

Ten Things Board Members Wish the Public Understood

Presented by: Elena M. Gallegos & Karla A. Schultz



WALSH GALLEGOS
TREVIÑO KYLE & ROBINSON P.C.

1

Introduction

- It often seems the public may not understand what board members can/cannot do.
- Board members can also feel pressured to address demands from employees or parents.
- We will identify some of the common issues.
- We will then discuss strategies for effectively responding to requests that board members do things outside of their authority.



2

1. We Take an Oath to Follow the Law and We Adhere to a Code of Ethics

- ❑ NMSA 1978, § 22-5-9.1. Oath of office
 - ❑ All elected or appointed members of local school boards shall take the oath of office prescribed by Article 20, Section 1 of the constitution of New Mexico.
 - ❑ Article 20, Section 1 of the New Mexico Constitution
 - ❑ "Every person elected or appointed to any office shall, before entering upon his duties, take and subscribe to an oath or affirmation that he will support the constitution of the United States and the constitution and laws of this state, and that he will faithfully and impartially discharge the duties of his office to the best of his ability."



3

Governmental Conduct Act (GCA)

- ❑ The GCA:
 - ❑ Establishes ethical principles of public service.
 - ❑ Prohibits certain official acts.
 - ❑ Prohibits disclosure of confidential information.
 - ❑ Imposes penalties for violation.



4

Ethical Principles under the GCA

- Treat positions as a public trust.
- Advance only the public interest, not personal benefits.
- Earn the confidence of the public.
- Maintain integrity and act ethically.
- Fully disclose real and potential conflicts of interest.
- Do not receive money, anything of value, or a promise in exchange for promised performance of a public act.

NMSA 1978, § 10-16-3.



5

GCA's Comprehensive Coverage

- 10-16-1. Short title.
- 10-16-2. Definitions.
- 10-16-3. Ethical Principles of Public Service; Certain Official Acts Prohibited; Penalty.
- 10-16-3.1. Prohibited Political Activities.
- 10-16-4. Official Act for Personal Financial Interest Prohibited; Disqualification from Official Act; Providing a Penalty.
- 10-16-4.1. Honoraria Prohibited.
- 10-16-4.2. Disclosure of Outside Employment.
- 10-16-4.3. Prohibited Employment.



6

GCA's Comprehensive Coverage

- ❑ 10-16-6. Confidential Information.
- ❑ 10-16-7. Contracts Involving Public Officers or Employees.
- ❑ 10-16-8. Contracts Involving Former Public Officers or Employees; Representation of Clients after Government Service.
- ❑ 10-16-13. Prohibited Bidding.
- ❑ 10-16-13.2. Certain Business Sales to the Employees of State Agencies and Local Government Agencies Prohibited.
- ❑ 10-16-13.3. Prohibited Contributions; Financial Service Contractors.
- ❑ 10-16-14. Enforcement Procedures.
- ❑ 10-16-17. Criminal Penalties.



7

Role of the State Ethics Commission

- ❑ "The state ethics commission may investigate suspected violations of the Governmental Conduct Act and forward its findings and evidence to the attorney general, district attorney or appropriate state agency or legislative body for enforcement."

NMSA 1978, § 10-16-14(A).



8

Board Member Ethics

- ❑ The applicable Code of Ethics is found in Board Policy.
- ❑ NMSBA Model Policy BCA (Board Member Ethics) incorporates the standards of the GCA and further includes that each Board member will:
 - ❑ Work with fellow Board members in a spirit of harmony and cooperation, respecting their rights and views.
 - ❑ Render all decisions in open, public meetings.
 - ❑ Accept and support majority decisions of the Board.
 - ❑ Delegate administrative and supervisory functions to the Superintendent of Schools.
 - ❑ Resist every temptation and outside pressure to use the position of a School Board member for personal benefit, or for the benefit of any individual, agency or special interest group(s) apart from the total interest of the school district.



9

2. We Don't Get Paid a Salary

- ❑ Being an elected school board member is an unpaid, voluntary position.
- ❑ NMSA 1978, § 22-5-5. Compensation; prohibited employment
 - A. The members of a local school board shall serve without compensation.
 - B. No member of a local school board shall be employed in any capacity by a school district governed by that local school board during the term of office for which the member was elected or appointed.



10

Though We Do Get Per Diem

- ❑ NMSA 1978, § 10-8-4, Subsection A:
 - ❑ Notwithstanding any other specific law to the contrary and except as provided in Subsection I of this section, every nonsalaried public officer shall receive either reimbursement pursuant to the provisions of ... this section or per diem expenses in the following amounts for a board or committee meeting attended; provided that the officer shall not receive per diem expenses for more than one board or committee meeting that occurs on the same day; or for each day spent in discharge of official duties for travel within the state but away from the officer's home:
 - (1) forty-five dollars (\$45.00) if the officer physically attends the board or committee meeting for less than four hours or the officer attends a virtual meeting of any duration during a single calendar day; or
 - (2) ninety-five dollars (\$95.00) if the officer physically attends the board or committee meeting for four hours or more during a single calendar day.



11

3. We Employ Just One Person: The Superintendent

- ❑ "A local school board shall have the following powers or duties ... employ a local superintendent for the school district and fix the superintendent's salary." NMSA 1978, § 22-5-4(B).
- ❑ As part of employing a superintendent, "the local board of education shall ... evaluate the local superintendent." 6.29.1.9(A)(2) NMAC.



12

So We Only Evaluate the Superintendent

- ❑ As part of a superintendent's duties under State rule (NMAC), the Superintendent is to be "held accountable" for:
 - ❑ Student Achievement
 - ❑ Student Safety
 - ❑ Budget Management
 - ❑ Expenditure of Funds
 - ❑ Dissemination of Information
 - ❑ Development, implementation and evaluation of the EPSS
 - ❑ All other district business

6.29.1.9(C)(2) and (6) NMAC.



13

4. We Cannot Tell the Superintendent What to Do With a Problem Employee or What to Pay an Employee

- ❑ Under State law, there is a division of authority and responsibility between the Board and Superintendent:
 - ❑ "The local superintendent shall ... employ, fix the salaries of, assign, terminate or discharge all employees of the school district." NMSA 1978, § 22-5-14(B)(3).
 - ❑ "A local school board shall have the following powers or duties ... except for expenditures for salaries, contract for the expenditure of money according to the provisions of the Procurement Code." NMSA 1978, § 22-5-4(J).



14

Board Statutory Duties Include

- “develop educational policies for the School District,” subject to PED rules
- “employ a superintendent for the School District and fix the salary”
- “review and approve the School District budget”
- “acquire, lease and dispose of property”
- “issue general obligation bonds of the School District”
- “provide for the repair and maintain all property belonging to the School District”
- “except for expenditures for salaries, contract for the expenditure of money according to the provisions of the Procurement Code”



15

5. We Cannot Meddle in Day-to-Day Operations

- “The local superintendent shall ... administer and supervise the school district.” NMSA 1978, § 22-5-14(B)(2).
- “[T]he local board of education shall ... delegate administrative and supervisory functions to the local superintendent.” 6.29.1.9(A)(4) NMAC.
- “[T]he local board of education shall ... refrain from involvement in delegated administrative functions.” 6.29.1.9(A)(5) NMAC.



16

What About Complaints From an Employee?

- ❑ Model NMSBA Policy BHC (Board Communications with Staff Members):
 - ❑ “The Board requires all employees to follow the proper channels of authority in reporting or attempting to resolve problems. It is considered to be insubordination whenever an employee knowingly circumvents the proper ‘chain of command’.”
 - ❑ “An employee will first communicate on school- or employment-related matters at the administrative level. Any employee who exhausts the opportunity of discussing a matter at the various administrative levels may then communicate in writing with the Board on the matter. No anonymous communication will be considered by the Board.”
- ❑ See also NMSBA Policy GBK (Staff Grievances) or the CBA.



17

What About Complaints From the Public?

- ❑ Model NMSBA Policy BHD (Board Communications with the Public):
 - ❑ “Any community member *who exhausts the opportunity of discussing a matter at the administrative level* may communicate with the Board in writing. No anonymous communication will be considered by the Board.”
 - ❑ “A member of the community who wishes to address the Board in person may do so by following the procedures in Policy BEDH [Public Participation].”
- ❑ See also Model NMSBA Policy KE:
 - ❑ “*Whenever a complaint is made directly to the Board as a whole or to a Board member as an individual, it will be referred to the school administration for study and resolution, if possible...The Board will not consider or act on complaints that have not been explored at the appropriate administrative level.*”
- ❑ See also NMSBA Policies KE, KEB, KEC and KED which allow members of the public to appeal to the Board the administrative response to certain complaints.



18

6. We Cannot Engage with the Public during Public Comment

- If a Board by policy or practice permits public comment during a Board meeting, that portion of the meeting is considered a “limited public forum” for speech by members of the public. *MacQuigg v. APS*, Civ. No. 12-1137 (D.N.M. 2015).
- Under the First Amendment, the Board can impose viewpoint neutral time, place, and manner restrictions on that speech as long as the restrictions:
 - Serve a significant government interest,
 - Are narrowly tailored to advance that interest, and
 - Leave open ample alternative channels of communication.
- Key Phrase: Viewpoint Neutral.
- Engaging with the public could violate viewpoint neutral time, place and manner restrictions.



19

Open Meetings Act and Public Comment

- While the Board may give facts (a meeting time for instance) or refer an issue to the administration, members should not engage in dialogue with public comment speakers.
- Remember: the OMA requires specific notice for meetings where “proposed rules, regulations, resolutions or formal action will be discussed or adopted.”
NM Open Meetings Compliance Guide.



20

7. We Are Limited by the Board Agenda

- ❑ Agenda setting is determined by Board Policy.
- ❑ Model NMSBA Policy BEDBA (Agenda Preparation and Dissemination):
 - ❑ “The Superintendent will prepare Board meeting agendas in consultation with the Board President.”
 - ❑ “The Superintendent or Board members may place items on the agenda. Any Board member desiring to place an item on the agenda will notify the Superintendent of the particular item of business at least five (5) central office working days before the meeting agenda is finalized (at least eight [8] days prior to the meeting). Inclusion on the next agenda will depend upon the amount of time necessary to provide information to the Board for deliberation and decision making. The Superintendent will make this decision in consultation with the Board President.”

21

OMA Agenda Content and Timeline Requirements

- ❑ Under the Open Meetings Act (OMA):
 - ❑ “Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda.” NMSA 1978, § 10-15-1(F).
 - ❑ “Except in the case of an emergency or in the case of a public body that ordinarily meets more frequently than once per week, at least seventy-two (72) hours prior to the meeting, the agenda shall be available to the public and posted on the public body’s web site, if one is maintained.” NMSA 1978, § 10-15-1(F).
 - ❑ “The 72-hour requirement applies regardless of whether it includes a Saturday, Sunday or holiday.” OMA Guide, page 16.

22

8. We Set the Overall Direction of the District through Vision, Mission and Policy

- "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(B).
- NMSBA Model Policy BCA (Board Member Ethics):
 - As a member of the Board of Education and recognizing that my actions will directly influence the children in this school district, I will ...
 - Confine the Board's functions to policy making, planning and appraisal.
- What about strategic planning, goal setting?



23

When Setting Goals Be SMART

- Simple: it addresses a single issue.
- Measurable: success can be measured and observed.
- Attainable: the goal is realistic and is something within the Superintendent's control.
- Results Oriented: there is value to the district.
- Time Driven: goal has a clear time frame.



24

What About the How?

- Remember, the “how” falls within the purview of the Superintendent.



25

9. We Can Only Act as a Body ...

- NMSBA Model Policy BCA (Board Member Ethics):
 - As a member of the Board of Education and recognizing that my actions will directly influence the children in this school district, I will ...
 - Recognize that there is no authority of an individual Board member either expressed or implied other than during legally constituted sessions of the Board or when representing the Board officially.



26

... In an Open Meeting

- ❑ The Open Meetings Act applies to meetings of public bodies:
 - ❑ at which a quorum of the members of the public body is present in person or by telephone; and
 - ❑ during which the public body will formulate public policy, discuss public business or take action.

See NMSA 1978, § 10-15-1(B).



27

10. We Approve the CBA, We Are Not the Bargaining Team

- ❑ Scenario:
 - ❑ The union and the District bargaining team have been negotiating for several months and do not seem to be making progress. The union president, who is also a friend of your family invites you to lunch and starts talking about negotiations. She asks you to talk to the bargaining team about giving more concessions at the table, including agreeing to a bigger pay raise than what was appropriated by the legislature.



28

Collective Bargaining and Confidentiality

- ❑ Collective bargaining negotiations are Confidential under two separate laws:
 - ❑ Public Employee Bargaining Act:
 - ❑ The following sessions shall be closed:
 1. Meetings for the discussion of bargaining strategy; and
 2. Collective bargaining sessions. NMSA 1978, § 10-7E-17(J)
 - ❑ Open Meetings Act:
 - ❑ Meetings for the discussion of bargaining strategy and meetings between the negotiating teams (when they include the School Board). NMSA 1978, §10-15-1(H)(5).



29

Prohibited Practices and Negotiations

- ❑ The administration selects the representatives for the bargaining team.
- ❑ The union selects its own bargaining team.
- ❑ Under the NM Public Employee Bargaining Act, it is a prohibited practices for the employer to refuse to bargain collectively in good faith with the union exclusive representative.
- ❑ Something called "direct dealing," by-passing the union's representative in bargaining negotiations and attempting to directly or indirectly bargain with employees is a violation of the duty to bargain in good faith.
- ❑ So, employees, please contact your union and not us about bargaining, during bargaining!



30

Practical Suggestions for Addressing Concerns within Ethical and Legal Limits

- Check Board policies regarding chain of command and follow it.
- Advise constituents to follow the chain of command/policy.
- Tell your Superintendent about the concern, do not become the investigator yourself.
- Do not promise confidentiality or anonymity when someone comes to you with a concern.
- Expect transparent communication from your Superintendent to the Board.
- As part of the evaluation process, make sure the Board evaluates the Superintendent's public relations, management and supervisory skills.
- Encourage your Superintendent to share with the Board how he/she is addressing employee or parent complaints, as permitted under OMA, and support his/her growth in this area.



31

Elena M. Gallegos
egallegos@wabsa.com

Karla A. Schultz
kschultz@wabsa.com



WALSH GALLEGOS
TREVIÑO KYLE & ROBINSON P.C.

500 Marquette Ave. NW, Suite 1310
Albuquerque, NM 87102
(505) 243-6864

32

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