

March 2010

ELEMENTS OF APPROVAL

The North Dakota Century Code (NDCC) requires that each public and nonpublic school in this state offering elementary or secondary education to students be approved by the Superintendent of Public Instruction. NDCC Section 15.1-06-06 states:

[T]he superintendent may not approve a school unless:

1. Each classroom teacher is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Each classroom teacher is teaching only in those course areas or fields for which the teacher is licensed or for which the teacher has received an exception under section 15.1-09-57;
3. The students are offered all subjects required by law;
4. The school is in compliance with all local and state health, fire, and safety laws; and
5. The school has conducted all criminal history record checks required by section 12-60-24.

**ELEMENT #1 - LICENSED OR APPROVED TEACHERS
(APPLICABLE TO PUBLIC AND NONPUBLIC SCHOOLS)**

Each classroom teacher must be licensed to teach by the Education Standards and Practices Board (ESPB) or approved to teach by the ESPB.

NDCC Section 15.1-13-17 states:

1. An individual may not engage in the profession of teaching unless:
 - a. The individual holds a teaching license issued by the board; or
 - b. The individual is approved to teach by the board. . . .
3. The board [ESPB] shall adopt rules establishing the terms and conditions under which an individual may be approved to teach, as provided for in this section. The terms and conditions may include the payment of a fine to the board in an amount not exceeding two hundred fifty dollars per incident, enrollment in and completion of continuing education courses, and submission of a completed application for licensure by a date certain.

NDCC Section 15.1-13-18 states:

Before being employed to teach, an individual shall present to the school district business manager a teaching license or other evidence of approval to teach issued by the board.

North Dakota Administrative Code (NDAC) Section 67.1-01-01-03 states:

The education standards and practices board may impose a fine against any individual without a valid license who is under contract in any position requiring a valid professional educator's license.

1. The fine imposed will be fifty dollars per day the individual practices without a valid license, up to a total fine of two hundred fifty dollars.
2. The effective date of the fine will be the first day after the educator's license has expired or the first day practicing before obtaining a valid license.
3. The educator will have five days after notification from the board to submit to the education standards and practices board all required information for license renewal before additional disciplinary action will be taken.

ELEMENT #2 - TEACHING IN FIELD
(APPLICABLE TO PUBLIC AND NONPUBLIC SCHOOLS)

Each classroom teacher may teach only in the course areas or fields for which the teacher is licensed by the ESPB or for which the teacher has received an exception under NDCC Section 15.1-09-57.

NDCC Section 15.1-09-57 states:

1. If the board of a school district or of a nonpublic school is unable to fill a particular position by recruiting or assigning an individual who is licensed to teach in that particular course area or field, the school board may fill the position with an individual who is not licensed to teach in that particular course area or field, provided the individual:
 - a. Is licensed to teach by the education standards and practices board or is approved to teach by the education standards and practices board;
 - b. Holds at least a minor or a minor equivalency in the course area or field in which the individual seeks to teach; and
 - c. Has received a temporary exception under this section.
2. The education standards and practices board shall adopt rules governing the issuance of temporary exceptions under this section. Except for a case of sudden and unexpected vacancy occurring during the school calendar, the rules must require consideration of a school board's efforts to fill a particular position and the school board's efforts to explore alternative methods of education delivery to the students. The rules must also require that the individual submit a plan for a course of study which will enable the individual to obtain a major or a major equivalency in the course area or field in which the individual seeks to teach.
3. An exception granted under this section is valid only through the conclusion of the school year in which the request for exception is submitted to the education standards and practices board. The board may extend the exception by one-year increments, provided the individual demonstrates successful completion of at least one-third of the total course of study prior to each requested extension.
4. At the conclusion of each school year, the education standards and practices board shall file a report with the legislative council. The report must cite all requests for exceptions under this section received by the board during the school year and must include the board's response to each request and a brief description of the board's rationale.

The ESPB has adopted rules to implement NDCC Section 15.1-09-57 by providing for a teaching alternative flexibility endorsement.

NDAC Section 67.1-02-03-11 states:

1. The applicant wishing to apply for the teaching alternative flexibility endorsement must:
 - a. Be licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
 - b. Hold a minimum of a minor or minor equivalency in the course area or field being taught;
 - c. Be a new teacher in the content area or have not taught the content area since January 1, 2002;

- d. Provide a letter from the school district requesting this endorsement for the applicant and documenting a diligent effort has been made to employ a regularly licensed teacher to fill the position. Documentation of a diligent effort to employ qualified personnel should include information on how and how long the position was advertised, whether schools of education have been contacted in search of applicants, how many qualified applicants applied, how many applicants were interviewed, whether increases in salary or other incentives were offered in an attempt to attract qualified applicants, and whether these incentives are comparable to those offered by other schools of similar size and means;
- e. Submit a program of study to be completed within three years to become highly qualified; and
- f. Complete the teaching alternative flexibility endorsement plan form and submit with the seventy-five dollar fee to the education standards and practices board, 2718 gateway avenue, suite 303, Bismarck, ND 58503-0585.

If the applicant under this subsection is a special education teacher, the plan of study will need to be completed in two years and the teaching alternative flexibility endorsement will only be renewed once.

2. The applicant will:

- a. Be provided by the school during the first year intensive supervision or structured mentoring to become highly qualified in the additional subjects; and
- b. Have three years, or two years if the applicant is a special education teacher, to complete all requirements which includes all content preparation, pedagogy, and field experiences to become highly qualified in all areas of instruction.

The teaching alternative flexibility endorsement will be valid for one year and can be renewed twice, or once if the applicant is a special education teacher, provided the individual demonstrates successful completion of one-third, or one-half if the applicant is a special education teacher, of the total course of study prior to each renewal.

**ELEMENT #3 - REQUIRED SUBJECTS
(APPLICABLE TO PUBLIC AND NONPUBLIC SCHOOLS)**

The school must offer all subjects required by law.

NDCC Section 15.1-21-01 states:

[E]ach public and nonpublic elementary and middle school shall provide to students instruction in:

1. English language arts, including reading, composition, creative writing, English grammar, and spelling.
2. Mathematics.
3. Social studies, including:
 - a. The United States Constitution;
 - b. United States history;
 - c. Geography;
 - d. Government; and
 - e. North Dakota studies, with an emphasis on the geography, history, and agriculture of this state, in the fourth and eighth grades.
4. Science, including agriculture.
5. Physical education.
6. Health, including physiology, hygiene, disease control, and the nature and effects of alcohol, tobacco, and narcotics.

NDCC Section 15.1-21-02 states:

[E]ach public and nonpublic high school shall make available to each student:

- a. Four units of English language arts from a sequence that includes literature, composition, and speech;
- b. Four units of mathematics, including:
 - (1) One unit of algebra II; and
 - (2) One unit for which algebra II is a prerequisite;
- c. Four units of science, including:
 - (1) One unit of physical science; and
 - (2) One unit of biology;
- d. Four units of social studies, including:
 - (1) One unit of world history;
 - (2) One unit of United States history; and
 - (3) (a) One unit of problems of democracy; or
(b) One-half unit of United States government and one-half unit of economics;
- e. One-half unit of health;

- f. One-half unit of physical education during each school year, provided that once every four years the unit must be a concept-based fitness class that includes instruction in the assessment, improvement, and maintenance of personal fitness;
 - g. Two units of fine arts, at least one of which must be music;
 - h. Two units of the same foreign or native American language;
 - i. One unit of an advanced placement course or one unit of a dual-credit course; and
 - j. Two units of career and technical education from a coordinated plan of study recommended by the department of career and technical education and approved by the superintendent of public instruction.
2. In addition to the requirements of subsection 1, each public and nonpublic high school shall make available to each student, at least once every two years, one-half unit of North Dakota studies, with an emphasis on the geography, history, and agriculture of this state.

NDCC Section 15.1-21-21 states:

1. Beginning July 1, 2010, each school district shall ensure that its curriculum for either economics or problems of democracy includes the exposure of students to concepts of personal finance, including:
 - a. Checkbook mechanics, including writing checks, balancing, and statement reconciliation;
 - b. Saving for larger purchases;
 - c. Credit, including credit card usage, interest, and fees;
 - d. Earning power, including jobs for teenagers;
 - e. Taxation and paycheck withholdings;
 - f. College costs;
 - g. Making and living within a budget; and
 - h. Mortgages, retirement savings, and investments.
2. Upon written request, the superintendent of public instruction may allow a school district annually to select courses other than economics or problems of democracy for purposes of exposing students to the concepts of personal finance, as listed in this section, provided the school district can demonstrate that the number of students exposed to the concepts in the other selected courses would meet or exceed the number of students exposed under the requirements of subsection 1.
3. The requirements of this section may be provided by the regular classroom teacher of the course in which the concepts of personal finance are incorporated.

NDCC Section 15.1-21-22 states:

Before a student is deemed to have successfully completed either United States government or problems of democracy, as required by section 15.1-21-02.1, the student's school district shall ensure that the student has read the Declaration of Independence, the United States Constitution, and the Bill of Rights.

**ELEMENT #4 - HEALTH, FIRE, AND SAFETY LAWS
(APPLICABLE TO PUBLIC AND NONPUBLIC SCHOOLS)**

The school must have been inspected by the State Fire Marshal or the State Fire Marshal's designee in accordance with NDCC Section 15.1-06-09.

NDCC Section 15.1-06-09 states:

1. The state fire marshal or the state fire marshal's designee shall inspect each public school in this state at least once every three years, prepare an inspection report, and provide copies of the report to the superintendent of the school district and the superintendent of public instruction.
2. a. If a deficiency is noted, the superintendent of the school district shall submit a plan of correction to the state fire marshal or the state fire marshal's designee and shall remedy the deficiency within a time period acceptable to the state fire marshal or the state fire marshal's designee and the school board affected by the deficiency, but not later than the next budget period.
- b. If the report discloses an imminent fire hazard, the state fire marshal or the state fire marshal's designee shall immediately notify the school board, the school district superintendent, and the superintendent of public instruction. Upon a recommendation of immediate closure by the superintendent of public instruction, the school board and the school district superintendent may immediately close some or all of the school until the fire hazard is eliminated. In the case of a closure, the school district superintendent shall cooperate with the superintendent of public instruction to make adequate arrangements for the interim education of all affected students.

NDCC Section 15.1-06-10 states:

1. The state fire marshal or the state fire marshal's designee shall inspect each nonpublic school in this state at least once every three years, prepare an inspection report, and provide copies of the report to the administrator of the school and the superintendent of public instruction.
2. a. If a deficiency is noted, the administrator of the school shall submit a plan of correction to the state fire marshal or the state fire marshal's designee and shall remedy the deficiency within a time period acceptable to the state fire marshal or the state fire marshal's designee.
- b. If the report discloses an imminent fire hazard, the state fire marshal or the state fire marshal's designee shall immediately notify the administrator of the school and the superintendent of public instruction. Upon a recommendation of immediate closure by the superintendent of public instruction, the administrator may immediately close some or all of the school until the fire hazard is eliminated. In the case of a closure, the administrator shall cooperate with the superintendent of public instruction to make adequate arrangements for the interim education of all affected students.

ELEMENT #5 - CRIMINAL HISTORY RECORD CHECKS (APPLICABLE TO PUBLIC AND NONPUBLIC SCHOOLS)

The school must have conducted all criminal history record checks required by NDCC Section 12-60-24.

NDCC Section 12-60-24 states:

1. a. Each applicant, employee, or petitioner for adoption or name change who is subject to a criminal history record check under subsection 2 shall consent to a statewide and nationwide criminal history record check for the purpose of determining suitability or fitness for a permit, license, registration, employment, or adoption.
 - b. Each applicant, employee, registrant, or petitioner for adoption or name change subject to a criminal history record check shall provide to the requesting agency or entity written consent to conduct the check and to release or disclose the information in accordance with state and federal law, two sets of fingerprints from a law enforcement agency or other local agency authorized to take fingerprints, any other identifying information requested, and a statement indicating whether the applicant or employee has ever been convicted of a crime.
 - c. The agency, official, or entity shall submit these fingerprints to the bureau of criminal investigation for nationwide criminal history record information that includes resubmission of the fingerprints by the bureau of criminal investigation to the federal bureau of investigation. Except if otherwise provided by law, federal bureau of investigation criminal history record information obtained by an agency or entity is confidential. For a request for nationwide criminal history record information made under this section, the bureau of criminal investigation is the sole source to receive the fingerprint submissions and responses from the federal bureau of investigation. A person who takes fingerprints under this section may charge a reasonable fee to offset the cost of fingerprinting. Unless otherwise provided by law, the bureau of criminal investigation may charge appropriate fees for criminal history information.
2. The bureau of criminal investigation shall provide to each agency, official, or entity listed in this subsection who has requested a statewide and nationwide criminal history record check, the response of the federal bureau of investigation and any statewide criminal history record information that may lawfully be made available under this chapter: . . .
 - c. The education standards and practices board for initial, reentry, and reciprocal teacher licenses under sections 15.1-13-14 and 15.1-13-20 and school guidance and counseling services under section 15.1-13-23. . . .
 - x. The governing board of a public school or, for a nonpublic school, the superintendent of public instruction, for employees designated by the governing board or nonpublic school. The governing board or the nonpublic school is responsible for paying the costs associated with obtaining a background check.
 - y. The governing board of a public school or, for a nonpublic school, the superintendent of public instruction, for a final applicant seeking employment with the school or otherwise providing services to the school, if that individual has unsupervised contact with the students. For purposes of this subdivision, "unsupervised contact" with students means being in proximity to one or more students, on school grounds or at school functions, outside the presence of an individual who has been subject to a criminal background check. The governing board or the nonpublic school is responsible for paying the costs associated with obtaining a background check.

OTHER ELEMENTS

CALENDAR (APPLICABLE TO SCHOOL DISTRICTS)

The school district's calendar must meet the requirements of NDCC Section 15.1-06-04 with respect to:

1. Total days (182);
2. Instructional days (175);
3. Holidays (3);
4. Parent-teacher conferences/compensatory time (up to 2); and
5. Professional development days (2).

NDCC Section 15.1-06-04(3) states:

Beginning with the 2011-12 school year, a school district shall provide for a school calendar of at least one hundred eighty-two days.

- a. One hundred seventy-five days must be used for instruction;
- b. Three days must be used for holidays, as selected by the board in consultation with district teachers from the list provided for in subdivisions b through j of subsection 1 of section 15.1-06-02;
- c. Up to two days must be used for:
 - (1) Parent-teacher conferences; or
 - (2) Compensatory time for parent-teacher conferences held outside of regular school hours; and
- d. Two days must be used for professional development.

**SCHOOL HOLIDAYS
(APPLICABLE TO SCHOOLS)**

NDCC Section 15.1-06-02 provides that schools may not be in session on the following holidays:

- a. Any Sunday.
- b. New Year's Day, the first day of January.
- c. Good Friday, the Friday preceding Easter Sunday.
- d. Memorial Day, the last Monday in May.
- e. The anniversary of the Declaration of Independence, the fourth day of July.
- f. Labor Day, the first Monday in September.
- g. Veteran's Day, the eleventh day of November.
- h. Thanksgiving Day, the fourth Thursday in November.
- i. Christmas Day, the twenty-fifth day of December.
- j. Any day declared to be a public holiday by the President of the United States or the governor.

**COUNSELORS
(APPLICABLE TO SCHOOL DISTRICTS)**

NDCC Section 15.1-06-19 states:

1. Beginning with the 2010-11 school year, each school district must have available one full-time equivalent counselor for every three hundred students in grades seven through twelve.
2. Up to one-third of the full-time equivalency requirement established in subsection 1 may be met by career advisors.

STUDENT PERFORMANCE STRATEGISTS (APPLICABLE TO SCHOOL DISTRICTS)

NDCC Section 15.1-07-32 states:

Beginning with the 2010-11 school year, each school district must have available one full-time equivalent student performance strategist for every four hundred students in average daily membership in kindergarten through grade three. Each school district shall submit documentation to the superintendent of public instruction, at the time and in the manner directed by the superintendent, verifying the amount of time that each student performance strategist expended in tutoring students on a one-to-one basis or in groups ranging from two to five, or in providing instructional coaching to teachers. For purposes of this section, a "student performance strategist" must meet the qualifications of an elementary school teacher as set forth in section 15.1-18-07 and serve as a tutor or an instructional coach.

POINTS OF DISCUSSION FOR EACH ELEMENT

1. Should the element be or continue to be part of the approval process?
2.
 - a. Should the element be directed at public schools or school districts?
 - b. Should the element be directed at nonpublic schools?
3.
 - a. How should compliance be determined?
 - b. How frequently should compliance be verified?
 - c. How should noncompliance be defined?
4. When should compliance be determined?
5.
 - a. In the event of noncompliance, should there be consequences?
 - b. What should the consequences be (e.g., withholding of state aid, withholding of oil and gas tax distribution, the imposition of criminal sanctions, the imposition of civil sanctions, notification of patrons, mandatory closure, state-level oversight, etc.)?
 - c. Should the consequences differ depending on the status of the noncompliant entity, i.e., public school, school district, or nonpublic school?
 - d.
 - (1) Should consequences be applied immediately?
 - (2) Should there be a "grace" or "probationary" period? If yes, for how long?
6. Should requirements for compliance or consequences for noncompliance be waived if student performance exceeds certain stated expectations?
7. Do the responses to the previous questions impact enforcement of the state's compulsory attendance law?

COMPULSORY ATTENDANCE LAWS

15.1-20-01. Compulsory attendance.

1. Any person having responsibility for a child between the ages of seven and sixteen years shall ensure that the child is in attendance at a public school for the duration of each school year. . . .
3. This section does not apply if a child is exempted under the provisions of section 15.1-20-02.

15.1-20-02. Compulsory attendance - Exceptions.

1. The provisions of section 15.1-20-01 do not apply if the person having responsibility for the child demonstrates to the satisfaction of the school board that:
 - a. The child is in attendance for the same length of time at an approved nonpublic school;
 - b. The child has completed high school;
 - c. The child is necessary to the support of the child's family;
 - d. A multidisciplinary team that includes the child's school district superintendent, the director of the child's special education unit, the child's classroom teacher, the child's physician, and the child's parent has determined that the child has a disability that renders attendance or participation in a regular or special education program inexpedient or impracticable; or
 - e. The child is receiving home education.
2. A decision by the board of a school district under subsection 1 is appealable to the district court.

15.1-20-03. Compulsory attendance law - Enforcement - Penalty.

1. Each teacher and administrator is charged with the enforcement of compulsory school attendance provisions. The compulsory school attendance provisions are applicable to any child who is offered school facilities by a school district, regardless of whether or not the child actually resides in the district.
2. If a teacher determines that a child is not in attendance as required by this chapter and that the child has not been excused in accordance with this chapter or in accordance with the school's or school district's policies, the teacher shall notify the administrator of the school.
3. Upon receiving notice of a child's absence under subsection 2, the administrator shall initiate an investigation into the cause of the absence. If the administrator has reason to believe that the person having responsibility for the child has failed to ensure that the child is in attendance, the administrator shall refer the matter to the local law enforcement agency.
4. Any person who fails to ensure that a child is in attendance as required by this chapter is guilty of an infraction for a first offense and is guilty of a class B misdemeanor for a second or subsequent offense.
5. In a prosecution for an offense under this section, it is an affirmative defense if the person responsible for ensuring that the child is in attendance has made substantial and reasonable efforts to comply with the requirements of this section, but is unable to compel the child to attend school. If the court determines that the affirmative defense is valid, the court shall dismiss the complaint against the person.