

# **Sheridan Public Schools**

## **Board of Trustees**

### **Board Responsibilities Workshop**

**November 8, 2011**



**Montana School Boards Association  
863 Great Northern Blvd #301  
Helena, MT 59601  
406.442.2180 or FAX 406.442.2194  
[www.mtsba.org](http://www.mtsba.org)**

## Board Direction and Planning

**November: Legal Counsel, Kris Goss:** Training on Boardmanship and public interaction during a Board/Committee meetings.

### Public Comment

- How to handle questions from the floor
- How to handle complaints from the floor
- How to handle public during a work session
- When to engage public
- How to disengage public during work session
- What the public can discuss with a trustee outside the Board room
- Uniform complaint procedure
- General Board action during a meeting/working committee

### Job Duties of a Trustee

- Set Educational goals for the District
- Create policy that ensures educational success
- Hire and work with a superintendent that holds to the same educational goals
- Create an environment that allows the superintendent, principals, and teachers to design educational objectives to meet the district goals

Public Comment:

If comment or question is posed that relates to **certified teacher:**

Say: Thank you for your comment but this discussion cannot occur. This personnel matter is governed by District Policy and the Sheridan Federation of Teachers Union Collective Bargaining. Concerns about teachers should be raised with the teacher or submitted to the District through the Uniform Complaint Procedure.

If the comment or question posed relates to **classified staff:**

Say: Thank you for your comment but this discussion cannot occur. This is a personnel issue that should be addressed by Superintendent Harding. Please submit a formal complaint through the Uniform Complaint Procedure.

If the comment or question posed is about a **student** issue:

Say: Thank you for your comment but this discussion cannot occur. This is a student issue that is governed by State and Federal Student Privacy Laws. Please make an appointment to see Superintendent Harding.

If the question posed is about **building/grounds/technology/ curriculum:**

Say: Thank you for your comment but this item did not appear on today's agenda. As such, a full discussion cannot occur at this time. This is an issue that can be addressed by Superintendent Harding. Please make an appointment to see her.

If a comment is made about **building/grounds/technology/ curriculum:**

Say: Thank you for your comment but this item did not appear on today's agenda. As such, a full discussion cannot occur at this time. The Board will take your comment under advisement and direct the appropriate District personnel to investigate that matter. No further discussion can occur at this time.

If the question posed is about **activities:**

Say: Thank you for your comment but this item did not appear on today's agenda. As such, a full discussion cannot occur at this time. This is an activities question. Please make an appointment to visit with our Rod Stout our Activities Director.

If a comment is made about activities that does not mention a **staff member or student:**

Say: Thank you for your comment but this item did not appear on today's agenda. As such, a full discussion cannot occur at this time. The Board will take your comment under advisement and direct the appropriate District personnel to investigate that matter. No further discussion can occur at this time.

If a comment is made requesting an item be place on a **future agenda:**

Say: Thank you for your request, the Board will take your comment under advisement. No further discussion can occur at this time.

If the question posted is about **school policy**

Say: Thank you for your comment but this item did not appear on today's agenda. As such, a full discussion cannot occur at this time. Please make an appointment to see the superintendent or the chairman of the Board Jeff Marsh.

### **When Does an Individual Trustee Have Official Authority?**

It is the Board as a whole that has authority over the school district. It can come as a shock to a trustee, but an individual trustee has authority on his or her own only to the extent that the Board specifically authorizes such authority. Because a school board (not each trustee thereof) is a governmental body, it can take action only by majority vote at a public meeting. The individual board member has no formal authority beyond expressing an opinion, debating an issue and casting a vote at meetings. The power to debate, discuss and vote, however, can be compelling if properly exercised!

Because he or she casts only one vote, a trustee can become frustrated with the pace or lack of change and turn to other options in seeking a change. Although other options may seem attractive at first blush, they will lead to division, and run a strong risk of reducing the trustee's effectiveness and credibility with other members of the Board. The end result of such action is often division and dysfunction on the Board. With the visionary elected leaders mired in controversy, the prospects for positive change in the district under such circumstances become dim at best.

A trustee who hopes to bring about change must do so within the existing legal and organizational framework of the Board. Many a good idea has died because it was not properly presented to the full school board or because some minor part of it presented avoidable legal difficulties. Focus your energies on establishing healthy lines of communication with the other

members of your Board, bring your good ideas to the Board for discussion and deliberation, and your efforts will pay dividends in the final analysis.

**The Power of a Trustee Exists Only to the Extent That the Board Has Authorized It**

A Board member who attempts to speak for the total Board, direct members of the staff or make other individual decisions without Board authority is acting outside the law. In fact, the only time a trustee is immune from personal and individual liability is when he or she is acting in an official capacity, at a meeting of the Board or a Board Committee, or pursuant to motion of the Board or a duly-appointed committee.

The following sections of law clearly specify the authority of the Board vs. the authority of an individual trustee, as well as the obligation of all trustees on the Board to act collectively.

**20-3-301. Election and term of office.**

(2) . . . . When exercising the power and performing the duties of trustees, the *members shall act collectively* and only at a regular or a properly called special meeting.

**20-3-322. Meetings and quorum.**

. . . .  
(4) *Business may not be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting.* A quorum for any meeting is a majority of the trustees' membership. All trustee meetings must be public meetings, as prescribed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

When a trustee is acting in a manner contrary to the provisions above, he or she loses the personal and individual immunity ordinarily enjoyed when working in concert with the Board. A trustee acting on his or her own, without and/or contrary to the authority of the Board as a whole, runs a significant risk of incurring individual and personal liability for such actions. Section 20-3-332, MCA, provides in relevant part as follows:

**"20-3-332. Personal immunity and liability of trustees.** (1) When acting in their official capacity at a regular or special meeting of the board or a committee of the board, the trustees of each district are individually immune from suit for damages, as provided in 2-9-305.

(2) The trustees of each district are responsible for the proper administration and use of all money of the district in accordance with the provisions of law and this title. Failure or refusal to do so constitutes grounds for removal from office

Under this section, a trustee's individual immunity from suit attaches only while acting in an official capacity. Official capacity comes upon approval by a majority of the trustees of the Board. Actions taken individually could lead to individual liability, which is another good reason why individual trustees should work within the structure of the Board as a whole.

**Where, or who, do I go to for information?**

The superintendent is a great source of information, and can usually provide answers to your questions on protocol or procedure, as well as on issues facing the board. Other board members, both current and past, are also good resources, particularly board chairs. MTSBA also is a good source for information and advice, and has staff specialists ready to answer your questions.

**What is the board's role when there are problems with an administrator?**

The only employee who answers directly to the school board in most districts is the superintendent (and the clerk of the district in some cases). Accordingly, if there are concerns about an administrator's performance, the board should raise these concerns with the superintendent in executive session. It is the superintendent who has the responsibility to handle these issues. Take care not to cross the line into micromanaging the relationship with this administrator. It's the superintendent's job to lead and manage the employees in the district. School boards may also have a review process established that enables board members to provide input to the superintendent regarding the other administrators. The superintendent takes your collective input into account, but it is ultimately the superintendent who completes the final evaluation of the administrator.

If there is a problem with the superintendent, on the other hand, the board needs to address the problem through the review process or through informal feedback via the board chair.

**What is the best way to inform superintendent or fellow trustees of disagreement?**

Always treat your fellow board members and the superintendent and administrators with respect. Don't be afraid to disagree on an issue, however. In fact, a discussion about an issue that reflects two or more views may result in a better decision than if everyone agreed from the beginning and the first solution was selected. Be certain you debate the issue, not the person. Demeaning comments or angry discussions do not facilitate effective decision making.

**How do I approach my superintendent or board if I have a suggestion for a change?**

If your suggestion needs to be discussed by the entire board and voted on, it should be added to an upcoming board agenda. Contact the superintendent or the board chair to discuss your idea and have it either put on the agenda or referred to committee.

**Is it ok to talk to district administrators and staff?**

In addition to the superintendent, you will come in contact with district employees, including administrators, teachers and other staff members. While there's nothing wrong with talking to district staff, keep in mind the chain of command. For example, teachers report to principals; principals report to the superintendent; the superintendent reports to the board. If you have a request for information, you should ask the superintendent unless he or she indicates otherwise.

### **Can I talk to board members outside the board meeting?**

Yes, the state's Open Meetings Law generally permits you to converse with your fellow board members outside of board meetings, so long as you are not doing so among a quorum, discussing business of the district. As with the superintendent, you should try to establish productive relations with each of the other board members. Talking with them in social situations or at school sporting events, for example, will give you an opportunity to learn about them outside of the school board. Be careful, however, that you do not discuss any school board matters if you have a quorum – a simple majority (more than half) of the total number of members on your board. This would constitute a meeting in violation of the state's Open Meetings Law. You should ensure that such informal chats do not substitute for full deliberation in a public meeting.

### **What can I say – or not say – to parents and friends about school issues?**

School board business that is discussed in executive session or relates to confidential matters (such as an employee personnel issue or student discipline issue) should never be discussed with anyone other than another board member or the superintendent. A good rule of thumb is to discuss only items that have been made public at a school board meeting. Adhering to this rule of thumb will go a long way in maintaining trust with the superintendent and the other board members, and protecting staff and the public.

### **How do I respond to a community that questions the school board's decisions?**

It's normal to hear questions about the board's decisions. You will at times find yourself dealing with controversial, complex issues; final decisions may be unpopular. Explain the thought process that went into the decision and why the board arrived at the conclusion it did. Be sure to answer honestly and without emotion. One of your roles as a school board member is to be an advocate for the district. Being asked about board decisions provides an opportunity to promote the positive activities that are occurring in your schools, while at the same time responding to community questions.

### **How do I respond to questions from the media?**

Your board has probably already adopted, at least informally, a policy for responding to the media. Particularly on issues of great sensitivity, a single spokesperson – usually the chair – may be designated to speak for the board. If the media is waiting to do an interview following a board meeting, then it is appropriate to refer the question to the chair or the superintendent. Individual board members should be free to explain their votes or comments they may have made at a public meeting. If you are contacted by a local reporter and you're not prepared or don't have the relevant information, don't say, "No comment." Instead, tell the reporter you'll get an answer and get back to them. Ask what kind of deadline they have, and then promptly follow through. In all situations, be honest – *never lie!* Talk in plain English, in short, quotable sentences, but stay on message. Answer the question that was asked. Don't feel compelled to offer more information than needed to answer the question. Be friendly and warm. If you are on camera, remember that body language is as important as what you say.

**How should I respond to parental complaints?**

The best way to respond to parental complaints is to be a good listener. This allows you to ask questions to understand the situation better. Be careful, though, that the parent does not interpret your questions or comments as an indication of future board action. Once parents have shared their complaints with you, try to give them guidance on how to get their concerns addressed through proper channels. It's safe to say that most of the complaints you'll hear are administrative in nature and not policy issues. As such, they don't belong on the board's table. It is not your responsibility to solve each parent's problem. By all means listen to them, but then make sure they know to contact the school staff to have their concerns addressed. You owe the superintendent and staff the opportunity to respond and to support them if they are properly following board policy.

**What role does the superintendent play at school board meetings?**

The superintendent is a key person at all school board meetings. The superintendent and chair, in coordination with the clerk, plan the meeting agenda together, but the superintendent makes certain the meeting room is set up as required and all tools that are needed are available, such as a tape recorder, easel, overhead projector, microphone, etc. Each item on the agenda is introduced by the chair; however, for discussion or action items, the superintendent or a designee is often asked to explain the issue. The superintendent's opinion or recommendation should be solicited before a vote is taken.

**Who is responsible for setting the agenda?**

The superintendent and board chair are responsible for setting the agenda according to most boards' policies. In some districts, the vice chair also participates in the pre-agenda meeting. This enables them to be prepared for the board meeting, as well as suggest topics to be covered. If there is no policy, the legal authority to set the agenda belongs to the chair, who can share that authority with others.

**How can I get my issues onto the board agenda?**

The best way to get an item onto the board agenda is to contact the superintendent or chair prior to the posting of the agenda. If you have an issue that comes up after the agenda has been distributed, you may still have an opportunity to have it added to the agenda, depending on your district's policies and the amount of time remaining before the meeting. Be careful not to spring any surprises, though. If a decision is not needed immediately, it is better to have the topic added to the agenda for a subsequent meeting, when board members will have sufficient time to become informed and prepared to discuss the topic.

**Is the public entitled to notice?**

Montana law does not enumerate any specific requirements for where notice of school board meetings must be posted or when such meetings must be posted; however, the notice

requirements specific to trustees provide guidance with regard to providing notice to the public. These notice requirements should, however, be viewed as minimum requirements. Schools can always give more notice than that required but not less.

- (1) **Where to Post/Publish Notice.** The law requires that school boards provide reasonable notice of meetings. Although publication in a newspaper is not required, such publication does create a presumption of sufficient notice.
- (2) **When to Post/Publish Notice.** The law does not provide for specific time requirements of when posting or publishing of notice of school board meetings must be accomplished. However, with regard to regular board meetings, District policy should specify how far in advance of school board meetings notice will be provided to the public. As for special meetings, because the law requires forty-eight (48) hours written notice to the trustees, this is the general rule of thumb that MTSBA recommends notice be provided to the public. This is a minimum standard.
- (3) **Agendas.** The law requires that the contents of an agenda contain enough information to enable the reader to understand the subject matter to be discussed at the meeting. The agenda for each meeting should be as specific as possible and should give the public sufficient information about what is intended to be discussed.

### **Does public comment only pertain to agenda items?**

The issue of the public's right of participation is addressed in the Montana Constitution, as follows:

**Article II, Section 8. Right of participation.** The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

The constitutional right of participation, therefore, is whatever is provided by statute, and no more. Montana law specifically requires agencies to “develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public.” Most of the Montana Supreme Court cases on this issue focus on the requirement that a board provide reasonable notice of meetings. Section 2-3-104, MCA, provides that a public agency is considered to have complied with the requirement of providing reasonable opportunity for public input, if “a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution.” School boards are required to adopt procedures for permitting and encouraging the public to participate in decisions that are of significant interest to the public. The right of participation is not unlimited.

During the 2003 Montana legislative session, the public participation statute was amended to provide for specific “public comment” on items that are not listed on the board's meeting agenda. The law specifically states that the agenda for a meeting of a public agency must contain a section on “public comment.”

The law specifically states that the time reserved for public comment is governed by the following:

- (1) Matters within the jurisdiction of the board but not before the board or on the agenda;
- (2) No action may be taken on a matter raised during public comment as proper notice has not been provided;
- (3) Matters raised by the public must be included in the meeting minutes; and
- (4) Purpose of commenting on public matters.

The intent of these changes was to give the public an opportunity to interact with their board on issues that may come before the board. The public comment agenda item is not designed to be a forum for the public to discuss any issue they may be concerned about. Their comments should be confined to concerns related to district issues or school business. The public comment period is not a time for the public to discuss matters on the board's agenda. Comments on matters presently before the board should be taken during discussion that specific agenda item. The law is designed to prevent multiple comments from the same citizen on the same topic.

Some guidelines have emerged from the case law addressing this issue. Boards are permitted to limit comments in certain ways. The Montana Supreme Court has stated that a time limit can be placed on individual citizens during the public comment period. Many jurisdictions have permitted a 3 or 5 minute limit per person. The board is also permitted to confine all non-agenda discussion to one section of the agenda. The board may also ask a commenter to limit their discussion to issues that are related to district issues. Boards should adopt a policy governing the public comment period and include the policy with all board meeting materials. A summary of the policy can be read prior to the comment period at each meeting.

It is the responsibility of the board chair to enforce the rules governing public comment. If a commenter moves to topics that are not related to education a board chair may ask the person to stay on topic. If a time limit has been adopted, the board chair can notify the person that they have exceeded their allotted time. If a citizen attempts to comment on an item before the board the board chair can invite that citizen to return to the podium when that item is being discussed. A board chair also has the power to enforce the rules of basic decorum. Outrageous or disruptive behavior is inexcusable during any portion of a board meeting and the public comment period is no exception. A person that is acting inappropriately or using offensive, obscene, or hostile language can be asked to sit down. If a member of the public persists in disrupting a board meeting it is a violation of state law punishable by a \$100 fine or 10 days in jail or both.

### **What if a member of the public complains at a board meeting?**

If an individual raises a general complaint during a board-established public comment period, it's best to listen to the individual and then say that the board will take the issue under advisement. You can expect the board chair to take control of this situation. Your board should not engage the individual in public debate during the meeting. Your board chair will also have to be mindful to protect individual privacy rights that may be implicated by such a presentation.

If a member of the public wished to be heard on a topic not appearing on the agenda, they should be advised of the District's complaint procedure. If the procedure is followed properly, they may be given a chance to be heard at a future board meeting.

### **Can I ask questions during the board meeting?**

Take time to review materials in your board packet and ask for any clarifications from the superintendent or board chair prior to the meeting. Certainly as the discussion of an item ensues, other questions may occur to you that you have not previously asked.

### **How can I ask questions at a board meeting and still adhere to the "no surprises" rule?**

If you want to ask a question that you anticipate being controversial, you should alert the superintendent or chair or both ahead of time. They can help you decide if there is a better way to address the issue or get information. If your question is to clarify an issue or if it is prompted by the discussion, then it is appropriate to ask it at the board meeting, as long as you don't broach topics properly discussed in executive session. If you have a question that may require collecting data or information not already in your board packet, it would be wise to let the superintendent know prior to the meeting so that he or she can come prepared to answer your questions.

### **What if I disagree with a board decision?**

If you don't agree with a decision that the board has made, you may express your position for the record, but it is still your responsibility to support the final decision of the board. Your opportunity to show your disagreement was during discussion and through your vote, which is public record. If you are asked about the decision, you should explain why the board voted the way that it did. It is permissible to say how you voted and why; however, you should not do it in a way that undermines the board's majority decision. As long as your comments remain factual and do not evaluate the board action, you are showing support for the decision. You should also direct questions to the board's spokesperson if one has been assigned to that particular issue.

### **When are issues serious enough to bring to the board?**

You are the link between the school district and the community. You should be aware of issues confronting other districts that could become an issue in your district. You must also filter what you bring to the board for consideration to be sure it truly requires board attention. If you are hearing from a number of people in your community about concerns, you might want to check with other board members to see if they are hearing the same concerns. An issue or activity that is counter to board policy should be brought to the attention of the chair or the superintendent. When in doubt you should feel free to discuss concerns with the superintendent and the chair at any time. They can help decide if the board needs to be proactive about the issue.

### **How do the school board's responsibilities differ from the superintendent's?**

The school board is the district's board of directors and is responsible for establishing goals, setting policy and overseeing resources for the school district. The superintendent – the district's

chief executive officer – works for the school board and is the person who translates the policy into action. Consistent with the goals established by the school board, the superintendent and staff make the day-to-day decisions that affect the operation of the school district, deploying resources, assigning staff and documenting results.

**Is it ok to call the superintendent? How do I communicate with the superintendent?**

You need to establish a productive working relationship with your superintendent. To do this, you will have to talk to that individual. If you have questions, it is better to call the superintendent and discuss them before the board meeting rather than surprise him or her at a public meeting. If these questions are concerns or relate to negative feelings from the community, the superintendent will appreciate knowing about these in advance of the board meeting so that he or she can come prepared to address them. It is appropriate to call the superintendent, set up a meeting to discuss questions, or even e-mail him or her for simple questions or requests.

**What are penalties for an open meeting law violation?**

**A. Timelines.** If it is determined by a court of law that the board violated the open meeting laws, any and all decisions may be declared void. The complaining party must file the action in district court within thirty days of the date on which the plaintiff or petitioner learns, or reasonably should have learned, of the decision.

**B. Attorneys' Fees.** If the board is sued for violation of the open meeting laws and the complaining party prevails, i.e., the court determines that the board did, in fact, violate the open meeting laws, the court has the discretion to award costs and attorneys' fees.

**C. Standing.** In order for a member of the general public to pursue an open meeting act violation against a public agency, the individual must establish more than taxpayer and resident status. Thus, the individual will be required to make a showing of some unique injury or personal stake in the issue being challenged distinguishable, from the community in general.

**D. Personal Immunity.** It is extremely important for individual trustees to recognize the scope of their authority and to act within the confines of that authority. When individual trustees are acting in their official capacity they are immune from personal liability. This means that when trustees are participating in regular or special board meetings, they are shielded from personal liability. If a board member is named individually in any lawsuit as a result of acting within the course and scope of the board member's authority, the school district will defend and indemnify the trustee. On the other hand, if an individual trustee is acting outside the course and scope of the trustee's authority, the trustee is not immune from personal liability and is not entitled to the defense and indemnification provisions of the law.