



BOARD AND SUPERINTENDENT RELATIONSHIPS/AUTHORITY

July 2024

Tony F. Ortiz, Attorney at Law

ORTIZ & ZAMORA

Attorneys at Law, LLC



Goals of the Presentation

- Help you determine your role and limitations
- Review and discuss common areas that sour board and superintendent interaction
- Talk about resolutions for damaged relationships
- Risks for ignoring limitations



Role of Counsel

Best Practices

- Advice offered today is similar to the way we train boards across New Mexico.
- Our advice is based on years of watching boards do things well and do things poorly.
- Our advice is a combination of statute, policy, local concerns, and best practices.

Representation

- Generally, we serve as school board's counsel.
- That can mean talking about limitations and mistakes by the board.
- Superintendent and counsel work together with an understanding that we represent the board.
- Access to Counsel: Board President and Superintendent, with access for other members through board protocol.
- We are not the superintendent's attorney, nor does the super have the right to hire/fire/choose counsel.
- Insurance: NMPSIA can withdraw coverage where a board ignores advice of counsel; it is rare, but it does happen.

Open Meetings Act

General Concept

- All discussion and decision-making on public matters must be done at an announced meeting with specific agenda topics.
- This is to permit public access and participation.

Meeting Specifics

- Creating Agendas
 - Roles, deadlines, specificity
- Regular, Special, or Emergency Meetings
- Public Comment
- Action
- The role of debate
- Executive Session
 - Guests? Super?
 - Protections and confidentiality

Common Violations

- Rolling quorum
- Vague agendas
- Wandering from agenda specifics
- Notice of Quorum
- “No fly zones”
 - Discussion of confidential information
 - Discussion of evaluation or other personnel matters



What are the lawful and appropriate roles for the Superintendent?

Section 22-5-14* of the New Mexico Statutes Annotated (NMSA) states role as:

- **Chief Executive Officer for the district**
- **Administer and supervise school district**
- **Employ, fix salaries, assign, terminate and discharge**

* Statute places general administrative and all employment functions in the hands of the administration (HB212, passed in 2003).



What are the appropriate roles for members of the board?

The Power of Five
versus
the Power of One

Section 22-5-4 of the NMSA defines the board's scope as:

- Focus on setting policy direction
- Budgets
- Limited role in employment matters, as a reviewing body
- Acquire, lease and dispose of property, including eminent domain right
- Except for salaries, contract for expenditure of money

Board Ethics: Public Service versus Helping Friends and Punishing Enemies

Best Practices/Authority

- Measuring stick: “Are you in your lane?”
- Emphasis on treating your office and authority as a public trust
- Sources: Board Code of Ethics; New Mexico Governmental Conduct Act; Statutory Roles

Improper purpose:

- Facilities/access
- Personal agendas
- Contracts to oneself or family; nepotism
- Doing anything that appears or could appear to be self-dealing
- Using influence for family or friends; punishing enemies
- Undermining the board
- Interfering with the superintendent/administration
- Consequences: Board chaos; loss of public trust; public censure; PED action; recall; 4th degree felony



Does your functionality as a board matter?

Social science research on this indicates the most effective boards that have an impact on overall achievement of the district are:

- Highly functional, data-driven with shared goals
- Hold cohesive working relationships with administration
- Keep true to mission

Conversely, dysfunctional leadership can have the opposite effect and often waste money on “adult issues” instead of students as a priority.

Source: 8 Habits of Highly Effective Boards

“ *QUIZ QUESTION* ”

A board member is upset with his child’s teacher or coach. The board member wants a meeting with the teacher.

—How should the board member handle it?

- What parental rights does the board member have?
- What complications are created by the board member role? Limitations?
- Proper process, if any?
- Ethical implications?
- Consequences for abuse?

Access to and Role with Administrative Team

Best Practices

- Distance
- Giving the Superintendent clear control
- Avoiding incorrect public perception of the board's role with staff
- Only accessing staff when clearly permitted by the Superintendent

Cautions

- “Visiting” with associate superintendents, directors, coordinators, site administrators, teachers
- Interference with Superintendent
- Assuming your role gives you special power or access
- Directing staff
- Presentations at board meetings
 - Access to administrative staff is at the discretion of the Superintendent

“ *QUIZ QUESTION* ”

A board member's son wants to contract for services, specifically copier services for the District.

How should the board member handle it?

- Can the family member even apply?
- Can the board member advocate for the contract? Publicly? Privately?
- Proper process, if any?
- Ethical implications?

Human Resources Decisions

Roles

- Board: opinion to the Superintendent without pressure or even perceived pressure
- Chain of Command must be followed
- Superintendent: final call on hiring, firing, salaries, evaluations, contracts, discipline, conditions of employees
 - These are areas outside of the scope of the board's role
 - Staff roles?

Considerations

- Board access to employee records
 - Conflicts and Ethical Violations
 - Creation of legal liability
 - Risks to Relationship
 - Board interference
 - Making Superintendent feel as though the board is threatening his/her position over HR matters
- What about volunteering??

“ *QUIZ QUESTION* ”

A board member complains to the Superintendent that he/she has talked to a number of parents about how bad the elementary school principal is doing. She wants to give the Superintendent her extensive notes on the complaints. She also suggests that the board may have some good ideas for replacements.

What is the board member's role here?
What are the appropriate boundaries for the Superintendent to set with the board? How?

“ QUIZ QUESTION: *Legal Risk* ”

- A staff member says she wants to visit with you about her suspicions of misuse of public money by her principal.
- A board member “does not like” a particular staff member because of his politics and wants him moved out of the neighborhood school.

How should the board member handle these?

- The superintendent is entirely in control of HR. Out of your lane?
- Proper process, if any?
- Legal implications for doing things not in the board’s role?
 - lawsuits, HR decisions
- Ethical implications; implications for the board?

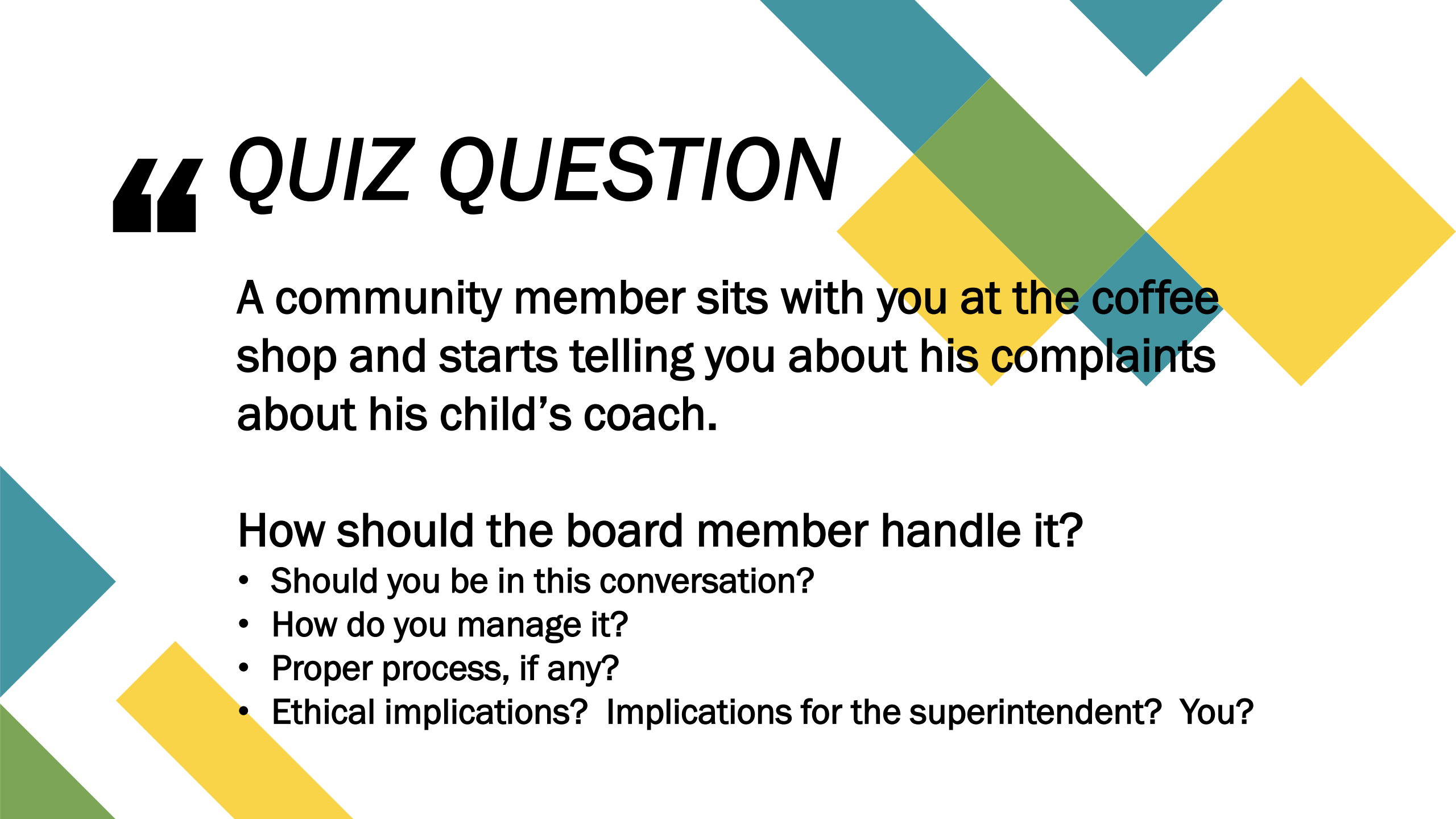
Board's Community Role

Best Practices

- Help the Superintendent anticipate problems
- On employee and student matters, be the “eyes and ears” of the District, not the legs, hands, and mouth
- Remember that the Superintendent is the CEO
- For non-board matters, ALL information should flow through the District Superintendent
- Learn to “triage”

Caution

- Do not directly communicate with employees or community members regarding confidential problems or issues that fall within the administrative chain of command
- These may include:
 - students, parents, or staff complaints
 - day-to-day operations
 - Complaints about morale or worries about retaliation



“ *QUIZ QUESTION* ”

A community member sits with you at the coffee shop and starts telling you about his complaints about his child's coach.

How should the board member handle it?

- Should you be in this conversation?
- How do you manage it?
- Proper process, if any?
- Ethical implications? Implications for the superintendent? You?

Other Typical Board Problem Areas

Schools

- PTA or other school groups involvement
- Unannounced school visits
- Abusing power at school sites

Board Action

- Board open criticism of District staff
- Making public statements that can be interpreted as speaking on behalf of the District

Confidence

- Public trust
- Fracturing board and superintendent relationships

Internet/Technology Use

Best Practices

- Do not download or store anything of questionable content
- Do not send or forward anything that you would not want everyone else to see
- Refrain from use of personal emails
- Social media:
 - Do's: schedules, "cheerleading"
 - Don'ts: "polls", generating conflict, misrepresenting the board's position; sharing data not intended for public access or otherwise protected.

Caution

- Understand that you have no reasonable expectation of privacy to anything that you use that belongs to the District
- This may include:
 - email
 - phone, including voicemail
 - texts
- Inspection of Public Records Act (IPRA)
 - District business

Inspection of Public Records Act

General Concept

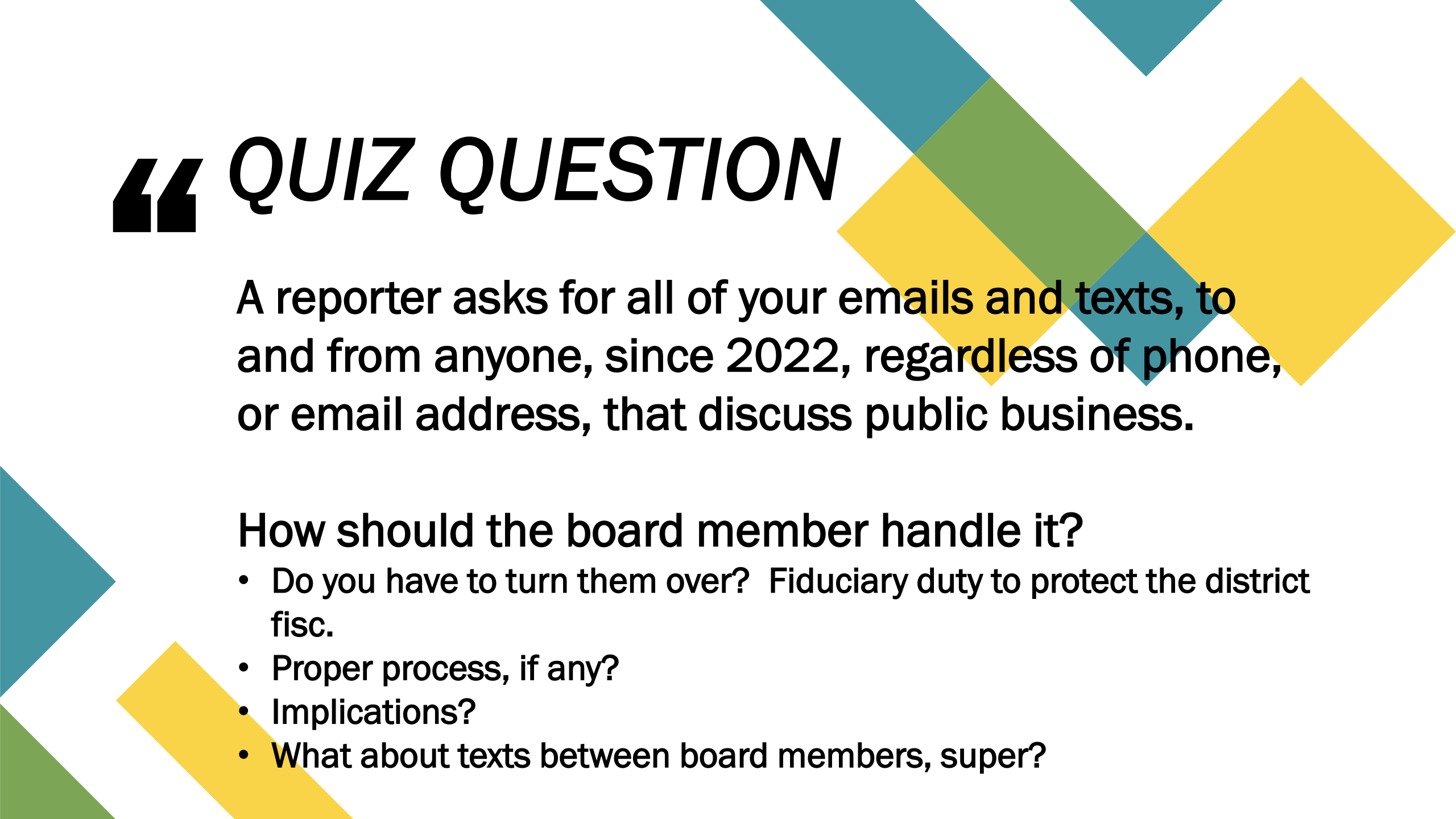
- Any materials created or maintained by the school related to public business are accessible to the public, if not specifically excepted by law
- Allows for open and transparent government

Statute issues

- Access to email, texts, recordings or any other materials addressing public business
- Can include personal emails and texts, regardless of phone or server, and regardless of who pays
- Very short timelines for response
- Exemptions for multiple reasons: ie. matters of opinion; identifiable student matters, etc.

Common Violations by Board Members; Consequences

- Ignoring
- Not conducting reasonable review
- Refusing to grant access
- Consequences: massive fines and attorney fees
- Superintendent OWNS this issue; this is day to day operations.



“ *QUIZ QUESTION* ”

A reporter asks for all of your emails and texts, to and from anyone, since 2022, regardless of phone, or email address, that discuss public business.

How should the board member handle it?

- Do you have to turn them over? Fiduciary duty to protect the district fisc.
- Proper process, if any?
- Implications?
- What about texts between board members, super?

Superintendent Evaluation

Evaluation Issues

- Fairness of criteria
- Timing
- Failing to give written direction
- 5 different evaluators
- Opportunity to correct
- Evaluating for areas that do not belong to the Board

Termination Considerations

- Common error:
 - Tossing around threats/promises to fire Superintendent
 - No effort to evaluate or correct
- The Point of No Return
- Continuity and Cost
- Cost of buy out
- PED oversight

Board Norms



What are norms?

Agreed-upon expectations of one another, particularly in areas where policy is unclear or there is some need for additional guidance.



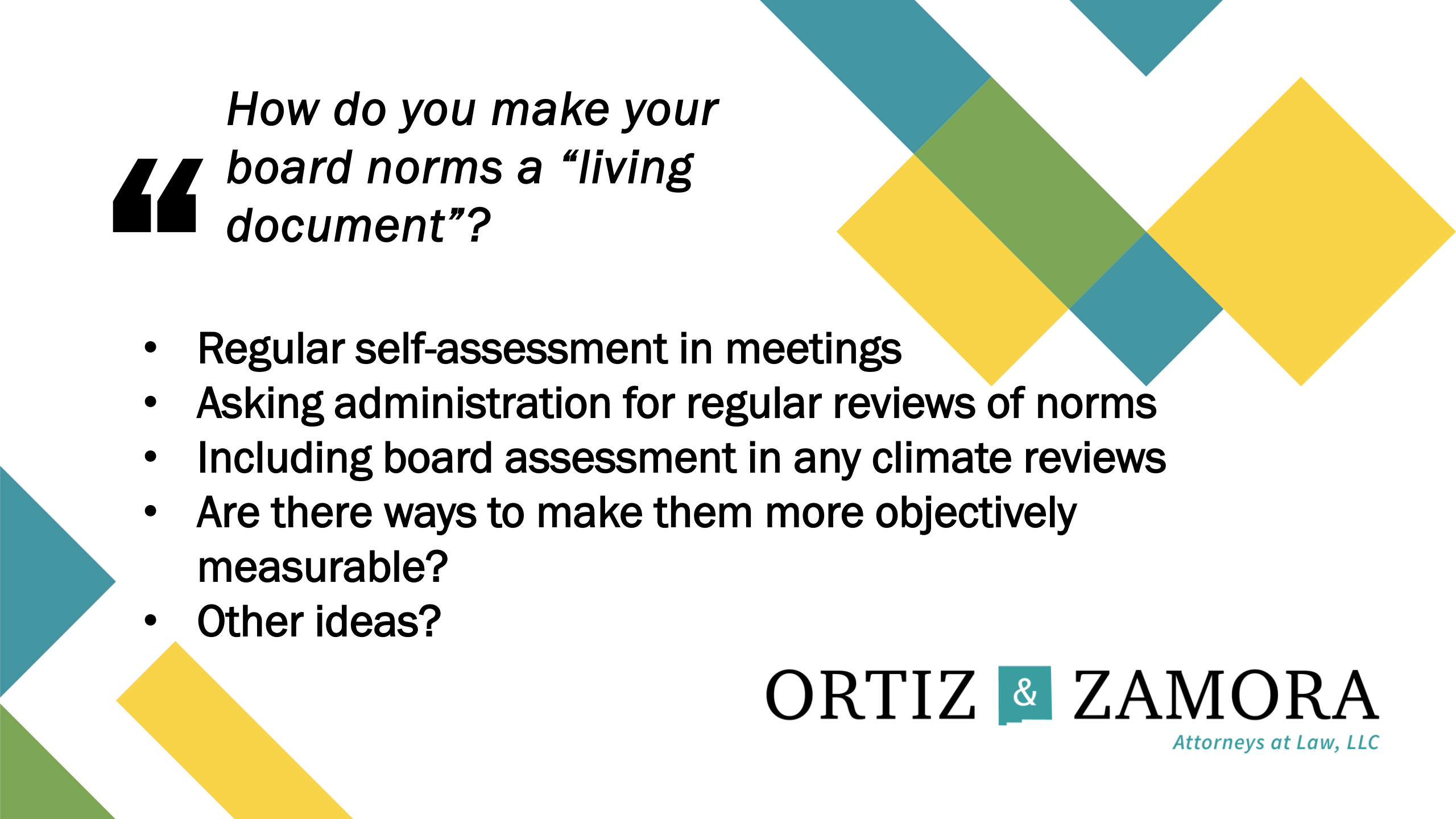
Why do we need norms?

- Establish baseline civility
- Increase productivity
- Focus on mission
- Avoid wasting resources
- Effective leadership

Example of Board Norms



- Show respect for one another and our administrative team and in so doing earn the respect of others;
- Make no assumptions and when we don't understand seek clarification;
- Listen without interrupting to what each of our fellow Board members is saying and seek to understand what is being said;
- Honor that the will of the majority as the voice of the Board;
- Respect the perspectives of the minority opinions; and
- Stay on the team when things don't go your way and become part of the solution.



“ How do you make your board norms a “living document”?

- Regular self-assessment in meetings
- Asking administration for regular reviews of norms
- Including board assessment in any climate reviews
- Are there ways to make them more objectively measurable?
- Other ideas?



Thank you!

Tony F. Ortiz – tony@ortiz-zamora.com

(505) 986-2900

ORTIZ  **ZAMORA**

Attorneys at Law, LLC