

TESTIMONY ON HB 1201
HOUSE EDUCATION COMMITTEE
January 18, 2023
By: Krista Schulz, Human Resources Manager
701-328-3298
North Dakota Department of Public Instruction

Mr. Chairman and Members of the Committee:

My name is Krista Schulz, and I am the Human Resources Manager with the Department of Public Instruction (DPI). I am here to speak in opposition of House Bill 1201 regarding the restriction of a state agency, department, institution, or political subdivision from employing an individual that is under contract with a school district.

For clarification, most state entities do not enter into employment contracts with employees. This bill, as written, would likely not affect DPI's hiring process due to the statement about entering into a contract of employment; however, we still stand in opposition of the bill for the few entities that do enter into employment contracts with employees.

Because we believe the bill was intended to affect all state entities, including our agency, from interviewing, offering employment and hiring a contracted school district employee, I will be speaking to it as such. As I stated, the Department of Public Instruction does not enter into employment contracts with employees. Instead, DPI makes employment offers that follow the State of North

Dakota's requirement for a competitive hiring process. Our employment offers are not a contract, and the term of employment may be terminated at the will of the employee. Following the State of North Dakota's competitive hiring process ensures equal employment opportunities, allows for veteran's preference to be applied, and requires the agency to hire the best candidate for the position. If this bill is asking us to exclude applicants and restrict us from making an employment offer to the best candidate for the position, this may directly conflict with the competitive hiring process required by the State of North Dakota. Human Resources Management Services' requirement for external hiring requires agencies to ensure the public has the opportunity to know of and apply for the position. Additionally, it requires the agency to select on the basis of the applicant's job-related qualifications for the position (NDAC 4-07-05-05). I also have concerns about whether this constrains a state entity from ensuring an equal employment opportunity when hiring for vacant positions.

As we understand, school boards currently have policies that detail and outline their procedures for denying or granting a person's request to be released from a contract. School districts also have a schedule of liquidated damages and penalties for a breach of contract. An example of a local school board enforcing its policy has recently occurred. In September 2022, DPI posted, interviewed and offered a vacant position to an individual who ranked the highest in our interview

process. We offered the position to this individual, who was a contracted teacher. The individual submitted a request to her school board to be released from her contract. To date, the school board has not released the teacher; therefore, the teacher is not an employee of the Department of Public Instruction. The school board followed its policy and denied the release from the contract. DPI understands the school board's policy and must decide whether or not to rescind the offer or wait to hire the individual after the contract term dates. I invite you to review an example of a school board's release of contract policy found at the end of my testimony. We feel that school boards already have policies in place to deal with these situations and that this law is unnecessary and will further complicate hiring efforts and cause some concerns with current state hiring requirements.

Just like Local Education Agencies (LEAs) have requirements to hire fully licensed and credentialed staff, so does the State Education Agency, specifically in our Specially Designed Services Office, formally known as our Special Education Office. We understand that the Local Education Agencies and the State Education Agency may receive applications and offer employment to the same individuals. If this bill, as written, is intended to restrict DPI from offering employment to the best candidate, it will put us at a disadvantage in meeting state and federal requirements.

The Department of Public Instruction recognizes the hiring issues all industries are facing. We also understand the teacher shortages our nation is experiencing. DPI has committed over \$4.2 million for the Para to Teacher Pathway and Grow Your Own program which assists districts in getting their own staff licensed as teachers to help with teacher shortages. If we are restricted from offering employment to and hiring the best candidates, we will not be able to initiate and implement these types of programs that have had a positive effect on all North Dakota districts. Historically, DPI has also lost staff to school districts during very busy times. Districts typically can pay higher hourly salaries and offer nine-month contracts.

In conclusion, the Department of Public Instruction understands the current hiring challenges that all industries are facing. We feel this bill is unnecessary due to the current policies and procedures that school boards already have in place, and it may directly conflict with the State's human resource requirements.

Chairman Heinert and Members of the Committee, that concludes my prepared testimony and I will stand for any questions that you may have.

ATTACHMENT

MANDAN PUBLIC SCHOOL DISTRICT #1

Descriptor Term:	Descriptor Code:	Adopted:
RELEASE OF CONTRACT & PENALTIES	GBAA	02/17/1997
	Revised:	Effective:
	02/03/2020	03/01/2020

The board has a right to deny a release of contract or to waive any penalties at its discretion.

The Mandan Public School District has established the following penalties for breach of contract and cost of replacement.

<u>Time of Release Request</u>	<u>Cost of Replacement</u>
March 1 through June 14	\$ 500
June 15 through June 30	\$1,000
July 1 through July 31	\$1,500
August 1 through the term of contract	\$2,000

In the event of extenuating circumstances, a waiver may be submitted by the individual explaining relevant circumstances for consideration to the Appeal's Committee. The Appeal's Committee will be made up of the Superintendent of Schools, the Chairperson of the Policy & Personnel Committee, and a teacher representative recommended by the Mandan Education Association and by the Board.

The recommendation of the appeals committee will be forwarded to the Mandan School Board for final approval.

LEGAL REF: NDCC 15.1-15-04