

Sheridan Public Schools

Board of Trustees

Board Responsibilities Workshop

December 13, 2011



**Montana School Boards Association
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Confidential Information

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.

Student Records. One frequent area of concern is school board member access to student records. Under the Family Education Rights and Privacy Act of 1974 (hereinafter FERPA), a school district is limited in divulging student records to individuals with a legitimate educational interest in such records. The school district is required to develop criteria for determining what constitutes a legitimate educational interest and must include such information in its annual notification. Although there are certainly times when a school board member has a legitimate interest in school records, it is not guaranteed absent a specific reason for access.

Since FERPA protects the privacy of student education records and information, it may not be used by one student or their parents to obtain education records or information about another student. Education records that contain information protected by FERPA regarding more than one student must be edited before disclosure to remove all records and information except “such part of such material or document as relates to such student” As a practical matter, such editing will entail removing all documents that are not education records related to the requesting student. Redacting personally identifiable information about other students may also be required.

School districts may disclose to others, upon the written consent of the student’s parents, a student’s education records. This release may be conditioned upon a copy of the released records being provided to the parents or the student. The written consent must specify the records to be released, the reasons for such release, and the persons to whom the release is authorized.

Employee Records. The level of individual access to school district records, including personnel records, is limited. Generally, individual school board members and individual citizens have no authority under law to review private personnel documents.

Occasionally, resolution of issues resulting from the conflict between the right to know and the right to privacy occurs under the framework established by the Montana Supreme Court. This privacy test is construed by the Supreme Court as follows:

Article II, Section 9 of the Montana Constitution guarantees all persons the right to examine documents of all public bodies or agencies of the Montana State government and its subdivisions except where “the demand of individual privacy clearly exceeds the merits of public disclosure.” Applying Article II, Section 9 involves a three-step process. First, does the constitutional provision apply to the particular public body or political subdivision against whom enforcement of the provision is sought? Second, are the documents at issue documents of public bodies subject to public

inspection? Third, if the first two requirements are met, is an individual privacy interest involved and, if so, does the demand of that individual privacy interest clearly exceed the merits of public disclosure?

T.L.S. v. Montana Advocacy Program, 2006 MT 262, ¶ 23, 334 Mont. 146, 144 P.3d 818

The privacy test must be applied by public officials when a request is made to determine whether documents or information should be disclosed or withheld from the public. If uncertainty exists about how any step of the Privacy Test should be analyzed, the public official should consult an attorney for guidance.

Publicly Divulging Confidential Information. When a school board member publicly divulges confidential information, the consequences can be devastating. By virtue of his or her position, a school board member is often advised of information that is both disputed and highly confidential (allegations of wrongdoing by a staff member, for example). Often that information is conveyed in an executive session of the school board, convened upon a finding that there is an issue of individual privacy that must be protected, to hear competing claims as to what an employee has or has not done. The allegations can often be hotly contested and may not necessarily be resolved with a public finding of fault or exoneration. When a school board member subsequently divulges information learned in such a setting, the school board faces a significant risk of liability regardless of what it does. Two primary claims that can be made include the tort of defamation and the tort of invasion of privacy. By convening an executive session, the school board arguably meets one of the elements of the tort of invasion of privacy - the private nature of the matters discussed. Even if the information divulged by the school board member is true, thereby avoiding liability for defamation, the board can incur liability under the tort of invasion of privacy.

Board/Administration Cooperation

The only employee who answers directly to the school board in most districts is the superintendent. 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.

Board Unity

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.

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.

Controversial Matters

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.

Uniform Complaint Procedure

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.

Sheridan Public School District 5 Policy 1700

Uniform Complaint Procedure

The Board establishes this Uniform Complaint Procedure as a means to address complaints arising within the District. This Uniform Complaint Procedure is intended to be used for all complaints except those governed by a collective bargaining agreement.

The District requests all individuals to use this complaint procedure, when the individual believes the Board or its employees or agents have violated the individual's rights under: (1)

Montana constitutional, statutory, or administrative law; (2) United States constitutional, statutory, or regulatory law; or (3) Board policy.

The District will endeavor to respond to and resolve complaints without resorting to this formal complaint procedure and, when a complaint is filed, to address the complaint promptly and equitably. The right of a person to prompt and equitable resolution of a complaint filed hereunder will not be impaired by a person's pursuit of other remedies. Use of this complaint procedure is not a prerequisite to pursuit of other remedies, and use of this complaint procedure does not extend any filing deadline related to pursuit of other remedies.

The Superintendent has the authority to contract with an independent investigator at any time during the complaint procedure process. Within fifteen (15) calendar days of the Superintendent's receipt of the independent investigator's report and recommendation, the Superintendent will respond to the complaint and take such administrative steps as the Superintendent deems appropriate and necessary.

Level 1: Informal

An individual with a complaint is first encouraged to discuss it with the appropriate teacher, counselor, or building administrator, with the objective of resolving the matter promptly and informally. An exception is that a complaint of sexual harassment should be discussed directly with an administrator not involved in the alleged harassment.

Level 2: Building Administrator

When a complaint has not been or cannot be resolved at Level 1, an individual may file a signed and dated written complaint stating: (1) the nature of the complaint; (2) a description of the event or incident giving rise to the complaint, including any school personnel involved; and (3) the remedy or resolution requested. This written complaint must be filed within thirty (30) calendar days of the event or incident or from the date an individual could reasonably become aware of such event or incident.

When a complaint alleges violation of Board policy or procedure, the building administrator will investigate and attempt to resolve the complaint. The administrator will respond in writing to the complaint, within thirty (30) calendar days of the administrator's receipt of the complaint.

If either the complainant or the person against whom the complaint is filed is dissatisfied with the administrator's decision, either may request, in writing, that the Superintendent review the administrator's decision. (See Level 3.) This request must be submitted to the Superintendent within fifteen (15) calendar days of the administrator's decision.

When a complaint alleges sexual harassment or a violation of Title IX of the Education Amendments of 1972 (the Civil Rights Act), Title II of the Americans with Disabilities Act of 1990, or Section 504 of the Rehabilitation Act of 1973, the building administrator may turn the complaint over to a District nondiscrimination coordinator. The coordinator will complete an

investigation and file a report and recommendation with the Superintendent. A coordinator may hire, with the approval of the Superintendent, an independent investigator to conduct the investigation. Within fifteen (15) calendar days of the Superintendent's receipt of the coordinator's or independent investigator's report and recommendation, the Superintendent will respond to the complaint and take such administrative steps as the Superintendent deems appropriate and necessary. If either the complainant or the person against whom the complaint is filed is dissatisfied with the Superintendent's decision, either may request, in writing, that the Board consider an appeal of the Superintendent's decision. (See Level 4.) This request must be submitted in writing to the Superintendent, within fifteen (15) calendar days of the Superintendent's written response to the complaint, for transmission to the Board.

Level 3: Superintendent

If either the complainant or the person against whom the complaint is filed appeals the administrator's decision provided for in Level 2, the Superintendent will review the complaint and the administrator's decision. The Superintendent will respond in writing to the appeal, within thirty (30) calendar days of the Superintendent's receipt of the written appeal. In responding to the appeal, the Superintendent may: (1) meet with the parties involved in the complaint; (2) conduct a separate or supplementary investigation; (3) engage an outside investigator or other District employees to assist with the appeal; and/or (4) take other steps appropriate or helpful in resolving the complaint.

If either the complainant or the person against whom the complaint is filed is dissatisfied with the Superintendent's decision, either may request, in writing, that the Board consider an appeal of the Superintendent's decision. (See Level 4.) This request must be submitted in writing to the Superintendent, within fifteen (15) calendar days of the Superintendent's written response to the complaint, for transmission to the Board.

Level 4: The Board

Upon written appeal, the Board will consider the Superintendent's decision in Level 2 or 3. Upon receipt of written request for appeal, the Chair will either: (1) place the appeal on the agenda of a regular or special Board meeting; or (2) appoint an appeals panel of not less than three (3) trustees to hear the appeal and make a recommendation to the Board. If the Chair appoints a panel to consider the appeal, the panel will meet to consider the appeal and then make written recommendation to the full Board. The Board will report its decision on the appeal, in writing, to all parties, within thirty (30) calendar days of the Board meeting at which the Board considered the appeal or the recommendation of the panel. A decision of the Board is final, unless it is appealed pursuant to Montana law within the period provided by law.

Level 5: County Superintendent

When a matter falls within the jurisdiction of a county superintendent of schools, the decision of the Board may be appealed to the county superintendent by filing written appeal within thirty (30) calendar days of the Board's decision, pursuant to Montana law.