



STRANG, PATTESON
RENNING, LEWIS & LACY

**WISCONSIN ASSOCIATION OF
SCHOOL SUPERINTENDENT
ASSISTANTS**

**HELPING SCHOOL BOARD MEMBERS
COMPLY WITH THE LAW**

April 22, 2016

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*The presenter wishes to acknowledge the contribution of Attorney
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STRANG, PATTESON
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PRACTICE AREAS

Labor and Employment
School and Higher Education Law

EDUCATION

J.D., University of Wisconsin Law School
B.A., Political Science, University of Wisconsin
Certificate in Women's Studies, University of Wisconsin

Shana has extensive experience in labor and employment law, school and higher education law, and municipal law. She represents private and public sector employers in a broad range of labor and employment law matters, including family and medical leave, harassment, employment contracts, and collective bargaining. Shana's practice focuses on representing school districts throughout Wisconsin on issues ranging from labor and employment matters to pupil discipline, open meetings, public records, and other matters of import to Wisconsin schools. She also has significant experience conducting investigations for private and public sector entities concerning allegations of harassment, bullying, and discrimination involving staff and/or students.

Professional Activities

Member, State Bar of Wisconsin
Member, Dane County Bar Association
Member, Legal Association for Women
Member, Education Law Association
Member, Council of School Attorneys
Member, Wisconsin School Attorneys
Association

Community Involvement

Adjunct Faculty, Edgewood College
President, Board of Directors, Theatre LILA
Supervising Attorney, Unemployment
Compensation Appeals Clinic
Secretary, Greenridge Park Neighborhood
Association
Member, TEMPO Madison
Celebrate Independence Luncheon Committee
Member, Domestic Abuse Intervention Service
(DAIS)

Recognitions

Best Lawyers® in America - School Law, Labor & Employment (2013 – 2016)
Best Lawyers' 2016 Labor Law – Management “Lawyer of the Year” for Green Bay, WI
Best Lawyers' 2016 Employment Law – Management “Lawyer of the Year” for Green Bay, WI
40 Under 40 List – Greater Madison InBusiness Magazine (2005, 2012)
Named “Wisconsin Rising Star” by Super Lawyers Magazine (2006 – 2013)
Rated BV® Distinguished™ by Martindale-Hubbell®
Top Lawyer, Madison Magazine (2009)
ATHENA Young Professional Award Nominee (2008)
2016 Women to Watch, *Brava Magazine*

I. LEGAL AUTHORITY OF THE SCHOOL BOARD

- A. Duties and powers of school boards (Wis. Stat. § 118.001).** The statutory duties and powers of school boards shall be broadly construed to authorize any school board action that is within the comprehensive meaning of the terms of the duties and powers, if the action is not prohibited by the laws of the federal government or of this state.

- B. Purpose (Wis. Stat. § 118.01(1)).** Public education is a fundamental responsibility of the state. The constitution vests in the state superintendent the supervision of public instruction and directs the legislature to provide for the establishment of district schools. The effective operation of the public schools is dependent upon a common understanding of what public schools should be and do. Establishing such goals and expectations is a necessary and proper complement to the state's financial contribution to education. Each school board should provide curriculum, course requirements and instruction consistent with the goals and expectations established under sub. (2) [Educational Goals]. Parents and guardians of pupils enrolled in the school district share with the state and school board the responsibility for pupils meeting the goals and expectations under sub. (2) [Educational Goals].

- C. School board duties (Wis. Stat. § 120.12).** School boards have responsibilities relating to:

(1) Management of school district.	(2) General supervision.
(2m) Educator effectiveness.	(3) Tax for operation and maintenance.
(4) Tax for debt retirement.	(4m) Calculation of total base wages increase for collective bargaining.
(5) Repair of school buildings.	(6) Insurance on school property.
(7) Depository.	(9) Discussion of public questions.
(11) Indigent children.	(12) Sanitary facilities.
(13) Declaration of Educational Standards.	(14) Course of study.
(15) School hours.	(16) Immunization of children.
(17) University of Wisconsin System tuition.	(18) Continuity of educational programming.
(19) Initiative to provide coordinated services.	(19m) Sale of property.
(20) Prohibition of tobacco.	(21) Consideration of effects on historic properties.
(22) Advanced placement examinations.	(23) Pupil participation in school activities.
(24) Health care benefits.	(25) Early admission to kindergarten and first grade.
(27) School closings and reopenings.	(28) School board vacancies.

D. School board powers (Wis. Stat. § 120.13). School boards may do all things reasonable to promote the cause of education, including establishing, providing and improving school district programs, functions and activities for the benefit of pupils, which includes powers relating to all of the following:

(1) School government rules; suspension; expulsion.	(2) Insurance.
(3) Agreements with governmental units.	(4) On-farm training to veterans.
(5) Books, material and equipment.	(6) Federal aid.
(7) Exchange teachers and administrators.	(8) Funds for rewards.
(9) Architects and engineers.	(9m) Legal services.
(10) School food service.	(11) Nurses and dentists.
(12) Historical records.	(13) Prekindergarten classes.
(14) Child care programs.	(15) Special high school courses.
(16) School board organization; fee.	(17) Temporary use of school property.
(18) Property for ecological, agricultural or vocational instruction.	(18m) Renewable resource facilities.
(19) Community programs and services.	(20) Options to purchase real property.
(21) Lectures.	(22) Cable television and data processing services.
(23) Bonds for officers and employees.	(24) Contracts with other governmental units.
(25) Lease school property.	(26) Contracts with private education services.
(26m) Contracts with county children with disabilities education boards.	(26r) Contracts for mental health and developmental disabilities services.
(27) Transportation of persons who are not pupils.	(27m) Transportation of indigent pupils.
(28) Records custodian.	(29) Borrowing.
(30) Hunter education programs.	(31) School crossing guards.
(32) School board orientation.	(33) Spending authority.
(34) Street trade and child labor permit officer.	(35) Presence in school buildings.
(36) Prekindergarten and kindergarten program agreements.	(37) Awarding high school diplomas to veterans.
(37m) Single-sex schools and courses.	(38) Hunting in school forests.

E. Filling vacancies on school boards (2015 Wisconsin Act 63).

1. Created Wis. Stat. § 17.26(1m) (effective April 12, 2016):

- a. If the remaining members of the school board of a common, union high or unified school district do not appoint an individual to fill a vacancy within 60 days of the date on which the vacancy first exists, the remaining members of the school board may fill the vacancy in accordance with the school board's policy under Wis. Stat. § 120.12(28).
- b. Prior to April 12, 2016, Wis. Stat. § 17.26(1m) contained different language, as created by 2015 Wisconsin Act 63 that, at present, only applies to the Racine Unified School District.

2. Amended Wis. Stat. § 120.06(7)(b):

The school board shall require a primary election if there are more than 2 candidates for any seat on a 3-member board or more than twice as many candidates as there are members to be elected to an unnumbered school board of more than 3 members. In school districts in which a plan of apportionment of school board members under s. 120.02 (2), an apportionment plan that apportions the territory of the school district into election districts under s. 120.42 (1m), or a plan for election of school board members to numbered seats has been adopted, the school board shall require a primary election for particular apportioned areas for which there are more than twice as many candidates as there are members to be elected and for any numbered seat for which there are more than 2 candidates. When there is a primary election it shall be held in conjunction with the spring primary.

3. Created Wis. Stat. § 120.12(28):

By July 1, 2016, school boards must adopt a policy on how the school board will fill a vacancy on the school board if the remaining school board members do not fill the vacancy within 60 days of the date on which the vacancy first exists.

4. Renumbered and amended Wis. Stat. § 120.42(1m)(b):

- a. The school board shall adopt a district apportionment plan that apportions the territory of the school district into election districts pursuant to the representation plan as follows:
 - i. Within 60 days after establishing the representation plan under par. (a).

- ii. Within 60 days after the population count by census block, established in the decennial federal census of population, and maps showing the location and numbering of census blocks become available in printed form from the federal government or are published for distribution by an agency of this state and decennially thereafter.

II. PRIMARY RESPONSIBILITIES OF THE SCHOOL BOARD

- A. **Mission.** The school board is responsible for determining the school district's mission, establishing its strategic direction and identifying and evaluating progress toward its goals.
- B. **Policymaking.** The school board is responsible for enacting, modifying, and repealing rules and regulations, which form the basis for school district operations. The school board is responsible for setting its goals and operational policies. The District Administrator is responsible for carrying out these goals and policies, and managing the day-to-day operations of the school district.
- C. **Student achievement.** The school board is responsible for adopting academic standards for pupils and establishes expectations for education in the District. The school board is responsible for monitoring student achievement and exercising general supervision over the schools.
- D. **Budget.** The school board is responsible for approving and adopting the annual budget for the District based on the educational plan of the District and the recommendations of the District Administrator. The school board is also responsible for supervising the execution of the budget, reviewing school district accounts and business procedures, and participating in the annual audit of the accounts. The school board is the fiscal fiduciary of the school district.
- E. **School board as an employer.** The school board is an employer that hires and evaluates the District Administrator. The school board must determine staffing levels, approve job descriptions and determine the compensation and benefits for all District employees. The District Administrator is responsible for evaluating all other personnel and serving as the supervisor of other District staff.
- F. **Public relations.** The school board is responsible for building understanding and support for public education in the community, which includes communicating with the public about the needs and demands of the school district and helping to establish a climate for change when it is necessary.
- G. **Political relations.** The school board is responsible for keeping abreast of the actions of other governmental bodies and agencies that impact the delivery of public education. School board members should be willing to participate in the system, where appropriate, and serve as an advocate for public education.

- H. Ethical leadership.** The school board is responsible for creating an environment that promotes legal compliance and ethical integrity. The school board should hold its administration and staff to the same standards.

III. RESPONSIBILITIES OF INDIVIDUAL SCHOOL BOARD MEMBERS

- A. Election of school board members; oath of office (Wis. Stats. §§ 120.06; 19.01).**

1. **Wis. Stat. § 120.06(4).** School board members elected for regular or unexpired terms shall take office, provided they have taken and filed the official oath, on the 4th Monday in April.
2. **Wis. Stat. § 120.06(10).** On or prior to the day provided for taking office, a school board member shall take and file the official oath.
3. **Wis. Stat. § 19.01.**

(1) Every official oath required by article IV, section 28, of the constitution or by any statute shall be in writing, subscribed and sworn to and except as provided otherwise by s. 757.02 and SCR 40.15, shall be in substantially the following form:

State of Wisconsin,

County of

I, the undersigned, who have been elected (or appointed) to the office of, but have not yet entered upon the duties thereof, swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will faithfully discharge the duties of said office to the best of my ability. So help me God.

.... ..,

Subscribed and sworn to before me this day of, (year)

....(Signature)....,

(1m) Form of oral oath. If it is desired to administer the official oath orally in addition to the written oath prescribed above, it shall be in substantially the following form:

I,, swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will faithfully and impartially discharge the duties of the office of to the best of my ability. So help me God.

B. Incompatibility of offices doctrine.

1. The Attorney General has stated: “two offices are incompatible if there is a conflict of interest or duties, so that the incumbent of one office cannot discharge with fidelity and propriety the duties of both. Incompatibility is not simply a physical impossibility to discharge the duties of both offices at the same time, but is an inconsistency in the functions of the two offices.” 58 Wis. Op. Att’y. Gen. 247 (1969).
2. Incompatibility is generally understood to mean a conflict or inconsistency in the function of two offices. It is almost always found to exist where one office is subordinate to another or subject to its supervision or control; where one office has the power of appointment or removal from the other; or where the exercise of authority in one office creates a conflict of interest related to the other office (i.e., salary negotiations, supervision and evaluation, auditing, etc.).
3. When substantial conflicts of interest between two offices (or an office and employment) exist, the individual holding both cannot avoid incompatibility by abstaining from voting in certain areas. The doctrine of incompatibility of office is designed to avoid requiring an individual to make such decisions. *Otradovec v. City of Green Bay*, 118 Wis.2d 393 (Ct. App. 1984).
4. 2015 Wisconsin Act 92. A school board member in a common, union or unified school district may serve as a volunteer coach or a supervisor of an extra-curricular activity if all of the following apply:
 - a. The school board member does not receive compensation for serving as a volunteer coach or supervisor.
 - b. The school board member agrees to abstain from voting on any issue that comes before the school board that substantially and directly concerns the activity that he/she coaches or supervises while he/she is serving as a volunteer coach or supervisor (except that the school board member is not required to abstain from voting on the school district’s annual budget).
 - c. The school board receives the results of a criminal background investigation of the school board member conducted by the Department of Justice or the Federal Bureau of Investigation.

C. School board officer-specific responsibilities.

1. **President (Wis. Stat. § 120.15).** The school district president of a common or union high school district shall:
 - (1) Countersign all checks, share drafts or other drafts for disbursement of school district moneys.
 - (2) Defend on behalf of the school district all actions brought against the school district.
 - (3) Prosecute, when authorized by an annual meeting or the school board, actions brought by the school district.
 - (4) Prosecute an action for the recovery of any forfeiture incurred under chs. 115 to 121 in which the school district is interested. . . .
 - (5) Act as chairperson of school board meetings and see that minutes of the meetings are properly recorded, approved and signed. . . .
2. **Vice President (Wis. Stats. §§ 120.11(1); 120.15(5)).** The Vice President primarily performs certain duties of the president when the president is absent.
3. **Clerk (Wis. Stat. § 120.17).** The school district clerk of a common or union high school district shall:
 - (1) Report the name and post-office address of each officer of the school district, within 10 days after the election or appointment of the officer, to the clerk and treasurer of each municipality having territory within the school district.
 - (2) Act as clerk and record the proceedings of annual and special meetings.
 - (3) Enter in the record book provided by the school board the minutes of its meetings, orders, resolutions and other proceedings.
 - (4) Enter in the record book copies of all the school district clerk's reports to the municipal clerks and the certificate of the proceedings of a meeting returned by a temporary school district clerk.
 - (5) Draw orders on the school district treasurer as directed by an annual or special meeting or the school board and record all orders drawn on the school district treasurer.

(7) Furnish each teacher with a copy of the contract between the teacher and the school board.

(8)

(a) Annually on or before November 10, deliver to the clerk of each municipality having territory within the school district a certified statement showing that proportion of the amount of taxes voted and not before reported, and that proportion of the amount of tax to be collected in such year, if any, for the annual payment of any loan to be assessed on that part of the school district territory lying within the municipality. . . .

(bm) If the equalized valuation of that part of a municipality lying within a school district is reduced due to the removal of property from the tax roll because the imposition of the property tax on that property is found unconstitutional, the school district clerk shall notify the supervisor of equalization. . . .

(c) If an order of school district reorganization under ch. 117 is effective after January 1 and before July 1 of any year, the school district clerks of the school districts affected shall prepare the statement under par. (a) based on the equalized valuation of the school districts as altered by the order and related to the equalized valuation of the year upon which the tax levy is required to be made. . . .

(9) Within 5 days after receipt of notification from the school board of the name of a new school, notify the proper postmaster of the name and location of the school and the number of the school district. . . .

(10) Have authority to administer the oath of office to school board members.

4. **Treasurer (Wis. Stat. § 120.16).** The school district treasurer of a common or union high school district shall:

(2) Apply for, receive and sue for all money appropriated to or collected for the school district and disburse the same in accordance with this subsection and s. 66.0607. . . .

(3) Enter in the treasurer's account books all money received and disbursed by the treasurer, specifying the source from which it was received, the person to whom it was paid and the object for which it was paid.

(4) Present to the annual meeting a written statement of all money received and disbursed by the treasurer during the preceding year.

(5) Immediately upon receipt, deposit the funds of the school district in the name of the school district in a public depository deposit designated by the school board

(6) Withdraw funds of the school district deposited in savings or time deposits

IV. RELATIONSHIP BETWEEN SCHOOL BOARD AND SCHOOL DISTRICT ADMINISTRATORS

A. Appropriate Roles.

1. Board has significant obligations (discussed above).
2. Administration: hired as educational professionals.

B. Oversight v. Management. Board makes policy, evaluates administration's effectiveness in carrying it out.

C. Board Member Role in Employee Evaluations.

1. **School board duties: Educator effectiveness (Wis. Stat. § 120.12(2m)).**
 - a. The school board of a common or union high school district shall evaluate the effectiveness of each teacher and principal employed by the school district using either the system established under s. 115.415 (2) or the equivalency process established by rule under s. 115.415 (3).
 - b. This is typically a responsibility delegated to the administration by school board policy.
2. **School district standards (Wis. Stat. § 121.02(1)(q)).**
 - a. School boards shall evaluate, in writing, the performance of all certified school personnel at the end of their first year and at least every 3rd year thereafter.

- b. This is typically a responsibility delegated to the administration by school board policy.

3. **School district standards: Personnel evaluation (Wis. Admin. Code § PI 8.01(2)(q)).**

- a. Each school district board shall establish specific criteria and a systematic procedure to measure the performance of licensed school personnel. The written evaluation shall be based on a board adopted position description, including job related activities, and shall include observation of the individual's performance as part of the evaluation data. Evaluation of licensed school personnel shall occur during the first year of employment and at least every third year thereafter.
- b. The school district board shall ensure that evaluations, including those for purposes of discipline, job retention or promotion, shall be performed by persons who have the training, knowledge and skills necessary to evaluate professional school personnel. The school district board shall be responsible for the evaluation of the school district administrator under this subdivision.
- c. This is typically a responsibility delegated to the administration by school board policy.

D. Board Member Role in Employee Discipline.

1. **General disciplinary procedures.**

- a. School board policies and employee handbook provisions typically outline a school district's employee disciplinary procedures.
- b. Discipline of employees is typically a responsibility delegated to the administration by school board policy. However, in many cases, the school board will retain severe discipline, such as disciplinary suspensions and termination. Note: Teachers and Administrators may only be terminated by a majority of the full membership of the school board.
- c. When an employee has a property right in his/her employment, the employee is entitled to due process, which includes, at a minimum, an impartial, unbiased tribunal to review the decision. The school board must serve as that impartial, unbiased tribunal for purposes of employee discipline, including termination.

2. **Renewal of teacher contracts (Wis. Stat. § 118.22).**

(2) On or before May 15 of the school year during which a teacher holds a contract, the board by which the teacher is employed or an employee at the direction of the board shall give the teacher written notice of renewal or refusal to renew the teacher's contract for the ensuing school year. If no such notice is given on or before May 15, the contract then in force shall continue for the ensuing school year. A teacher who receives a notice of renewal of contract for the ensuing school year, or a teacher who does not receive a notice of renewal or refusal to renew the teacher's contract for the ensuing school year on or before May 15, shall accept or reject in writing such contract not later than the following June 15. No teacher may be employed or dismissed except by a majority vote of the full membership of the board. Nothing in this section prevents the modification or termination of a contract by mutual agreement of the teacher and the board. No such board may enter into a contract of employment with a teacher for any period of time as to which the teacher is then under a contract of employment with another board.

(3) At least 15 days prior to giving written notice of refusal to renew a teacher's contract for the ensuing school year, the employing board shall inform the teacher by preliminary notice in writing that the board is considering nonrenewal of the teacher's contract and that, if the teacher files a request therefor with the board within 5 days after receiving the preliminary notice, the teacher has the right to a private conference with the board prior to being given written notice of refusal to renew the teacher's contract.

3. **School district administrator (Wis. Stat. § 118.24).**

(2)

(a) Under the direction of the employing school board, the school district administrator shall have general supervision and management of the professional work of the schools and the promotion of pupils.

(c) The school district administrator shall make written recommendations to the school board on teachers, courses of study, discipline and such other matters as the administrator thinks advisable and shall perform such other duties as the school board requires.

(6) The employment contract of [a school district administrator, a business manager and school principals and assistants to such persons] shall be in writing and filed with the school district clerk. At least 4 months prior to the expiration of the employment contract, the employing school board shall

give notice in writing of either renewal of the contract or of refusal to renew such person's contract. If no such notice is given, the contract then in force shall continue in force for 2 years. Any such person who receives notice of renewal or who does not receive notice of renewal or refusal to renew the person's contract at least 4 months before the contract expiration shall accept or reject the contract in writing on or before a date 3 months prior to the contract expiration. No such person may be employed or dismissed except by a majority vote of the full membership of the school board. Nothing in this section prevents the modification or termination of an employment contract by mutual agreement of the parties. No school board may enter into a contract of employment with any such person for a period of time as to which such person is then under a contract of employment with another school board.

(7) Prior to giving notice of refusal to renew the contract of any person described under sub. (1), the employing board shall give such person preliminary notice in writing by registered mail at least 5 months prior to the expiration of such contract that the board is considering nonrenewal of the contract, and that if such person files a written request with the board within 7 days after receiving such notice, the person has the right to a hearing before the board prior to being given written notice of refusal to renew the contract. The written request for a hearing shall include a statement requesting either a private hearing or a public hearing before the board. Section 118.22 does not apply to such a proceeding. If a hearing concerning nonrenewal of the contract is requested, the reasons upon which the board is considering nonrenewal may also be requested and the board shall furnish such reasons before the hearing in writing.

4. Grievance procedures.

Under a school district's grievance procedure, "the highest level of appeal is the governing body of the local governmental unit." Wis. Stat. § 66.0509(1m)(d)3. School board policies contain additional procedural details for carrying out the grievance process.

E. Board Member Access to Records.

1. Confidentiality and disclosure of pupil records (Wis. Stat. § 118.125(2)(d)).

Pupil records shall be made available to persons employed by the school district which the pupil attends who are required by the department under s. 115.28 (7) to hold a license, law enforcement officers who are individually designated by the school board and assigned to the school district, and other school district officials who have been determined by the school board to

have legitimate educational interests, including safety interests, in the pupil records. . . .

2. **Family Educational Rights and Privacy Act (“FERPA”) regulations: Under what conditions is prior consent not required to disclose information? (34 CFR § 99.31).**

An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure is to other school officials . . . within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

V. COMMON MISTAKES MADE BY SCHOOL BOARD MEMBERS

- A. Failing to have patience.**
- B. Engaging in poor or inappropriate behavior.**
- C. Undermining or challenging the board after a vote.**
- D. Acting like the “Lone Ranger.”**
- E. Forgetting that you are a member of a team.**
- F. Dropping a “bomb” at a board meeting.**
- G. Voting along party lines or putting politics before children.**
- H. Becoming a “ball carrier” for others with agendas.**
- I. Failing to respect the District’s chain of command.**
- J. Not being prepared.**
- K. Not listening.**
- L. Having a hidden agenda.**
- M. Refusing to understand and appreciate real and perceived bias.**
- N. Engaging in behavior that interferes with or impedes the board’s ability to perform its statutory and policy based duties.**
- O. Failing to see the forest for the trees.**

- P. Speaking about confidential issues outside of the District.**
- Q. Considering the District Administrator or the staff the “enemy”.**
- R. Ignoring policy (or worse yet, not reading the policies).**
- S. Failing to take into account open meetings and public records implications of everyday individual actions.**

VI. SCHOOL BOARD MEETINGS

A. School Board Meetings (Wis. Stat. § 120.11).

(1) The school board in a common or union high school district shall hold a regular meeting at least once each month at a time and place determined by the school board and may hold special school board meetings under sub. (2). A majority of the school board members constitute a quorum at a regular or special school board meeting. The school district president shall preside at school board meetings. In the president's absence, the school district vice president shall preside or, in the case of a 3-member board, the school board may select another school board member to preside. The school district clerk shall record the minutes of school board meetings and, in his or her absence, the school board may select another school board member to act as the clerk of the meeting.

(2) A special school board meeting shall be held upon the written request of any school board member. The request shall be filed with the school district clerk or, in the clerk's absence, the school district president who shall notify in writing each school board member of the time and place of the special school board meeting at least 24 hours before the meeting. The notice shall be delivered to each school board member personally or shall be left at the usual place of abode of the school board member or shall be mailed by 1st class mail to the usual place of abode of the school board member so as to arrive at least 24 hours before the special school board meeting. A special school board meeting may be held without prior notice, if all school board members are present and consent, or if every school board member consents in writing even though he or she does not attend.

(4) The proceedings of a school board meeting shall be published within 45 days after the meeting as a class 1 notice, under ch. 985, in a newspaper published in the school district, if any, or publicized by school district-wide distribution prepared and directed by the school board and paid out of school funds. If there is no newspaper published in the school district, the proceedings shall be posted or published as the school board directs. For the purpose of publication, the proceedings shall include the substance of every official action taken by the school board at the meeting and a statement of receipts and expenditures in the aggregate. The school board shall make a detailed record of all receipts and expenditures

available to the public for inspection at each school board meeting and upon request.

B. Open Meetings Law (Wis. Stat. § 19.81 *et seq.*).

1. Policy.

- a. It is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of the government as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1).
- b. All meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2).
- c. Every meeting of a governmental body must be preceded by public notice and initially convened in open session.

2. Definitions.

a. Governmental body.

A state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule, or order; a governmental or quasi-governmental corporation . . . ; a local exposition district under subch. II of ch. 229; any public purpose corporation, as defined in s. 181.79(1); or a formally constituted subunit of any of the foregoing. . . .” Wis. Stat. § 19.82(1).

b. Meeting.

- i. The convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. Wis. Stat. § 19.82(2).
- ii. The number of members present must be sufficient to determine the present body’s course of action regarding the proposal discussed. “If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body.” Wis. Stat. § 19.82(2).

- c. **Social/chance gatherings.** The term “meeting” does not include social or chance gatherings or conferences which are not intended to avoid the Open Meetings Law. Wis. Stat. § 19.82(2).

3. **Notice requirements.**

a. **Public notice is required in the following manner:**

- i. To the public;
- ii. To those news media who have filed a written request for such notice; and
- iii. To the official newspaper, or if none exists, to the news media most likely to give notice in the area.

b. **Notice contents.**

- i. Time.
- ii. Date.
- iii. Place.
- iv. Subject Matter. The notice must be in a form that is reasonably likely to apprise members of the public and the news media of the subject matter.
- v. Matters intended for consideration at a closed session.

c. **Notice time lines.**

- i. Generally at least twenty-four (24) hours prior to the commencement of the meeting.
- ii. In an emergency (where “good cause” is shown) at least two (2) hours prior to the commencement of the meeting.

d. **Public comment.**

A governmental body is not required to offer a public comment period. The Open Meetings Law permits a meeting of a governmental body to provide for a period of public comment, during which the body may receive information from the public. Wis. Stat. § 19.84(2).

4. **Closed session.**

- a. Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the specific exemptions of Wis. Stat. § 19.85.
- b. Only the elected or presiding officials may exercise the right to convene into closed session; the public does not have the right or power to close a meeting.
- c. The chief presiding officer must announce to all present the intention of going into a closed session and read the closed session notice that should include the reason(s) and the specific statutory exemptions to support the closed session. Wis. Stat. § 19.85(1). A motion, with a second and roll call vote as to closing the session, must be recorded by the custodian of records. The motion passes only with a majority vote.
- d. A closed session may be held for any of the purposes (known as exemptions) articulated in the Open Meetings Law, which include, but are not limited to:
 - i. **Judicial or Quasi-Judicial Matters.** Deliberations concerning a case which is the subject of any judicial or quasi-judicial trial or hearing before the governmental body. Wis. Stat. § 19.85(1)(a).
 - ii. **Discharge/Discipline.** Considering dismissal, demotion or discipline of a public employee provided the public employee is given actual notice of the evidentiary hearing prior to the final action being taken and the notice contains a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. Wis. Stat. § 19.85(1)(b).
 - iii. **Compensation and Evaluation.** Considering the employment, promotion, compensation or performance evaluation of a public employee. The discussion must pertain to a specific employee, as contrasted with general policies which do not involve specifically identified employees. Wis. Stat. § 19.85(1)(c).

- iv. **Competitive or Bargaining Reasons.** Deliberating or negotiating the purchase of public properties, the investing of public funds, or conducting other specific public business, whenever competitive or bargaining reasons require a closed session. Wis. Stat. § 19.85(1)(e).
- v. **Personnel Matters.** Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where Wis. Stat. § 19.85(1)(b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations. Wis. Stat. § 19.85(1)(f).
- vi. **Conferring with Legal Counsel.** Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. Wis. Stat. § 19.85(1)(g).
- vii. Once the governmental body has convened in closed session, it may discuss or consider only those subjects specifically allowed by the statutory exemptions and is limited to matters that the presiding officer has announced would be the subject of the closed session.

C. School Board Member Use of Social Media and Open Meetings Law.

1. The use of electronic communications, including e-mail, text messages, and social media such as Facebook and Twitter, have the potential to implicate the Open Meetings Law.
2. The Wisconsin Department of Justice’s 2015 Open Meetings Law Compliance Guide describes this potential:

“Written communications transmitted by electronic means, such as email or instant messaging . . . may constitute a ‘convening of members,’ depending on how the communication medium is used. Although no Wisconsin court has applied the open meetings law to these kinds of electronic communications, it is likely that the courts will try to determine whether the communications in question are more like an in-person discussion—e.g., a rapid back-and-forth exchange of viewpoints among multiple members—or more like non-electronic written correspondence, which generally does not

raise open meetings law concerns. If the communications closely resemble an in-person discussion, then they may constitute a meeting if they involve enough members to control an action by the body. In addressing these questions, courts are likely to consider such factors as the following:

- (1) the number of participants involved in the communications;
- (2) the number of communications regarding the subject;
- (3) the time frame within which the electronic communications occurred; and
- (4) the extent of the conversation-like interactions reflected in the communications.”

D. Removing/Expelling a School Board Member from a School Board Meeting (Wis. Stat. § 17.13).

Only the public, through an election, or the judge of the circuit court of the circuit wherein the school district is situated, for cause, may remove or suspend a school board member.

VII. SCHOOL BOARDS AND PUBLIC RECORDS

A. Board members and public records (Wis. Stat. § 19.31 *et seq.*).

1. Policy (Wis. Stat. § 19.31). Access to public records is presumed.

Sections 19.32 to 19.37 “. . . shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.” Except as otherwise provided by law, any requestor has a right to inspect any record. (Wis. Stat. § 19.35).

2. Definition of “Record” (Wis. Stat. § 19.32(2)).

- a. Any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. “Record” includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts and optical disks.

The term “Record” does not include:

- i. Drafts, notes, preliminary computations and like materials prepared for the originator’s personal use or prepared by the originator in the name of a person for whom the originator is working;
- ii. Materials which are purely the personal property of the custodian and have no relation to his or her office;
- iii. Materials to which access is limited by copyright, patent or bequest; and
- iv. Published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.

B. School Board Member Use of Social Media and Public Records Law.

1. E-mails have long been a subject of public records laws, but other forms of electronic communication may also result in the creation of public records. As noted above, recorded or preserved content may constitute a public record “regardless of physical form or characteristics.”
2. While instruction from courts on this topic is sparse, the Wisconsin Department of Justice’s 2015 Public Records Law Compliance Guide provides the following guidance:

“Electronic records include content posted by or on behalf of authorities to social media sites, such as Facebook and Twitter, to the extent that the content relates to government business. If an authority uses social media, the content must be produced if it is responsive to a public records request. This includes not only currently ‘live’ content, but also past content. . . . If an authority makes use of social media, or if employees use mobile devices to conduct government business (whether the device is personal or provided by the authority), the authority should adopt procedures to retain and preserve all such records consistent with Wis. Stat. § 16.61 (state authorities), Wis. Stat. § 19.21 (local authorities), and applicable records disposition authorizations.”