



Understanding Ethics and Transparency Obligations 2.0

Presented to:

New Mexico School Boards Association

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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.
- NEW FORMAT – Discussion, Law, Examples



What do you know about
OMA?

- What is it?
- What are the biggest violations?
- What happens if there is a violation?



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, and no sharing of time
 - Treat all the same
 - Use a “script” to introduce public session



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



Open Meeting Act Discussion

- **Possible Topics**

- Rolling Quorums
- What is an emergency for purposes of an Emergency Meeting?
- Electronic discussion of District Business with other Board Members (email, text)

- **What If?**

- Myself and a newly elected Board Member usually meet for lunch once-a-week, can we continue to do so now that we are both on the Board? Can another Board Member join us?
- The same public citizen comes and speaks about different issues at every Board meeting, but makes no sense and says outrageous things, can we cut her off next time?
- We forgot to approve the funding for the Staff Appreciation Luncheon at our last meeting, can we call an emergency meeting to do that?
- I am the only person on my Board who wants to pass a policy and I need to try and talk to the rest of the Board about my reasoning How do I do that privately, but without violating OMA?



What do you know about IPRA?

- What is it?
- What are the biggest violations?
- What happens if there is a violation?



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



IPRA Discussion

- **Potential Topics**

- Text messages
- Personal cell phone use for district business

- **What if?**

- Can I forward a District-related email from my District account to my personal email account,... Do I have to give up my private email in an IPRA Request?
- I get a disparaging email from a parent to my personal email account, about a topic that will be discussed at that night's Board Meeting... Can I share it with the rest of the Board? Is it a public record?
- A friend texts my personal cell phone with a complaint about her child's principal...Is this a Public Record? Do I respond from my District email to ensure its saved?

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



What do you know about the NM Governmental Conduct Act?

- What is it?
- What are the biggest violations?
- What happens if there is a violation?



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



Ethics Discussion

- **Possible Topics**

- What is personal financial Gain?
- Conflicts of Interest

- **What If?**

- My brother is running for City Council can I help him campaign?
- I was asked to speak at another district's career day, they said they would pay for my gas and my lunch... Can I accept?
- My son is on the high school baseball team, we are voting to potentially provide them for more funding... Is that a conflict of interest? Must I disclose it?
- I'm trying to sell some property and a District employee wants to buy it, can I sell it to them? Do I have to disclose anything?
- A business I started but sold is trying to bid on a contract, can they do that?



Questions you must ask yourself

- 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?
- Are we doing enough to protect ourselves and the District from any potential violations?
- If the answer to any of these is “I Don’t Know” than find out... It is that important

ADDITIONAL QUESTIONS/DISCUSSION

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