



School Board Training
Monday, April 25, 2022; 4:00 PM
ECC Room 350

I. Determination of Quorum and Call to Order

II. Training

A. Overview of Equity Framework

Description: The Board will receive an explanation, tools, and resources.

Presenter(s): Dr. Trudy Arriaga, former Superintendent of Ventura Unified School District, CA

B. Board Discussion with Jewish Community Relations Council (JCRC) and Coalition of Asian American Leaders (CAAL)

Description: Community leaders will provide prospective and guidance on supporting Jewish, Asian, and Asian American students.

Presenter(s): Laura Zelle, JCRC; and ThaoMee Xiong, CAAL

C. Board Legal Training

Description: The Board will be presented with training on Open Meeting Law and other topics that guide Board practices.

Presenter(s): Trevor Helmers, District Legal Counsel

III. Board Chair Updates

IV. Superintendent Updates

V. Adjournment



333 South Seventh Street, Suite 2800
Minneapolis, MN 55402
Office (612) 436-4300
Fax (612) 436-4340
www.raswlaw.com

EFFECTIVE GOVERNANCE: UNDERSTANDING THE RIGHTS, RESPONSIBILITIES, AND RISKS OF BEING A SCHOOL BOARD MEMBER

Independent School District No. 273, Edina Public Schools

April 25, 2022

Presented by

Trevor S. Helmers

trevor.helmers@raswlaw.com

I. INTRODUCTION

This presentation will cover major legal topics that school board members face in carrying out their official duties. Learning the basics of the Open Meeting Law, data privacy rights, and efficiently running meetings will help board members to avoid the common pitfalls that tend to derail and get in the way of the work of running the school district.

II. BOARD MEMBER RESPONSIBILITIES, RIGHTS, AND ROLES

- A. RESPONSIBILITIES.** “The board must have the general charge of the business of the district, the school houses, and the interests of the schools thereof.” Minn. Stat. § 123B.02. “The board must superintend and manage the schools of the district.” Minn. Stat. § 123B.09, subd. 8 In order to fulfill its responsibility to “superintend and manage the schools of the district,” a school board must perform specific statutory duties. For example, every school board must:

NOTE: These materials and the corresponding presentation are meant to provide information about important legal developments. The information that is provided may be superseded by judicial decisions and legislative amendments. The presenter cannot render legal advice without an awareness and analysis of the facts of a particular situation. If you have questions about the application of concepts discussed in this outline or the corresponding presentation, you should consult with your legal counsel about the facts of your particular situation. 2022 © Rupp, Anderson, Squires, Waldspurger & Mace, P.A.

- furnish school facilities;
- arrange for transportation of pupils living at least two miles from school;
- prescribe textbooks and courses of study;
- provide a testing program for the purpose of measuring student growth and curriculum evaluation;
- keep accurate and complete individual, permanent, cumulative personal records for all students;
- levy for necessary funds for the conduct of schools, the payment of indebtedness, and all proper expenses of the District;
- pay all just claims against the district;
- keep registers; and
- prosecute and defend actions by or against the district.

B. AUTHORITY. “The board’s authority to govern, manage and control the district; to carry out its duties and responsibilities; and to conduct the business of the district includes implied powers in addition to any specific powers granted by the legislature.” Minn. Stat. § 123B.02. For example, every school board *may*:

- enter into agreements with a term less than four fiscal years;
- employ and discharge necessary employees;
- contract for goods and services;
- procure insurance against liability;
- receive bequests, donations, or gifts for the benefit of the district;
- establish and maintain summer school programs;
- provide a program of co-curricular and extracurricular activities; and
- expel students.

C. POLICYMAKING ROLE. “The board shall make, and when deemed advisable, change or repeal rules relating to the organization and management of the board and the duties of its officers.” Minn. Stat. 123B.09, subd. 7. The Board must “adopt rules” for the “organization, government, and instruction” of schools in the district.” Minn. Stat. § 123B.09, subd. 8.

D. MACRO-MANAGEMENT, NOT MICRO-MANAGEMENT. After the school board sets the policy or general direction that will be taken by the district, the superintendent should oversee the implementation of that policy or direction. In other words, the school board identifies the destination on the roadmap, but the superintendent drives the car to the destination and picks the route that will be taken.

1. For example, when it comes to employment matters, the board is responsible for big-picture decisions such as:
 - the overall budget;
 - organizational structure;

- creation and elimination of positions;
- employment policies;
- efficiency of school district operations;
- hiring and firing; and
- salary and benefits.

2. In contrast, the Superintendent, or his/her designee, is responsible for day-to-day personnel matters such as:

- selecting and assigning personnel;
- supervising and evaluating personnel;
- directing personnel and ensuring compliance with directives;
- enforcing work rules;
- transferring personnel;
- disciplining personnel (except teacher and administrator terminations); and
- making recommendations to the board.

E. THE BOARD MUST ACT AS A BODY AND NOT THROUGH INDIVIDUAL MEMBERS. The school board acts as a continuing body. As a body, the board is responsible for fulfilling the school district's duties under the law and for lawfully exercising its powers.

1. **Individual members have a limited role.** The most important role of an individual board member is to prepare for and participate fully at board meetings so that the board, as a body, fulfills its statutory duties.
2. **Individual board members have no authority to act on their own.** Unless the board has delegated authority to an individual board member, the individual board member has no power to give orders, to supervise or evaluate an employee, to investigate a complaint, to formulate policies, or to take any other action on behalf of the board.

F. FOLLOWING THE PROPER CHAIN OF COMMAND

1. **Responding to citizen complaints**
 - a. Document the complaint and provide the documentation to the superintendent;
 - b. Direct the citizen to the superintendent or building principal (depending on the nature of the complaint);
 - (1) Provide appropriate contact information;
 - (2) Inform the citizen you will be informing the superintendent.

- c. Explain that the school district has a written complaint form, and that the superintendent or building principal may ask the citizen to complete the form.

2. **Responding to anonymous complaints**

- a. The same basic process should be followed as with other complaints.
- b. The district's obligation to investigate depends on the nature of the anonymous complaint and whether the information that is provided is sufficient to allow an investigation.
- c. The district can investigate only reasonable leads and should not participate in a fishing expedition.

3. **Responding to citizen concerns.** Inform the superintendent of all concerns.

- a. The superintendent needs to know about all employee performance concerns so the concerns can be addressed promptly and properly.
- b. The superintendent needs to know about all concerns so that the superintendent can discuss them, as appropriate, with other members of the administrative team and can follow up with the appropriate employee(s) to ensure that the concern was addressed.
- c. The superintendent generally should inform the building principal of building specific concerns.
- d. The superintendent generally should inform the appropriate director of concerns that fall under his/her jurisdiction (e.g. Human Resources, Special Education Director, etc.).

4. **Why is a proper order of contacts (chain of command) important?** Board members should never investigate on their own for the following reasons:

- a. Board members are not properly trained to conduct investigations and may create legal liability by doing so.
- b. Board members who investigate on their own may impair the integrity of an existing investigation or a future investigation.
- c. An individual board member (and even the board as a body) might not know the full story, what has been done in the past, or what is happening right now with respect to the issue.
- d. The district needs to ensure that a clear, consistent, and lawful message is delivered to the complainant, the witnesses, and the alleged offender.

- e. Board members who investigate on their own often place employees in an untenable situation and create undue stress for employees.
- f. Board members who investigate on their own may be deemed to be biased if a student or personnel issue later comes before the board.
- g. Board members have no authority to investigate on their own.
- h. Investigating directly with employees undermines the superintendent's authority.
- i. It is not the proper role of any Board member to engage in personal investigation of such matters.

5. **What *NOT* to do.**

- a. Do not pick sides.
- b. Do not promise a particular outcome or course of action.
- c. Do not promise confidentiality.
- d. Do not investigate yourself.
- e. Do not act outside the process or act as *the* decision-maker.
- f. Do not offer to personally address the concern (hero/villain syndrome).
- g. Do not go directly to employees below the superintendent or members of the superintendent's cabinet.

G. AFTER THE VOTE IS OVER, THE BOARD ACTS WITH ONE VOICE.

Regardless of which side of a vote an individual board member was on, a school board acts as a body and it speaks as a body with one voice once the vote has been taken.

1. **Board members should not undermine board action.** Board members are entitled to have their own view, and they are encouraged to share that view publicly when debating a motion. However, once a vote has been taken, the body has spoken and no board member should act to undermine implementation of the board's vote. For example, it is inappropriate to publicly campaign against an action that has already been voted upon by the board.
2. **Motions to reconsider.** On occasion a school board member will be in the minority when voting for or against a motion. Unhappy with the result, the board member will move to have the board reconsider the motion. The board is not required to entertain such a motion. Under Robert's Rules of Order, a

motion to reconsider may only be made by a member who voted on the winning side.

- a. If a board member who was not on the winning side of a motion moves to have the board reconsider the motion, the board chair should rule the motion out of order. Ideally, the chair would state that under parliamentary procedure and the operating rules adopted by the board, a motion to reconsider may only be made by a member who voted in favor of the motion (if it was passed) or against the motion (if it was defeated).
- b. If a motion to reconsider passes by majority vote, then the board must vote again on the original motion. Voting in favor of a motion to reconsider does not, itself, constitute a vote on the underlying motion.

3. **Fiduciary Duties.** Individual board members owe a fiduciary duty to the board as a whole. There are many ways in which a board member can violate this duty. In other states, the law has developed to hold that a board member who intentionally violates a fiduciary duty is guilty of malfeasance and may be criminally prosecuted. For example:

- a. Feeding private or confidential information to the plaintiff in a lawsuit against the district;
- b. Disclosing confidential information about labor negotiations to a union representative or any other person, including but not limited to a teacher who is a friend or a spouse;
- c. Disclosing confidential information, which was discussed in closed session, to a newspaper or television reporter;
- d. Indicating to a contractor of the district that you are acting in your capacity as a board member and then engaging the services of the contractor to perform services that are designed to undermine a formal action taken by the board;
- e. Obtaining the services of a contractor on behalf of the board without any authority to do so from the board; or
- f. Disclosing educational data that you had access to because of your position as a board member.

5. **Attorney-Client Privilege.** The attorney-client privilege is held by the board as a body. Individual board members do not have the legal right to waive the privilege or to disclose confidential legal advice or other information protected by the attorney-client privilege.

6. **No Right to Record Attorney-Client Closed Session.** Members of a school board and members of a committee of the school board have no right to record a session that is closed pursuant to the attorney-client privilege.

III. OPEN MEETING LAW (MINNESOTA STATUTES CHAPTER 13)

A. PURPOSE

The Open Meeting Law (“OML”) creates a presumption that all meetings of governing bodies are to be open to the public. The primary purpose of the law is to allow interested members of the public to be fully informed. Toward that end, the OML is to be broadly construed in favor of public access.

B. “MEETINGS” THAT ARE SUBJECT TO THE OPEN MEETING LAW

1. **School Board Meetings.** Whenever a school board meets, it must comply with the OML. For purposes of the OML, a “meeting” is “a gathering of a quorum or more members of the governing body . . . at which members discuss, decide, or receive information as a group on issues relating to the official business of that governing body.” *Moberg v. Independent School District No. 281*, 336 N.W.2d 510 (Minn. 1983).
 - a. **Telephone conference calls.** A meeting occurs if a majority of the school board members participate in a conference call or other virtual communication, such as Skype.
 - b. **Serial meetings.** Serial meetings, each consisting of less than a quorum of the school board, may violate the law depending on the facts and circumstances of the case.
 - c. **Email and Text Messages.** A meeting arguably occurs if a majority of the school board members use email or text messages to discuss, express approval, or express disapproval of a matter that is before the board or is likely to come before the board. *See* Advisory Op. 09-20 (Sept. 8, 2009).
 - (1) Electronic communications that involve a back-and-forth exchange of viewpoints are analogous to a telephone conference call.
 - (2) Avoid use of “reply all.”
 - (3) If two board members correspond by email with each other, they should consider a “no forwarding” and a “no copying” rule so there is less risk of an OML violation.
 - (4) The risk of a violation is reduced if the superintendent sends the email to board members and then has board members respond

directly to the superintendent without copying other board members.

2. **Exceptions to the Definition of a “Meeting”**

- a. **Chance social gathering.** Even if a quorum of the board is present, “chance social gatherings” are not a “meeting” for purposes of the OML *St. Cloud Newspapers, Inc. v. District 742 Community Schools*, 332 N.W.2d 1 (Minn. 1983).
- b. **General training programs.** A training program that is attended by a quorum of a school board to develop skills and a better understanding of board responsibilities, and is directed toward general municipal matters rather than specific problems, is not a meeting for purposes of the OML. Op. Minn. Atty. Gen., 63a-5 (Feb, 5, 1975).

3. **Committee Meetings.** The OML applies to committee meetings if the committee has decision-making authority on behalf of the school board. *Minnesota Daily v. University of Minnesota*, 432 N.W.2d 189 (Minn. App. 1988); *Sovereign v. Dunn*, 498 N.W.2d 62 (Minn. App. 1993).

- a. Courts will presume that a committee has decision-making authority (i.e. the ability to act on behalf of a school board) if a quorum of the school board members are on the committee. Courts will also presume that a committee has the capacity to act on behalf of a school board if the board has delegated some decision-making authority or power to a committee.
- b. The Department of Administration has opined that standing committees are subject to the OML. However, the Department’s opinion is contrary to existing case law.

C. NOTICE OF MEETINGS

1. **Regular Meetings.** A schedule of the regular meetings of a school board must be kept on file at the District’s primary office. If a school board decides to hold a regular meeting at a time or place different from that stated in its schedule of meetings, it must comply with the notice requirements for special meetings.

2. **Special Meetings.** Notice must be posted three calendar days (72 hours) before a special meeting. The notice must state the date, time, place and purpose of the special meeting.

- a. **Posted on bulletin board or meeting room door.** The district must post notice on its principal bulletin board or, if there is no bulletin board, the door of the regular school board meeting room. The principal bulletin board must be located in a place that is “reasonably accessible to the public.” *Rupp v. Mayasich*, 533 N.W.2d 893 (Minn. App. 1995).

- b. **Mailed or delivered to those who request notice.** The district must mail or deliver notice to each person who has filed a written request for notice of special meetings. Alternatively, the district may publish notice in its official newspaper three days before a special meeting.
 - (1) A school board may establish an expiration date for requests for notices of special meetings and may require refilling of the request once a year.
 - (2) Not more than 60 days before the expiration date of a request for notice, the school board must send notice of the refilling requirement to each person who filed during the preceding year.
- 3. **Emergency Meetings.** An “emergency meeting” is a meeting that is called because of circumstances that, in the judgment of the school board, require immediate consideration by the school board. Floods, fires, tornado damage, and similar events would likely qualify as an emergency.
 - a. A good faith effort must be made to provide notice to news media that have filed a request for notice of special meetings. The notice must include an explanation of the subject matter of the meeting.
 - b. Notice must also be given by telephone or any other reasonable method to board members.
 - c. If matters not directly related to the emergency are discussed or acted upon at an emergency meeting, the minutes of the meeting must include a specific description of that discussion or action.
- 4. **Continued Meetings.** No published or mailed notice is required for a continued meeting so long as the time and place of the meeting was established during the previous meeting and was recorded in that meeting’s minutes.
- 5. **Closed Meetings.** The notice requirements apply to closed meetings, as well as open meetings.
- 6. **Actual Notice Exception.** If a person receives actual notice of a school board meeting at least 24 hours before the meeting, all notice requirements of the OML have been satisfied with respect to that person, regardless of the method or receipt of notice.

D. VIRTUAL MEETINGS

1. **Interactive Technology.** A school board may use interactive technology with an audio and visual link to conduct a meeting if the school board complies with the following requirements:
 - a. All members of the board must be able to hear and see one another and hear and see all discussion and testimony presented at any location at which at least one member is present.
 - b. Members of the public present at the regular meeting location must be able to hear and see all discussion and all votes of board members.
 - c. At least one member of the board must be physically present at the regular meeting location.
 - d. Each location at which a member of the board is present must be open and accessible to the public.
 - e. To the extent practical, the board must allow a person to monitor the meeting electronically from a remote location. The board may require the person to pay for the “documented marginal costs” the board incurs as a result of the additional connection.
 - f. The board must provide notice of the regular meeting location and notice of any site where a member of the board will be participating in the meeting.

2. **Health Pandemic/Emergency.** A school board may conduct a meeting by telephone or other electronic means so long as the following conditions are met:
 - a. the presiding officer, chief legal counsel, or chief administrative officer for the affected governing body determines that an in-person meeting or an open meeting conducted in accordance with the OML is not practical or prudent because of a health pandemic or an emergency declared under chapter 12;
 - b. all members of the body participating in the meeting, wherever their physical location, can hear one another and can hear all discussion and testimony;
 - c. members of the public present at the regular meeting location of the body can hear all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration;

- d. at least one member of the body, chief legal counsel, or chief administrative officer is physically present at the regular meeting location, unless unfeasible due to the health pandemic or emergency declaration;
- e. all votes are conducted by roll call, so each member's vote on each issue can be identified and recorded;
- f. to the extent practical, the body shall allow a person to monitor the meeting electronically from a remote location;
- g. the school board shall provide notice of the regular meeting location, of the fact that some members may participate by telephone or other electronic means, and of the provisions of subdivision 3.

E. MATERIALS REVIEWED AT A MEETING

1. **Materials Available to the Public.** At least one copy of the agenda and other written materials must be available in the meeting room for public inspection during the meeting if the materials are distributed to all school board members at or before the meeting, or are available in the meeting room to all school board members.
2. **Materials Not Available to the Public.** The following materials are not available to the public even if they are distributed to all members of the board at or before the meeting: (a) data classified as non-public under the Minnesota Government Data Practices Act; and (b) data relating to matters discussed at a closed meeting.
3. **Emails Related to Agenda Items.** The Department of Administration has opined that an email from a city manager to council members one week before a city council meeting should have been printed and made available to the public at the meeting pursuant to Minn. Stat. § 13D.01, subd. 6. The Department concluded that the emails were “printed material relating to the agenda” that had been distributed to all the members before the meeting. *See* Advisory Opinion 08-015. The emails did not contain private data.

F. PUBLIC ACCESS TO ELECTRONIC COMMUNICATIONS

1. **Disclosure of Emails.** Emails between two school board members, between a superintendent and a school board member, or between another employee and a school board member do not enjoy any special protections under the Minnesota Government Data Practices Act (“MGDPA”). All government data are presumed to be public and may be subject to a data practices request. Assume that the data may be read by the subject of the data or the public.

2. **Record Retention Requirements.** Most email messages that are sent or received by a school district fall under the category of “Administration” and the subcategory of “Correspondence.” The Retention Schedule generally requires that correspondence be retained for a minimum of three years “unless otherwise specifically addressed” in the Retention Schedule. If the content of a particular email or its attachments causes the email to fall under another category or subcategory on the Retention Schedule, a school district may be required to retain the email for longer than three years.
 - a. Because of retention requirements, a school district may require board members to send and receive all board-related emails through an email account maintained by the school district.
 - b. In the event of litigation against the district, a school board member’s personal email account may be subject to search if the board member uses the personal account to conduct any school-related business.
3. **Disclosure of Electronic Calendars, Task Lists, and Text Messages.** In Advisory Opinion 02-003, the Department of Administration opined that a city was required to provide data that documented public business and were contained in an employee’s electronic appointment calendar, even if the data were commingled with private data. In that particular case, the public data related to discussions between a library director and a contractor about a possible library expansion project, which the employee had noted into his appointment calendar.

G. GROUNDS FOR CLOSING A MEETING

1. **Statutory Exception Required.** Meetings may not be closed simply because private or confidential data will be discussed, unless a statutory exception applies.
 - a. If the meeting is not permitted to be closed, private data may be discussed in public without liability or penalty if the disclosure relates to a matter within the scope of the board’s authority and is reasonably necessary to conduct the board’s business. Specifically, the OML states:

“Data that are not public data may be discussed at a meeting subject to this chapter without liability or penalty, if the disclosure relates to a matter within the scope of the school board’s authority and is reasonably necessary to conduct the business or agenda item before the school board.”
 - b. Data discussed at an open meeting retain the data’s original classification; however, a record of the meeting, regardless of form, is public.

2. **Exception for Labor Negotiations Strategy and Developments.** A school board *may* close a meeting to discuss strategy for labor negotiations, including developments or the discussion and review of proposals. To utilize this exception, a school board must: (a) vote to close the meeting to discuss strategy for labor negotiations; (b) announce the time and place of the closed meeting before going into closed session; (c) record the names of the board members and other persons who are present at the closed meeting; and (d) record the closed meeting and retain the recording for two years after the contract is signed. The tape must be available to the public after all contracts have been settled for the current budget period.

3. **Preliminary Consideration of Allegations Against an Employee.** The board *must* close one or more of its meetings to give preliminary consideration to allegations or charges against an employee, unless the employee requests that the meeting be open to the public. The meeting must be open at the employee's request.
 - a. This provision suggests that a school district must notify an employee if the school board is going to move into closed session for preliminary consideration of allegations against the employee.
 - b. If the board decides that discipline may be warranted as a result of the charges, further meetings relating to those charges held after that conclusion is reached must be public.

4. **Performance Evaluations.** A board *may* close a meeting to evaluate an employee's performance. However, the meeting must be open if the employee so requests. Before the meeting is closed, the board must identify the employee. At its next open meeting, the board must summarize its conclusions regarding the evaluation.

5. **Discussion of Certain Types of Data.** A school board *must* close a meeting to discuss the following types of data:
 - a. Data identifying victims or reporters of criminal sexual conduct, domestic abuse, maltreatment of minors or vulnerable adults.
 - b. Active investigation *data relating to child abuse or neglect*, as defined in Minn. Stat. § 13.82.
 - c. Internal affairs data relating to allegations of law enforcement personnel misconduct.
 - d. *Education data, health data, medical data, welfare data and/or mental health data* defined as not public data under the Minnesota Government Data Practices Act.

6. **Attorney-Client Privilege.** A meeting *may* be closed if permitted by the attorney-client privilege. The attorney-client privilege allows closure of the meeting to discuss matters pertaining to pending or threatened litigation. A board may not close a meeting to seek general legal advice. A board does not need to record a meeting that is closed pursuant to the attorney-client privilege.
7. **Competitive Reasons Relating to Purchase or Sale of Property.** A school board *may* close a meeting to: (1) determine the asking price for real or personal property to be sold by the school district; (2) to review an appraisal of real property that is classified as confidential or nonpublic; or (3) to develop or consider offers or counteroffers for the purchase or sale of real or personal property.
 - a. Before holding a closed meeting for competitive reasons relating to the purchase or sale of property, the school board must identify on the record the particular real or personal property that is the subject of the closed meeting.
 - b. The proceedings of a meeting closed under this paragraph must be recorded at the expense of the school board. The recording must be preserved for eight years after the date of the meeting and made available to the public after all real or personal property discussed at the meeting has been purchased or sold or the school board has abandoned the purchase or sale. The real or personal property that is the subject of the closed meeting must be specifically identified on the tape.
 - c. A list of members and all other persons present at the closed meeting must be made available to the public after the closed meeting.
 - d. An agreement reached that is based on an offer considered at a closed meeting is contingent upon approval of the school board at an open meeting. The actual purchase or sale must be approved at an open meeting.
8. **Security Briefings and Reports.** Meetings may be closed to receive security briefings and reports, to discuss issues related to security systems, to discuss emergency response procedures, and to discuss security deficiencies in or recommendations regarding public services, infrastructure, and facilities—but only if disclosure of the information would pose a danger to the public safety or compromise security procedures or responses.
 - a. A meeting closed for this purpose must be recorded at the expense of the school board, and the recording must be preserved for at least four years.
 - b. Financial issues related to security matters must be discussed and all related financial decisions must be made at an open meeting.

9. **Hypothetical Scenario.** The agenda for a regular meeting states that the board will be going into closed session for preliminary consideration of allegations against an employee, who is not named. A local newspaper reporter approaches you and asks the following questions: (1) What is the name of the employee who is the subject of a closed session? (2) Can you confirm that the allegations have to do with statements that were made to students? (3) Did the school district conduct an investigation? (4) Were the allegations substantiated? Assume you are the Board Chair and you know that teacher Bob Smith is the subject of the closed session; that Bob allegedly made inappropriate comments to students; and that the allegations against Bob were substantiated after an investigation. Which of the following is an appropriate response?
- a. “Mind your own business.”
 - b. “The employee’s name is Bob Smith. I cannot confirm or deny that allegations have been made against Mr. Smith, or that an investigation has been conducted.”
 - c. “I cannot disclose the employee’s name, but I can confirm that the allegations relate to inappropriate comments that were made to students. I can also confirm that an investigation was completed and that the allegations were substantiated.”
 - d. “The employee’s name is Bob Smith. I can confirm that allegations have been made against Mr. Smith, but I cannot comment on the nature of the allegations. I can also confirm that an investigation has been completed, but I cannot discuss the results of the investigation.”
 - e. “I cannot disclose the employee’s name, or the nature of the allegations, but I can tell you that an investigation was completed and that the allegations were substantiated.”

H. BASIC PROCEDURES FOR CLOSING A MEETING

1. Before going into closed session, the school board must state on the record the specific ground permitting the meeting to be closed and must describe the subject to be discussed. The specific ground should not include private or non-public data.
2. Materials reviewed in a closed meeting should *not* be distributed to the public. The meeting minutes should simply state that a closed meeting was held, the statutory grounds for closing the meeting, and a generic description of the subject that was discussed.

I. RECORDING CLOSED MEETINGS

1. **Closed Meetings.** All closed meetings, except those that are closed pursuant to the attorney-client privilege, must be recorded at the expense of the school board. Unless a longer period is prescribed by law, the recordings must be preserved for at least three years after the date of the meeting.
2. **Open Meetings.** The votes of board members on any action taken in a meeting required to be open to the public must be recorded in a journal kept for that purpose. This journal must be open to the public during normal business hours. The vote of each member must be recorded on each appropriation of money, except for payments on judgments, claims and amounts fixed by statute.

J. PENALTIES FOR VIOLATING OPEN MEETING LAW

1. A civil penalty not to exceed \$300 for each violation may be imposed upon each person who intentionally violates the Open Meeting Law. This penalty may not be paid by the school board.
2. A board member may be removed if found to have been involved in three separate and unrelated violations of the Open Meeting Law.
3. The court may award up to \$13,000 for costs and attorneys' fees to each plaintiff. This amount *may* be paid by the school board.
4. The Open Meeting Law provides that a school board may pay any costs and disbursements or attorneys' fees incurred by any of its members under this section. However, such claims are not actions for damages and thus a municipality is not required to reimburse members for such expenses under the Municipal Tort Liability Act, Minn. Stat. § 466.07.

IV. DATA PRACTICES IN THE SCHOOL SETTING

- A. APPLICABLE LAWS.** The Minnesota Government Data Practices Act ("MGDPA") and the Family Educational Rights and Privacy Act ("FERPA") address a school's obligations with respect to student and employee data.
- B. REQUESTS FOR ACCESS TO DATA.** Each school district must designate a "responsible authority" to receive and process data requests. The "responsible authority" is by default the superintendent unless otherwise designated. The role should not be designated to any board member. However, each school board member should be aware of the ways in which access to non-public data is governed.
 1. **Family Educational Rights and Privacy Act.** This is a federal law that applies to any educational institution receiving federal funds. Its purpose is to protect the privacy of parents and students. Its application is limited to educational records. The provisions of FERPA that regulate the release of and access to

education records have, by and large, been incorporated by reference into the provisions of the MGDPA that cover educational records.

2. **Minnesota Government Data Practices Act.** The MGDPA is a state law that applies to all state agencies, political subdivisions and statewide systems. This law governs the collection, creation, storage, maintenance, dissemination and access to government data. The public policy behind the MGDPA is to provide the public with access to data that is the basis for, and the product of, governmental decisions. Accordingly, government data are presumed to be accessible by the public for inspection and copying unless they fall within a recognized exception to the MGDPA. The Minnesota Department of Administration has issued administrative rules that also address a government entity's obligations with respect to data. *See* Minn. R. Ch. 1205.
3. **Definition of "government data."** "Government data" means all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use. Minn. Stat. § 13.02, subd. 7. "Storage media" includes all forms of electronic data. The subject matter and content of government data determines who is entitled to have access to the data.
4. **Classifications of data.** The three types of data that generally arise in the educational setting are public data, private data, and confidential data.
 - a. **Public data on individuals:** Data which the public may access because no state or federal law or regulation denies such access. Minn. Stat. § 13.02, subd. 15.
 - b. **Private data on individuals:** Data which the public may not access under the law, but which is accessible to the subject of the data. Minn. Stat. § 13.02, subd. 12.
 - c. **Confidential data on individuals:** Data which neither the public nor the subject of the data may access. Minn. Stat. § 13.02, Subd. 3; *see also* Minn. Rules, part 1205.0200, subp. 3.
5. **Determining the subject of government data.** Any person who can be identified as a subject of government data is a data subject, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual. *See* Minn. Stat. § 13.02, subd. 5; *Burks v. Metropolitan Council*, 884 N.W.2d 338 (Minn. 2016).
 - a. **Subject's right to access data.** The MGDPA guarantees an individual data subject the right to access any private government data of which he or she is the subject. In cases of minors or incapacitated adults, parents

or guardians may exercise the rights of the data subject to access private government data. *See* Minn. Stat. § 13.04, subd. 3.

C. DEFINITIONS RELATED TO EDUCATIONAL DATA.

1. **“Educational Data.”** Educational data means data on individuals maintained by an educational agency or by a person acting for an educational agency which relates to a student. Minn. Stat. § 13.32, subd. 1(a); *see also* 34 C.F.R. § 99.3 (defining “education records” under federal law).
 - a. Student health data that are maintained by an educational institution, including the records of school nurses, are private educational data.
 - b. Pupil census data, including emergency information and family information, are private educational data.
 - c. Data concerning parents that are collected because of a student are private data, but may be treated as directory information if the same procedures that are used by a school district to designate student data as directory information (described below) are followed. Minn. Stat. § 13.32, subd. 2(c).
2. **“Student.”** The term “student” means an individual currently or formerly enrolled or registered, or an applicant for enrollment or registration, at a public school, and individuals who receive shared time educational services from a public school. Minn. Stat. § 13.32, subd. 1(c).
3. **Desk drawer records are not educational data.** Records of instructional personnel that are in the sole possession of the maker and are not accessible or revealed to any other individual except a substitute teacher, and that are destroyed at the end of the school year, are *not deemed to be educational data*. Minn. Stat. § 13.32, subd. 1(a).

D. MOST EDUCATIONAL DATA ARE PRIVATE. Educational records constitute private data on an individual and may not be disclosed to the public. However, upon request, educational data must be disclosed to the subject of the data (the student) or the student’s parents if the student is under the age of 18.

E. WHEN IS THE DISCLOSURE OF EDUCATIONAL DATA PERMITTED?

1. **Upon request by a parent of the student who is the subject of the data.**
2. **Informed consent of parents or student (if the student is over 18).** Generally, in order to release private educational data to someone *other than* the subject of the data, informed consent must be obtained from the data subject (*i.e.*, a parent or student over 18). Informed consent must be in writing. 34

C.F.R. § 99.30. Most school districts have developed a form for this purpose (*i.e.*, Authorization to Release Private Data).

3. **Pursuant to a valid court order.** School districts may disclose educational data in response to a valid court order, but FERPA requires that the district give the parents and student notice that it intends to comply with the court order. 34 C.F.R. § 99.31(a)(9)(ii).
4. **Pursuant to a statute specifically authorizing access to private data.** For example, the Minnesota Pupil Fair Dismissal Act requires that a school district provide a list of witnesses (including student witnesses) and a description of their testimony before holding a hearing to expel a student. Minn. Stat. § 121A.47, subd. 2(b).
5. **The data have been properly designated as “directory information.”** Information which a school district properly designates as “directory information” constitutes public data on individuals. Such information will be identified by school district policy.
 - a. Directory data typically include, but are not necessarily limited to, the student’s name, address, telephone listing, date and place of birth, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, and awards received.
 - b. A school district must provide parents with annual notice of the information that it designates as directory and a reasonable period of time within which to object to the designation. Minn. Stat. § 13.32, subd. 5; 34 C.F.R. § 99.37.
 - c. A school district may designate data as limited directory information under FERPA. As the Data Practices Office has explained, “unlike general directory information, which is accessible to anyone, for any reason, [a district] may restrict access to limited directory information to those specific parties and/or for those specific purposes identified in the annual FERPA notice.” *See* Adv. Op. 14-009 (Jul. 18, 2014); 34 C.F.R. § 99.37(d). Consequently, a district that chooses to designate limited directory information may have two sets of data: one that is general directory information and one that is limited directory information. *Id.*
6. **A health or safety emergency exists.** If a true emergency exists and disclosure is necessary to protect the health and safety of the student or other individuals, the district may disclose educational data. *See* Minn. Stat. § 13.32, subd. 3(d); 34 C.F.R. § 99.36(a). The Office of Administration, which is charged with interpreting the MGDPA, has opined that the health or safety emergency exception must be interpreted very narrowly. Generally, only an actual, impending, or imminent emergency—such as a natural disaster, a terrorist

attack, a campus shooting, or the outbreak of an epidemic disease—triggers the exception.

7. **To proper health authorities.** Educational data may be disclosed to appropriate health authorities to the extent necessary to administer immunization programs and for bona fide epidemiological investigations. Minn. Stat. § 13.32, subd. 3(f).
8. **Pursuant to FERPA.** The following are the additional circumstances under which FERPA permits (but does not require) a school district to disclose educational records without parental consent. *See* 34 C.F.R. § 99.31(a)-(b).
 - a. **Legitimate educational interest.** FERPA permits school district officials to disclose educational data to other school officials in the district, including teachers, who have a *legitimate educational interest* in the information. The MGDPA also clarifies that within a governmental entity, private information may be accessed by “individuals within the entity whose work assignments reasonably require access.” Minn. Rule 1205.0400, subp. 2. These provisions can cover volunteers, consultants, and agents of a school district.
 - (1) Thus, information contained in educational records of a student may be shared within a school district only to the extent that it is necessary to do so in order to educate the child.
 - (2) It is not appropriate to share information about a student with another District employee merely because of that employee’s curiosity or your desire to tell an interesting story.
 - (3) In many cases, you can discuss an educationally interesting situation with others without violating any student’s privacy rights by removing from the discussion any and all information that allows a student to be identified.
 - b. **Lawfully issued subpoena.** A school district may disclose educational data in response to a lawfully issued subpoena. FERPA, however, requires that the district first give the parents and student notice that it has received a subpoena and intends to comply with it. 34 C.F.R. § 99.31(a)(9)(ii). This provides the parent of the student an opportunity to ask a judge to “quash” the subpoena. An exception to the rule is that prior notice to the parent or student is not required if the subpoena is a grand jury subpoena or if the subpoena is issued for law enforcement purposes and indicates its contents are not to be disclosed.
 - c. **Transfer of records to new school.** A school district may disclose private educational data to the officials of another school, school system,

or institution of postsecondary education where the student seeks or intends to enroll. 34 C.F.R. § 99.31(a)(2).

9. **In response to an appropriate request by the juvenile justice system.** Upon request from the juvenile justice system, schools may release the following educational data to the juvenile justice system: (1) full name; (2) home address; (3) telephone number; (4) date of birth; (5) school schedule; (6) attendance record; (7) photographs, if any; (8) parents' names, addresses, and telephone numbers. Minn. Stat. § 13.32, subd. 8. However, the request for data and a record of the release must be maintained in the student's file. Minn. Stat. § 13.32, subd. 3(i).

a. **The "juvenile justice system"** includes criminal justice agencies (state and local prosecution authorities, all state and local law enforcement agencies, the sentencing guidelines commission, the bureau of criminal apprehension, the department of corrections, and all probation officers who are not part of the judiciary) and the judiciary when involved in juvenile justice activities. Minn. Stat. § 13.32, subd. 1(b).

b. **Release of existence of certain data.** Upon request, schools may disclose the *existence* of additional educational data on certain students to the juvenile justice system if the data concern the juvenile justice system and the ability of the system to effectively serve, prior to adjudication, the student whose records are released. However, the request from the juvenile justice system for this data must explain why access is necessary to serve the student. In addition, the authorities to whom the data are released must submit a written request for the data that certifies that the data will not be disclosed to any other person except as authorized by law without the written consent of the parent, and the request and a record of the release must be maintained in the student's file. The existence of the following information may be disclosed:

- (1) use of a controlled substance, alcohol or tobacco;
- (2) assaultive or threatening conduct that could result in dismissal from school pursuant to Minn. Stat. § 121A.45, subd. 2(b)-(c);
- (3) possession or use of weapons or look-alike weapons;
- (4) theft; or
- (5) vandalism or other damage to property.

The superintendent or a school principal must, before complying with the request to release information to the juvenile justice system, notify the student's parent or guardian, to the extent allowed by law, by

certified mail of the planned disclosure. If the student's parent or guardian objects to the planned disclosure within ten days of receiving the certified notice, the superintendent or school principal must not disclose the information and must inform the juvenile justice system of the parent's objection. This does not prohibit a school from disclosing information pursuant to a court order. Minn. Stat. § 13.32, subd. 8.

10. **To protect the safety of a student or others.** A school district may disclose educational data to the juvenile justice system if information about the behavior of a student who poses a risk of harm is reasonably necessary to protect the health or safety of the student or other individuals. Minn. Stat. § 13.32, subd. 3(1).
11. **To report crimes.** School districts are authorized to report criminal activity. The public policy supporting the reporting of school related crimes is evidenced by legislation that either makes certain acts on school grounds a crime which would not be criminal in another setting or enhances the penalties for crimes that are committed on school grounds. *See, e.g.*, Minn. Stat. § 609.2231, subd. 5 (relating to assaults on school officials); Minn. Stat. 609.66, subd. 1(d) (relating to possession of a weapon on school grounds); Minn. Stat. § 609.66, subd. 1(d) (relating to possession of a replica firearm on school grounds); Minn. Stat. § 152.021-024 (relating to possession and sale of narcotics on school grounds).
12. **Possession of a firearm.** In compliance with the Federal Gun-Free Schools Act (20 U.S.C. § 7961), Minnesota law requires that school districts have in place a policy which refers to law enforcement any pupil who brings a firearm to school unlawfully. *See* Minn. Stat. § 121A.05. This explicit requirement in the law permits a school district to report a student to law enforcement notwithstanding any provision of the MGDPA.

F. PERSONNEL DATA means government data on individuals maintained because the individual is or was an employee of or an applicant for employment by, performs services on a voluntary basis for, or acts as an independent contractor with a government entity. Minn. Stat. § 13.43, subd. 1.

G. PUBLIC PERSONNEL DATA. Some personnel data is considered public data, including:

1. Name; employee identification number, which must not be the employee's Social Security number; badge number.
2. Job title; job description; bargaining unit.
3. Work location; work telephone number.
4. Education and training background; previous work experience; work-related continuing education; honors and awards received.

5. Date of first and last employment.
6. Actual gross salary and salary range; actual gross pension; the value and nature of employer paid fringe benefits; the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary; the terms and conditions of the employment relationship; and any contract fees.
7. Payroll time sheets or other comparable data that are only used to account for employee's work time for payroll purposes, except to the extent that release of time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data.
8. The existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action.
9. The final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the public body.
 - a. Final disposition of disciplinary action occurs when the school district makes its final decision about the disciplinary action, regardless of the possibility of any later proceedings or court proceedings.
 - b. Final disposition includes a resignation by an individual when the resignation occurs after the final decision of the school district.
10. The complete terms of any agreement settling any dispute arising out of an employment relationship, including a buyout agreement; the agreement must include specific reasons for the agreement if it involves the payment of more than \$10,000 of public money.
11. All data relating to the complaint or charge against a public official if:
 - a. an investigation is completed and the complaint or charge results in disciplinary action;
 - b. the public official resigns or is terminated from employment while the complaint or charge is pending; or
 - c. potential legal claims arising out of the conduct that is the subject of the complaint or charge are released as part of a settlement agreement; and
 - d. access to the data would not jeopardize an active investigation or reveal confidential sources.
12. The term "public official" includes business managers; human resource directors; athletic directors whose duties include at least 50 percent of their time spent in administration, personnel, supervision, and evaluation; chief financial

officers; directors; individuals defined as superintendents and principals; and in a charter school, individuals employed in comparable positions.

H. WHEN CAN PRIVATE PERSONNEL DATA BE DISCLOSED? All other personnel data is considered private data on individuals and generally only subject to disclosure with the informed consent of the data subject or by valid court order. In limited circumstances, a school may disclose private personnel data without consent or a valid court order, like in response to a request from another school district, certain personnel data related to acts of violence toward or sexual contact with a student may be disclosed if the statutory requirements are met. Minn. Stat. § 13.43, subd. 16. Some other exceptions include:

1. **Maltreatment Data to MDE.** When a report of alleged maltreatment of a student in a school facility is made to the MDE, data that are relevant to the report and are collected by the school facility about the person alleged to have committed maltreatment must be provided to the MDE upon request for purposes of an assessment or investigation of the maltreatment report.
2. **Notifying a Parent about Maltreatment of a Child.** In accordance with the Maltreatment of Minors Act, as soon as practicable after a school receives information regarding an incident that may constitute maltreatment of a child in a school facility, the school shall inform the parent, legal guardian, or custodian of the child that an incident has occurred that may constitute maltreatment of the child, when the incident occurred, and the nature of the conduct that may constitute maltreatment. Minn. Stat. § 626.556, subd. 7(h). Personnel data may be released for purposes of making this report. Minn. Stat. § 13.43, subd. 14(b).
3. **Protection of Employee or Others.** Where the responsible authority or designee determines that the release of personnel data is necessary to protect an employee from harming themselves or to protect another person who may be harmed by the employee, data that are relevant to the concerns for safety may be released to:
 - a. the person who may be harmed and to an attorney representing the person when the data are relevant to obtaining a restraining order;
 - b. a prepetition screening team conducting an investigation of the employee under section 253B.07, subdivision 1 (prior to filing a petition for commitment of or early intervention for a proposed patient); or
 - c. to a court, law enforcement agency, or prosecuting authority.

Minn. Stat. § 13.43, subd. 11.

4. **Dissemination to Law Enforcement.** Private personnel data, or data on employees that are confidential civil investigative data, may be disseminated to a law enforcement agency for the purpose of reporting a crime or alleged crime committed by an employee, or for the purpose of assisting law enforcement in

the investigation of a crime committed or allegedly committed by an employee. Minn. Stat. § 13.43, subd. 15.

I. PENALTY FOR MGDPA VIOLATIONS

1. **Misdemeanor.** Any person who willfully violates the MGDPA or its regulations, or whose conduct constitutes the knowing unauthorized acquisition of not public data, is guilty of a misdemeanor. Minn. Stat. § 13.09.
2. Any action subject to a criminal penalty under the MGDPA also constitutes just cause for suspension without pay or dismissal of a public employee. *Id.*

V. HYPOTHETICAL SCENARIOS FOR BOARD MEMBERS

A. HYPOTHETICAL SCENARIO NO. 1. Two high school students, Ed and John, get into a fight at school. John is your neighbor’s son and is a model student. The fight begins when Ed sucker punches John in the face. John responds by throwing three punches, which knock Ed unconscious. John is subsequently suspended from school and is arrested by the police. Meanwhile, Ed is taken to the hospital in an ambulance. The following day, your neighbor sends you an email telling you about the fight between John and Ed. Your neighbor then asks whether you think it was appropriate for the principal to suspend John and whether the District will be seeking to expel either John or Ed. How should you respond?

B. HYPOTHETICAL SCENARIO NO. 2. Same facts as in Hypothetical Scenario No. 1, except that your neighbor shares that he is very frustrated because he had repeatedly told the principal that Ed was bullying John, but the principal failed to take any action. Your neighbor also asks whether you knew that Ed had been in two other fights at school and whether you knew that he received special education services at school for a serious emotional behavioral disorder. You were aware of that information. Your neighbor also asks whether you would be willing to look into the matter. How should you respond to your neighbor?

C. HYPOTHETICAL SCENARIO NO. 3. Same facts as in Hypothetical Scenario No. 1, except John is your son and you would like to access Ed’s education records in order to see whether they contain any information that would be helpful in defending John against the criminal charges. If the administration refuses your request for Ed’s records, would it be appropriate to ask the board to vote to give you access to Ed’s records?

D. HYPOTHETICAL SCENARIO NO. 4. A close family friend, who is a resident of the district, comes to you and tells you that she is upset because the district is refusing to provide her child, Mary, with simple accommodations that she needs because of a severe peanut allergy. Your friend tells you that Mary’s teachers are being unreasonable and asks you to intervene on her behalf by calling her principal. Your friend describes the accommodations that she is seeking for Mary, and you believe the accommodations sound quite reasonable. How should you respond? _____

E. HYPOTHETICAL SCENARIO NO. 5. At an upcoming meeting, the board is scheduled to vote on whether or not it will renew a probationary teacher’s annual contract. The probationary teacher is a long-term member of the community. Shortly before the board meeting at which the vote will be taken, another board member approaches you and “confidentially” shares her concern that the administration is proposing not to renew the teacher based on the teacher’s political views rather than on performance. The board member also tells you that she promised the probationary teacher she would vote against any motion not to renew her contract. The board member also tells you that she has convinced two other board members to vote against the motion as well. She then asks whether you are willing to join the motion so it will pass. How should you respond? _____

F. HYPOTHETICAL SCENARIO NO. 6. Another board member sends you an email complaining about a particular student’s misconduct at school. You reply by email and state that you have the same complaints and concerns based on discussions you have had with the building principal, based on your own child’s experiences with the student, and based on the fact that the board was contemplating expelling the student the previous year. You also state in your reply email that the student is not really to blame. You explain that the real problem is the parent’s lack of intellect and parenting skills. You jokingly conclude your email by stating, “I guess the apple does not fall far from the tree.” What concerns would you have if this scenario occurred? _____

H. HYPOTHETICAL SCENARIO NO. 7. A citizen approaches you and tells you that a high school principal in the district is showing favoritism to a couple of teachers and is allowing them to send some of their students home early. The citizen tells you the students leave school two hours early every day. The next day you drive by the high school and see four students leaving early. You see that one student, John, is walking to his parent’s car. You have met John and his parent before and decide to approach her. After saying hello, you say to the parent: “I don’t mean to pry, but as you know I am on the school board, and I was wondering if you might be willing to tell me why John is

leaving school early?" You immediately see that the parent and John become visibly flustered and embarrassed. The parent says, "I'd rather not say." She then rolls up her window and drives off.

Concerned that the citizen's allegations may be accurate, you walk into the school and ask a hall monitor who John's teacher is. You then go to the teacher's room and state: "As a board member, I am wondering why you allowed John to leave school early today." The teacher states that she cannot tell you. You become visibly angry and leave. The next day you send the following text message to the citizen: "Thank you for the heads up. Looks like you were right. John and three other kids are leaving early each day and the teacher, Ms. Jamison, could not give me a valid reason. When I get to the bottom of this heads will roll!" After being unable to sleep for several nights, Ms. Jamison tells the building principal about the matter. The principal then tells the Superintendent. Meanwhile, the citizen has forwarded your text message to dozens of parents.

1. What errors did the board member make? _____

2. Did the board member violate any laws? If so, which ones? _____

3. Can the district or the board member be held liable for any of the board member's conduct? _____

I. HYPOTHETICAL SCENARIO NO. 8. The president of the teachers' bargain unit frequently emails you and other board members about potential grievances, staff issues, and negotiations issues. In addition, the president often solicits feedback from board members on various issues. How should you respond if you receive such an email and why? _____

J. POLITICAL ISSUES. What are some of the factors a school board should consider before addressing the following?

1. **Student Protests** (e.g. walk-outs, sit-ins, fundraisers to go to Washington D.C., etc.)
2. **Staff Protests** (e.g. walk-outs, discussion of personal views on political issues, rainbow signs in class stating that gay, lesbian, bi-sexual students are welcome, etc.)

3. **Immigration Issues** (e.g. sanctuary schools, statements about burdens on the school system, etc.)

VI. EFFICIENT GOVERNANCE

A. PROCEDURAL RULES GOVERNING BOARD MEETINGS

1. **Reason for Rules.**
 - a. **Efficiency:** It is easier to work in a group that has rules.
 - b. **Focus:** A group should only deal with one substantive matter at a time.
 - c. **Equality:** Rules assure all members have a right to participate.
 - d. **Consensus:** Rules allow discussion to lead to a decision reflective of the will of the majority.
 - e. **Fairness:** Rules protect the rights of the minority.
 - f. **Information:** Every voting member must understand what he/she is voting on, and the effect a decision will have.
2. **Parliamentary Procedure.** Many school districts have adopted *Robert's Rules of Order* as the primary rules which govern the participation of board members.

B. MOTIONS

1. **Proper motion procedure.**
 - a. Member X presents a motion. (When possible, it is a good practice to write out the motion to ensure that it is worded correctly.)
 - b. Member Y seconds the motion. If no member seconds the motion, it is not put before the board for discussion or consideration. A motion must be seconded in order to be considered by the board.
 - c. If there is a second, the Chair should then state the motion. For example: "It is moved and seconded that the school district establish a varsity tennis team." Once the Chair states the motion, it is considered to be "pending."
 - d. Members then "debate" the motion. Debate means an opportunity for discussion on the merits. At this time, the member who made the motion should present the reasons for the motion if they are not obvious.

- (1) Note that *not all motions are “debatable.”* Examples of motions that are not debatable include a motion to adjourn, to limit debate, to recess, or to suspend the rules.
 - (2) Example: “I move to limit debate on the motion to four minutes per board member.” Or “I move that debate on the pending motion be limited to ten minutes in total.”
 - (3) A motion to limit debate generally requires a two-thirds vote.
 - e. The Chair puts the question to vote. The Chair states: “Those in favor say “aye.” Those opposed say “no.”
 - f. The Chair announces the result.
2. **One Substantive Matter at a Time – the “Main Motion.”** A school board generally may consider only one substantive matter at a time. When a board member makes a motion concerning a substantive matter, the motion is considered a “Main Motion.” When a Main Motion has been made and seconded and repeated by the Chair, the board should not consider any other substantive matters until the motion has been voted on. However, “Subsidiary,” “Privileged,” and “Incidental” motions may be considered while a Main Motion is pending.
 3. **“Subsidiary Motions.”** Subsidiary Motions assist a body in disposing of a Main Motion. Subsidiary motions take precedence over a Main Motion. Subsidiary motions relate to the subject matter of the Main Motion and include, for example, a motion to postpone indefinitely, a motion to amend, a motion to refer, a motion to limit debate, and a motion to table.
 4. **“Privileged Motions.”** Privileged Motions do not relate to pending business, but have to do with special matters of immediate importance. Examples include a motion to recess, a motion to adjourn, and a motion to fix the time to adjourn. A Privileged Motion takes precedence over other motions.
 5. **“Incidental Motions.”** These are motions that relate to the transaction of business. Incidental motions must be decided immediately. One example of an Incidental Motion is when a board member raises a Point of Order.
 6. **Point of Order!** A point of order should be handled in the following manner:
 - a. If a board member believes that a rule has not been followed, the board member states, “Point of order!”
 - b. The board Chair then states, “The member will state his/her point of order.”

- c. The member then states how he/she thinks the rules are being violated.
- d. The Chair then rules on the point of order by stating either, “The point of order is well taken” or “the point of order is not well taken.” The Chair should then *briefly* give the reason(s) for the ruling.
- e. The Chair should refer to the specific rule that has been violated.
- f. If a board member disagrees with the Chair’s ruling on a point of order, the board member may state, “I appeal from the decision of the chair.”
- g. An appeal requires a second before debate may occur amongst the board members.
- h. After receiving a second and any debate (which is initiated and concluded by the Chair), an appeal may be put to a majority vote. To do so, the Chair states, “Shall the decision of the Chair be sustained? Those in favor say ‘aye.’”
- i. The board members then proceed to vote. The board as a whole has the final authority to determine whether a rule has been violated.

C. ADDRESSING INAPPROPRIATE CONDUCT

1. **Comments Must Be Germane.** A board member’s remarks must be germane. This means that the remarks must be material to whether the pending motion is to be adopted. A board member who ventures off on irrelevant topics may be ruled out of order.
2. **Personal Attacks.** The motion, and not the board member who has made it, should be the subject of the “debate” or discussion. A board member who begins to personally attack another board member or an administrator should be ruled out of order. The board chair may remind the other board members that the debate should focus on the motion, and not the person who made the motion.
3. **Stick to the Formalities.** Complying with formalities helps avoid conflicts in personalities. Along these lines, board members should direct their comments to the Chair, and not to individual board members. A board member who directs personal comments to an individual member may be ruled out of order and instructed to direct his or her comments to the Chair or to the board as a whole.
4. **Closing “Debate.”** A school board can immediately end all debate on a pending motion. This can be helpful if the board has one member who is using the time to “debate” a pending motion to make comments that are not constructive or are unrelated to the matter before the board.

- a. To close debate immediately, a board member must first be recognized by the Chair. The member then states: “I move the previous question.”
 - (1) By moving the previous question, a board member is moving to have the board vote the pending motion immediately and without further discussion.
 - (2) It is not appropriate to interrupt a fellow board member to move the previous question. To move the previous question, a board member must first have the floor, meaning he or she has been recognized by the Chair.
 - b. A motion to move the previous question (i.e. to close debate or discussion) is itself not subject to debate or discussion. However, a *two-thirds vote is required* to pass a motion to move the previous question.
5. **Referring a Matter to a Committee.** Occasionally, a board member will make a motion out of left field. When this happens, the board as a whole may be caught off guard or may lack sufficient knowledge to vote on the motion. To address this problem, any board member may move to refer the motion to a committee and to instruct the committee to report back to the board. Alternatively, a board member may move to refer the matter to the superintendent to gather additional information and to report back to the board at a later date.
- a. A “motion to refer” is amendable. This means, for example, that another board member may move to amend the motion to add additional conditions such as: “I amend the motion to state that the superintendent must report back to the board at the next meeting rather than two months from now.”
 - b. A “motion to refer” is debatable. This means that the board members may discuss whether it is desirable to refer the matter to the superintendent or to a committee.
6. **Motion to Postpone Indefinitely.** When one board member makes an offensive or objectionable motion, another board member may move to postpone the motion indefinitely. A majority vote is required to adopt a motion to postpone indefinitely.

D. WHAT OTHER STEPS CAN BE TAKEN IF A BOARD MEMBER ACTS INAPPROPRIATELY?

- 1. **Reminder of penalties for violating Open Meeting Law.**
- 2. **Reminder of fiduciary duties.** Board members owe a fiduciary duty to the board as a whole.

3. **Responses to inappropriate conduct by a board member.** After conducting an investigation and consulting with legal counsel, a school board could consider the following options for addressing a board member's inappropriate behavior:
 - a. Inform the board member of the potential consequences, including potential loss of immunity for inappropriate acts. (Immunity is only available if a board member acts within the scope of official duties.)
 - b. Adopt new standards to address the situation.
 - c. Censure the board member.
 - d. Ask for the board member's resignation.
 - e. Disavow the board member's conduct (consult with legal counsel).
 - f. Seek to remove the board member in accordance with law (consult with legal counsel).

VII. REGULATING PUBLIC PARTICIPATION AT MEETINGS

A. SIX SIGNIFICANT LEGAL PRINCIPLES

1. The school board controls its own meetings, agendas, parliamentary procedure, and all other aspects of its own business and function. *See* Minn. Stat. § 123B.09, subd. 7.
2. The public has the right to receive notice of, and to attend, all regular, special, and emergency meetings of the full school board and its committees, unless the meeting is closed in accordance with the Open Meeting Law.
3. The Open Meeting Law permits but does not mandate an opportunity for public comment during school board meetings.
4. Speech on public issues and political matters lies at the heart of protected speech. *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557 (1995). Freedom of speech, however, is not absolute.
5. A designated public forum is created by a school board through an intentional decision to open a meeting to public comment. *Cornelius v. NAACP, supra.*; see also *Christ's Bride Ministries, Inc. v. Southeastern Pa. Transportation Authority*, 148 F.3d 242 at 248 (3d Cir. 1998).
6. Once a designated public forum is created by a school board, it still may restrict the time, place, and manner of speech, provided:

- a. The restrictions are justified without reference to the content of the regulated speech (content neutral);
- b. The restrictions are narrowly tailored to serve a significant governmental interest; and
- c. The restrictions leave open ample alternative channels for communication of the information from the public.

B. EXAMPLES OF PERMISSIBLE TIME, PLACE, & MANNER RESTRICTIONS

1. Persons wishing to address the Board shall sign in prior to the meeting, listing their name, address, and the matter on which they will speak.
2. Persons addressing the Board shall speak in the order in which they sign in.
3. A person addressing the Board shall give his or her name and address and be recognized by the Presiding Officer.
4. The Presiding Officer shall limit the comments of each person addressing the Board to three (3) minutes.
5. Persons addressing the Board shall confine their comments to matters pertaining to the agenda or germane to matters of administrative concern.
6. There shall be no demonstrations during or at the conclusion of any speaker's presentation.
7. A person addressing the board shall refrain from the following:
 - a. attempting to engage individual Board members in conversation;
 - b. insults;
 - c. obscenity or profanity;
 - d. attacks against any person in his or her personal capacity;
 - e. physical violence or threat thereof;
 - f. comments that are not relevant to matters on the agenda or to matters of administrative concern;
 - g. comments that are unduly repetitious;

- h. comments that exceed the five-minute time limit, or other such comments or conduct that disrupts, disturbs, or otherwise impedes the orderly conduct of any Board meeting;
8. Any person who breaches these rules shall, at the discretion of the presiding officer or a majority of the Board, be given an oral warning by the presiding officer to refrain from disturbing or disrupting the meeting. If, after receiving such a warning, the person continues to breach these rules, he or she will be barred from further audience before the Board at that meeting.
 9. If, after receiving an oral warning from the presiding officer and being barred from further audience before the Board at a meeting, a person persists in disturbing or disrupting that meeting, the Presiding Officer may order him to leave the meeting. If such person does not remove him- or herself, the presiding officer may request a law enforcement officer who is on duty at the meeting as sergeant-at-arms to remove that person from the meeting.

VIII. QUESTIONS?

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