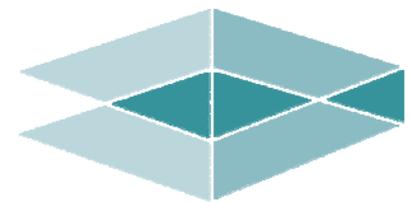


WORKING WITH SCHOOL BOARDS AND SCHOOL BOARD MEMBERS

WISCONSIN ASSOCIATION OF SCHOOL SUPERINTENDENT ASSISTANTS
OCTOBER 12, 2017

ATTORNEY SHANA R. LEWIS
SLEWIS@STRANGPATTESON.COM



**STRANG, PATTESON
RENNING, LEWIS & LACY**

LEGAL AUTHORITY OF THE SCHOOL BOARD

- Wis. Stat. § 118.001 and Wis. Stat. § 118.01(1) – Broad Powers.
 - Wis. Stat. § 120.12 – School Board Duties.
 - Wis. Stat. § 120.13 – School Board Powers.
 - Wis. Stat. § 120.08 and Wis. Stat. § 120.10 – Powers of the Electors in a Common or Union High School District.
 - Wis. Stat. § 120.44 – Powers of the Board in a Unified School District.
- 

PRIMARY RESPONSIBILITIES OF THE SCHOOL BOARD

- Mission.
 - Policymaking.
 - Student Achievement.
 - Budget.
 - Employer.
 - Public Relations.
 - Political Relations.
 - Ethical Leadership.
- 

PRIMARY RESPONSIBILITIES OF INDIVIDUAL SCHOOL BOARD MEMBERS

- Faithfully and impartially discharge the duties of the office of school board to the best of his/her ability.
- Office Specific Duties.
 - President.
 - Vice President.
 - Clerk.
 - Treasurer.
- Board Member Job Description Examples.

RESTRICTIONS ON RIGHTS OF SCHOOL BOARD MEMBERS

- Authority to Act.
 - Access to Records.
 - Maintain Confidentiality.
 - Conflicts of Interest.
 - Incompatibility of Offices/Positions.
- 

COMMON MISTAKES MADE BY SCHOOL BOARD MEMBERS

- Failing to have patience.
- Engaging in poor or inappropriate behavior.
- Undermining or challenging the board after a vote.
- Acting like the “Lone Ranger”.
- Forgetting that you are a member of a team.
- Dropping a “bomb” at a board meeting.
- Voting along party lines or putting politics before children.
- Becoming a “ball carrier” for others with agenda.
- Failing to respect the District’s chain of command.
- Not being prepared.
- Having a hidden agenda.
- Refusing to understand and appreciate real or perceived bias.
- Engaging in behavior that interferes with or impedes the board’s ability to perform its statutory and policy based duties.
- Failing to see the forest for the trees.
- Speaking about confidential issues outside of the District.
- Considering the Superintendent or the staff the “enemy”.
- Ignoring policy (or worse yet, not reading the policies).
- Failing to take into account open meetings and public records implications of everyday actions.

EMAIL CREATES OPEN MEETINGS LAW AND PUBLIC RECORDS CONCERNS

- Email use by school board members (especially REPLY ALL) continues to create concerns regarding Open Meetings Law violations.
- Often discovered in the context of compiling records in response to public records requests. Note: The District cannot refuse to release a public record simply because it is evidence of an Open Meetings Law violation.
- What can you do?
 - Provide reminders to school board members to be cautious.
 - When emailing school board members use the BCC line so they cannot REPLY ALL.
 - Work with IT Department to disable REPLY ALL for school board member email accounts.

WHAT TO DO WHEN YOU KNOW THE SCHOOL BOARD IS VIOLATING THE OPEN MEETINGS LAW

■ Strategies:

- You should work with the Superintendent to inform the Board members.
- You should work with the Superintendent to remind the Board members about the potential consequences.
- You have no obligation to report the Board to the AG or DA.

■ Who enforces?

- Attorney General.
- Local District Attorney.
- Any other Individual.

■ What is the statute of limitations?

- AG and DA have 6 years.
- Individual has 2 years, but cannot file within the first 20 days of submitting verified complaint.
- No notice of claim required.

■ Penalties.

- \$25-\$300 per violation for members of the governmental body.
- May not be reimbursed by the District.
- May void action taken during the meeting.

■ **Only members of governmental bodies are subject to penalties under the Open Meetings Law.**

- The Superintendent's Assistant is not a member of a governmental body.
- However, employment consequences may occur for errors in job performance.

WHAT IS A ROGUE SCHOOL BOARD MEMBER?

- Rogue school board members are those members who often operate beyond any legal authority, using implied authority to bully and intimidate school district administration, staff and the public. Sometimes they start out with good intentions. Sometimes they push a personal agenda.
 - Typically, they refuse to support majority decisions of the Board and they work both openly and behind the scenes to disrupt and undermine the Board authority when it conflicts with his/her own interests or preferences.
 - Rogue school board members are often micromanagers, who interfere with the day-to-day operations of the school district, and disregard the organizational structure.
 - Rogue school board members typically behave counter to written and unwritten rules of conduct and breach the Board's Code of Ethics and the laws governing conflicts of interest.
- 

EXAMPLES OF ROGUE SCHOOL BOARD MEMBERS

- A school board member requests access to employee resignation letters and then contacts former employees to find out why they really left the employment of the District.
- A school board member wants to approve every news release issued by the school district, and wants final editing rights on the school district newsletter.
- A school board member shows up at football practice and “helps” the coaches run practice.
- A restaurant owner elected to the school board begins his service on the board tenure by telling the Food Service Director what to serve in the school lunch program.
- A school board member discloses the details of a closed session on strategies in litigation involving the school district.
- A school board member requests a master key to the District’s buildings so that he can randomly visit class rooms and school offices nights and weekends.
- A school board member contacts the vendors who are likely to submit bids in response to an RFP to tell them her perspective on what they should include in the submission.
- A school board member grants an interview to the local media to explain her perspective regarding the performance of the Superintendent.
- A school board member contacts employees to investigate a rumor he heard about a Principal’s misconduct.
- A school board member contacts the Director of Student Services to advocate on behalf of a student with a disability.
- A school board member directs the Executive Assistant to prepare a significant amount of information/documents for a topic that is not on the agenda of the Board or a Committee on which he serves.

WHAT CAN BE DONE WITH A ROGUE SCHOOL BOARD MEMBER?

- Review and revise, as necessary, the Board Member Code of Ethics.
 - Establish policies and guidelines for regulating Board member behavior.
 - Require Board member orientation.
 - Establish a Board professional development and organizational building plan.
 - Bring in external consultants and advisors, including legal counsel, WASB or WASDA representatives, retired Administrators.
 - Establish Board member peer, 360°, or community evaluations.
 - Appoint a mentor for the rogue Board member.
 - Consider whether to utilize the public, including the media, to examine the actions of the rogue Board member.
 - Pursue public or private censure of the Board member by the remaining school board members.
 - Consider whether any of the Board member's actions violate the law and justify a complaint to the District Attorney or an administrative agency or removal by a judge.
 - Explore political opportunities, such as a recall effort or endorsing a candidate who opposes the rogue school board member.
- 

Thank you.
