Understanding Ethics and Transparency Obligations

Back by Popular Demand!

Presented to:
New Mexico School Boards Association

February 10, 2018

Geno Zamora, Esq.
Tony F. Ortiz, Esq.
Jessica R. Terrazas, Esq.
Laws/Polices 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: Mandatory Public Comment period
  - HB 378 (2015) - Either general period or during agenda items
    - Allow reasonable amount of time and diverse perspectives
    - Topics limited to those in scope of board authority
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 of meeting
  - Names of members in attendance and absent
  - Substance of the 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 copies of board packet online
  - No additions, only deletions, after publishing

- 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
Open Meetings Act – Best Practices

- Use Specific Language in Agenda Items, including Executive Session
  - Executive Session to Discuss Personnel Matters Relating to Superintendent Assignments
  - Executive Session to Discuss Personnel Matters Related to Reduction in Force of Certain Personnel

- Post Draft Meeting Minutes Online within 10 days, until Final Minutes are Adopted

- Consider taping or live streaming meetings and posting online
OMA Takeaways

- Conduct business in open session
- Early and substantive notice
- No rolling quorums
- Implement best practices
Inspection of Public Records Act (IPRA)

NEWER

- Draft documents that are not otherwise protected are public record
- Unless there is a specific exclusion, the document is public record - No “rule of reason”

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

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 School Business
  - Avoids a search of your personal email
- Only Use District Cell Phones for District Business
  - Understand implications of using personal cell
- 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"

- **§22-21-1 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 permitted
  - (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
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
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
Geno Zamora, Esq.
Tony F. Ortiz, Esq.
Jessica R. Terrazas, Esq.
(505) 986-2900
geno@ortiz-zamora.com
tony@ortiz-zamora.com
jessica@ortiz-zamora.com