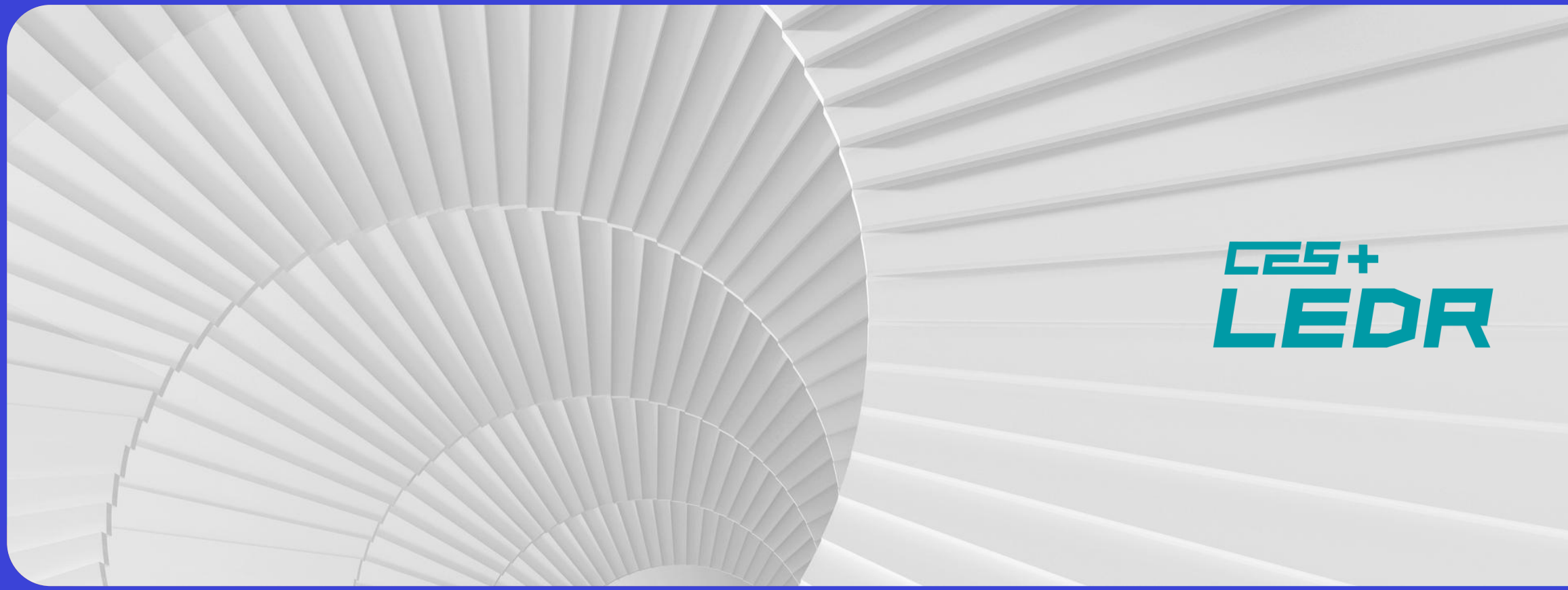


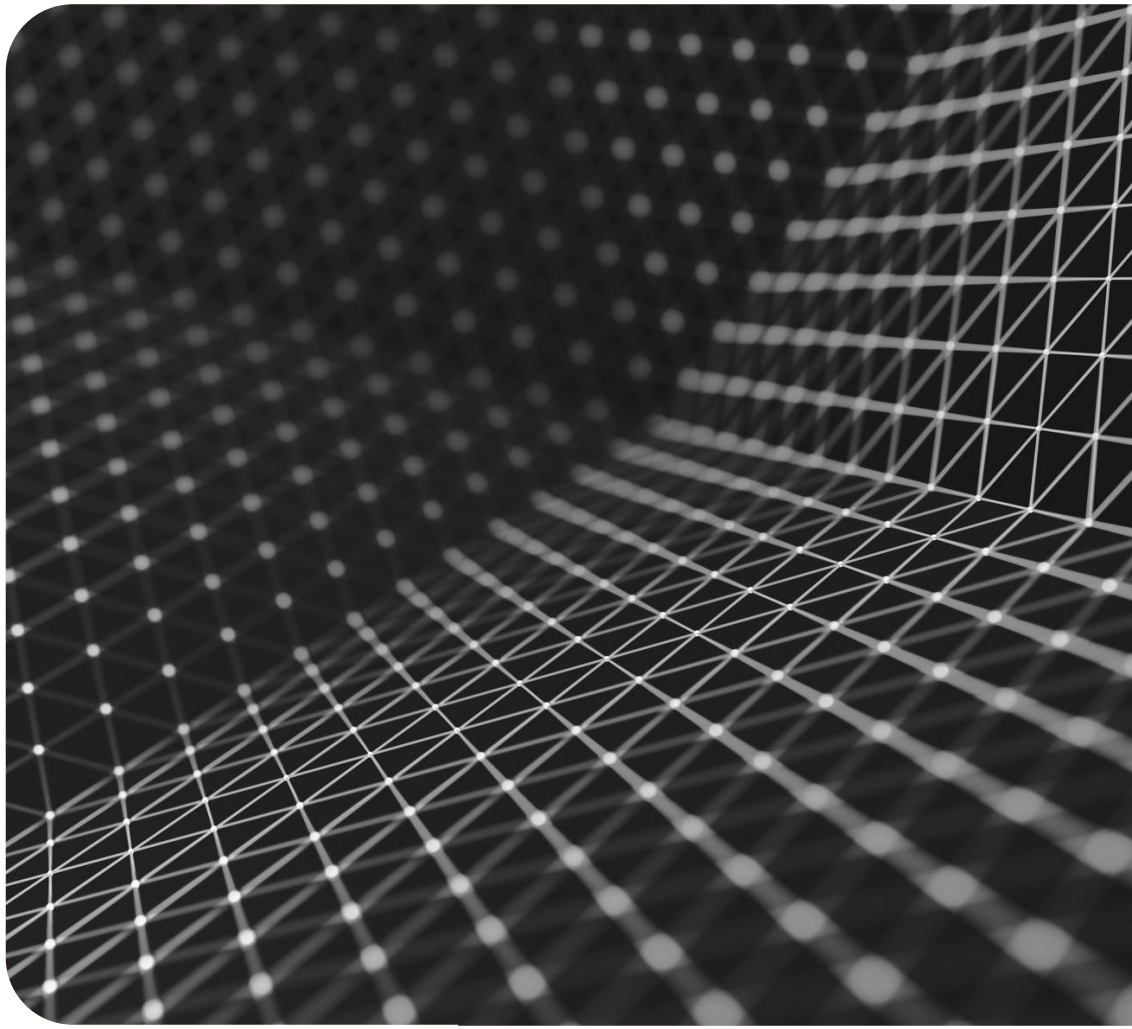
Demystifying Legal Concepts

LeAnne Gandy

Director of Leadership Development

Agenda

- New Mexico Open Meetings Act (OMA), § 10-15-1, et seq.
- New Mexico Inspection of Public Records Act (IPRA), § 14-2-1, et seq.
- FERPA –Family Educational Rights and Privacy Act
- School Board Specific Laws
- New Mexico Governmental Conduct Act, § 10-16-1, et seq.





Open Meetings Act (OMA)

- **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
- **Applies to all meetings with a quorum of members (§10-15-1(D)):**
  - No rolling quorums
  - Meetings of a quorum by email/text/phone included



You have coffee with your board president to discuss an upcoming vote on a new controversial policy. When you get home, you have a message from your other friend on the board, asking how the meeting went and asking you to call. What now?

After your meeting with the board president, she asks you to send a text to the board about a couple of changes you both agree should be made to the policy.



Open Meetings Act – Agendas

- Must be publicly posted at least 72 hours before meeting
- It must include all items to be discussed or acted upon
- No action can be taken on items not listed on the agenda



Open Meetings Act – Executive Sessions

Section 10-15-1(H), permitted for:

(1)Limited personnel matters of any individual public employee

(2) deliberations in connection with an administrative adjudicatory proceeding (when determining rights after a trial-type hearing

(3) discussion of personally identifiable student information

(4) **Collective bargaining** strategy and negotiations

(5) Reviewing competitive sealed proposals and negotiations under the Procurement Code, for proposals over $2,500

(7) Attorney-client privileged discussions of pending or threatened litigation

(7) Discussions of the acquisition or disposal of real property or water rights

Executive session must be publicly noticed, state specific statutory provision, and state the subject with reasonable specificity. Section 10-15-1(I)

Final action shall occur in an open meeting



You arrive at the board meeting where you are scheduled to discuss the superintendent contract terms in executive session. The executive session lists the issue as "limited personnel matters". Are you okay? Is there a problem?

The Board wanted to discuss a new policy on booster clubs, but it wasn't listed on the agenda. The board president tells you that it's okay and that there is a "catch all" at the end of the agenda for "new business" where you can talk about the policy. Now what?



Open Meetings Act - 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 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
- **2024 SB 137 – Approved school board meeting minutes must be posted on website within 7 days of approval and remain for 3 years (July 1, 2024)**
- **Enforcement and penalties: AG, DA or individual enforcement; penalties include misdemeanor and/or fines, attorneys fees and costs (§10-15-3)**

Open Meetings Act – Public Comment

- Not required by OMA, but highly recommended
  - Allow reasonable amount of time and diverse perspectives (3 minutes or less)
  - Apply time restrictions uniformly, no special treatment, no sharing of time
  - Cannot control criticism
  - Consider an introductory script
    - Speak respectfully
    - Try to limit to issues within the authority of the Board
    - No comments regarding individual students
    - Personnel matters should be directed to the Superintendent
- Applies to identified period at beginning of meeting, NOT every agenda item





There are a few very controversial matters on the board agenda. The board president suggests that the board should take comments from the public as each agenda matter comes up. What do you think?

A speaker is yelling and cursing. What is the best way to handle it?

A speaker is criticizing the board and superintendent, saying that they are incompetent. It's a packed room and the statements are false and unfair. Should you respond to set the record straight?



Issues in OMA

- Vague agenda items
- Executive Session placeholders
- Discussions during a meeting recess
- Compliance with minutes requirements
- Enforcement of public comment rules
- Properly posted meeting notices

Attorney General Inquiries are costly—monetarily and public opinion



OMA & Virtual Meetings

- Meetings should be in-person with infrequent board member remote attendance
- If a member is attending remotely:
  - Identify yourself at start of meeting and when you speak
  - All votes must be by Roll Call Vote
  - If the audio or video is interrupted the Chair should suspend the discussion until it is operational again
- 2024 SB 137 – Live audio and video webcasts of school board meetings required (July 1, 2024)
  - Must allow for written or verbal comments
  - Recordings must be posted on website for 3 years

Open Meetings Act -- Best Practices

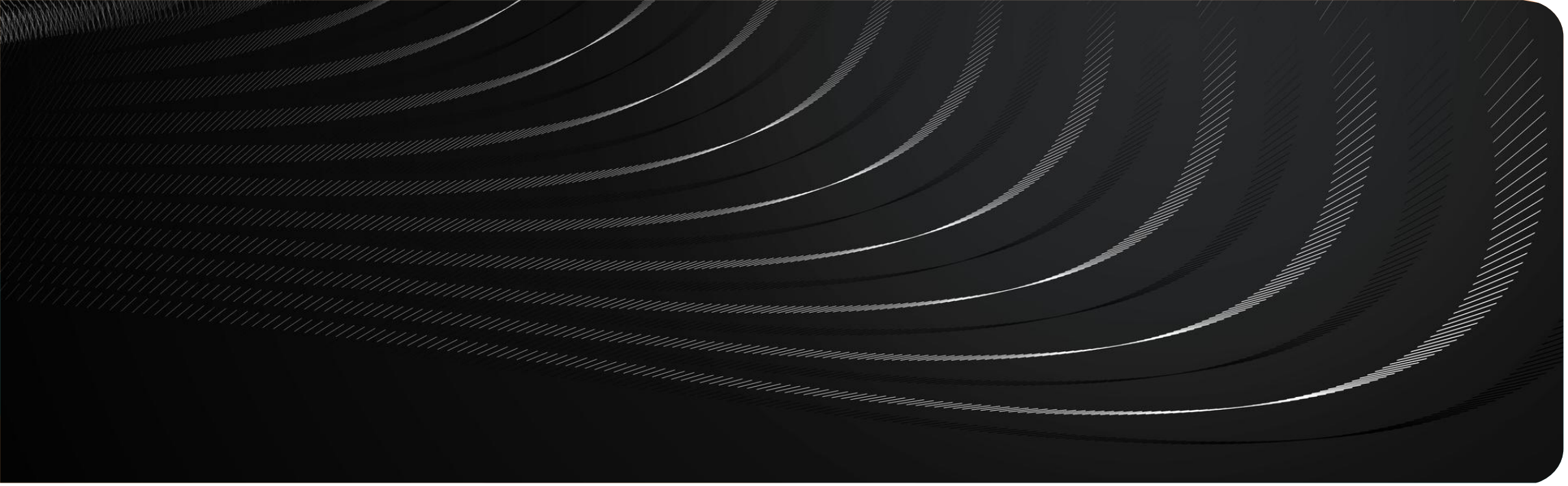
- Meeting Notices and Agendas
  - Publish by 5pm Friday the week before
  - Include copies of board packet online
  - No additions, only noted deletions, after publishing
- Use specific language in agenda items, including Executive Session
- Post draft meeting minutes online within 10 days, until final minutes are adopted
- NO rolling quorums!



Inspection of Public Records Act (IPRA)

- Public has the right to inspect public records except for limited exclusions
- Response Timelines:
  - Immediately or as soon as practical but not later than 15 days
  - Enforcement action brought by Attorney General, District Attorney, or requestor
  - Penalties: Damages up to $100 per day, costs, and attorney's fees

Your search must find all documents

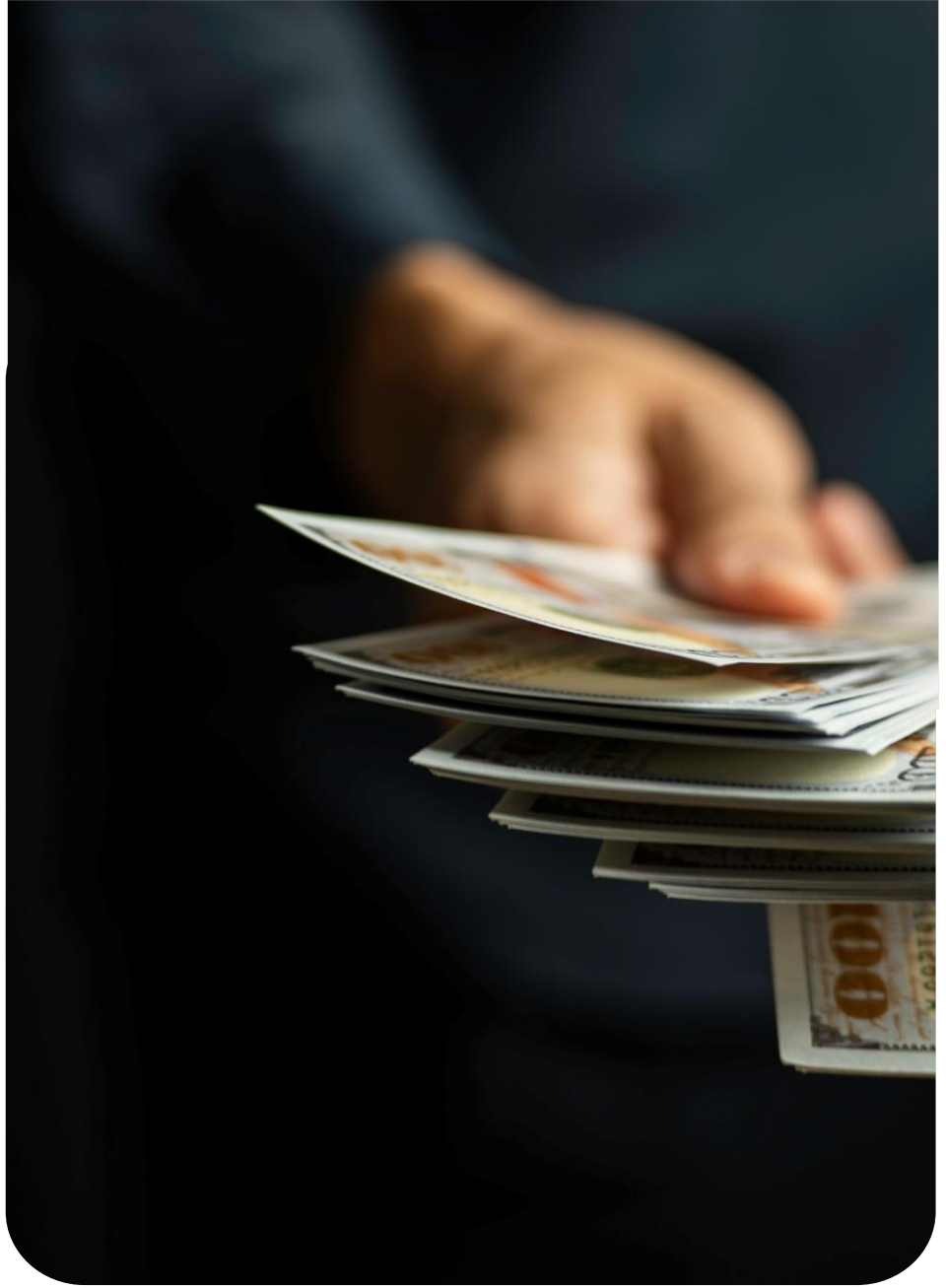


IPRA Best Practices

- 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 phone
- Written communication should always be professional
  - Write like a 3rd party is going to read your emails
- District should have a centralized public records custodian, with records as a primary duty

Potential Cost to Districts

- Money is becoming the driving force behind IPRA litigation
  - $130,000 paid by the NM Secretary of State's office
  - $90,334.49 awarded against Dona Ana County
  - $397,659.02 awarded against the NM Governor's office
- *Plus, you are paying your attorneys also!*
  - Typically, no NMPSIA coverage





A reporter asks for all your texts between you and other board members. Fair? But it's your personal phone.

You have had an employee communicating with you about his complaints about his principal. The principal sends an IPRA request for all texts, emails, and voicemails. Is there any exception that protects them?

Family Educational Rights and Privacy Act (FERPA)

- What rights does FERPA guarantee for students?
  - Right to consent and limit the disclosure of the personal education records
  - Richt to inspect and review their personal education records
  - Right to seek to amend education records
  - Right to file a complaint with the Family Compliance Office in the US Department of Education

At the K-12 and college levels, these student rights transfer from students to parents, regardless of the age of the student, as long as parents can show their child is a dependent.

What do you need to know about FERPA?

- You may have access to confidential student records, and you cannot share any such information
- An education record is defined as:
  - Any information provided by a student to the school for use in the educational process, including demographic information, admission records, grades, class schedules, printed class list, graded tests
  - Includes disciplinary investigations and actions
  - Any record from which a student can be personally identified
  - A record can be in any format: computer print-out, class list on a teacher's desk, handwritten note, video, etc.



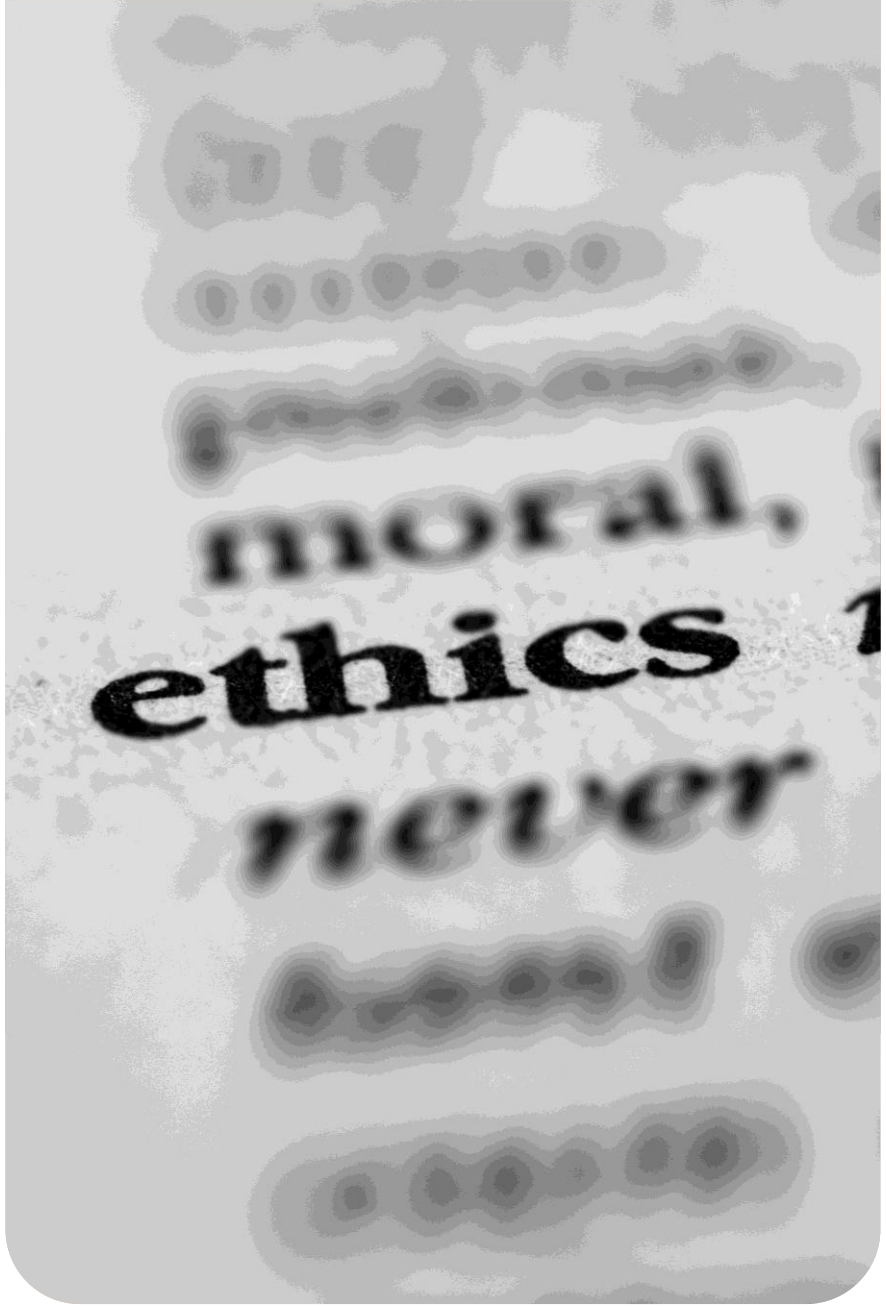
Your grandchild is having issues with another student in his 6th grade class. You think the principal is allowing this even though he knows the student has a history of violence. You meet with the superintendent and ask about the student's history. Issues?

Your board is required by policy to hear student expulsion hearings. You learned in the hearing that this student is in special education, and you learn about the student's IEP. That night you tell your spouse about the hearing. Issues?

NM School Code Ethics Laws Applicable to School Board

- 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"
- Nepotism Prohibited
  - Superintendent may not employ board or superintendent family members (spouse, parents, children, siblings, in-laws of each)
    - Board may waive rule for family members of superintendent





NM School Code Ethics Laws Applicable to School Board

- Prohibiting sales to school districts and personnel
  - 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
- Prohibition on the sale of use of student, faculty, and staff lists in direct marketing



You are from a small district where it is hard to recruit teachers. The superintendent tells you that he wants to hire your daughter-in-law. Issues?

You played football in college and think that you could help the district's struggling football program as an unpaid volunteer. You ask the football coach, and he thinks it's a great idea. Issues?

You sell life insurance and have always sold to school employees. You are starting your new term as a school board member on January 1st and it is your livelihood. Issues?

You have had it with the high school principal and tell the superintendent that you want the principal fired . Issues?

NM Governmental Conduct Act (GCA)

- General rules for public officers or employees
  - 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
  - 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 a political activity
  - Not use of governmental property for non-authorized purposes
- Official Acts for personal financial interest prohibited
  - 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 performance of public duties
  - Disclosure of outside employment (officials and employees)
  - No use of confidential information for private gain
  - Restrictions on contracts involving current officers or employees and families
  - Prohibited bidding if participated in preparation of bid

NMGCA (cont.)

- Other important provisions:
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Your brother is suing the school district. As a board member, you are entitled to participate in the executive session with school attorneys about the lawsuit. What do you do?

You have a long-time friend who is submitting for a contract to build fences for the district. The contract is up for a vote at the next meeting. Options?

The board wants to buy a parcel of land from your father-in-law. You opt out of any board meetings, but you let him know what you think the board's negotiating position will be.



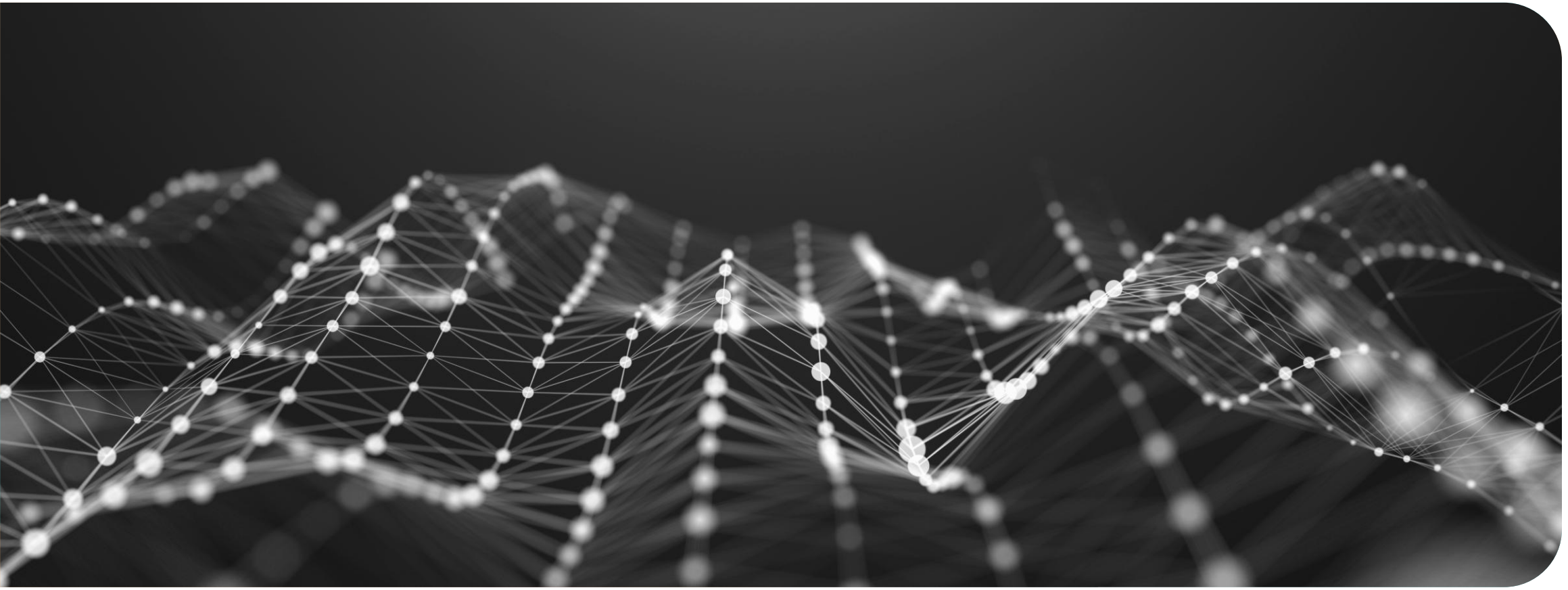
You meet with your child's teacher about classroom problems and tell her, "I can make your life really hard if this isn't dealt with."

You are at the football game and are asking employees to contribute to your campaign.

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
- Consult your district's counsel before acting on ethical issues





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Thank you