

THE ADVOCATE

Schools urged to make sure everyone is counted during the 2010 Census



The first census was conducted in 1790 and has been carried out every 10 years since, as required by the U.S. Constitution. The national census shows state population counts by census tract and determines representation in the U.S. House of Representatives. Census information also serves as a factor in the distribution of major federal education funds and federal funding for local communities and states. Many counties and cities have chosen to use census data to determine the location of new public facilities, plan transportation systems, determine service needs for police and fire protection, and create voting districts for local governments. Businesses also use census data to forecast product demand and identify sites for expansion or new business opportunities. Census data also provides a wealth of data for research and information on a wide variety of topics.

When state residents are undercounted, information that guides the calculation of federal program funds is not accurate, and the state may receive less in the way of assistance for important programs such as Pell Grants for college students and Title I grants to school districts. Local, state and federal officials hope to enlist the public school community to help get the word out: Be counted during the 2010 U.S. Census! Local school board members, superintendents, principals, teachers and parent organizations can play an important role in conveying the message to students and their families, officials say. More than \$400 billion in government funding is at stake – from Title I, special education, college grants and loans and other education programs to public transit, transportation and community improvements that also impact schools.

A particular problem in states with diverse populations is getting full counts among immigrants who may fear that completing the survey form will expose them to deportation or other consequences due to their status. Other factors that may affect turn out response include lack of education or understanding about the purpose of the census or fear of identity theft. School districts are being encouraged to set aside one week in February or March as “2010 Census in the Schools Week” to help reinforce the importance of participating in the census. Census education and outreach services are available through federal websites, such as “2010 Census in Schools” materials at www.census.gov/schools.

This year’s census features one of the shortest questionnaires in history, with 10 simple questions that will take just a few minutes to answer – names, birthdates and other limited information about each person living at a residence on April 1, the official census day. The census survey should arrive in the mail in March 2010 to nearly 200 million homes. But not everyone receives the census in the mail, and some who do not receive it may be reluctant to take the initiative to find the forms and complete them. For that reason, census officials will only visit households that did not return the questionnaire during the May-July 2010 time frame to improve the accuracy of the count. By law, the details provided will not be shared with anyone but the Census Bureau – including law enforcement or other federal agencies.

♦ *Source:* Compiled from information printed in the *California School News*, December 2009 and *Texas Lone Star*, November 2009.

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NMSBA School Board Members at FRN in 2010 (Left to Right): Randy Manning (Central); Terry Martin (Clovis); Margie Tapia (Pojoaque); Dion W. Sandoval (Grants); Joanna Dyjehouse (Dulce); David Zimmerman (Questa); and Andrew J. Chavez (Espanola)

School Board Members Lobby Congress at FRN in Washington D.C.

Several New Mexico school Board Members joined their peers nationwide to lobby members of Congress in Washington D.C. The 37th National School Boards Association's Annual Federal Relations Conference was held January 31 through February 2, 2010. During this legislative conference, participants learned about in-depth federal issues affecting schools, hearing from education experts and political pundits, and lobby members of Congress. Key federal priorities at the national level include: reauthorization of an improved and better-funded Elementary and Secondary Act; adequate funding for education programs including full funding for mandates such as the Individuals with Disabilities Education Act and Title I; promoting local governance and decision-making as keys to effective public education and student achievement in the 21st century; and forward looking initiatives in pre-Kindergarten education, teacher effectiveness and education innovation. The FRN included meeting directly with NM Congressional representatives: US Senator Jeff Bingaman, US Senator Tom Udall, US Representative Martin Heinrich (District 1), US Representative Harry Teague (District 2), and US Representative Ben Ray Lujan (District 3).

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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2009 State Annual Convention Highlights

The NMSBA Annual Convention was held December 4-5, 2009 at the Hotel Albuquerque in Old Town, Albuquerque. About 350 school board members, superintendents and education stakeholders participated in the conference.

At the Friday morning General Session, **William Bayne Anderson** of Deming and **Dr. Alan W. Garrett** of Portales were presented with a certificate, lapel pin and embroidered Navy blazer in recognition of earning the Master Board Member Distinction by writing articles, presenting at conferences and attending specific topics of training.



New Master Board Members - William Bayne Anderson of Deming and Dr. Alan W. Garrett of Portales.

Speakers featured on Friday included, **Dr. Veronica Garcia**, NM Secretary of Education sharing a progress report on the state of education in NM. **Kanisha Williams-Jones**, Director of Education at NSBA presented "Understanding the Key Work of School Boards". Board members participated in whole-board training and received the workbooks of *The Key Work of School Boards* as part of their conference participation. **Charles K. Trainor**, President of

Management Audit Consultants, Inc. presented "Financial Oversight & Internal Controls for School Boards" and provided participants with resources to use in their local district. Later in the morning, there was a panel presentation entitled "Financial Improprieties – Lessons Learned" with **C. Emery "Buck" Cuddy, Jr.** of the Cuddy & McCarthy Law Firm; **Hector Baldaras**, State Auditor; and **Adan Delgado**, Jemez Mountain Superintendent. Presentation materials are available from the NMSBA website, under "Conferences" or directly at <http://www.nmsba.org/pastconf.htm>



Kanisha Williams-Jones, Director of Education at NSBA presented whole-board training on the Key Work of School Boards.

Also on Friday, there was an Awards Luncheon that included recognition for those participating in the Leadership Development Program. Other award recipients recognized included those honored with NMSBA Awards:

Frank Cordova of Cobre was recognized as the Board Member of the Year. He has been a local school board member for over 23 years. In addition, the nomination letter noted how he takes his board responsibilities seriously, how he achieves exemplary training distinctions

Continued on pages 6-7

Twelve Mistakes Board Members Make

By Nicholas D. Caruso, Jr., Senior Staff Associate for Field Services
Connecticut Association of Boards of Education

This article was originally published in the American School Board Journal in February, 2001, but has been updated to reflect some new "mistakes".

Before coming to work for the Connecticut Association of Boards of Education (CABE), I served for ten years on a local board of education. One of my most important roles at the Association is that of a trainer or facilitator. In the past sixteen years I have worked with 142 different boards of education and literally thousands of board members. By and large the vast majority of board members are some of the finest people one could ever get to work with. However, I have found that certain issues seem to crop up with some board members regularly, even among those with the best intentions.

I should know, I made several of these mistakes myself. I have discovered that there is a "Wrong Way" and a "Right Way" to doing almost anything on a board, and I've put together my list of the twelve most common errors.

1. Lack of Patience

Board members are "Movers and Shakers". You probably were asked to run because someone saw your leadership potential. In all likelihood, this is the first opportunity to serve in elected office. You want to do it all now, and you want to know it all yesterday. This is great! Don't lose that enthusiasm! But, if you think that you will learn it all, or do it all immediately, you will probably not succeed, and will frustrate yourself and your fellow board members. Understand that it really takes a while to learn the issues, the politics and the people. It could take a year before you are up to speed on such things as budget or policy. Meanwhile, take advantage of training opportunities presented by the board, the state association or NSBA. Those experiences will help you a lot.

Joining a team decision-making group is new for many board members. We choose leaders to run for the board – people often used to making decisions by themselves, and we take these individuals and put them in a room with a half-dozen similar individuals and ask them to make *consensus* decisions. It takes time to learn to appreciate the opinions of those whom you disagree with. Try to understand what motivates others, and have patience with ideas different than your own. Finally, election to a board of education does not automatically entitle you to respect - civility, yes, but not respect - that is something to be earned on your own - by your behavior and your ability to learn.

2. Poor Behavior

I have seen board members throw temper-tantrums, use off-color language, throw things, threaten or insult board members, the superintendent, staff or the public on a number of occasions. I remember one board totally stopped in its tracks for six months because one board member made a foul

remark to his colleague, and the board wouldn't discuss anything else until there was an apology or censure, neither of which ever took place. They finally got tired and moved on - but it cost them half a year.

It amazes me how many of those same board members would be the first to object if they saw the students in their schools acting the same way. I have only met a couple board members who I don't think cared about children. The other "troubled" board members were behaving poorly for a variety of reasons. In many cases, board members act out due to frustration, because they feel that they have no voice in the board's actions. Members of the "majority" need to examine their behavior to see if they are consciously, or unconsciously, contributing to the problem. I can remember, on a very contentious issue, being told by my board chair, "we don't need to hear from you, we already know how you feel..." It didn't contribute to my desire to be part of a team.

I've seen a list of "Things People Are Afraid Of" and public speaking was number one (#7 was death!). Members of the public who come to a board meeting to share their ideas deserve respect. Most people are very uncomfortable when they are in such a position, and it takes a lot for them to come out and approach the board with an issue. They deserve your careful attention.

Likewise, show your professional staff the courtesy they deserve when they are presenting to the board. Staff members, including the Superintendent, treat presenting to the board as an honor, and they will be very proud of the work they are showing you. Board members who criticize staff at meetings are doing a great job of alienating an important part of the team. If the board has an issue with an action of the Superintendent, talk to him or her on the side, or in Executive Session at a later date. Don't air dirty laundry in public.

Your community will often judge the quality of your schools by the behavior of the board. Give them something to be proud of!

3. Challenging the board after a vote

Emotions run high when the board makes a difficult decision on an emotional issue. Board members tend to be committed to doing what they think is right and sometimes a majority of the board may see things differently than you, and vote accordingly. There are few things more destructive than a board member publicly chastising the board of education for making a "bad" decision. The subtleties will be lost on the general populace, which will only see a board in chaos. My advice is to fight hard for what you believe in, and then accept the will of the board, and publicly support the decisions of the board after the vote. I look at voting as a sort of contract: I sign on the dotted line, and accept the outcome of the contract. When you vote, you should be willing to accept the outcome of the vote, win or lose.

Continued on page 10

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 2010 SPRING REGION MEETINGS

Region I

Wednesday, April 21* in Dulce

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

Region II

Thursday, March 18* in Pecos

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

Region III

Monday, April 19 in Mora or Mosquero

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

Region IV

Thursday, April 15* in Belen

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

Region V

Monday, March 29* in Clovis

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

Region VI

Monday, March 15* in Loving

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

Region VII

Thursday, April 29* in Cloudcroft

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

Region VIII

Wednesday, March 31* in Lordsburg

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

**Indicates a change*

2009 State Annual Convention Highlights Continued...

every year, and how he put forth the extra effort to earn his Master Board Member distinction as well.

The Board of Education of the Year Award was changed to include two levels: large district (student population greater than 1,000) and small district (student population smaller than 1,000). The Small District Board of Education of the Year was the **Pecos Independent Schools BOE**, which includes President **Paul C de Baca**, Vice-President **Mary Ann Vigil**, Secretary **Harold Garcia**, and members **Michael Flores** and **Victor Ortiz**. In support of the board's nomination, it was noted that the school board made many innovative choices to support the students and the board as a whole exceeded training requirements for the program year.

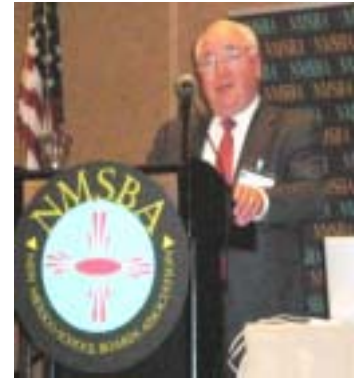
The Large District Board of Education of the Year was a tie between **T or C Municipal Schools BOE** and the **Grants-Cibola County Schools BOE**. T or C Municipal Schools BOE includes President **Paul Tooley**, Vice-President **Ann Filosa**, Secretary **Cathy Vickers**, and members **Louis Schwab** and **Lydia Baymonte**. T or C Municipal Schools BOE nomination packet highlighted many of their initiatives.

Grants-Cibola County Schools BOE includes President **Earl Chavez**, Vice-President **William Estevan**, Secretary **Sharon MacEndrick**, and members **Dion W. Sandoval** and **Jerry Smith**. The Grants-Cibola County Schools BOE nomination packet highlighted their strategic plan, which included measurable Goals and Indicators of Success.

The NMSBA Awards Call-For-Nominations were sent out in the spring and nomination submissions are due by the first week in July. The NMSBA Board of Directors, comprised of the Executive Board (5), each Region President (8), Region Vice-Presidents (8), and Region Secretaries (8), Past NMSBA Presidents (3) and Large District Representatives (7) voted on nominations submitted for the NMSBA Awards which were then presented in December.

Friday afternoon, the Delegate Assembly was held to conduct association business. All information presented at the Delegate Assembly was mailed in advance to every member in late October so that they had a minimum of 30 days prior to the Convention to review it. This year new voting pads were used which lessened the total amount of time needed to conduct the meeting.

The Nominations report was shared and officer elections were held. **David Zimmerman** (Questa) moved into the Immediate Past President position; **Ramon Montano** (Las Vegas City) moved into the position of President; **Terry Martin** (Clovis) moved into the position of President-Elect; **Dion W. Sandoval** was elected to the position



Charles Trainor speaks to board members about internal audit issues.



NM State Auditor, Hector Baldaras, speaks to board members about financial improprieties.



(Left to Right) David Zimmerman, NMSBA President; Dr. Veronica Garcia, NM Secretary of Education; Ramon Montano, NMSBA President-Elect; Frank Cordova, 2009 NMSBA Board Member of the Year; Dion W. Sandoval, NMSBA Secretary-Treasurer; Lora Harlan, NMSBA Immediate Past-President and Terry Martin, NMSBA Vice-President.

of Vice-President; and **Andrew J. Chavez** (Espanola) was elected from the floor to the position of Secretary-Treasurer. With special thanks we recognize **Lora Harlan** (Clovis) for her service in the position as outgoing Immediate Past President.

A special thanks goes out to our door prize contributor, **Al Clemmons of George K. Baum & Company** for donating ten \$100 bills (for a total of \$1,000) that were distributed via door prize tickets intermittently during the Delegate Assembly. Winners included: **David Sanchez** (Santa Rosa); **Irene Rodriguez** (Cobre); **Caroline Lopez** (West Las Vegas); **Sharon Dogruel** (Pojoaque); **Paul Tooley** (T or C); **Margie Tapia** (Pojoaque); **James Waldrip** (Roswell) and **Fernando Gurule** (Mesa Vista).

Lora Harlan, Immediate Past President gave the Policy Review Committee Report which included a proposed change to Article CVII, Section I of the NMSBA Constitution with regard to Nominations. The change required a 2/3 affirmative vote of the delegate assembly members present, however, it only received 43% support and did not pass.

Ramon Montano, President-Elect gave the Resolutions Committee Report of the 2009-2010 proposed resolution changes to the NMSBA Legislative Platform. The committee's recommendations were accepted by the delegate assembly with 81% approval.

Following the Delegate Assembly, **Cooperative Education Services** (CES) sponsored a reception for all the conference attendees. There was a Mariachi at the reception and the outgoing President **David Zimmerman** passed the gavel to incoming President **Ramon Montano**.

On Saturday morning, there were eight concurrent sessions over three one-hour periods for board members to receive training.



*Your 2010 NMSBA Executive Board:
(Left to Right) Secretary-Treasurer Andrew J. Chavez (Espanola); President-Elect Terry Martin (Clovis); Vice-President Dion W. Sandoval (Grants); President Ramon Montano (Las Vegas City); and Immediate Past-President David Zimmerman (Questa).*



Pecos Independent Schools received the Small District BOE of the Year Award. Those present to accept were Harold Garcia, Victor Ortiz, Michael Flores, and Paul C de Baca.



Grants-Cobola County Schools received the Large District BOE of the Year Award (tie with T or C). Those present to accept were Jerry Smith, Earl Chavez, William Estevan and Dion W. Sandoval.



T or C Municipal Schools received the Large District BOE of the Year Award (tie with Grants). Dr. Veronica Garcia, NM Secretary of Education helps present the award to those present to accept Lydia Bamonte, Cathy Vickers, Paul Tooley, and Ann Filosa. David Zimmerman, NMSBA President also helps present the awards.

Can a School District Be Sued Over Recitation of the Pledge of Allegiance in the Schools?

By Mathew Campbell, Cuddy & McCarthy, LLP

The short answer is yes. Pursuant to New Mexico law, the Pledge of Allegiance “shall be recited daily in each public school in the school district[s] according to regulations adopted by the state board [public education department].”¹ The regulations of the Public Education Department provide that the “Pledge of Allegiance shall be recited each day in each public school within the State.”² Out of the fifty states, thirty-seven (37) have similar statutes to New Mexico requiring the Pledge of Allegiance to be recited.³

This issue has received some notoriety and media coverage recently when New Mexico Secretary of Education declined to amend the state rule which deals with the Pledge to include an “opt out” provision.

So how do school districts lower the chances of being hauled into court because they have complied with New Mexico law? In order to answer this question, it is important to understand the federal case law surrounding the Pledge of Allegiance.

It has long been held by the Supreme Court of the United States that to require students in public schools to salute the flag and recite the Pledge of Allegiance is unconstitutional, particularly when failure to participate results in insubordination or other disciplinary sanctions.⁴ In 1942, West Virginia’s State Board of Education adopted a resolution ordering that the Pledge of Allegiance and salute to the flag become “a regular part of the program activities in the public schools,” and that all teachers and pupils “shall be required to participate in the salute honoring the Nation represented by the Flag; provided, however, that refusal to salute the Flag be regarded as an act of insubordination, and shall be dealt with accordingly.”⁵ Not only were students expelled for not reciting the Pledge of Allegiance in West Virginia, but parents were prosecuted for causing delinquency.⁶

The Supreme Court determined that “no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”⁷ Consequently, the Court found that West Virginia’s State Board of Education resolution was unconstitutional, and also that compelling the flag salute and Pledge of Allegiance was unconstitutional and therefore illegal.⁸ It is clear, therefore, that School Districts cannot compel students to recite the Pledge of Allegiance and cannot punish or otherwise sanction students for refusing to participate in the Pledge.

What is less clear is whether the daily reading of the phrase “under God” in the Pledge of Allegiance is a violation of the First Amendment’s *Establishment Clause*. The Supreme Court has not directly addressed this issue, but several Justices have suggested that the reading of the Pledge of Allegiance in schools is not unconstitutional.⁹

Of the three Circuit Courts of Appeals to address the issue - the Fourth, Seventh, and Ninth Circuits - two have

held that the reading of the Pledge of Allegiance does not violate the *Establishment Clause*.¹⁰ However in 2002, the Ninth Circuit held in *Nedow v. Elk Grove Unified School District* that the School District’s policy and practice of teacher led recitation of the Pledge of Allegiance, with the inclusion of the words “under God,” does violate the *Establishment Clause*.¹¹ The Ninth Circuit’s decision was reversed by the Supreme Court, but the majority of the Supreme Court did not address the *Establishment Clause* issue and instead reversed on other grounds.¹²

The Supreme Court has still not addressed the issue. To complicate matters, some federal District Courts are still relying on the Ninth Circuit opinion (that was reversed) as binding precedent.¹³ The Tenth Circuit and U.S. District Court in New Mexico, have not directly addressed the issue. As a result, there is no clear answer to this question for New Mexico school districts, and until either the Tenth Circuit or the Supreme Court of the United States addresses and resolves this issue there is still the potential for litigation.

In order to reduce the potential threat of litigation, School Districts should enact policies that comply with current Supreme Court precedent. The clear mandate is that School Districts cannot compel students to recite the Pledge of Allegiance and cannot punish or otherwise sanction students for not participating.¹⁴ Accordingly, School Districts should adopt a policy that allows students to object to and refrain from participating in the Pledge of Allegiance, so long as their refusal does not disrupt the observance by others who do so voluntarily. An example of a model provision would look like this:

Pledge of Allegiance

The Pledge of Allegiance will be recited in each school daily. A student may not be compelled to recite the Pledge of Allegiance if he/she or his/her parent(s) object(s) on religious or conscientious grounds; however, that student may not interfere with the recitation by other students.

Adopting a policy similar to this will reduce the likelihood of being drawn into a court battle over violating student constitutional rights, and carefully following such a policy reduces the likelihood that any such lawsuit will be successful. While there is still the opportunity for litigation with regard to the Pledge of Allegiance, adopting a policy that allows students the option not to participate goes a long way in reducing that potential.

(Footnotes)

¹ N.M. Stat. Ann. § 22-5-4.5 (1978).

² N.M.A.C. § 6.10.2.8(B) (1998).

³ See David A. Toy, *The Pledge: The Constitutionality of an American Icon*, 34 J.L. & Educ. 25, 64 (2005).

⁴ See *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 625-643 (1943); see also *Elk Grove Unified Sch. Dis. V.*

Newdow, 542 U.S. 1, 124 S. Ct. 2301, 2319 (2004) (Renquist, J., dissenting) (noting students who object to the Pledge of Allegiance on religious or other grounds may abstain from the recitation because the government may not compel school students to recite the Pledge); *Frazier v. Winn*, 535 F.3d 1279, 1285 (11th Cir. 2008) (noting that government cannot compel students to participate in the Pledge); *Myers v. Loudoun County Pub. Sch.*, 418 F.3d 395, 398, n.1 (4th Cir. 2005) (noting that because statute makes clear students are permitted to opt-out of reciting the Pledge, there is no *Barnette* constitutional problems); *Sherman v. Cmty. Consol. Sch. Dist. 21 of Wheeling Twp.*, 980 F.2d 437, 439, 442 (7th Cir. 1992) (stating that a “state therefore may not compel any person to recite the Pledge of Allegiance to the flag.”).

⁵ *Barnette*, 319 U.S. at 625.

⁶ *Id.* at 630.

⁷ *Id.* at 642.

⁸ *Id.*

⁹ *Newdow*, 124 S. Ct. at 2312-2333 (Rhenquist, J., dissenting, O’Connor, J., dissenting, and Thomas, J., dissenting).

¹⁰ *Myers*, 418 F.3d 395; *Sherman*, 980 F.2d 437.

¹¹ 328 F.3d 466, 490 (9th Cir. 2002) *rev’d on other grounds*, *Elk Grove Unified Sch. Dist.*, 542 U.S. 1, 124 S.Ct. 2301.

¹² *Elk Grove Unified Sch. Dist.*, 542 U.S. 1, 124 S.Ct. 2301.

¹³ *Newdow v. Congress of U.S.*, 383 F.Supp.2d 1229 (Ct. 2005).

¹⁴ See note 2 *supra*.

States Sour on Race to the Top Program

Many governors originally praised the vision of Secretary of Education Arne Duncan for the \$4.35 billion in competitive grants offered to states in the Race to the Top program. But because only two states — Delaware and Tennessee — actually won the award, many now question the scoring by anonymous judges and are not sure they will reapply for the second round. Delaware will get \$100 million and Tennessee will get \$500 million. The difference between theirs and other state’s applications was said to be buy-in from local stakeholders, including teacher’s unions. Many unions refused to sign-on because they felt the federal grants promoted merit pay. States have begun questioning the criteria by which winners were chosen, wondering why there were only two that won and criticizing a last-minute cap on future awards.

♦ Source: *Reading Today News Feed*

Changes Proposed to NCLB

In March, President Obama announced he would send a proposal to Congress to reauthorize the Elementary Secondary Education Act (ESEA), more widely known as No Child Left Behind.

The administration’s “Blueprint for Reform” keeps some features of the existing law, most notably the requirement for annual reading and math tests. However, it also proposes significant changes. The existing law requires every child to achieve grade level proficiency in reading and math by 2014, a goal considered unrealistic. The new proposal calls for all students to be prepared for college and career upon graduation. That standard would take effect by 2020.

One criticism of the existing No Child Left Behind law is that since states set their own standards, the act creates incentives for states to lower academic standards in order to meet federal progress benchmarks. The new plan calls for states to develop and adopt standards in language arts and math in common with other states, such as through the common standards proposed by the National Governors Association and the Council of Chief State School Officers. Alternatively, states may work with their university system to develop their own college-ready standards. In addition to measuring performance in math and reading, schools could include student performance in other subjects to prove students are making progress.

The Obama plan calls for federal intervention in failing schools, including possibly closing the school. It also calls for rewarding, and reducing federal interference in, top-achieving schools and those schools that have made progress in student achievement. More federal funding would move to competitive grants, similar to the Race to the Top program. Anne Bryant, Executive Director of the National School Boards Association, called the plans a “vast improvement,” but cited misgivings about linking a state’s federal funding to the adoption of common standards.

The full text of the blueprint is available online by selecting the “No Child Left Behind” link of the U.S. Department of Education’s policy section of its website www.edu.gov/policy

♦ Source: *NJSBA weekly Education News Report, March 2010.*

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Another serious mistake board members sometimes make is when they believe they are going to lose a vote; they fold their arms, close their mouths and pout, rather than share their ideas. It is very important that those members share their concerns with their colleagues. You may not win your point, but it is very likely that some of your concerns could be addressed by amending the motion to take them into consideration. Be careful how you present your ideas. Be judged on the quality of your ideas, not your behavior.

In order for this to work, however, the other board must be very sensitive to opposing views. They probably feel as passionate about their convictions as you do about yours. If possible, allow them to “save face” before a vote. It will greatly enhance the team.

4. Acting like the “Lone Ranger”

There often seems to be board members who appoint themselves “overseer” of the school district. I recall one board member, an administrator in an adjoining school district, who often went on “raids” at the high school, trying to find mistakes. She would appear at board meetings, legal pad at the ready, with a report to the board of all the “problems” at the school. The staff panicked whenever she arrived at the door.

Whether a board member improperly acts as a spokesperson for the board, or a one-person auditing firm, board members need to remember that the board of education is empowered to handle various responsibilities. They could conceivably vote to appoint a member to a specific charge, but, in general, individuals have no more authority than any other member of the public.

5. Can’t See The Forest for The Trees

Probably the greatest complaint by superintendents is that of the board micro-managing the administration. I’ve seen boards argue about the size engine needed on a snow blower, or what wattage light bulb to purchase. There is no definitive answer to what constitutes Policy versus Administration. However, there are a few things to help a board and superintendent set some ground rules: First of all, it is important to understand that not all issues are exclusively either policy or administration. Gray areas abound. It is important for the board and the superintendent to discuss and decide together where the lines need to be drawn. The more the board concentrates on VISION, the less it should be in day-to-day activities. Setting goals, monitoring their implementation through policy, communicating often with staff is appropriate.

6. Dropping a bomb at a board meeting

Occasionally a board member will try to make points in the community by embarrassing the superintendent, or board chair by dropping a “bomb” - a surprise question that cannot be quickly answered. The intent isn’t to gain information, only to embarrass someone.

A primary task of a board of education is to make decisions, based on information they acquire through reading, presentations and asking questions. Board members need to feel comfortable in making a decision, and it is

important to ask any question that needs answering prior to voting. If the intention is to gain knowledge on an issue, than any question is fair game, but *how* you ask it is very important. If you know the issue is divisive, or is a matter of concern in the community, pick up the phone and ask the superintendent beforehand. Give the superintendent time to give a thoughtful answer, which will help you, and other board members, make a good decision. In some cases, it is important that the question you are asking be asked publicly, if you know members of the community have the same concern. You want your community to know that the matter was discussed, asked and answered, and that the board took the matter into consideration. Again, the purpose of raising questions is to help the board decide.

Similarly, many times, board member ask questions that were answered quite well in the preparation materials provide in the board packet. If they had read the packet ahead of time, they wouldn’t have had to waste the board’s time reviewing material already presented. Read and understand the packet - and be on time!

6b. Superintendent or chair drops bomb on board

Fair is fair: if the board shouldn’t surprise the superintendent or chair, neither should they drop an emergency decision on the board’s lap without adequate preparation. A true emergency aside, the board shouldn’t get hit with a surprise request to pass something without adequate information to make a good decision. That being said, your staff goes through a lot to prepare your board packet and the materials you need to study in order to make good decisions. Show appreciation for the prep work being done by reading the materials beforehand.

7. Vote along party lines, putting politics before children

School board service is “grass-roots” democracy at its best, or worst, depending on how politics play in your community. I have worked with boards where there is no clue that the members were elected politically, and others where politics stymies the board’s ability to focus on children. I have seen boards crippled by the partisan infighting, and the district slowly falter as the lack of vision and leadership keeps everyone from doing what is necessary to improve education.

If you have a political board, I suggest you each get a blank sheet of paper, write your political affiliation on it, have someone collect them - and throw them out the meeting room door! Leave politics out of board business, it doesn’t belong there!

8. Become a “ball carrier” for others with hidden agendas

It seems that every board has someone who acts as the spokesperson for the staff, or specific community groups. While every board member wants to be helpful, under no circumstances should they try to circumvent the chain of command. Human nature being what it is, every story has two sides. There are board members who, misguidedly, bring every issue they hear in public to the board’s attention.

In cases where staff or parents approach you, remember that the board is often the last link in the chain of command. Your board should have a clear policy on when it is appropriate for the board to “hear” a case, and it is usually after other avenues are exhausted. Let the process work. In some extreme cases, your involvement at the wrong time could keep the board from rendering a legitimate decision, or

open the district to potential legal liability. Ultimately, your attempt to help someone could leave your board open to more serious harm.

Likewise, when approached by someone you know; a friend, coworker, neighbor or political supporter, be very careful not to commit to voting a certain way. You should always vote your conscience, and make decision based on what you believe is best for the children in your district, but only after hearing all sides.

Memorize this statement:

“This problem could end up requiring board action, and if I am involved in it at this level, I will be unable to act on it as a member of the board because it could be a violation of due process. You really need to go through the proper channels.”

8a. Have your own hidden agenda

I have known people who have sought a seat on their local board to achieve some task - fire the superintendent, bring in all-day kindergarten, or get their brother-in-law a job as football coach. It becomes apparent to most after a short time that the job involves much more than your issue.

One way to deal with hidden, or one-agenda board members is for the board to establish goals for the district (and the board), which become the driving force for the district. When the superintendent is faced with the individual issues, he or she must be able to bring out the goals and see if they meet the vision of the board. The more the board focuses on goals, and leaves administration alone, the less disruption a “lone-wolf” can cause.

9. Speak about confidential issues

Each state has restrictions on what can be discussed in “Executive Session”. It is important that the board members all understand the laws, and their intention. You are entrusted to do the work of the public, watching over their schools, and their children. Except for a few clearly defined exceptions, the public has a right to watch the board fulfill its obligations. You should be doing most of your work under public scrutiny. In the end, this builds credibility and trust.

There are times when the board is in executive session, and strays from the original topic. Every board member should be ready to interrupt at any time, when the discussion strays from “privileged” information to something that should be discussed in public.

Likewise, it is highly unethical and sometimes illegal for board members to divulge the contents of the closed session to outsiders, whether members of the press or others. Doing so could open up the district to lawsuits, or civil penalties.

10. Consider staff “the enemy”.

While visiting boards I have heard board members say the following statements:

- a. “We would have a lot more money to spend on kids if we didn’t have so many teachers on the payroll”
- b. “They’re not the public, they’re just staff (board chair referring to staff present at board meeting)”
- c. We have way-y too many administrators”

Whether a blatant or derogatory statement is made at a meeting, or if the tone of your questions at a meeting drives a staff member out of the board room in shame and

disgust, you are harming the district when you attack your teaching staff. With all the talk of testing, accountability and technology in education; learning still, by-and-large, takes place when a teacher works directly with children. They should be considered a vital part of the team (as should all staff members) and appreciated.

Likewise your administrative staff is spending so much time responding to reporting requirements, disciplining students, administering special education requirements, etc, that they may not have time to do what they really want to do – to be the educational leader in their school. Support them, and show them that you appreciate the job they are doing.

If you have a problem with an administrator, a program or teacher, bring your concern to the superintendent. Don’t take potshots at staff.

11. Ignore Policy

When I work with a board I will usually ask the members to raise their hand if they’ve read their policy manual. One board chair said “I don’t think we have a Policy manual”. I’ve seen boards of education decide something only to find out it goes contrary to board policy. I have seen votes to regularly overrule existing policies. There are boards that ignore it when staff overlooks board policy.

Policy is the board’s book of law. It is the only substantive thing they leave behind – it is the board’s legacy to the community. Boards should refer to policy whenever they make a decision. Rarely is there *no* connection to policy in a board decision. In fact, if the board routinely deals with non-policy issues, they should start asking whether or not it is necessary for the board to make the decision, or to let administration do it. If you find yourselves overruling board policy on a regular basis, rewrite the policy. How can you expect your administrators, teachers and students to respect the district policy manual if the board does not?

These same individuals need to be held to the policy manual as well. Only the board of education can overrule a policy; no one else. This should be done only after careful consideration, and the board must be sure to specify what is unusual about the situation that is requiring the board to overrule policy. You must be very careful that you don’t set a dangerous precedent and open the door for others to demand the same exception. If you are having a problem enforcing a policy, review it.

12. Put the board above family and business

As important as serving on a Board of Education is, NEVER forget what is most important! I have seen board members lose their jobs, their families and their homes because they spent so much energy on the board. It is easy to do so. School board members become “important” to the community and are often sought out to participate in a variety of community events, all of which tend to boost the board member’s ego. Other organizations will ask for time, and “free” time diminishes. I fell into this trap myself, and spent hundreds of hours a year at board-related meetings and events. While there is something incredibly noble about serving on behalf of children, remember that there are others who serve with you, and other members of the community who will also help. You don’t have to do it all. While your obligation to the board is important, and you should carry your weight, learn to say “no” to non-critical requests for your time. When your time on the board is completed, you still need a life to go back to.

MARK YOUR CALENDAR!

Celebrating Opportunities
March 26-28, 2010
AZ Grand Resort
Phoenix, AZ

NSBA Annual Convention
April 10-13, 2010
Chicago, IL

School Law Conference
June 4-5, 2010
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...

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*

Read Across America

While the national celebration takes place March 2nd to commemorate the birth anniversary of Dr. Seuss, the NEA-NM Cat in the Hat travels year round to prove every day is Read Across America Day. This year the Cat traveled from Cimmaron to Farmington; from Ruidoso to Hatch; through Los Lunas and Tucumcari; with stops in Aztec, Las Vegas, Las Cruces, Espanola and Santa Fe thrown in for good measure. School libraries had book parades, guest readers from the community, birthday parties, green eggs and ham on the menu and handed out reading achievement awards. To see pictures of celebrations across the state and ideas or resources for your own celebration, you can go to the NEA website at www.nea-nm.org.

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