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Understanding Ethics and Transparency Obligations

Presented to:
New Mexico School Boards Association

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Geno Zamora, Esq.
Tony F. Ortiz, Esq.
Jessica R. Terrazas, Esq.

ORTIZ & ZAMORA
Attorneys at Law, LLC

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

NMGCA (cont.)

- 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

NMGCA (cont.)

- 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

