addressed in the presence of other persons or at an open meeting. If, upon final decision, the teacher is dismissed, the board may in its discretion determine the teacher's salary or compensation as of the date of suspension. If the final decision is favorable to the teacher, there shall be no abatement of salary or compensation.
5. The school board of any school district contemplating not renewing a teacher's contract, as provided in section 15-47-27, shall notify the teacher in writing of such contemplated nonrenewal no later than April fifteenth. The teacher must be informed in writing of the time, which may not be later than April twenty-first, and place of a special school board meeting for the purpose of discussing and acting upon such contemplated nonrenewal. The teacher must also be informed in writing of the reasons for nonrenewal. The reasons given by the school board for its decision not to renew a teacher's contract must be drawn from specific and documented findings arising from formal reviews conducted by the board with respect to the teacher's

overall performance. Each district shall have an established system through which written evaluations are prepared for every teacher employed by the district as provided in section 15-47-27.

The reasons given by the board for not renewing a teacher's contract must be sufficient to justify the contemplated action of the board and may not be frivolous or arbitrary but must be related to the ability, competence, or qualifications of the teacher or the necessities of the district such as lack of funds calling for a reduction in the staff. At the meeting with the board the teacher may then produce such evidence as may be necessary to evaluate the reasons for nonrenewal, and either party may produce witnesses to confirm or refute the reasons. The administrator shall substantiate the reasons with written or oral evidence presented at the meeting, unless the administrator is the subject of the contemplated nonrenewal, in which case the board shall substantiate the reasons with written or oral evidence presented at the meeting. All witnesses are subject to questioning for the purposes of clarification. At the meeting, the board shall discuss the evidence presented. If the reasons for nonrenewal have not been substantiated, the nonrenewal proceedings will be dismissed. The meeting must be an executive session of the board unless both the school board and the teacher agree that it is to be open to other persons or the public. The teacher may be represented at the meeting by any two representatives of the teacher's own choosing; and the teacher's spouse, or one other family member of the teacher's choice, may also attend the meeting if the teacher so desires. In addition to board members, the business manager of the school district, and the superintendent, the school board may be represented by two other representatives of its own choosing at such executive session. At the meeting, if the teacher so requests, the teacher must be granted a continuance of not to exceed seven days. No claim for relief for libel or slander lies for any statement expressed either orally or in writing at any executive session of the school board held for the purposes provided for in this section. The determination not to renew a contract if made in good faith is final and binding on all

parties. Final notice of the determination not to renew a contract must be given in writing by May first as provided in section 15-47-27.

6. No teacher may be discharged and no school board may refuse to renew a teacher's contract under this section based solely upon an investigation of alleged child abuse or neglect made under section 50-25.1-05.1 in which a determination was made that no probable cause existed to believe that the child abuse or neglect was indicated, or in which a determination was made that probable cause did exist to believe that child abuse or neglect was indicated but a decision relating to the alleged abuse or neglect has not been made by a court of competent jurisdiction. If a school board is notified that a finding of probable cause is made, this subsection does not prevent the school board from moving to suspend the teacher under the provisions of subsection 4.

**15-47-38.2. Evaluation, renewal, or discharge of superintendents of school districts.**

1. The term "superintendent" as used in this section includes district superintendents of schools and chief administrators of multidistrict special education units and multidistrict vocational education centers.
2. At least once before December fifteenth, the school board of each school district shall conduct a formative evaluation of the performance of the superintendent employed by the district. The board shall also conduct a formal and written evaluation of the performance of the superintendent by March fifteenth and provide a copy to the superintendent. The written evaluation of a superintendent's performance must include recommendations with respect to all subject areas within which the school board considers the performance to be unsatisfactory. The school board must provide in reasonable detail the basis for its assessment of the unsatisfactory performance.
3. The superintendent, upon receipt of an evaluation, may respond in writing to the substance and content of the evaluation, and the response must become a permanent attachment to the superintendent's personnel file. The school board shall meet with the

- superintendent to discuss the evaluation.
4. Throughout the term of a contract between a school district and a superintendent, the superintendent is subject to discharge for good and just causes as described in subsection 3 of section 15-47-38. However, the school board may not arbitrarily or capriciously require the superintendent's dismissal.
  5. If a school district governing body intends to discharge a superintendent, the superintendent must be served with a detailed and written description of the reasons given by the school board for the proposed dismissal. Following service of the written description, the superintendent must be granted a hearing before the governing body for which reasonable advance notice is required. If a superintendent chooses to be accompanied by an attorney, the legal expenses attributable to that representation must be incurred by the superintendent.
  6. The superintendent may produce necessary witnesses to refute charges made by the board against the superintendent or reasons given by the board for its proposal to discharge the superintendent. The witnesses are subject to cross-examination.
  7. All procedures relative to evidence, subpoena of witnesses, oaths, records of testimony, decisions, rehearings, appeals, certification of records, scope and procedures for appeals, and appeals to the supreme court must be conducted in accordance with the provisions of chapter 28-32. The meeting must be conducted in an executive session of the board, unless both the school board and the superintendent agree that the meeting be open to the public.
  8. The superintendent may be represented at the meeting by two persons chosen by the superintendent. The superintendent's spouse or one other family member, may also attend the meeting.
  9. In addition to board members and the business manager of the school district, the school board may be represented by two persons chosen by the school board.
  10. If the superintendent requests, the superintendent must be granted a continuance by the board not to exceed seven days, unless good cause for a longer continuance is shown.
  11. No claim for relief for libel or slander may accrue from any statement expressed orally or in writing at an executive session of the school board held for the purposes provided in this section.
  12. A school board dismissing a superintendent for cause shall report the dismissal to the administrator's professional practices board. The school board by unanimous vote may suspend the superintendent from regular duty if such action is deemed desirable during the dismissal process. If the superintendent is dismissed, the board may determine the superintendent's salary or compensation as of the date of suspension. If the final decision is favorable to the superintendent, there may be no abatement of salary or compensation.
  13. The school board of a school district contemplating the contract nonrenewal of a superintendent who has been employed in the school district as a superintendent for at least two consecutive years, shall notify the superintendent in writing of the contemplated nonrenewal no later than April fifteenth. The school board shall inform the superintendent in writing of the time, which may not be later than April twenty-first, and the place of a special school board meeting for the purpose of discussing and acting upon the contemplated nonrenewal. The school board shall inform the superintendent in writing of the reasons for nonrenewal. The reasons may not be frivolous or arbitrary, must be related to the ability, competence, or qualifications of the superintendent, must be sufficient to justify the contemplated action of the board, and must be drawn from specific and documented findings arising from the formal and written evaluations of the superintendent's performance as required in subsection 2, except when the nonrenewal results from a necessary reduction in staff. At the board meeting, the superintendent may produce evidence necessary to evaluate the reasons for

nonrenewal, and either party may produce witnesses to confirm or refute the reasons. The school board shall substantiate the reasons or cause the reasons to be substantiated with written or oral evidence presented at the meeting. All witnesses are subject to questioning for purposes of clarification. The superintendent may be represented at the meeting by two persons chosen by the superintendent. The superintendent's spouse or one other family member may also attend the meeting. If the superintendent chooses to be accompanied by an attorney, the legal expenses attributable to that representation must be incurred by the superintendent. In addition to the board members and the business manager of the school district, the school board may be represented by two persons chosen by the board. If the superintendent requests, the board shall grant the superintendent a continuance not to exceed seven days. No claim for relief for libel or slander accrues from any statement expressed orally or in writing at an executive session of the school board held for the purposes provided in this section. The school board shall give the superintendent final notice of the determination not to renew a contract by May first.

14. If a school district fails to provide notification to a superintendent in writing between March first and April fifteenth of each year that the school board intends to contemplate the nonrenewal of the superintendent's contract, and the superintendent has not resigned in writing before June first, the district and the superintendent are deemed to have renewed the contract for a period of one year extending from the termination date set forth in the existing contract. If a school district provides notification to a superintendent who has not been employed in that school district as a superintendent for at least two years in writing before May first of its intent not to renew the superintendent's contract, the school board shall meet with the superintendent to convey the reason or reasons for the nonrenewal if the superintendent requests such a meeting.

**15-47-42. Status and authority of student and eminence-credentialed teachers.** Any

student teacher or eminence-credentialed teacher hired or assigned in this capacity must be given the same legal authority and status as if the student or eminence-credentialed teacher were a licensed teacher employed by the school district. The authority of the student or eminence-credentialed teacher extends to all aspects of student management or discipline, the handling of confidential student records, and to all other aspects of legal authority granted to licensed teachers in the state. The student or eminence-credentialed teacher must be deemed a licensed teacher employed by the district with respect to acts performed by the student or eminence-credentialed teacher at the direction, suggestion, or consent of the district employees under whose supervision and control the student or eminence-credentialed teacher performs duties, whether or not the duties are performed entirely in the presence of district employees assigned to supervise the student or eminence-credentialed teacher, and must be deemed an employee of the school district within the meaning of sections 32-12.1-05 and 39-01-08 relating to liability insurance carried by political subdivisions. For purposes of this section, "eminence-credentialed teacher" means a person providing teaching services in accordance with subsection 21 of section 15.1-09-33.

**15-47-46. Teacher qualification - Kindergarten through grade eight - Exceptions.**

1. Except as provided in subsections 2 through 4 or subsection 21 of section 15.1-09-33, all teachers teaching kindergarten through grade eight must hold a professional teaching license and:
  - a. A minimum of a kindergarten endorsement to teach kindergarten;
  - b. A major, minor, or endorsement in elementary education to teach elementary education in grades one through eight; or
  - c. An endorsement in kindergarten or elementary education from the education standards and practices board attained prior to or within two years of the assignment to teach kindergarten or elementary education. An endorsement may be obtained by completing teaching requirements and a minimum number of credit hours in courses prescribed by the education standards and practices board.
2. A teacher who holds a professional teaching license and a major or an endorsement in middle school education attained prior to, or within two years of,

the assignment to teach middle school may teach grades five through eight.

3. A teacher who holds a professional teaching license and a major or minor in the course area or field in which the teacher is teaching may teach grades seven and eight.
4. A teacher who holds a professional teaching license from the education standards and practices board and meets the requirements of the superintendent of public instruction may teach special education, foreign language, art, music, physical education, business education, and computer education in kindergarten through grade eight.

### INTERPRETIVE CONCERNS

NDCC Section 1-02-25 provides the following:

**Continuations of existing statutes.** For purposes of historical reference and as an aid to interpretation, the provisions of this code, so far as they are substantially the same as previously existing statutes, must be construed as continuations thereof, and not as new enactments except that a revised version of such statutes contained in this code supersedes all previous statutes.

A 1988 Attorney General's Opinion (88-22) concluded that a section of the Century Code was incorrect as published because the "code revisor" had, in 1943, included language that had never been enacted by the Legislative Assembly. The reference to the "code revisor" is to the Code Revision Commission, established in 1939 under legislation that authorized the North Dakota Supreme Court to create the commission to recodify the state's laws. The Attorney General's Opinion states that:

In *City of Fargo v. Annexation Review Commission*, 148 N.W.2d 338 (N.D. 1966) the North Dakota Supreme Court considered the applicability of a 1915 statute that had been rewritten by the Code Revision Commission in 1943. The 1943 revision, which was not specifically addressed by the Legislative Assembly, resulted in a potential substantive change in the statute's provisions. The court found that the Legislative Assembly had not intended to change the 1915 statute when it adopted the Revised Code of 1943 and, subsequently, when it adopted the same statute within the North Dakota Century Code. The court wrote:

Since the original enactment is unambiguous as to its intent and meaning, the subdivisions and changes appearing in the North Dakota Revised Code of 1943, and subsequently appearing in the North Dakota Century Code, do not change the original intent and meaning as embodied in the original enactment of the 1915 statute . . . .

The court decided that the current statute had to be construed as a continuation of the previously existing statute, and the court applied the statute as it had appeared in 1915.

Given the existence of such a holding by the North Dakota Supreme Court, together with the 1988 Attorney General's Opinion, the interim Education Services Committee, in approaching the directed rewrite of those portions of Title 15 which relate to elementary and secondary education, should ensure that its intent regarding recommended changes is clearly articulated and accurately reflected in the committee's minutes.

ATTACH:1

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine**

HOUSE CONCURRENT RESOLUTION NO. 3007  
(Legislative Council)  
(Education Services Committee)

A concurrent resolution directing the Legislative Council to continue its study of those provisions of Title 15 of the North Dakota Century Code which relate to elementary and secondary education.

**WHEREAS**, many of the laws relating to the provision of elementary and secondary education in this state have been adopted over the years without regard to their interrelationship; and

**WHEREAS**, many of the laws relating to the provision of elementary and secondary education in this state set forth neither clear objectives nor directives for their administration; and

**WHEREAS**, many of the laws relating to the provision of elementary and secondary education in this state are duplicative, inconsistent, or illogically arranged; and

**WHEREAS**, the Legislative Council, through the Education Services Committee, conducted a study during the 1997-98 interim which resulted in recommendations for the revision of a substantial portion of Title 15;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council continue its study of those provisions of Title 15 of the North Dakota Century Code which relate to elementary and secondary education; and

**BE IT FURTHER RESOLVED**, that the purpose of the study is to recommend changes to laws that are found to be irrelevant, duplicative, inconsistent, illogically arranged, or unclear in their intent and direction; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-seventh Legislative Assembly.