



A Divided House – A School Attorney’s Guide to Managing a Split Board

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WHAT'S WRONG WITH A DIVIDED HOUSE?

- ❑ In 1856, then Senate Candidate Abraham Lincoln began his speech at the State Republican Convention with, “A house divided against itself cannot stand.”
- ❑ These words are attributed in the Gospels (Matthew, Mark, and Luke) to Jesus.
- ❑ But does this apply to school boards?

“NAME-CALLING, FIGHTING FREQUENT ON ‘DIVIDED’ LOS BANOS SCHOOL BOARD” —CA

- ❑ “Recent meetings of the Los Banos Unified School District board have been characterized by nasty exchanges and even name-calling between trustees and, board members admit, it’s a problem.” Marlene Smith, *Name-calling, fighting frequent on ‘divided’ Los Banos school board*, Los Banos Enterprise, Aug. 4, 2016.
- ❑ “Trustee Marlene Smith erupted at the July 26 meeting over the unrest on the board. She accused trustees Dennis Areias and Tommy Jones of having ‘testosterone issues’ and described the board as ‘a bunch of mess’ and ‘a big pot of crap.’” *Id.*
- ❑ “Smith said the board is ‘disjointed’ and hasn’t done anything for the kids in the school district.” *Id.*
- ❑ “‘We do have a divided board,’ trustee Carol Duffy said. ‘But there are deep-seated things that have happened between some of the board members. I think it’s hard to get over.’” *Id.*

“NAME-CALLING, FIGHTING FREQUENT ON ‘DIVIDED’ LOS BANOS SCHOOL BOARD” —CA

- ❑ “The troubles have community leaders concerned.” *Id.*
- ❑ “Mueller said the board is ‘very disjointed,’ and that trustees on the board majority are putting personal agendas over what’s best for students.” *Id.*
- ❑ “Areias agreed ... He blamed the issues on Jones and Smith. He said problems intensified after Smith reached the board two years ago, and the majority ‘continues to bring up surprises’ at meetings and ask questions that can’t be answered at the time.” *Id.*
- ❑ “Areias accused Jones of acting erratically and leaking closed-session information...” *Id.*
- ❑ “Along with the recall campaign, three board members – Jones, Duffy and Falasco – are up for re-election this year.” *Id.*

“TRUSTING A DIVIDED BOARD” — CHARLOTTE-MECKLENBURG SCHOOLS, NC

- ❑ “Members split on many proposals, often along racial lines. And in a city where racial and economic cracks continue to widen, the school board has one of the greatest opportunities to build trust among an increasingly skeptical community...” Adam Rhew, *Trusting a Divided Board*, Charlotte Magazine, May 25, 2017
- ❑ “In the mid-eighties, ideological differences among the school board members disintegrated into personal feuds—at one meeting, a member dramatically requested CMPD protection because she said she feared for her safety in closed sessions with her colleagues. The board became dysfunctional, lost voters’ trust, and accomplished little.” *Id.*
- ❑ “Although the current board has generally avoided personal attacks, the tension among members is obvious.” *Id.*

“TRUSTING A DIVIDED BOARD” — CHARLOTTE-MECKLENBURG SCHOOLS, NC

- ❑ “The student assignment debate rebooted a years-old push to split CMS into smaller districts. Some opponents said last night that they would leave CMS if the school board did one thing or another. Others threatened to defeat the district’s November facilities bond referendum.” *Id.*
- ❑ “How CMS leaders choose to move on from last night’s vote will be a signal to parents. If board members can’t signal that they trust each other, how do they expect the rest of us to treat CMS as a school system instead of worrying only about the campus closest to home?” *Id.*

BOARD POWERS AND DUTIES

Compare:

- ❑ “A local school board shall have the following powers or duties ... adopt rules pertaining to the administration of all powers or duties of the local school board.” NMSA 1978, § 22-5-4(K) (2005).

With:

- ❑ “A local school board shall have the following powers or duties ... subject to the rules of the department, develop educational policies for the school district.” NMSA 1978, § 22-5-4(A) (2005).

CONSIDER DEVELOPING OR REVISING BOARD OPERATING PROCEDURES

AREAS TO ADDRESS THROUGH BOARD OPERATING PROCEDURES

- ❑ Developing board meeting agendas
- ❑ Calling a special board meeting or emergency meeting
- ❑ Board Meeting Place & Time Activities
 - ❑ Under the Open Meetings Act, the Board must “determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body.” NMSA 1978, § 10-15-1 (D) (2013).
 - ❑ “Accordingly, each public body should adopt an annual resolution or other announcement at a regularly scheduled open meeting stating its procedure for giving notice of meetings.” *Open Meetings Act Compliance Guide* (Eighth Edition 2015) page 12.
- ❑ Member conduct during board meetings

AREAS TO ADDRESS THROUGH BOARD OPERATING PROCEDURES

- ❑ Individual board member requests for information or reports
- ❑ Board member access to district documents
 - ❑ Under the Inspection of Public Records Act (IPRA), every person has a right to inspect public records unless an exception applies. NMSA 1978 § 14 -2-1 (A).
 - ❑ The exceptions include “letters or memorandums which are matters of opinion in personnel files.” NMSA 1978 § 14-2-1 (A)(3).
 - ❑ How does a board member access public records, including confidential records such as past superintendent evaluations, which the board member may legitimately need to access in order to perform his/her role?

AREAS TO ADDRESS THROUGH BOARD OPERATING PROCEDURES

- ❑ Board member access to district documents, continued:
 - ❑ Consider, under the Texas Education Code, at Section 11.1512(c):
“A member of the board of trustees of the district, *when acting in the member's official capacity*, has an inherent right of access to information, documents, and records maintained by the district, and the district shall provide the information, documents, and records to the member without requiring the member to submit a public information request under [Public Information Act]. The district shall provide the information, documents, and records to the member...without regard to whether the requested items are the subject of or relate to an item listed on an agenda for an upcoming meeting.”

AREAS TO ADDRESS THROUGH BOARD OPERATING PROCEDURES

- ❑ Board member access to district documents (continued)
 - ❑ Also, in compliance with FERPA and other applicable confidentiality laws such as medial privacy laws, the Texas Education Code requires a board member to “maintain the confidentiality of information, documents, and records received” from such a records request (Effective September 1, 2017.)

AREAS TO ADDRESS THROUGH BOARD OPERATING PROCEDURES

- ❑ Procedures for board policy development and review
- ❑ Employee, Parent, or Community Requests/Complaints to Brought to Individual Board Members
 - ❑ NM School Board Code of Ethics: “Recognize that I have no legal authority outside the board meetings, and that all decisions of the board will be made at a public meeting where a quorum of the board is present and only after a thorough review of all the available information...”
- ❑ Media Inquiries to the Board
 - ❑ NM School Board Member Code of Ethics: Board members shall “Avoid speaking on behalf of the board except at those times when the board, by official action authorizes me to do so, and respect the confidentiality of information that is privileged under applicable law.”

AREAS TO ADDRESS THROUGH BOARD OPERATING PROCEDURES

- ❑ Clarify Overarching Powers and Duties of Board and Superintendent.
 - ❑ Board employs the superintendent, fixes the superintendent's salary, and evaluates the superintendent.
 - ❑ Board conducts termination and discharge hearings.
 - ❑ Superintendent administers and supervises the school district.
 - ❑ Superintendent employs, fixes the salaries of, assigns, terminates or discharges all employees of the school district.

See NMSA 1978, § 22-5-4(B) (2005); NMSA 1978, § 22-5-14(B)(2)-(3) (2003); NMSA 1978, § 22-10A-24 (2003), NMSA 1978, § 22-10A-27 (2003); See also 6.29.1.9(A)(2), (A)(12) NMAC.

AREAS TO ADDRESS THROUGH BOARD OPERATING PROCEDURES

- ❑ Board Member Visits to School Campus
 - ❑ Keep in mind:
 - ❑ The Superintendent is the chief executive officer of the district.
 - ❑ The Superintendent shall administer and supervise the district.

See NMSA 1978, § 22-5-14(A), (B)(2) (2003) (local superintendent; powers and duties).

AREAS TO ADDRESS THROUGH BOARD OPERATING PROCEDURES

- Communications
 - Board Member Communication with Staff
 - Board Member Communication with Superintendent
 - Board Member Communication with Legal Counsel
 - Board Member Communication with other Board Members
 - Board Member Use of Email

AREAS TO ADDRESS THROUGH BOARD OPERATING PROCEDURES

- ❑ Evaluation of Superintendent
 - ❑ Consider forming a committee to review and make recommendations regarding the format and process.
- ❑ Criteria and Process for Selecting Board Officers and Committee Members
- ❑ Role and Authority of Individual Board Member and/or Board Officer

AREAS TO ADDRESS THROUGH BOARD OPERATING PROCEDURES

- Meeting Procedures
 - Discussion of Motions
 - Robert Rules of Order/Meeting Procedures
 - Grievance Hearing Procedures
 - Other Hearing Procedures
- Audience Participation at Meetings
- Board Work Sessions

AREAS TO ADDRESS THROUGH BOARD OPERATING PROCEDURES

- New Board Member Orientation
- Board Training Requirements and Status Updates
- Travel Protocol and Reimbursable Expenses
- Board Evaluation
- Enforcement of Operating Procedures – Violations & Sanctions
- Time Line to Review Board Operating Procedures

OTHER STRATEGIES FOR COPING WITH A DIVIDED HOUSE

- Remember you are a team of six
 - Follow the chain of communication with superintendent – staff
 - Refer others to the chain of command
 - Let superintendent know you're visiting a school – cloak of power is always on
- Always strive to be transparent
- Find commonalities and shared interests
- Celebrate students
- Give each other space and understand all board members are volunteers, and humans with busy complicated lives

POTENTIAL CASUALTIES OF A DIVIDED HOUSE

- ❑ Recall of Individual Board Members
 - ❑ New Mexico Constitution, Article 12, Section 14 states:
“Any elected local school board member is subject to recall by the voters of the school district from which elected. A petition for a recall election must cite grounds of malfeasance or misfeasance in office or violation of the oath of office by the member concerned. The recall petition shall be signed by registered voters not less in number than thirty-three and one-third percent of those who voted for the office at the last preceding election at which the office was voted upon...”
 - ❑ *See also* Local School Board Member Recall, NMSA 1978 §§ 22-7-1 to -16 (1977, as amended through 3-2015).

POTENTIAL CASUALTIES OF A DIVIDED HOUSE

- ❑ Suspension of authority of a local school board, superintendent or principal by the Secretary of Education
 - ❑ *See* 6.30.6 NMAC.
 - ❑ The factors for determining suspension include “the existence of a pattern of noncompliance with requirements of any applicable law, department standards, state or federal rules or department directives.” 6.30.6.8(C)(1) NMAC.

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