

UNDERSTANDING ETHICS AND TRANSPARENCY OBLIGATIONS

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LAWS/POLICIES TO BE REVIEWED

- New Mexico Open Meetings Act (OMA), § 10-15-1, et seq.
- New Mexico Inspection of Public Records Act (IPRA), § 14-2-1, et seq.
- School Board Laws
- New Mexico Governmental Conduct Act, § 10-16-1, et seq.

OPEN MEETINGS ACT – “NEWER” PROVISIONS

○ Meeting notices published 72 hours in advance

- No amendments within 72 hours
- Publication required on website if have one

○ Emergency Meetings

- AG must be informed of emergency meetings within 10 days after the emergency meeting
- Must be unforeseen circumstances that will likely result in injury or damage to persons or property or substantial financial loss

PROPOSED LEGISLATION

- **HB 378 (2015) Mandatory Public Comment Period**
 - Either general period or during agenda items
 - Allow reasonable amount of time and diverse perspectives
 - Topics limited to those in scope of board authority
- **HB 392 (2015) Mandatory Internet Audio/Video Streaming and Archiving of Meetings**
 - If “financially, technically or logistically feasible”

OMA IMPORTANT PROVISIONS

- Applies to all meetings with a quorum of members (§10-15-1(D)):
 - No rolling quorums
 - Meeting of a quorum by email included
- Decisions must be made in open meetings (§10-15-1(A)):
 - Public entitled to the greatest possible information including the official acts of officers and employees
 - Formulation of public policy or the conduct of business by vote shall be done in open meetings
 - All persons shall be permitted to attend and listen, reasonable efforts shall be made to accommodate use of audio and video devices

OMA IMPORTANT PROVISIONS

- **Meeting Notices** shall contain an agenda with a list of specific items of business to be discussed or transacted (§10-15-1(F))
- **Minutes** (§10-15-1(G)): The policymaking body shall keep written minutes of all its meetings including:
 - Date, time and place
 - Members in attendance and absent
 - Substance of proposals considered and a record of votes
 - Minutes shall be prepared within 10 days, shall be approved at the next meeting with a quorum and are not official until approved by the policymaking body
- **Enforcement and penalties:** AG, DA or individual enforcement; penalties include misdemeanor and/or fines, attorneys fees and costs (§10-15-3)

OPEN MEETINGS ACT – BEST PRACTICES

- Meeting Notices and Agendas
 - Publish by 5 pm Friday the week before
 - Include board packet online
 - After publishing, no additions, only noted deletions
 - If it's not on agenda, it's not to be discussed/acted upon = next agenda
- Use Specific Language in Agenda Items, including Executive Session:
 - Describe contracts
 - Describe programs/presentations
 - Executive Session: Personnel Matters "Superintendent Assignments", "Superintendent Evaluation", "Reduction in Force of Certain Personnel"
 - Executive Session: Pending and Threatened Litigation [case name or description]

OPEN MEETINGS ACT – BEST PRACTICES

- Post Draft Meeting Minutes Online within 10 days, until Final Minutes are Adopted
- Include a Public Comment item
 - Limit comments to topics within Board Authority
 - No disclosure of student information
 - Limit to 2 to 3 minutes per person, but treat all the same
- Video Record Meetings and Stream/Post on Website
 - Possibly engage student A/V groups
 - Increased public access, clear record and quotes, assists media coverage

OMA TAKEAWAYS

- Conduct business in open session
- Early and substantive notice
 - No “Ad-Libbing”
- No rolling quorums
- Implement best practices

INSPECTION OF PUBLIC RECORDS ACT **IPRA**

- Public has the right to inspect public records except for limited exclusions
 - Records include emails, texts, pictures, videos, etc.
 - Response Timelines (§ 14-2-8): Immediately or as soon as practicable but not later than 15 days
 - Unless there is a specific exclusion, the document is public record - No “rule of reason”
 - Think: emails/texts with parents, superintendent, constituents
 - Exclusions: Attorney info, FERPA, certain personnel info
- Enforcement action (§ 14-2-12): Brought by AG, DA or requestor
- Penalties: Damages up to \$100 per day, costs and attorneys fees (§ 14-2-11)

IPRA BEST PRACTICES

- ALWAYS Use District Email for District Business
 - Avoids a search of your personal email
- Only Use District Cell Phones for District Business
 - Understand implications of using personal cell
- All Written Communications Should Always Be Professional
- District should have a centralized public records custodian, with records as primary duty

STATE LAWS APPLICABLE TO SCHOOL BOARDS

○ §22-5-6 Nepotism Prohibited

- Superintendent may not employ board family members (parents, children siblings, in-laws of each)

○ §22-5-6 Prohibited Employment

- Board member shall not be employed in any capacity by a school district “during the term of office for which the member was elected or appointed”

○ §22-11-5.1 Restrictions on Gifts

- Nothing of value from contractor, bidder, or fund advisor. Exception: food or beverage not exceeding \$50 per meal or \$150 per year

MORE STATE LAWS APPLICABLE TO SCHOOL BOARDS

○ §22-21-1 Prohibiting sales to school districts and personnel

- (A) Board member shall not directly or indirectly sell or be a party to any transaction to sell materials, furnishings, equipment, insurance, supplies to the district, or work under contract with the district; no commission or profit
- (C) No board member shall solicit or be a party to a transaction to sell insurance or investment securities to any employee of the district
 - Penalty: 4th degree felony

○ §22-21-5 Prohibition on the sale or use of student, faculty and staff lists in direct marketing

- Offender pays damages of \$500 or more, plus attorneys fees to recipient

NEW MEXICO GOVERNMENTAL CONDUCT ACT

○ General Rules for public officers or employees (§ 10-16-3):

- Treat their position as public trust and use powers/resources only to advance the public interests, not obtain personal benefits or pursue private interests
- Conduct themselves in a manner that justifies the confidence placed in them by the people
- Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct
- Make reasonable efforts to avoid undue influence and abuse of office

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○ Prohibited Political activities (§ 10-16-3.1):

- No coercion to contribute, vote or participate in political activity
- No threats to deny promotion or pay increase
- No requiring employee contribution or event ticket
- No advising an employee to take part in political activity
- No use of governmental property for non-authorized purposes

○ Official Acts for personal financial interest prohibited (§ 10-16-3.1):

- Knowing and willful violation is a 4th degree felony
- Public officer or employee is disqualified from engaging in any official act directly affecting their financial interest

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○ Other important provisions:

- No honoraria for speeches/service relating to the performance of public duties (expenses ok)
- No use of confidential information for private gain
- Restrictions on contracts involving current or former officers or employees
- Prohibited bidding

○ Enforcement and penalties (§ 10-16-14, 17, 18):

- Enforced by Attorney General or District Attorney
- Penalties: discipline, dismissal, demotion or suspension
 - Criminal penalties include misdemeanor (unless otherwise specified) and up to \$1,000 fine
 - Civil penalties of \$250 per violation up to \$5,000

ETHICS – BEST PRACTICES

- Avoid conflicts and improper interactions with employees
- Abstain from decisions affecting personal financial interests
- Be careful with political campaigns
- Public disclosures of financial interests, non-profit, memberships and gifts received

QUESTIONS?

- Is there a clear guidance regarding board and staff roles in open meetings and disclosure of public records?
- Is there clear guidance regarding ethical considerations for board members and staff?

Thank you
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