

1999 HOUSE EDUCATION

HB 1217

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1217

House Education Committee

Conference Committee

Hearing Date 1-27-99

Tape Number	Side A	Side B	Meter #
#1	x		0.1 to 43.5
#1		x	31.0 to end
Committee Clerk Signature <i>Joan Dieis</i>			

Minutes:

Those present: Chairman R. Kelsch , Vice-Chair Drovdal , Rep Brandenburg , Rep Brusegaard , Rep. Haas , Rep. Johnson , Rep. Nelson , Rep. Nottestad , Rep. L. Thoreson , Rep. Grumbo , Rep. Hanson , Rep. Lundgren , Rep. Mueller , Rep. Nowatzki , Rep. Solberg .

Chairman R. Kelsch : Open the hearing on HB 1217 and ask the clerk to read the title.

Rep Hawkens: Introduced the bill as sponsor. District 46. Introduced this on behalf of the North Dakota School Board Association. In current language school boards are held to a higher standard in their evaluation. This bill would make the language as the same as it is for teachers and administrators.

Rep. Hanson : The bill would change from one evaluation to two the first year?

Rep Hawkens: Within the first year and then one after the third year.

Rep. Grumbo : Do we not have to give detailed evaluations in areas to we feel persons are deficient?

Rep Hawkens: It is the language that has changed. If you are trying to not renew a superintendent, if you want improvement in some area, you have to put that in an evaluation. It would have to written down to be taken into the due process part.

Rep. Nelson : When a superintendent comes in to your district you have some expectations to meet and you had a bar to judge progress. The due process comes from, its spelled out in the evaluation what is expected of you.

Hawkens: This is just a language change on behave of the School Board Association.

Vice-Chair Drovdal : One of the other changes, an unsatisfactory performance, the school board has to provide detailed information, would that no longer be required?

Hawkens: That would still be covered under the due process portion of the law.

Chairman R. Kelsch : Can you tell me, do we have any historical data, what do other states that have something like this?

Hawkens: I can't answer that.

Richard Ott: Director of the North Dakota School Boards Association. (see written attached).

Vice-Chair Drovdal : You removed the negative part of the report in the bill, is that covered in another section of code?

Ott: The time when the negative report becomes a problem, is when you are looking at some kind of a termination process. Any process must be drawn from a written evaluation.

Vice-Chair Drovdal : I looked as the comments on the written evaluation as a way to turn an unsatisfactory thing around. You don't see that's the reason for it.

Ott: No

Chairman R. Kelsch : Are there other states that are doing something similar to this, do we have any track record?

Ott: I'm not familiar with any.

Rep. Nelson : When this process began, you were very supportive of this process that we are reviewing today, is that true?

Ott: I will support whatever is in place.

Rep. Nelson : This is a hard task, the evaluation process.

Larry Klundt: Executive Director of North Dakota Council Of Education Leaders. Spoke in opposition of HB 1217 (see written attached).

Rep. Mueller : A comment, the instrument by which you do evaluate your superintendent, it might be well to take a look at the issue and find what needs to be done.

Klundt: Good suggestion, and I wish I would have brought the document that we use when we present superintendent evaluation.

Rep. Nottestad : Do most schools follow a set evaluation, or is that just available and boards can come up with one of their own?

Klundt: In the seminars, we suggest that every district develop their own.

Rep. Nelson : Do you feel that every issue that would come into question about the superintendents qualifications and ability to serve that district can be documented in a evaluation process that you described.

Klundt: Not everything is identified in the expectations.

Jim Cheatley: Superintendent of Maddock. Some concerns that come from this bill. I have been on both sides of the evaluation. The key point to an evaluation are the written recommendations and proscriptive serve that goes with it. The evaluation is for growth and change. This process may become a turn key process. We don't wish for the written portion of evaluation to be taken out.

Helen Busch: NDEA If there is no communication between the people who involved in the process, how things going to change and how are they going to improve. In the 1980's when the evaluation bill was passed, the School Board Association and the Teachers and Administrators got together and put together an evaluation instrument for teachers, that would improve teaching performance, which in turn would improve students achievement.

Chairman R. Kelsch : Anyone else who wishes to appear in opposition of HB 1217? Seeing none we will recess the hearing on HB 1217.

Chairman R. Kelsch : We will take up HB 1217.

Rep. Haas : Move to amend the bill by removing the strike out line 15 and 16 that reads "The school board must provide in reasonable detail the basis for its assessment of the unsatisfactory performance." And remove the in front of satisfactory and insert an.

Rep Brusegaard : Second.

Vice-Chair Drovdal : If we take the over strike off, this bill is doing anything that we are currently doing? What is the sense of the bill?

Rep. Haas : The additional lines 16 through 20 are appropriate and practical, and we should submit the bill to the house floor.

Rep. Hanson : Rep Haas, you were a superintendent, how would you like to get fired on one evaluation?

Rep. Haas : The superintendent evaluations are a ten to twelve page document. The school board members fill it out at home and then it is brought to a school board meeting. It is based on their perception over a long period of time.

Rep. L. Thoreson : I agree taking the over strike out, but I think that the whole over strike should be taken out beginning with line 12. That part includes recommendations and that is an important part of the evaluation process.

Rep. Mueller : I agree, what we have done is have a single evaluation after three years. If you have one evaluation, but you don't have a follow up one. You can't tell if the situation has been rectified or changed.

Rep. L. Thoreson : All this does, is tell them they have to do one, they can always have more to complete the process. They don't have to wait.

Rep. Nottestad : If you look at the single evaluation verses two, if you have a person who has taught for a number of years, you certainly aren't going to sit down and write one evaluation based upon what is going on. This bill requires one, but you can do more.

Rep. Nelson : The days are passed that we fire a superintendent for one bad day. School boards have learned that if you have a problem, you have the evaluation and note what the problem is, provide remedies, and then evaluate from that stand point.

Rep. Hanson : Larry Klundt gave the example of some superintendent catching heat because the president of school boards daughter didn't get to play volley ball. Now if there are only three

members on that school board, if he and one of his buddies got together, they could get hid of that superintendent in no time flat. You said it was out dated, but he said it already happened.

Rep. Nelson : That is probably true, the odds are that, that school district would be paying two superintendents for quite some time.

Rep Lundgren : Just for clarification, did you make an amendment to the amendment?

Rep. L. Thoreson : No.

Chairman R. Kelsch : Are you planning further amend the motion.

Rep. L. Thoreson : Either that or he can withdraw his amendment and then we can do the whole thing at once.

Rep. Haas : Madam Chair, it doesn't bother me is we remove the strike over from line 12 through line 16. I have no objection.

Chairman R. Kelsch : The chair will rule that we will take the first amendment that we have on the table, and then if there are further amendments we will take them at that time. Further discussions on the amendment. Seeing none, voice vote on the amendment - page one line 15 remove the overstrike and page one line 16 remove the overstrike - further remove the word the and replace with an. Voice vote, motion carried.

Rep. L. Thoreson : I would make a motion, that we would remove the overstrike starting with line 12 on page one, starting with The and down to line 15 and remove the an on the previous amendment.

Chairman R. Kelsch : Is there a second to that amendment.

Vice-Chair Drovdal : Second.

Chairman R. Kelsch : The motion is to remove the over strike from line 12 through line 16 and insert the in place of an. Voice vote, motion carried.

Rep. Lundgren : I move that we table is for discussion until after lunch, as I have had e-mail on this bill and I need to make some phone calls.

Chairman R. Kelsch : We have a motion to table this until after lunch is there a second.

Rep. Hanson : Second.

Chairman R. Kelsch : Voice vote, motion carried.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1217-1-27-99

House Education Committee

Conference Committee

Hearing Date 1-27-99

Tape Number	Side A	Side B	Meter #
#3	x		13.8 to 16.9
Committee Clerk Signature <i>Joan Davis</i>			

Minutes:

COMMITTEE ACTION

Those present and voting: Chairman R. Kelsch , Vice-Chair Drovdal , Rep Brandenburg , Rep Brusegaard ,ch , Rep. Johnson , Rep. Nelson , Rep. Nottestad , Rep. L. Thoreson , Rep. Grumbo , Rep. Lundgren ,pm , Rep. Nowatzki , Rep. Solberg .

Chairman R. Kelsch : Open the hearing on HB 1217, what are the wishes of the committee?

Rep. Drovdal : Move a DO NOT PASS as amended.

Rep. Mueller : Second.

Chairman R. Kelsch : Discussion. I have a DO NOT PASS as amended motion, I will ask the clerk to read the roll.

Motion of DO NOT PASS as amended, passes with 14 YES 0 No 1 Absent

FLoor assignment - Rep Johnson.

VR
1/28/99

HOUSE

AMENDMENTS TO HOUSE BILL NO. 1217 Edu 1-28-99

Page 1, line 12, remove the overstrike over "~~The written evaluation of a~~"

Page 1, remove the overstrike over lines 13 through 15

Page 1, line 16, remove the overstrike over "~~assessment of~~", after "~~the~~" insert "an", and remove the overstrike over "~~unsatisfactory performance.~~"

Renumber accordingly

Date: 1-27-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1217

House Education Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass as amended

Motion Made By Rep Drovda Seconded By Mueller

Representatives	Yes	No	Representatives	Yes	No
Rep. ReaAnn Kelsch-Chairperson	✓		Rep. Dorvan Solberg	✓	
Rep. David Drovda-Vice Chair	✓				
Rep. Michael D. Brandenburg	✓				
Rep. Thomas T. Brusegaard	✓				
Rep. C. B. Haas	✓				
Rep. Dennis E. Johnson	✓				
Rep. Jon O. Nelson	✓				
Rep. Darrell D. Nottestad	✓				
Rep. Laurel Thoreson	✓				
Rep. Howard Grumbo	✓				
Rep. Lyle Hanson					
Rep. Deb Lundgren	✓				
Rep. Phillip Mueller	✓				
Rep. Robert E. Nowatzki	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Johnson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1217: Education Committee (Rep. R. Kelsch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1217 was placed on the Sixth order on the calendar.

Page 1, line 12, remove the overstrike over "~~The written evaluation of a~~"

Page 1, remove the overstrike over lines 13 through 15

Page 1, line 16, remove the overstrike over "~~assessment of~~", after "the" insert "an", and remove the overstrike over "~~unsatisfactory performance.~~"

Renumber accordingly

1999 TESTIMONY

HB 1217

TESTIMONY ON HB 1217

House Education Committee
January 27, 1999

Madam Chair and members of the committee, my name is Richard Ott, executive director of the North Dakota School Boards Association, and I am here to testify in favor of House Bill 1217.

Normally, I do not submit written testimony because I am more comfortable presenting from broad and general notes. However, the evening prior to this hearing, I was scheduled to be in Williston for a seminar presentation and with the weather uncertainties that hang over North Dakota in January, I felt it best to have something ready in the event I could not return to Bismarck in time to address the committee.

You may notice that I am the only person that I've asked to testify. Also, if you were contacted by other proponents of this bill, those contacts were spontaneous. We have made no effort to deluge you with phone calls, nor have we elected to try to fill the room with proponents.

This bill, like all others, should be judged on the merits of its content, and your decision should be based upon what you hear in the way of testimony coupled with your own good judgement.

Too often, bills become clouded with personality considerations and that's just not how the process is supposed to work.

I have heard some talk that this is an anti-superintendent bill. That's hogwash. I am basically behind this proposal and, remember, last session I stood before this very committee on this very spot, and vigorously opposed a bill that would have stripped superintendents of any and all process due them. I took a lot of flak for what I did in 1997, so it bothers me greatly to be accused of trying to harm the superintendency in this state. My enthusiasm for the integrity of the superintendency in North Dakota is no less now than it was then.

The school board, to the best of my knowledge, is the only governance body in the state, public or private, which is required by legislation to evaluate its CEO. Certainly, we, as a school boards association, firmly believe in the value of a valid program of evaluation for all staff members of the public schools and even if we weren't mandated to do so, we'd certainly develop some process for addressing this very vital function.

I personally have trouble comparing things unless I can see them laid out next to each other. For that reason, I've prepared a handout which shows the law that applies to teachers, the current one that deals with superintendents, and the one we are proposing.

This might help to emphasize the point that lay boards are held to a higher standard of evaluating their CEO than are the professionals who are trained and experienced in the evaluation process. I have always regarded the relationship between the board and the superintendent as a professional one--similar to that of a lawyer and client or a doctor and patient. The nature of some of our laws,

however, relegate this relationship to simply an employer-employee situation, and when that occurs, I feel a lot of the professionalism is drained from the scene.

The changes we are asking for will place the boards on the same plane as their administrators. We are still asking the board to be actively and effectively involved in the evaluation process but not expecting more from them by mandating the execution of a highly complex process.

Also board membership changes regularly and there is a constant need to bring new board members up to speed on this and numerous other expectations.

Nothing will change as far as the processes due a superintendent in any discharge or nonrenewal proceeding. All those things have been left intact.

More importantly, we view the evaluation process as one designed to promote growth and development--not as a tool to fire superintendents.

Dr. Klundt and I have crossed the state conducting workshops on the process of evaluating superintendents. We feel we can help both our memberships by being available and willing to advise through the process. We have developed a booklet to help guide our constituencies through the process. We have met from time to time to determine how we can best implement the requirements of the existing law.

In early December and early March, I spend a great deal of time talking to board people about how to do what is expected of them in the process of evaluating their superintendent.

Not many problems have surfaced because an inordinate amount of effort has gone into striving to make the process work. None of the other evaluation functions required of the public school sector receives this mush investment of resources, because the evaluators are given some flexibility in how they do the evaluating.

Regardless of how this bill ends up, I thoroughly intend to continue this effort to make whatever system is in place function smoothly.

Effective and valid evaluation of superintendents is to the advantage of everyone.

In the recent past, I can only recall one court case that has originated between a terminated superintendent and the board, and the issue was outside the provisions of what we're talking about here today and would have developed even had the proposed wording of this bill been in place.

Another of our efforts is to help school boards locate and employ the best possible candidates when superintendent vacancies occur. We are committed to putting a great deal of energy up front into getting the right person into the position in the beginning, and then, there are a lot less problems after the fact.

I respectfully request that you give this bill a do-pass, and I am available for any questions you may have.

TEACHER

SUPERINTENDENT
CURRENT

SUPERINTENDENT
PROPOSED

15-47-27 Current Wording

-----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.

15-47-38.2 (2) Current Wording

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.

15-47-38.2 (2) Proposed Change

2. At least once before December fifteenth, the board of each school district shall evaluate the performance of the district superintendent and forward a copy of the completed evaluation to the superintendent. The board shall conduct a second evaluation of the superintendent's performance before March fifteenth and forward a copy of the completed evaluation to the superintendent. If the superintendent has been employed by the board for more than three years, the board may determine the time and manner in which it shall evaluate the superintendent, provided that the board shall evaluate the superintendent at least once each year and forward to the superintendent a copy of the completed evaluation before March fifteenth.

**NORTH DAKOTA COUNCIL OF EDUCATIONAL LEADERS
1720 Burnt Boat Drive
Bismarck, North Dakota 58501**

Testimony on HB 1217

By

Dr. Larry A. Klundt, Executive Director

Madam Chairman, and members of the House Education Committee—my name is Larry Klundt and I am the executive director of the North Dakota Council of Educational Leaders (NDCEL). The NDCEL is an umbrella association of school administrators that includes superintendents, elementary and secondary principals, county superintendents, vocational directors, special education directors, school business officials and athletic directors.

We oppose HB 1217 and respectfully request that you give this bill a do not pass recommendation. The reason that we believe it should fail is that we believe that school board's must be required to communicate to superintendents what they think is unsatisfactory performance, why it is unsatisfactory, and give them a reasonable time to correct their deficiencies.

The primary argument for this bill by the proponents appears to be that school boards are held to a higher standard when evaluating superintendents than superintendents and principals are held to when they evaluate teachers. They also will suggest that the bill really doesn't change much! I believe that this is not an accurate statement and that the changes are substantial. I will refer to the following sources to substantiate my point. The sources are the Handbook for School Boards, published and updated yearly by the North Dakota School Boards Association, Inc.; Termination of School Employees: Legal Issues and Techniques, published in April of 1997 by the National School Boards Association; and Becoming a Better Board Member, that was published by the National School Boards Association in 1982. These Documents have many pages of suggestions, recommendations and requirements regarding evaluation of teachers and superintendents that will be helpful in determining if school boards really are held to a higher standard.

The first handout that I would like you to consider is 06-92-95, page 1 and 2, from the Handbook for School Boards that is published by the NDSBA. If you begin reading after the main division entitled Mandatory Evaluations, you will see that the NDSBA and its attorney state that if a district is going to be successful in nonrenewal of a teacher's contract, careful attention must be paid to including recommendations as to areas of improvement in performance and describing the unsatisfactory performance.

The second document and handout that I will quote is from the NSBA publication entitled Termination of School Employees: Legal Issues and Techniques. On page 1-2, the NSBA says, "At a minimum, the notes must include the teachers name, the date of the incident and short description of the problem." And on page 1-4, they state, "If a teacher has performance deficiencies, they should be spelled out clearly with suggestions or instructions regarding what is necessary to correct them."

The third source of school board reference to evaluation comes from the book entitled, Becoming a Better School Board Member, published by the NSBA. In the chapter regarding superintendent evaluation, they describe several positive aspects to superintendent evaluation. One of the recommendations is to "Provide a basis for assessing the weaknesses and strengths of both the superintendent and board" and to "Document that the board has communicated its desires to the superintendent." (Page 131) The NSBA also identifies some common pitfalls to avoid. One of the pitfalls to avoid is "Not providing time for the superintendent to correct deficiencies before acting on the results of the evaluation". (Page 136)

The NDSBA also makes some statements that I believe are insightful regarding superintendent evaluation. In section 06-92A-95, pages 1 and 2, reference again is made to Mandatory Evaluations and I have provided you with a copy.

This brings us to what I consider the real reason for the introduction of this bill—*Simmons v. New Eight Public School District*. In this case, the school board nonrenewed the contract of the superintendent and won a lawsuit in district court. Upon appeal to the Supreme Court of North Dakota, the district court's decision was unanimously reversed. I believe that the reason it was reversed is that the board had

failed to follow the procedures in 15-47-38.2 that required them to tell their superintendent why her performance was unsatisfactory and then failed to give her time to correct the deficiencies.

There are several issues associated with this bill that you should be aware of if it is passed. It is my opinion that:

1. It will eliminate many of the advancements we have made regarding evaluation for growth.
2. It will infuse more politics into the decision-making process in many school districts.
3. Arbitrary and frivolous reasons will return to the nonrenewal of superintendent contracts.
4. Other states that have weakened their evaluation/due process statutes are experiencing shortages of superintendents and shortages of people aspiring to the superintendency. This also has caused the cost of superintendents to increase dramatically, which I suppose, is a positive for superintendents.

The NDCEL does not object to all of the amendments that are being suggested in this bill. We gladly support the changes recommended except the deletion of the language on line 15 and 16, which states, "The school board must provide in reasonable detail the basis for its assessment of the unsatisfactory performance." If this language can not be left in the law, then it is our preference to have all of 15-47-38.2 repealed and then amend superintendents, multi-district special education directors and vocational education directors into the definition of "teacher" in 15-47-26 for the purposes of 15-47-27 and 15-47-38.

Again, thank you for allowing me to testify on this bill. The NDCEL simply wants school boards to tell superintendents why their performance is unsatisfactory. I think the NDSBA attorney, Gary Thune, has said it well, ". . . , a reasonable person should be able to ascertain the basis for the board's assessment of unsatisfactory performance when reviewing the evaluation." That is all we ask. Please give this bill a do not pass recommendation or amend it so that lines 15 and 16 stay in the law.

PERFORMANCE NONRENEWALS

The more difficult nonrenewals are those involving allegations of unsatisfactory performance. While a conditional resignation letter is an alternative that may be elected, caution must be exercised to avoid even the appearance of any insistence upon such an option. Any conditions attached to a voluntary resignation must be carefully analyzed to determine the obligations they impose--before the resignation is accepted. (See also Sections 06-84, 06-90, and 06-92A.)

STAGE I: IDENTIFYING THE NEED

Unlike RIF nonrenewals, the initial responsibility in performance nonrenewals lies solely with the administrators or the board. Classroom observations and formal evaluations are the key to both instructional improvement and documentation of unsatisfactory performance.

A. MANDATORY EVALUATIONS

A systematic approach to evaluation of teachers, principals, and assistant superintendents has long been an admirable goal for school districts across the state of North Dakota. **NOW IT IS MANDATORY.** Section 15-47-27 of the North Dakota Century Code, as amended by the 1989 legislature, states:

"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."

This timeline for mandatory written evaluations not only applies to teachers, but also to every principal and assistant superintendent in your district.

The 1993 Legislative Assembly created a new section of law (NDCC 15-47-38.2) in which was placed the evaluation and nonrenewal of school district superintendents and chief administrators of multidistrict special education units and area vocational and technology centers (see Sections 06-39 and 06-92A).

The legal effect of failure to comply with these evaluation mandates is yet to be determined in North Dakota. Some insight may be gained from a June 20, 1983, decision of a California Appellate Court which found in favor of the board where a teacher's evaluations:

- a) Complied with the applicable statute,
- b) Were provided within statutory time limits,

- c) Included recommendations as to areas of improvement in performance,
- d) Contained a notice of unsatisfactory performance, AND
- e) Described the unsatisfactory performance.

Failure to implement and adhere to an evaluation system, as required by law, may prove to be a fatal omission when the board's decision to nonrenew for nonperformance is tested in North Dakota's courts.

The requirement of two written evaluations for teachers, principals, and assistant superintendents who have been employed in your district less than three years and one evaluation per year thereafter should be viewed as minimum, not maximum, standards. It has been suggested that the purpose of the first evaluation should be to place the teacher, principal, or assistant superintendent on notice as to deficient or unacceptable performance, while the second should document the continued existence or correction of those deficiencies. The concepts of "notice" and an "opportunity to correct" provide common sense theories for the process.

B. SUGGESTED TIMELINE FOR ADMINISTRATIVE EVALUATION AND ACTION

November 1	Complete two observations of first, second, and third-year teachers, principals, and assistant superintendents.
December 1	"Experienced teachers" observed once.
December 1	Written evaluations in file of all teachers, principals, and assistant superintendents in their first, second or third year. (Statutory deadline is December 15--see Section 15-47-27, NDCC.)
January 1	Second written evaluation of those doing unsatisfactory work.
January 10	Review unsatisfactory evaluations with board attorney.
Jan. 15-Feb. 15	Biweekly or weekly observations of those doing unsatisfactory work.
February 28	Written evaluation in file of all teachers, principals, and assistant superintendents. (Statutory deadline is March 15.) Second evaluation in file of first, second, and third-year teachers, principals, and assistant superintendents.
March 1	Decision by administration to renew or recommend contemplated nonrenewal to the board.

APPENDIX D

SAMPLE SUMMARY MEMORANDUM
(Specific Directives)

To: Willie Makit

From: Principal Penny Popular

Date: May 29, 1996

Re: Performance in the 1995-1996 school year and expectations for 1996-1997 school year

On May 28, 1996, you and I talked about your performance during the 1995-1996 school year. Throughout this school year, we have discussed several aspects of your performance that have concerned me. We discussed those same areas again yesterday. Specifically, we discussed the following topics:

1. Compliance with grading procedures: At the close of the first six weeks, I discovered you had not complied with the minimum requirements in the faculty handbook regarding grading of students. You did not have a minimum of 12 daily grades and three test grades in addition to the six weeks examination grade. This was addressed with you in conference on October 4, 1995, and in a memorandum dated October 7, 1995. I have monitored your compliance with this process and have found no more errors this school year. You assured me yesterday you would continue to comply with all requirements for grading students.
2. Arriving late: On two occasions in the fall you arrived late to school and almost missed the beginning of your first period class. You and I discussed this in a conference on October 7, 1995 and I confirmed our conference in a memorandum dated October 8, 1995. You were late one more time during the year on April 8, 1995. We talked on that same date and you told me you were late because of a traffic accident on the highway. It is essential that you arrive at school by 7:40 a.m. each day.
3. Failure to sign in and out: Seven times this year you have failed to follow the proper procedure for signing in and out of school. The first two instances on September 9, 1995 and September 23, 1995 were discussed in our conference on October 7, 1995 and in my memorandum to you of October 8, 1995. The next three instances were on October 25, 1995, November 11, 1995, and November 29, 1995, and were discussed in a conference on December 4, 1995 and in my memorandum to you of December 6, 1995. Two instances have occurred this spring on April 8, 1996 and May 6, 1996. In both of those instances, you informed me the next morning you had forgotten to sign out the afternoon before and asked to correct this mistake. It is essential for teachers to sign in in the morning so that we can be sure everyone is on campus and the classes are all attended. Failure to sign in may result in an administrator needlessly coming to your class to cover it. It is also essential to sign out in the afternoon. This allows us to monitor who is on campus and respond to any calls about your whereabouts.

NONRENEWAL OF SUPERINTENDENT

When a North Dakota school board elects to contemplate the nonrenewal of its superintendent, multidistrict special education director, or vocational education director (hereinafter "superintendent"), several unique factors come into play. First, and most significantly, the sole responsibility for both documentation and procedural correctness lies directly with the board. For that reason, it is recommended that the board consider retaining legal counsel if a less than amicable separation is anticipated. The 1993 Legislative Assembly enacted Section 15-47-38.2, which provides additional areas of concern for school boards including:

- 1) Unique evaluation requirements,
- 2) "Probationary" status, and
- 3) Automatic contract renewal after a 45-day window for unilateral resignation.

Each of these special statutory provisions presents potential problems for boards.

A. MANDATORY EVALUATIONS

A well-documented evaluation is at the heart of performance nonrenewals. This is particularly true when the nonrenewal involves a superintendent or multidistrict special education director for at least two reasons:

1. Two Per Year, Every Year

Unlike teachers, principals and assistant superintendents, for whom only one annual evaluation is required after they have been employed by the same school district for three years, superintendents must be evaluated twice a year--every year they remain employed by the district. This "twice per year, every year" requirement also applies to the "probationary years" discussed below.

2. Substantive Requirements

The most important requirements of these two evaluations are found at Subsection 2 of Section 15-47-38.2, which states:

"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."

These three substantive requirements, all made mandatory by the use of the word "must," are critical to the evaluation process:

A. "Unsatisfactory" Performance

Board evaluations of their chief executive officer should specifically include the word "unsatisfactory" in every performance area to which it applies. Categories such as "Outstanding--Average--Needs Improvement" do not satisfy this requirement. Neither do numerical rankings unless one of those rankings is specifically defined as meaning "unsatisfactory." The use of the term "unsatisfactory" triggers the other two substantive requirements.

B. Detailed Basis for Assessment

When a board's assessment of its superintendent's performance in one or more areas of responsibility is deemed to be unsatisfactory, then the board is required to provide "in reasonable detail the basis for its assessment." Use of specific examples or occurrences, which put the superintendent "on notice" as to the source of the board's dissatisfaction, should be included in the written evaluation. Put another way, a reasonable person should be able to ascertain the basis for the board's assessment of unsatisfactory performance when reviewing the evaluation.

C. Required Recommendations(s)

Utilizing the reasonable detail referred to above, the board's evaluation should then turn to recommendations for improving each area of performance which has been assessed as being unsatisfactory. These mandatory "recommendations" will become the focus of subsequent evaluations of the superintendent. They are also consistent with the strong preference of the North Dakota Council of School Administrators for the use of improvement plans. While not statutorily mandated, a well-written improvement plan would appear to satisfy the need for recommendations.

The evaluation of a superintendent serves to set the tone for all evaluations of certified staff in a school district. Boards that recognize this critical fact will be more likely to give superintendent evaluation the time and attention it merits and deserves. A suggested format for evaluation of a superintendent is provided (see APPENDIX A to this section).

B. TWO-YEAR PROBATIONARY STATUS

While all superintendents are entitled to two evaluations each school year, not all are entitled to an evidentiary hearing before being nonrenewed. To the contrary, a superintendent is employed on a "probationary" status until he or she has been employed in that school district as a superintendent for at least two years. Prior to that time, the only process due a "probationary" superintendent is two-fold: