

THE ADVOCATE

Annual Conference Changes

The NMSBA Annual Convention was held December 5-6, 2008 at the Radisson Hotel in Albuquerque. About 350 school board members, superintendents and education stakeholders participated in the conference. This year's conference incorporated many format changes as a result of member survey input, staff suggestions and hotel availability.

At the Friday morning General Session, Paul Tooley of T or C was recognized for earning his Master Board Member distinction, and was presented with a certificate, lapel pin and embroidered Navy blazer.

Speakers featured on Friday included, Barbara Bolas, NSBA President sharing the value of board members; State Representative Rick Miera giving insights into what to expect during the 2009 session; and Dr. Veronica Garcia, NM Secretary of Education sharing a progress report on the state of education in NM. Later in the morning, there was an inspirational clip from YouTube featuring a Texas student named Dalton Sherman, entitled "Do You Believe in Me?"

New this year was the option for members to provide input at a focus group on one of two topics: "Public Schools Are Not Failing" or "School Board Administrative Hiring", both of which were facilitated by members of the Board of Directors.

Instead of the usual evening Awards Banquet, there was a luncheon. This not only allowed NMSBA to offer a reduced cost for the meal, but also incorporated feedback from the membership in regard to having a set time frame and even allowed for NMSBA to ensure members of the press would be more likely to attend and cover school boards in a positive way. Lieutenant Governor Diane Denish brought greetings and spoke to educational initiatives and some Funding Formula issues. There was a grand powerpoint presentation recognizing those participating in the Leadership Development Program. Other award recipients recognized included those selected for the NMSBA Awards. Hall of Fame inductees were Susan Lutterman of Ruidoso, Lilliemae Ortiz of Pojoaque, and Joe Price, formerly of Aztec. Lora Harlan of Clovis was recognized as the Board Member of the Year. The Gadsden Independent Schools Board of Education was acknowledged as the Board of Education of the Year. Award nomination packets were submitted in June and voted on in July by the NMSBA Board of Directors for these awards.

Friday afternoon, the Delegate Assembly was held to conduct association business. The Nominations report was shared and officer elections were held

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NMSBA President (2008) Donna Archuleta, NM Lt. Governor Diane Denish, and NSBA President 2008-2009 Barbara Bolas at the NMSBA Annual Convention, December 2008.

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DIRECTOR'S PERSPECTIVE

By Joe Guillen

School Boards Face Many Tough Decisions

You all know that public schools are public because they are paid for primarily with public funds. As school board members we serve as the stewards of these public funds. We are accountable to ensure that funds are spent wisely, efficiently and equitably to deliver a quality education for all our students. That is a heavy burden and it is becoming increasingly difficult for boards to meet all the needs of the district. We are at a

critical period in the history of public education in New Mexico with increased mandates at the state and federal levels and absent the resources that have been promised.



I also want to make it clear that never in the history of public education in New Mexico have school boards been more focused on student achievement as they are today. Even so, at the federal level the IDEA program and the No Child Left Behind Act provide only a small portion of the funding necessary to meet the numerous program mandates. And at the state level we receive more than a sufficient number of rules and regulations but

clearly not the sufficient funding promised in our Constitution.

School Boards face many tough decisions! One of our boards is faced with the decision of either increasing class sizes or reducing the number professional development days. Another board is debating whether to reduce support for education programs or provide compensation equity for instructors. And yet another Board is weighing the difficult choice of providing additional support for maintenance and operations or providing much needed security to make schools safe. Not so long ago, school boards had the resources and opportunities to consider and prioritize new initiatives and programs for our districts. Today, our discussions at the board table center on imposing hiring freezes, layoffs, and elimination of needed learning materials for students. Several school boards are looking at closing schools that are the heart of their community or consolidating schools to make ends meet.

School Boards face many tough decisions! Many school boards are trying to decide whether or not to place a bond issue before the voters to provide needed facilities for their students. Yet another board must choose between building a new school and going through the pains of renovating a 60 year old facility.

And as you have already heard, more and more boards are faced with the decision of whether to apply for emergency supplemental funding to balance their already strained budgets. Recently, another of our boards was forced to decide between cutting back on bus transportation for high school activities and filling a music teacher vacancy.

School Boards face many tough decisions! But now is not the time to throw our hands up and say we quit - that's it - we can't take it any more - and walk away. We have schools and kids to worry about. And we must advocate for them and work as hard as we can to bring awareness of our dilemma to our community, our legislators and our Governor. And when the gavel falls at school board meetings throughout our state, in addition to making those tough decisions, we must be able to report with a clear conscience, that we did all we could to advocate for sufficient resources for our students.

After all, they are the future of New Mexico!

THE ADVOCATE

The mission of *The Advocate* is to provide information to the members of the New Mexico School Boards Association.

Articles published in *The Advocate* represent the ideas or beliefs of the respective writers and are not necessarily the views of the NMSBA unless otherwise noted.

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Summer Issue - June 10th
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PRESIDENT'S MESSAGE

By David Zimmerman - Incoming President

It's an exciting time to be a school board member. We have a new president, new congress, a 60-day legislative session, a weak economy and many other challenges. In New Mexico, one of the big issues is the funding formula. New Mexico's Constitution requires that a "uniform system of free public education sufficient for the education of and open to all children of school age in the state shall be established and maintained". In 1987, public schools received 51% of the state's general revenues. In 2008, public schools received only 43.3% of general revenues. The New Mexico legislature made a major commitment to the constitutional mandate by authorizing a study to determine if public schools in New Mexico are being funded sufficiently. The Funding Formula Task Force, using nationally accepted methods, determined that New Mexico's public schools are currently under funded by 15%. I think everyone is in agreement that our schools are under funded. The big question is how to fund the funding formula. NMSBA supports utilizing gross receipts revenues as the permanent earmarked funding source of this new formula.



This session will be severely impacted by the weak economy. However, I ask you as fellow school board members, to join in this grass roots effort to implement and fund the new funding formula. Contact your local constituents, local town councils, local chambers of commerce, county commissioners, state representatives and senators. With the effort of everyone, we can get the new funding formula fully funded. Our children deserve it.

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By Donna Archuleta - Outgoing President

I decided that for this issue I would talk about a program in our district that has been successful in meeting the needs of the "whole child". Of course, we do concentrate on the academics and making sure that we meet AYP, but there are other areas in a child's development that need to be met also. We call this program the Barn Project. At our Eagle Nest site we now have a barn and several horses that the students are required to care for. Originally, it was designed to help only the extreme children to find and develop compassion and other skills. It should have been expected that every student would be interested and want to participate. It started with 4 neglected horses that were donated to the school. The students were charged with feeding and caring for these horses. At first the horses stayed away from the children but through their love and attention within three months the horses were halter broke and no longer stayed at the opposite end of the pen. We had one student who was continually in trouble at the school as he had serious anger problems, but he was able to feel compassion for the horses and was crushed that people could treat animals so poorly. There was a



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Annual Convention

continued from cover...

after hearing additional nominations from the floor. Donna Archuleta (Cimarron) moved into the Immediate Past President position; David



T or C Board President Paul Tooley received recognition and a Navy blazer at the Friday General Session for earning his Master Board Member distinction.

Zimmerman (Questa) moved into the office of President; Ramon Montano (Las Vegas City) moved into the position of President-Elect; Terry Martin (Clovis) was elected from the floor to the position of Vice-President; and Dion W. Sandoval (Grants) was elected from the floor to

the position of Secretary-Treasurer. With special thanks we recognize our two outgoing officers, Margaret Tapia (Pojoaque) and Lora Harlan (Clovis) for their efforts on behalf of NMSBA and education in NM. A special thanks also goes to our door prize contributor, Al Clemmons of George K. Baum and Company for donating ten \$100 bills (\$1,000 total) that were distributed by door prize tickets during the vote counting, Friday (7) and for vendor visitation prizes on Saturday (3).

2008 Hall of Fame inductees included: (L to R) Lilliemae Ortiz of Pojoaque, former school board member Joe Price of Aztec; and Susan Lutterman of Ruidoso.



The Policy Committee recommendations presented (and sent out in a mailing in October to all members via the Bylaws requirement) failed to gain enough support to pass. The Resolutions Committee's 28 recommendations passed, with #9 being modified before passage.

Following the Delegate Assembly, Cooperative Education Services (CES) sponsored a Vendor Appreciation Reception for all the conference attendees. Also at the reception, outgoing president Donna Archuleta passed the gavel to incoming president David Zimmerman.

On Saturday morning, there were twenty-four breakout sessions offered for board members to receive relevant training. ♦

The 2008 Board of Education of the Year was Gadsden Independent School Board: (L to R front row): Secretary Manuela Huerta, President Maria Saenz, Vice-president Jennifer Viramontes; (back row): Supt. Cynthia Nava, Craig Ford and Daniel Castillo.



Newly elected to the Executive Board were: Vice-President Terry Martin from Clovis and Secretary-Treasurer Dion W. Sandoval of Grants.



December 2008 Annual Convention: NSBA Board member Randy Manning, NMSBA Secretary Treasurer Margaret Tapia; President-Elect David Zimmerman giving Lora Harlan NMSBA Past-President the Board Member of the Year Award; Vice-President Ramon Montano.



NMSBA NEWS

The NMSBA website (www.nmsba.org) is a resource for your use:

Current News - identifies current events involving the association or school board members, such as the upcoming conference, handouts or pictures from a previous conference, or links to legislative issues.

From the menu bar of links on the homepage:

Calendar - lists dates and locations of region meetings, state and national conferences.

Conferences – upcoming conference information such as agenda, registration form and hotel links. The upcoming conference information is posted on the website about two months prior to each conference.

Legislative – current legislative information such as the Funding Formula link, the Bill Tracker link for NM legislative bills and the NMSBA platform of issues.

Organizational Structure – current Executive Board and Board of Directors pictures, names, and school districts.

Resource Center – frequently requested materials, publications such as Open Meetings Act, Board Member Orientation booklet, and a link to the Public Education Department regulations.

About us - the association vision statement, mission statement and statement of belief.

Links - weblinks to other education-related sites such as the public education department; public education commission; searchable NM State Statutes; NM Coalition of School Administrators; NM Regional Educational Applicant Program for education job openings; Cooperative Education Services; National School Boards Association “BoardBuzz” weblog and Center for Public Education; and other state association website links.

Publications – previous Newsletters (in pdf format) and other current items of interest to NM Board Members, such as Independent Training Request Forms; Master Board Member Program information and board election calendars.

Contact us - the staff directory of NMSBA.

Services available to school districts for a fee are:

Subscription Policy Service

NMSBA offers districts the option of a Subscription Policy Service. The service offers policy development by a consultant/lawyer and provides up-to-date Policy Service Advisories. For further information or clarification, contact Joe Guillen, Executive Director of NMSBA via e-mail at jguillen@nmsba.org or by phone at the NMSBA office, (505) 983-5041.

BoardBook Offers Districts Paperless Meetings

There is a BoardBook link available from the “Links” menu bar option of the NMSBA homepage. BoardBook is an electronic means to have Paperless Board Meetings and is now being offered through a partnership between NMSBA and the Texas Association of School Boards (TASB) to New Mexico school districts.

NMSBA 2009 SPRING REGION MEETINGS

Region I

Wednesday, April 29 in Bloomfield

Aztec, Bloomfield, Central, Dulce,
Farmington, Gallup, and Zuni

Region II

Monday, March 30 in Santa Fe

Chama Valley, Espanola, Jemez Mountain,
Los Alamos, Mesa Vista, Pecos, Penasco,
Pojoaque Valley, Questa, Santa Fe, and
Taos

Region III

Monday, April 20 in West Las Vegas

Cimarron, Clayton, Des Moines, Las
Vegas City, Maxwell, Mora, Mosquero,
Raton, Roy, Santa Rosa, Springer,
Wagon Mound, and West Las Vegas

Region IV

Monday, April 13 in Moriarty-Edgewood

Albuquerque, Belen, Bernalillo,
Grants-Cibola, Cuba, Estancia, Jemez
Valley, Los Lunas, Magdalena,
Moriarty-Edgewood, Mountainair,
Quemado, Rio Rancho, Socorro, and
Vaughn

Region V

Tuesday, March 17 in Floyd

Clovis, Dora, Elida, Floyd, Fort Sumner,
Grady, House, Logan, Melrose, Portales,
San Jon, Texico, and Tucumcari

Region VI

Wednesday, April 15 in Lovington

Artesia, Carlsbad, Dexter, Eunice,
Hagerman, Hobbs, Jal, Lake Arthur,
Loving, Lovington, Roswell, and Tatum

Region VII

Wednesday, April 22 in Hatch

Alamogordo, Capitan, Carrizozo,
Cloudcroft, Corona, Gadsden, Hatch
Valley, Hondo Valley, Las Cruces,
Ruidoso, T or C, and Tularosa

Region VIII

Tuesday, March 24 in Deming

Animas, Cobre, Deming, Lordsburg,
Reserve, and Silver City

President's Messages continued...

David Zimmerman - Incoming President

One of the big issues on the national level that affects all schools in New Mexico is the reauthorization of the No Child Left Behind Act. School boards across the nation welcome the goals of the NCLB, including increased accountability for student performance. However, a major concern is the belief that the accountability framework does not accurately or fairly assess student, school or school district performance.

During the 111th Congress, the National School Board Association expects Congress to direct much of its initial attention toward strengthening the economy. While there is potential for delay in the reauthorization of the NCLB Act, the NSBA will focus on securing the immediate suspension of sanctions against school and school districts, and the adoption of technical amendments needed to address accountability flaws under the current No Child Left Behind Act.

I would like to thank each and every one of you for your service and dedication to your students, your schools, and your communities. School board members are sometimes asked to make difficult decisions, but the rewards of educating our children is e greatest reward of all.

It's an exciting time to be a school board member. ♦

Donna Archuleta - Outgoing President

remarkable change in this student and he improved in his school work and had very few referrals to the office. Later that year one of the horses who had given birth to a colt, died despite the care the students were giving her. The principal explained to the students that the mother gave her all for her baby but she lost the fight for her own life. Several of the students in the community never had this commitment by their parents and it was great for the students to see love and commitment from this horse. This program has helped improve the attitudes of many students and taught them responsibility and caring for others. A final example for this program is a child who was absent from school 44% of the time, involved in 2 fights, and was sent to the principal's office 3 times for being disrespectful to teaches in the first three months of school. Once the program started, his absenteeism dropped to 10% of the time, he was not in any more fights, and he stopped being disrespectful to the teachers. The program has the students excited about coming to school! I would say this is one program I am glad the board approved because it reaches areas in a student's education that are difficult to reach through our traditional programs. ♦

Hardest Lessons

Experienced board members from across the nation were asked to identify the most difficult lesson or fact they had to learn about board service. Here's what they said most often:

- 1) Learning to acknowledge publicly that you have no power and authority as an individual board member; that only the board as a whole can make policies and decisions for the school district.
- 2) Determining what your function is on the board and how to accomplish it effectively.
- 3) That no matter what you *think* you know about board service when you first come on board, you still have a lot to learn.
- 4) Recognizing the difference between setting policy (the board's job) and administering the schools (the superintendent's job).
- 5) That you must represent *all* the students. Your decisions must be made in the interest of the total school system and not made solely for special groups or interests.
- 6) Learning how to respond to the complaints and concerns of citizens, school administrators, and other staff.
- 7) That change comes slowly.
- 8) That you can't solve everyone's problems by yourself.
- 9) That you must think deeply and sometimes accept a reality that is contrary to your own beliefs.
- 10) That elective board service means being able to hold the minority viewpoint when voting on a given issue, then openly supporting the majority vote of the board in your community.
- 11) Discovering how the schools are funded.
- 12) That the primary focus of all board decisions must be student achievement.

♦ *Source: Georgia School Boards Association, 2006.*

Teaching, Fishing and Reality

By Alan W. Garrett, MBM Candidate
and School Board Member in Portales Municipal Schools

The term “failing schools” regularly is employed as a condemnation of public education as an institution by those individuals and groups whose agendas often include dismantling or radically altering schools as they are known today in the United States. More specifically, an individual school in which a specified number of students does not attain a prescribed score on a single high-stakes test is labeled a “failing school.” Inherent in this accusation is the faulty notion that schools and the teachers who work in them actually *cause* learning to occur in the minds of their students. Nothing could be further from the truth.

All people naturally seek explanations for what they observe in the world around them. The idea that teachers cause learning likely has a long history. Events in the early 20th century, however, served to strengthen and spread this flawed notion. As schools became larger and more complex, age-level grades also became more common. The factory and its assembly line began to serve as an analogy for schools. Students entered schools as “raw material,” progressed through an assembly line of graded classrooms while being “worked upon” by teachers, and ultimately graduated as “finished products.” According to this analogy, if the teachers did their jobs well, satisfactory “finished products” would emerge from schools. On the other hand, “substandard products,” students who had not met learning expectations, must be the fault of teachers who did not teach competently. Among the most obvious difficulties when comparing schools to factories are that factories begin with uniform raw materials, while students entering school are anything but uniform; factories have complete control over their materials and process, while students spend but a minority of their time in schools; and a factory’s raw material is passive, waiting to be acted upon, while a school’s students possess minds and free wills. Superficially, there may be some similarities between schools and factories, but to think of a school as a factory is to ignore the complexity of education. It is a denial of reality.

Philosopher Mortimer J. Adler termed teaching “one of the three great cooperative arts” in his book *The Paideia Proposal*. By this, he meant that individuals engaged in teaching, agriculture, or medicine “must work with nature” to attain the results they desire. In other words, they are factors in reaching those results but not their sole causes. Adler employed terms such as “active,” “use of the mind,” and “discovery,” to describe learning. Each is something that students must do for themselves. No one else, not

even teachers, can satisfy for others the conditions required for learning to occur.

O. L. Davis, Jr., of The University of Texas at Austin, offered one of the best analogies for what occurs in classrooms when he likened teaching to fishing. Both teaching and fishing, Davis rightly observed, are *intentional* activities. That is, one engages in them intending certain results. Those results, students learning and catching fish, however, are not caused by the intentional acts. Those acts may influence the outcome, making them more likely to occur, but they do not control them.

Consider the case of the fisherman. He goes to the lake or stream with all of his gear, knowledge of fish, and fishing wisdom based on experience. The number of fish he catches that day, if any, as well as their quality ultimately depends on which fish, if any, choose to bite. Everything he brings with him to the fishing encounter serves only to increase the probability that fish will bite but does not guarantee that they will. In the end, the fish themselves determine success or failure in fishing. Even if the fisherman caught no fish that day, no one would deny that fishing had occurred. He had tried; he had intended to catch fish. Even the most capable fisherman is at the mercy of the fish. He may have done everything to the best of his ability, to the best of anyone’s ability, but, in the end, success from his point of view depends on the decisions the fish make.

Now consider the case of the teacher, a skilled and experienced professional with a wealth of knowledge about the subject to be taught, how to teach that subject, and the students in her classroom. Although she does everything to the best of her ability – she presents a truly outstanding lesson by any standard – there is no assurance that all of the students in her presence that day will learn. Her decisions and actions likely will increase the probability that a greater number of students will learn more content than if they had been left to their own devices, but she does not cause the students’ learning to occur. Only each individual student can do that. Unfortunately, those critics with narrow, limited understandings of teaching and learning might very well claim that she had “failed to teach” if, in their minds, an inadequate number of students learned to the extent mandated in the time allotted. Such critics very likely would attribute to this teacher partial responsibility for creating a “failing school.”

Recognition of the fact that teachers do not cause learning does not relieve them of responsibility but

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Board Member Training

Training hours are tracked from September 1 through August 31 each year – the “program year”. State law requires board members receive a minimum of five hours of training each program year. NMSBA tracks approved training and sends quarterly training reports to the superintendents. At the end of each program year, final reports are sent to the Public Education Department’s Office of Accountability. Board member names and annual training hour totals are included in the school district report card that is published and available for the public.

In December, each year at the NMSBA Annual Convention, members are recognized for receiving training. The Leadership Development Program recognizes members who have accumulated training points. Level I – Leadership Achievement is achieved with 24 cumulative hours of training. Level II – Outstanding Leadership is achieved with 36 hours of cumulative training. The Exemplary Award is given to those who earn more than 20 training hours within one program year. The Master Board Member distinction is bestowed upon those who have achieved 44 cumulative training hours and have fulfilled the presentation and/or writing requirements – for more details on this see the MBM Program brochure in the “Publications” section available from the NMSBA homepage at www.nmsba.org.

For additional questions, please contact Elizabeth Egelhoff, Programs Director at the NMSBA Office, 505-983-5041.

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Teaching, Fishing and Reality continued from page 7...

changes the nature of that for which they and their leaders rightly can be held accountable. Teachers must use all of their knowledge and skills in conjunction with the resources available to them to teach well during every encounter with their students. School administrators must monitor to assure that good teaching is occurring, that it is the norm in their schools and school districts. They also must assist teachers in procuring the resources they require for classrooms and offer teachers opportunities for meaningful, high quality professional growth. School boards must provide the resources necessary for classroom excellence to become the standard as well as creating a district-wide environment in which it is possible and expected.

Accountability today too often is used as a synonym for blame. School critics tend to be less interested in accountability properly understood and more interested in finding someone or some group to blame. For many board members faced with accusations of “failing schools,” the first reaction is to offer counterarguments centered on school successes. Such successes are important; they should be celebrated and publicized. At a deeper level, however, this sort of

response in isolation demonstrates acceptance of the critics’ often unstated premise that teachers and schools cause learning. It cedes a point that defies reality and will leave school people at a perpetual disadvantage.

A better alternative would be to rephrase the issue. The question should be, Why did some students not learn? This new question offers an opportunity to provide evidence of the work of the schools and to offer an explanation of the intentional rather than causal nature of teaching. Some school critics would not be swayed. In fact, some people simply like to complain. Others, perhaps just a few at first, would begin to think about teaching and learning in more robust ways. They would realize that an “accountability system” that spreads accountability for learning to everyone except those who actually determine whether or not learning occurs, the students themselves, is a flight from reality that diverts attention from the important matter at hand. As more people, especially those who do not work in schools, accept the true relationship between teaching and learning, the serious work of improving schools for enhanced student learning could resume with increased vigor and new allies. ♦

Nepotism Prohibitions Revisited

By C. Emery Cuddy, Jr. of Cuddy, Kennedy, Ives, Archuleta-Staehlin, Fairbanks & Vigil, LLP

At the Leadership Conference held in Taos in July, our law firm presented its traditional “Stump the Lawyer” session. Somewhat to our surprise the first question asked was about nepotism, followed by over one-half hour of additional questions on the same subject. Because there seems to continue to be some confusion about the prohibitions contained in the nepotism statute which limits school board member and Superintendent employment of relatives, we decided to review the statute and hopefully clear up some of the continued confusion.

Section 22-5-6(A), NMSA 1978, provides: 22-5-6. Nepotism prohibited. A. A local superintendent shall not initially employ or approve the initial employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law of a member of the local school board or the local superintendent. The local school board may waive the nepotism rule for family members of a local superintendent.

This provision has been around since 1971, but has been revised several times to provide greater clarity as well as to recognize that it is now the Superintendent who does the hiring in a school district.

Most of the questions we received during the Taos “Stump the Lawyer” session were about whether a particular species of relative could be lawfully employed. The statute provides an *exclusive* list of relatives of school board members or superintendents who are prohibited from being employed. These are:

[1] Spouse; [2] Father; [3] Father-in-Law; [4] Mother; [5] Mother-in-Law; [6] Son; [7] Son-in-Law; [8] Daughter; and [9] Daughter-in-Law

If a relative is not on this list, there is no prohibition. For example, a brother or sister may be employed as may a grandfather or grandmother. Grandchildren may be employed and so can aunts, uncles and cousins. If you have a question about the legality of the hiring of a particular relative, simply go to list above and if the person is not on that list, there is no prohibition against his or her employment.

Of course, in our “evolving” culture, you may run into some “non-traditional” relationships which raise questions as to whether the statutory prohibitions apply. For example, a couple may be living as husband and wife, yet not be married. Since the statute’s prohibitions are “exclusive,” and “spouse” has a clearly defined meaning in New Mexico law, the prohibition

against employment of a spouse would not prohibit the employment of an unmarried “domestic partner.” The same is true of divorced persons, where the divorce has terminated the relationship (for example, a former son-in-law is no longer a son-in-law if he has been divorced from the board member’s or Superintendent’s daughter).

Another aspect of the nepotism law to remember is that a local school board is allowed to waive the statute’s prohibition for family members of the local Superintendent. The Legislature, in including this waiver provision, seemed to be aware that such flexibility is important to the ability of some (particularly small) school districts to recruit Superintendents or to hire staff. Although the waiver provision is available, it is important that the waiver be properly drafted and adopted publicly by the local school board, in order to be legally defensible. In addition, both the Superintendent and local school board should appreciate and consider the public relations impact of such a waiver. A public outcry following the Superintendent’s hiring of his or her spouse, even following the adoption of a completely defensible waiver, may make the Superintendent less effective as the education leader in the community.

Subsection (B) of the same statute provides: “B. Nothing in this section shall prohibit the continued employment of a person employed on or before March 1, 2003.”

This subsection was enacted to reflect a New Mexico Supreme Court decision in 1981 that held that the nepotism statute’s prohibitions did not require the termination of employment of a tenured teacher when her father was subsequently elected to the school board. Therefore, if a person is already employed when a relative is elected to the local school board or a school superintendent is hired by the board, he or she is entitled to continue to be employed even if the person is within one of the prohibited categories listed above.

As far as the March 1, 2003 date is concerned, we are of the opinion that it is irrelevant to the application of the statute; anyone who was employed prior to the election of a related school board member, or to the employment of a Superintendent, can continue to be employed regardless of the nature of the relationship to the board member or Superintendent.

We hope this article will make you more secure about the limitations on employment required by the anti-nepotism statute. ♦

Open Meetings Act

10-15-1. Formation of public policy; procedures for open meetings; exceptions and procedures for closed meetings.

A. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affair of government and the official acts of those officers and employees who represent them. The formation of public policy or the conduct of business by vote shall not be conducted in closed meeting. All meetings of any public body except the legislature and the courts shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. Reasonable efforts shall be made to accommodate the use of audio and video recording devices.

B. All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency, any agency or authority of any county, municipality, district or any political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of any board, commission or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act [this article]. No public meeting once convened that is otherwise required to be open pursuant to the Open Meetings Act shall be closed or dissolved into small groups or committees for the purpose of permitting the closing of the meeting.

C. If otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all

participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

D. Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public. The affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body. That notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice.

E. A public body may recess and reconvene a meeting to a day subsequent to that stated in the meeting notice if, prior to recessing, the public body specifies the date, time and place for continuation of the meeting and, immediately following the recessed meeting, posts notice of the date, time and place for the reconvened meeting on or near the door of the place where the original meeting was held and in at least one other location appropriate to provide public notice of the continuation of the meeting. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting.

F. 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. Except in the case of an emergency, the agenda shall be available to the public at least twenty-four hours prior to the meeting. Except for emergency matters, a public body shall take action only on items appearing on the agenda. For purposes of this subsection, an "emergency" refers to unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body.

G. The board, commission or other policymaking body shall keep written

minutes of all its meetings. The minutes shall include, at a minimum, the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted. All minutes are open to public inspection. Draft minutes shall be prepared within ten working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present. Minutes shall not become official until approved by the policymaking body.

H. The provisions of Subsections A, B and G of this section do not apply to:

(1) meetings pertaining to issuance, suspension, renewal or revocation of a license, except that a hearing at which evidence is offered or rebutted shall be open. All final actions on the issuance, suspension, renewal or revocation of a license shall be taken at an open meeting;

(2) limited personnel matters; provided that for purposes of the Open Meetings Act, "limited personnel matters" means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee; provided further that this subsection is not to be construed as to exempt final actions on personnel from being taken at open public meetings, nor does it preclude an aggrieved public employee from demanding a public hearing. Judicial candidates interviewed by any commission shall have the right to demand an open interview;

(3) deliberations by a public body in connection with an administrative adjudicatory proceeding. For purposes of this paragraph, an "administrative adjudicatory proceeding" means a proceeding brought by or against a person before a public body in which individual legal rights, duties or privileges are required by law to be determined by the public body after an opportunity for a trial-type hearing. Except as otherwise provided in this section, the actual administrative adjudicatory proceeding at which evidence is offered or rebutted and any final action taken as a result of the proceeding shall occur in an open meeting;

(4) the discussion of personally identifiable information about any individual student, unless the student, his parent or guardian requests otherwise;

(5) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the policymaking body and a bargaining unit representing the employees of that policymaking body and collective bargaining sessions at which the policymaking body and the representatives of the collective bargaining unit are present;

(6) that portion of meetings at which a decision concerning purchases in an amount exceeding two thousand five hundred dollars (\$2,500) that can be made only from one source and that portion of meetings at which the contents of competitive sealed proposals solicited pursuant to the Procurement Code [13-1-28 to 13-1-117 and 13-1-118 to 13-1-199 NMSA 1978] are discussed during the contract negotiation process. The actual approval of purchase of the item or final action regarding the selection of a contractor shall be made in an open meeting;

(7) meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant;

(8) meetings for the discussion of the purchase, acquisition or disposal of real property or water rights by the public body;

(9) those portions of meetings of committees or boards of public hospitals that receive less than fifty percent of their operating budget from direct public funds and appropriations where strategic and long-range business plans are discussed; and

(10) that portion of a meeting of the gaming control board dealing with information made confidential pursuant to the provisions of the Gaming Control Act [60-2E-1 to 60-2E-60 NMSA 1978].

I. If any meeting is closed pursuant to the exclusions contained in Subsection H of this section, the closure:

(1) if made in an open meeting, shall be approved by a majority vote of a quorum of the policymaking body; the authority for the closure and the subject to be discussed shall be stated with reasonable specificity in the motion calling for the vote on a closed meeting; the vote shall be taken in an open meeting; and the vote of each individual member shall be recorded in the minutes.

Only those subjects announced or voted upon prior to closure by the policymaking body may be discussed in a closed meeting; and

(2) if called for when the policymaking body is not in an open meeting, shall not be held until public notice, appropriate under the circumstances, stating the specific provision of the law authorizing the closed meeting and stating with reasonable specificity the subject to be discussed is given to the members and to the general public.

J. Following completion of any closed meeting, the minutes of the open meeting that was closed or the minutes of the next open meeting if the closed meeting was separately scheduled shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting. This statement shall be approved by the public body under Subsection G of this section as part of the minutes.

History: 1953 Comp., § 5-6-23, enacted by Laws 1974, ch. 91, § 1; 1979, ch. 366, § 1; 1989, ch. 299, § 1; 1993, ch. 262, § 1; 1997, ch. 190, § 65.

10-15-1.1. Short Title. Chapter 10, Article 15 NMSA 1978 may be cited as the “Open Meetings Act”.

History: 1978 Comp., § 10-15-1.1, enacted by Laws 1979, ch. 366, § 2; 1989, ch. 299, § 2.

10-15-2. State legislature; meetings.

A. All meetings of a quorum of members of any committee or policymaking body of the state legislature held for the purpose of discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such committee or body are declared to be public meetings open to the public at all times.

B. The provisions of Subsection A of this section shall not apply to matters relating to personnel, or matters adjudicatory in nature, or any bill, resolution or other legislative matter not yet presented to either house of the legislature or general appropriation bills.

C. For the purposes of this section, “meeting” means a gathering of the members called by the presiding officer of a standing committee.

History: 1953 Comp., § 5-6-24, enacted by Laws 1974, ch. 91, § 2.

10-15-3. Invalid actions; standing.

A. No resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless

taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978. Every resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be presumed to have been taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978.

B. All provisions of the Open Meetings Act [this article] shall be enforced by the attorney general or by the district attorney in the county of jurisdiction. However, nothing in that act shall prevent an individual from independently applying for enforcement through the district courts, provided that the individual first provides written notice of the claimed violation to the public body and that the public body has denied or not acted on the claim within fifteen days of receiving it. A public meeting held to address a claimed violation of the Open Meetings Act shall include a summary of comments made at the meeting at which the claimed violation occurred.

C. The district courts of this state shall have jurisdiction, upon the application of any person to enforce the purpose of the Open Meetings Act, by injunction, mandamus or other appropriate order. The court shall award costs and reasonable attorney fees to any person who is successful in bringing a court action to enforce the provisions of the Open Meetings Act. If the prevailing party in a legal action brought under this section is a public body defendant, it shall be awarded court costs. A public body defendant that prevails in a court action brought under this section shall be awarded its reasonable attorney fees from the plaintiff if the plaintiff brought the action without sufficient information and belief that good grounds supported it.

D. No section of the Open Meetings Act shall be construed to preclude other remedies or rights not relating to the question of open meetings.

History: 1953 Comp., § 5-6-25, enacted by Laws 1974, ch. 91, § 3; 1989, ch. 299, § 3; 1993, ch. 262, § 2; 1997, ch. 148, § 1.

10-15-4. Penalty.

Any person violating any of the provisions of Section 10-15-1 or 10-15-2 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) for each offense.

History: 1953 Comp., § 5-6-26, enacted by Laws 1974, ch. 91, § 4; 1989, ch. 299, § 4.

MARK YOUR CALENDAR!

Celebrating Opportunities
March 27-29, 2009
Austin Hyatt Hotel
Austin, TX

NSBA Annual Convention
April 4-7, 2009
San Diego, CA

School Law Conference
June 5-6, 2009
Hotel Albuquerque - Old Town
Albuquerque, NM

Information for NMSBA conferences will be available on the NMSBA website.
Go to www.nmsba.org, and from the homepage choose "Conference Information"
For out-of-state conferences, see the website listed.

Tidbits...

A Different Way to Rate Schools

A new study suggests that up to three-quarters of the U.S. schools deemed to be failing based on achievement test scores would get passing grades if evaluated by what it called a less-biased measure. Ohio State University researchers Douglas Downey and Paul von Hippel measured children's math and reading scores on four occasions: the beginning and end of kindergarten, and the beginning and end of first grade. The findings were published in August 2008 in the journal *Sociology of Medicine*.

♦ *Source: Cleveland Plain Dealer*

Quotable Quotes

"In a completely rational society, the best of us would aspire to be teachers and the rest of us would have to settle for something less, because passing civilization along from one generation to the next ought to be the highest honor and the highest responsibility anyone could have."

♦ *Source: Lee Iacocca, American businessman*

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