

BEST PRACTICES FOR SCHOOL BOARD MEMBERS

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SCOPE OF PRESENTATION

- ▶ I. INDIVIDUAL BOARD MEMBER CONDUCT
- ▶ II. PERSONNEL ISSUES
- ▶ III. RIGHT TO KNOW LAW

I. INDIVIDUAL BOARD MEMBER CONDUCT

- ▶ Opinions of individual Board members are not the views of the Board unless endorsed by a quorum of the Board.
- ▶ Individual Board members have no authority over District employees or the day to day operation of the schools (same as any other taxpayer).
- ▶ Requests for information or material requests for services from the administration should be approved by the Board and/or Superintendent.
- ▶ Board should consider impact of new initiatives on operations of the District and prioritize accordingly.

Board Goal - reflect needs w/ district

experience
benefits of teacher

Conflicts of Interest

- › Conflict of interest exists whenever a Board members votes on a matter in which he has a direct personal and pecuniary interest.
- › The personal pecuniary interest must be "immediate, definite, and capable of demonstration; not remote, uncertain; contingent; and speculative, that is, such that men of ordinary intelligence would not be influenced by it.

Legislative vs. Quasi Judicial Acts

- › Board members may have a direct pecuniary interest in the outcome of a legislative act so long as the interest is no greater than that of the rest of the taxpayers.
- › Board member sitting in a Quasi Judicial capacity should not vote on matters that they have a direct pecuniary interest in the outcome (of any kind).
- › If a Board member recuses him or herself they should physically step down.
- › If the member intends to participate after recusal, indicate role as taxpayer.

Keys to Effective Board Member Participation

- › Avoid conflicts of interest (when in doubt recuse or abstain).
- › Keep open mind (avoid prejudice) when Board members must sit in Quasi Judicial manner.
- › Avoid acts which could lead to disqualification.
- › Abstention should be reserved to those circumstance where there is an insurmountable lack of participation information or where the member's participation in the vote creates the appearance of impropriety or a conflict of interest. The reason for abstaining should given.
- › Share all supporting information views with the other members prior to the matter being discussed.
- › Respect all views and opinions.

Comments can show actual bias

Disqualification

- › Because of the role of hearing appeals (Quasi Judicial), Board members should avoid getting involved in any manner that might lead to claim of bias or prejudgment.
- › Substantial prior involvement in personnel matters can result in claim of actual bias and result in disqualification in future discipline proceedings.
- › Public statements can be source of claim of bias. Avoid public comment on all matters where the Board may be required to sit in Quasi Judicial manner.
- › Disqualification requires exclusion from Board and may result in invalidation of any action already taken by the Board.

II. PERSONNEL MATTERS

- › The only School District official that has authority over District employee performance and discipline is the Superintendent of Schools.
- › School Board's authority to address personnel matters is limited by law to:
 - 1. Appeal of terminated "teachers" under RSA 189:13; and
 - 2. Appeal of Nonrenewals pursuant to RSA 189:14-a; and
 - 3. Appeal of grievances pursuant to Collective Bargaining Agreements; and
 - 4. The election of employees upon nomination by the Superintendent; and
 - 5. The performance and discipline of the Superintendent.

Best Practices Dealing with Personnel Issues

- › All concerns of employee performance/discipline (with except those relating to the Superintendent) should be referred to the Superintendent immediately.
- › School Board should direct its attention to whether or not the Superintendent handled the employee matter appropriately.
- › Never talk about personnel issues in public or with others who lack privilege.
- › Never use email to discuss personnel issues.

Dealing with Taxpayer's Concerns of Employee Misconduct

- ▶ Encourage taxpayers to go directly to Superintendent.
- ▶ Only involve yourself as needed to refer matter to Superintendent.
- ▶ If the complaint relates to Superintendent, contact legal counsel and consider hiring an independent investigator.
- ▶ Board members should avoid conducting own investigations of employee misconduct.
- ▶ Criminal conduct should be referred to Police. No exceptions.

Board Member Interaction with District Employees

- ▶ Board members have no authority to reprimand or redirect employee conduct.
- ▶ Board members have no authority to go directly to employees seeking information.
- ▶ All request for information from Board members should be routed through the Board Chair and/or Superintendent.
- ▶ Superintendent has the lawful authority over the operation of the schools.



III. RIGHT TO KNOW LAW

- ▶ New Hampshire's Right to Know Law preamble provides:

"Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to insure both the greatest possible public access to the actions, discussions, and records of all public bodies and their accountability to the people."

Meetings

- › Meeting is defined as:
- › When a quorum of the membership of a *public body* has been assembled, *in person or by means of telephone or electronic connection, or in any manner in which all participating members are able to communicate contemporaneously, for the purposes of discussing or acting* upon matters over which the public body has supervision, control, jurisdiction or advisory power.

Public Body

- › *Public Body* is defined as "any legislative body, governing body, board, commission, committee, agency, or authority of any county, municipal corporation, school district, SAU, charter school other political subdivision, or any committee, subcommittee, or subordinate body thereof, or advisory committee thereto."

Electronic Proceedings

- › *No proceedings shall be conducted electronically that does not permit the public to hear, read or otherwise discern meeting discussion contemporaneously at the meeting location specified in the notice.*
- › *All proceeding held electronically shall not circumvent the spirit and purpose of the right to know law.*

Non-Meetings

- ▶ Chance or social meetings or *other gatherings not convened for the purpose of discussing or acting upon such matters if no decisions are made.*
- ▶ Consultation with legal counsel.
- ▶ Strategy or Negotiations with respect to Collective Bargaining.
- ▶ *Circulation of Draft documents which, when finalized, are intended only to formalize decisions previously made in a proceeding, provided, this provision cannot be used to prevent disclosure mandated by any other provision of law*

Non-Public Sessions

The Right to Know Law sets forth conditions under which the body may conduct business in a non-public session. These conditions are summarized as:

- ▶ (a) the dismissal, promotion, compensation of any public employee or charges against them.
- ▶ (b) the hiring of any person of a public employee.
- ▶ (c) matters which might adversely affect the reputation of a person, (other than a Board member),

Non-Public Sessions(CONT)

- ▶ (d) consideration of sale of property.
- ▶ (e) discussions regarding negotiations or pending claims and/or litigation.
- ▶ (f) consideration on applications for the adult Parole Board.
- ▶ (g) consideration of emergency management information and other security related matters.
- ▶ (h) applications by the Business Finance Authority (if consideration of the application would cause harm to the applicant if handled in public session.)

Burden: Non-Public Sessions

- ▶ The body seeking to go into non-public session has the burden of proving that the body is justified in going into non-public session.
- ▶ The Supreme Court has also indicated that it will narrowly construe the circumstances under which a Public Body may go into non-public session in a manner that favors a public proceeding.

Governmental Records

- ▶ The term "*governmental record*" is defined as:
- ▶ "*any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function. Without limiting the foregoing, the term "governmental records" includes any written communication or other information, whether in paper, electronic, or other physical form, received by a quorum or majority of a public body in furtherance of its official function, whether at a proceeding or outside a proceeding of the body.* The term "governmental records" shall also include the term "public records."

Electronic Governmental Records

- ▶ *Governmental records may be purely electronic records (e-mail etc).*
- ▶ *Electronic communications that are circulated to a quorum of a public body are public records.*
- ▶ *Once an electronic public records is created, it must be available to the public for inspection.*

Availability

- ▶ Every governmental record must be reasonably described and made available for inspection and copying during regular or business hours.
- ▶ The public body has five (5) business days from a request to:
 - (a) make such a record available; or
 - (b) deny the request in writing, stating reasons for the non-disclosure; or
 - (c) acknowledge receipt and indicate how long it will take to decide whether or not to grant the request.

Discrete Electronic Communications

- ▶ *Electronic communications (e-mail) from a constituent or between members of the public body that is not sent to (or shared with) a quorum of the public body are not public records.*
- ▶ *However, discrete electronic communications cannot be used to circumvent the spirit of Right to Know Law (Example to replace deliberations).*

Non-Public Records

- ▶ Records pertaining to internal personnel practices, confidential commercial or financial information, test questions, scoring keys and other examination data
- ▶ Examinations given for employment, personnel, medical, welfare, library user, video sale, rental and other files where the disclosure would constitute an invasion of privacy.
- ▶ Teacher certification records of the Department of Education are also exempt. However, the Department must make available teachers certification status information.
- ▶ Emergency function information (911)

Other Non-Public Records

- › Personnel school records of pupils.
- › Written legal advice from agency or body's legal counsel (including electronic communications).
- › Documents or material, which an agency would be permitted to receive in non-public session to the extent disclosure of such records would frustrate the purposes for non-public session.
- › Bank examiner's reports.
- › Real estate appraisal reports compiled by the Department of Transportation.
- › Certain law enforcement investigative files.

Remedies; Violations of RTKL

- › *Court action regarding alleged violations of the Right To Know law given high priority on Court's calendar.*
- › Remedies may be sought either in advance of the proceeding or after the proceeding has taken place.
- › Injunction may be granted preventing the public body from holding the non-public session.
- › Court may invalidate action taken and/or order release of minutes of the past non-public meeting .
- › Attorney's fees and costs can be awarded to the party seeking disclosure (Public Body knew or reasonably should have known that the meeting should be open to the public).

Remedies for Unlawful Withholding of Public Records

- › *Court action regarding alleged violations of the Right To Know law given high priority on Court's calendar.*
- › With regard to the disclosure of records, the burden lies on the body seeking to resist disclosure .
- › Remedies involve production of the governmental record and may subject the public body to attorney's fees and costs (Public Body knew or reasonably should have known that the information/document sought was a public record).

THANK YOU

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