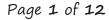○ May   ○ 2015

Policy *ponderings*

LEGISLATIVE UPDATE I:

VETERANS' PREFERENCE AND HIRING POLICIES

With the 2015 North Dakota Legislative Session finished, NDSBA Policy Services has begun to analyze the impact of new laws on policy. We have identified approximately 20 laws that will affect the content or implementation of our sample policies and one law that will require the development of a new policy. We will devote several issues of *Policy Ponderings* to legislative updates, including this issue. In this publication, we examine how changes to the state Veterans' Preference law impact school district hiring policies.

Amended Law

NDCC 37-19.1-02, which describes public employment preference rights for veterans, was amended as follows:

4.   This section does not apply when the position to be filled is that of ~~a superintendent of schools, teacher,~~ an administrative head of a department required by law, or the chief deputy or private secretary of an elected or appointed official~~; the chancellor and vice chancellors of the board of higher education; and presidents or executive deans, vice presidents, assistants to the president, provosts, instructors, and athletic team coaches of board institutions~~. Temporary committees and individual or group appointments made by the governor or legislative assembly are also excepted from the provisions of this section. If an exempt position is advertised, the advertisement must state that veterans' preference does not apply to the position being advertised.

A competitive personnel system may take the form of a skills or aptitude test, an interview, or a simulation exercise (e.g., teaching candidates prepare a lesson and teach a class) or any combination thereof.

This amendment impacts teacher and superintendent hiring procedures. As of August 1, school districts must comply with Veterans' Preference procedural requirements whenever a veteran applies for one of these positions.

What are Procedural Requirements under the Veterans' Preference Law?
The answer to this question differs based on whether or not your district chooses to use a competitive personnel system. A competitive personnel system is defined in NDCC 37-19.1-01 as "a system that rates applicants for a position using an objective set of skills, knowledge, abilities, behaviors, or other characteristics required for the position." A competitive personnel system may take the form of a skills or aptitude test, an interview, or a simulation exercise (e.g., teaching candidates prepare a lesson and teach a class) or any combination thereof. These systems are typically based on a 100 point scale with veterans automatically receiving five points (or 5% for scales not based on 100 points) and disabled veterans automatically receiving ten points (or 10% for scales not based on 100 points).

The decision to use a competitive personnel system will likely vary based on the position being filled. For example, in the interest of

time, districts may choose not to use a competitive personnel system when hiring substitute teachers. For all positions subject to continuing contract law (i.e., any teaching position filled before January 1 and all administrative positions), we strongly encourage school districts to use a competitive personnel system to ensure that districts are selecting the best candidate for the job.

- **Procedural Requirements when not Using a Competitive Personnel System:**
  1. Ensure that the applicant claiming Veterans' Preference is qualified to receive it. The applicant must be a North Dakota resident and wartime veteran. The applicant must also submit a DD-214 to claim preference. Law also grants preference to disabled veterans and a spouse of a deceased veteran. See NDCC 37-19.1-02 (1) (b-d) for qualification criteria.

  2. Determine if the veteran is qualified for the position based **only** on the position description. If qualified, the veteran must be hired. Disabled veterans receive preference over non-disabled veterans, and law contains a selection procedure if multiple veterans apply for a position that is filled

without the use of a competitive personnel system.

School districts should review and update job descriptions associated with positions filled without use of a competitive personnel system. Qualifications should include items such as passing a criminal history record check (if not previously conducted by ESPB), not having been nonrenewed for cause or discharged from previous employment, passing a drug test if required to perform safety-sensitive functions such as driving bus for the district, holding required licensure and educational credentials, and ability to perform all essential job functions with reasonable accommodations. Including such qualification criteria will ensure that schools are able to select candidates who work safely and meet the district's minimum expectations for the position.

- **Procedural Requirements when Using a Competitive Personnel System:**
  1. Develop a competitive personnel system that awards qualified veterans five points and qualified disabled veterans ten points on a hundred-point scale. Define what constitutes a passing score under this system (e.g.,

90% or higher is a passing score).

2. Ensure that the applicant claiming Veterans' Preference is qualified to receive it. The applicant must be a North Dakota resident and wartime veteran. The applicant must also submit a DD-214 to claim preference. Law also grants preference to disabled veterans and a spouse of a deceased veteran. See NDCC 37-19.1-02 (1) (b-d) for qualification criteria.

3. Determine which applicants are qualified for the position by reviewing their credentials in relation to the district job description. Again, qualifications in the job description should include items such as passing a criminal history record check (if not previously conducted by ESPB), not having been nonrenewed for cause or discharged from previous employment, passing a drug test if required to perform safety-sensitive functions such as driving bus for the district, holding required licensure and educational credentials, and ability to perform all essential job functions.

4. Qualified applicants must complete the competitive personnel system. All applicants who receive a passing score are placed on a "list of eligibles." This list constitutes the final pool of applicants.

5. Award the position to the highest scorer, or conduct a second round of interviews, background checks, and/or skill tests and select a finalist from the list of eligibles.

- **Denial of Veterans Preference**
  Regardless of whether or not a school district uses a competitive personnel system, anytime it chooses not to hire a veteran, it must comply with the following requirements. The veteran must receive a **certified** letter that:
  1. States the reasons for nonselection

  2. Informs the applicant of the right to an appeal hearing

  3. Informs the applicant of the requirement that the request for a hearing must be filed by certified mail within fifteen calendar days after the notification

  4. Informs the applicant that a request for an appeal hearing must be made to

the commissioner of veterans' affairs at the included commissioner's mailing address

5. Inform the applicant that if the applicant requests an appeal, the applicant must mail a copy of the request for an appeal hearing to the employer or employing agency NDCC 37-19.1-04 (1)

Sample denial letters are available on the North Dakota Department of Veterans Affairs website:
http://www.nd.gov/veterans/benefits/veterans-preference-state/hiring-agencies-responsibility-competitive-personnel-system

Impact on Policy
NDSBA has updated Policy DBAC, Recruiting and Hiring Teachers (included at the end of this publication); Policy CAAB, Hiring Administrative Staff (available upon request); and Policy CAAA, Superintendent Recruitment and Appointment (available upon request) in response to the amended Veterans' Preference law. The updated policies include factors that should be used to determine if an applicant qualifies for employment. The policies also contain optional language on use of a competitive personnel system.

Regardless of whether or not an employer uses a competitive personnel system, selection of applicants under ND Veterans' Preference law begins with a qualifications analysis.

Effective teachers have organized and well managed classrooms; have well organized lesson plans with objectives, activities, and assessments; have diversified teaching strategies to meet the needs of all learners; and utilize tools to monitor student progress. NDSBA has incorporated these four categories into our teacher interview rubric.

We have also updated language on advertising requirements. This change did not result from amendments to state law. It was made in response to questions our office continues to receive about advertising requirements for teachers and administrators. The policies clarify that vacancies may be posted internally, externally, or both since law does not contain advertising requirements for school vacancies. We have also modified language on final applicant rights in our policy on teacher hiring (DBAC). We formerly quoted federal regulations on this matter in our policy. We have moved federal regulatory language to DBAC-E2 (included at the end of this publication).

Finally, we have attempted to help school districts build a competitive personnel system for teachers. We did so by reviewing literature on teacher selection best practices. Schumacher, Grigsby, and Vesey's (2015)[1] study on developing hiring protocols to predict teaching quality offered the most guidance. They argue, based on past research, that interview questions designed to measure teacher values and aptitudes do not always allow for selection of the best teachers.

The study sets out to determine which teaching behaviors bolster student success, and the research team recommends an interview rubric with questions centered on these behaviors. The study finds that effective teachers have organized and well managed classrooms; have well organized lesson plans with objectives, activities, and assessments; have diversified teaching strategies to meet the needs of all learners; and utilize tools to monitor student progress. We incorporated these four categories into our teacher interview rubric, adding additional categories related to aptitudes and adaptability. We chose to include this former category despite Schumacher, Grigsby, and Vesey's (2015) recommendations because this category contained questions related to many of the issues that become the basis for nonrenewal in North Dakota schools. The latter category was designed to help districts select teachers that meet current **and** future staffing needs. We weighted points in each question category primarily based on Schumacher, Grigsby, and Vesey's (2015) research.

In addition to modeling research on teacher selection, our teacher interview rubric incorporates state Veterans' Preference requirements (veterans automatically receive five points and disabled veterans receive ten points) and allows for assignment

of additional bonus points for teachers highly qualified in one or more hard-to-fill areas. The rubric is meant to serve only as a starting point for schools and should be modified to meet local needs.

We recognize that changes to teacher and superintendent hiring laws come at a time when schools are struggling to recruit and retain teachers. As we updated our teacher and administrator hiring policies, we attempted to incorporate as many options as possible into them to allow schools the flexibility to hire quickly and efficiently within new legal parameters. We recommend that before boards take action on these policies, school administrators responsible for screening employment applicants should provide feedback on which options contained in our sample policies will work best for your schools. The updated hiring policies should be adopted and ready to implement by August 1, 2015.

While this issue of Policy Ponderings has been legally reviewed, Policy Ponderings, NDSBA's sample policies, and other resource materials should not be considered as legal advice and are not intended as a substitute for the advice of your board's legal counsel.

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[1] Schumacher, G., Grigsby, B., & Vesey, W. (2015). Determining effective teaching behaviors through the hiring process. *International Journal of Educational Management*, 29(1), 139-155.

RECRUITING & HIRING TEACHERS

The **[Name of District]** School Board is committed to hiring teachers who will best meet the needs of the District consistent with budget limitations, with district policy, with its goal to ensure student and staff safety, and in compliance with state and federal law. Nothing contained in this policy requires the District to fill a teaching vacancy. The Superintendent is authorized to end the advertising and screening processes in this policy at any time based on the needs of the District; however, once the District offers a teaching contract, it cannot retract this offer without the consent of the teacher receiving the job offer.

Definitions
For the purposes of this policy:
- *Crime against a child* is defined in accordance with NDCC 15.1-13-26.

- ***[Immediate family* is defined as the employee's spouse, brother, sister, parents, children, stepchildren, father-in-law, mother-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, and any member of the employee's household. *NOTE: Adopt only if selecting #2 under "Disqualifying Factors" heading*]**

- *Teaching positions* are jobs held by individuals licensed to teach in North Dakota who are employed primarily as classroom teachers.

- *Sexual offense* is defined in accordance with NDCC 15.1-13-26.

Advertising Protocol
When the District seeks to fill a teaching position, the Superintendent or designee:
1.   Shall develop an announcement with the following components:
       a.   Minimum qualifications including, but not limited to, required education, licensure, competencies, and successfully passing any required background or criminal history record checks;
       b.   Instructions on where to access the position's job description, this policy, and any other application material;
       c.   An Equal Employment Opportunity statement.

2.   May post the announcement internally; internal teaching announcements shall contain all items listed under #1, a statement that internal applicants are ineligible for Veterans' Preference, and the deadline for internal applicants to exclusively submit applications.

3.   May post the announcement externally using methods deemed reasonable, effective, and within budget parameters; external teaching announcements shall contain all items listed under #1, a statement that external applicants are eligible for Veterans' Preference if meeting requirements in state law, and a closing date.

Screening Protocol

The Superintendent or designee should develop regulations, including adjudication standards, for conducting background checks **[and criminal history record checks]** on teachers.

Teaching applicants must meet minimum qualification requirements contained in the job announcement and job description. Teaching applicants must not be disqualified from employment based on the disqualifying factors listed in this policy. If no applicant is qualified, the Superintendent or designee may revise the announcement and shall repost the opening in accordance with this policy's advertising protocol.

The Superintendent or designee shall verify that any applicant claiming Veterans' Preference has satisfied eligibility requirements in law, including submission of required documentation.

[Option 1: The District does not use a competitive personnel system when hiring teachers. If a qualified veteran or disabled veteran applies for a teaching opening, the veteran entitled to preference under law will receive the position. If multiple veterans apply, the District shall comply with selection procedures contained in law. If a veteran or disabled veteran does not apply for a teaching opening, selection shall be made using an interview {and list other screening procedures}].

[Option 2: The District uses a competitive personnel system to screen all qualified teaching applicants {with the exception of substitute teachers and teachers hired after January 1}. This system consists of the following components: {phone interviews,} {an aptitude exam,} {face-to-face interviews,} {a teaching exercise,} {list other components}. Under this system, the Superintendent or designee(s) scores applicants eligible for Veterans' Preference {on a 100-point scale} in accordance with NDCC 37-19.1-02. {The competitive personnel system is tiered, and applicants must receive a passing score at each stage of the screening process to advance to the next stage.} The Superintendent or designee shall develop a rubric for scoring teaching applicants under the competitive personnel system and for defining the threshold for a passing score.

The District may further investigate the qualifications of applicants who received a passing score under the competitive personnel system by checking sources such as, but not limited to, references, employment history, {background check databases}.

The Superintendent may recommend to the Board for hire the most qualified teaching applicant remaining after all screening steps are complete.]

Applicants eligible for Veterans' Preference who are not recommended for hire shall receive notice in accordance with NDCC 37-19.1-02.

Disqualifying Factors
Factors that may exclude an applicant from employment as a teacher include, but are not limited to, the following:
1. The applicant has been charged with a felony, sexual offense, crime against a child, any other offense involving a child victim, or any other crime that the Superintendent or designee has reason to believe poses a safety risk to district students, staff, or operations or could substantially disrupt district operations.

2. **[The employment would create a direct supervisor-subordinate relationship with an immediate family member who is also an employee. Employees who marry or become members of the same household may continue employment; however, a direct supervisor-subordinate relationship between the employees shall be avoided.]**

3. Knowing falsification or omission of any information given to the District by an applicant or made by an applicant during the applicant screening process including, but not limited to, information concerning criminal convictions or pending criminal charges.

4. The individual has not met ESPB's standards for teaching licensure and/or will not have obtained a teaching license by the start of the school year.

5. The individual was **[nonrenewed for cause or]** discharged from a previous teaching position.

Hiring Authority
The Superintendent or designee(s) shall screen and make recommendations to the Board about offering an applicant a teaching position.[2]

Final Applicant Rights
Records obtained by the District for background checks, criminal history record checks, and other record checks will be used solely for purposes that they were requested and will only be disseminated and retained in accordance with the district's personnel records policy. Applicant rights related to criminal history records are contained in DBAC-E2.

Issuing Contracts
If the Board approves hiring a new teaching staff member contingent upon satisfactory adjudication of criminal history records or obtaining a teaching license, the individual's teaching contract shall be issued with language notifying him/her of this contingency.

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[2] This is only one option. The Board may screen candidates or designate an interview committee to conduct candidate screening.

[Orientation

Each teacher shall be provided with a personnel handbook. {The Superintendent or designee shall provide an orientation program for new teaching staff members to acquaint them with the district's policies and procedures, the school's rules and regulations, and the responsibilities of their position.}]

Complementing NDSBA Templates (may contain items not adopted by the Board)

- DI, Personnel Records

End of [Name of District] Policy DBAC .... **Adopted:**

[04/15]

COMPETITIVE PERSONNEL SYSTEM EXAMPLE FOR TEACHERS
*NOTE: This competitive personnel system is for a school district that **only conducts interviews** to screen teaching candidates. If your district uses additional screening mechanisms, adjust the competitive personnel system accordingly.*

Managing Classrooms	Total Points: 20

Sample questions (select and assign point value to each):
• Describe day-to-day procedures and activities you use to help structure your classroom.
• Describe how you would handle the following:
   o A group of students who are insubordinate
   o A parent who wants to observe your classroom
   o A student who persistently disrupts your classroom
   o Bullying
• Describe your ideal classroom environment. What steps do you take to create this environment?
• Do your students consider you to be lenient or strict? Why?
• How do you command the respect of your students?
• How would you rate yourself as a classroom manager? Why?
• What are your academic expectations for your students? How do you convey these expectations to them?
• What are your behavioral expectations for your students? How to do you convey these expectations to them?
• What strategies do you use to work with and manage **[paraprofessionals] [volunteers]** in your classroom?
• What is it like to be in your class?
	Score:

Organizing for Instruction	**Total Points: 20**
Sample questions (select and assign point value to each): • Describe how you develop a lesson plan from start to finish. • Describe how you use your preparation period. • Describe strategies you use for short and long-term instructional planning. • Describe your experience working **[on a curriculum planning team] [in a professional learning community]**. How has involvement on the team impacted your planning and instruction? • Describe time management strategies you use to ensure you successfully complete all your responsibilities as a teacher. • How do state standards guide your lesson planning? Tell me about a lesson you use that integrates one or more standards. • How do you decide what should be taught in your class? • How do you ensure that you cover all the necessary content in your classroom each school year? • How do you incorporate technology into your lesson plan? • What is differentiated instruction, and how is incorporated into your lesson plans?	**Score:**

Implementing Instruction	Total Points: 30
Sample questions (select and assign point value to each): • Describe how you make content relevant to students. • Describe one of your assignments or projects, the outcome of which surprised you. Explain why. • Describe the best lesson that you taught. Why did it work so well? • Describe the worst lesson that you taught. Why didn't it work and what did you learn from it? • Describe three teaching strategies you feel most competent using. • Describe your teaching style. • How do you encourage class participation? • How do you individualize instruction? • How much time do you devote to lecturing? • If your students do not understand a concept, how do you adjust your instructional techniques to respond? • What is cooperative learning, and how have you used it in your classroom? • What was the best question(s) you asked your students during a lesson taught? What was their response? • What would we see if observing you at work in your classroom? • What would your students say they remember most about your class? • Would you rather try new teaching strategies or try to perfect the approaches which work best for you? Explain.	**Score:**
Monitoring Student Progress	**Total Points: 10**
Sample questions (select and assign point value to each): • Describe your experience and/or training in interpreting state assessment data. • Discuss your philosophies related to grading, assignments, assessments, and extra credit. • Does assessment improve student learning? If so, how? • How do you communicate student progress or lack of progress to students? To parents? • How do you define student success, and how do you know when a student has succeeded? • How have you used student data to inform planning or assessment? • If most of the students in your class failed an assignment, test, or project, how would you respond? • What is the role of homework in your classroom? • What procedures do you use to evaluate student progress besides tests? • What strategies do you use to help students self-assess their progress? • When should a student be considered for remediation?	**Score:**
Aptitude	**Total Points: 10**
Sample questions (select and assign point value to each): • Describe characteristics of the best/worst teacher you have known.	**Score:**

• How do you handle a conflict with:
   o A student?
   o Parent?
   o Co-worker?
   o Supervisor?
• How would your previous principal describe you?
• If you could choose your class size and were paid $3000 per student, what would your class size be? Why?
• What are your goals in terms of professional growth?
• What does it mean to be a professional and ethical educator?
• What does it mean to be a student advocate?
• What kinds of experiences have you had interacting with people whose backgrounds are different than your own?
• When is it appropriate for teachers to use social media to interact with students?
• Who do you believe to be most responsible for student learning: the student, the teacher, or the parent?
• Why did you choose to become a teacher **[and study your subject area]**?	

Adaptability	**Total Points: 10**
• Are you highly qualified to teach in any other areas? • At which grade levels have you previously taught? • Do you hold any specialty credentials? • Do you have an administrator's credential? • Do you have experience advising or coaching student activities?	**Score:**

Interview total:..._____

Extra points	
Applicant is eligible for Veterans' Preference and is not disabled: **Assign five points**	
Applicant is eligible for Veterans' Preference and is disabled: **Assign 10 points**	
Applicants is highly qualified to teach in one or more hard-to-fill area(s) as defined by the Educational Standards and Practices Board: **Assign [#] points for each area**	

Total score:..._____

A passing score is defined as receiving [#] points or more.

End of [Name of District] Exhibit DBAC-E

Descriptor Code: DBAC-E2

**CRIMINAL HISTORY RECORD SCREENING PROCEDURES &
ADJUDICATION FOR TEACHERS**

NOTE: Only use this document if your district intends to run criminal history record checks on teaching applicants.

The process for teachers to be fingerprinted is contained in DBAA-AR.

Criminal history records are confidential. Only the district adjudicator is authorized to review them. The District designates **[title]** to serve as the adjudicator of teachers' criminal history records.

The adjudicator shall advise applicants that the procedure for obtaining, correcting, or updating federal criminal history records is contained in 28 CFR 16.34. Before determining if an applicant passed or failed the criminal history record check, the adjudicator shall give the applicant a reasonable time to correct and/or complete his/her criminal history record or decline to do so.

The adjudicator will deem a teaching applicant to have failed the criminal history record check if the applicant has been charged with:
- A felony
- Sexual offense (NDCC 15.1-13-26)
- Crime against a child (NDCC 15.1-13-26)
- Any other offense involving a child victim
- Any other crime that the adjudicator has reason to believe poses a safety risk to district students, staff, or operations or could substantially disrupt district operations

End of [Name of District] Exhibit DBAC-E2