Rights, Risks and Responsibilities of School Board Members

New School Board Member Academy
Board Authority

- Boards of Education operate as Corporate Bodies
- What is the authority of an individual board member?
It’s Good to be King!

Board

Superintendent
Corporate Identity & Legal Authority

- School board is a corporate body that oversees and manages district
- Purpose and authority found in Education Law and other applicable state laws
  - No inherent powers- only those expressly delegated or reasonably implied there from
- Transact business by adopting resolutions at duly convened meeting
  - Quorum
  - Majority of the whole board needed to adopt resolutions
Authority of Individual Members

• No inherent powers by reason of holding office
  – No greater rights/authority than qualified voter unless delegated authority by board for particular purpose.

• Expressing personal views

• Calling special meetings
  – Entitled to 24 hrs. notice of meetings (may be waived in emergency)
Free Speech Rights of Superintendents & Board Members
Defamration Actions

Defenses to Defamation Actions

Truth

Pure Opinion
Witches and Superintendents Don’t Mix

Board Members do not have the right to seek hit men or witches to kill superintendents
School Board Ethics

• Statutory conflicts of interest occur when board member may benefit personally from decision made utilizing official authority
  • Deemed to have interest (pecuniary benefit) as result of contract with district

• Interests prohibited by law
  – Contract with district where board member exerts power or appoints someone who does
  – Interest by chief fiscal officers, treasurer or employee in a bank used by district
School Board Ethics

- Exceptions to conflicts of interest (p. 5)
  - Contract of employment between a school district and board member’s spouse, minor child or dependent
  - Board member is merely an employee of the entity with which the district/board is contracting, & his/her compensation not tied to the contract
  - CBAs
    - Contract already in existence when board member was elected (but can’t renew)
  - Contract between district and corporation in which school official holds less than 5% of stock
School Board Ethics

• Test to determine if conflict of interest:
  – Is there a contract?
  – Does the board member have interest in contract?
  – Can the board member exercise any of his/her authority with respect to contract?
  – Is there an exception?
School Board Ethics

• Public disclosure of conflicts required

• Required by law to adopt code of ethics that sets standards of conduct
  – Must include notice of types of conduct prohibited by law
  – Board policy may compel disclosure of conflict even if not prohibited by law, to avoid appearance of impropriety
School Board Ethics

- Consequences for Violations:
  - Misdemeanor to knowingly and willfully violate the conflicts of interest laws
    - Fine/ Restitution if school district victim of larceny
  - Subject to removal by commissioner
  - Contract is void and unenforceable
Confidentiality

• Board members and officers must keep confidential information acquired by them in their duties

• What is “confidential”? (not defined by GML)
  – Commissioner and courts define case by case
    • Information discussed in executive session
    • Information made confidential by law (ex. FERPA)
Incompatibility of Office

• Statutory prohibitions: expressly prohibits school board members from simultaneously holding certain offices or positions of employment while board member (p. 11)

• Common law prohibition:
  – One position is subordinate to the other (can’t be your own boss)
  – Functions of the 2 offices are inherently inconsistent
Liability of School District

- School district liable as corporate entity for:
  - Negligence (breach duty of care owe to another)
  - Breach of contract
  - Wrongful actions of board members
  - Negligence of its employees
Liability of Board Members

• Board members immune from suits when carrying out official functions, if:
  – Not exclusively ministerial
  – Involve exercise of discretion or judgment

• District must defend and indemnify board members & employees from all reasonable costs/expenses for actions arising out of the performance of their duties

• Exceptions: action brought by district & criminal actions
Civil Rights Liability

• Section 1983 – Civil Rights Liability
  – Plaintiff can bring a lawsuit against a school district or official for violation of a federal right, where otherwise there would be no remedy for the violation

• Liability based on whether
  – individual suing enjoyed a protected right,
  – the school/employee deprived him of the right, and
  – the cause of the deprivation was an official practice, policy or custom
Discipline & Removal

• No authority for a school board or the commissioner to issue censures or reprimands

• Removal from office- 2 processes
  – By the commissioner
    • Willful violation or neglect of duty or willful disobedience of law, decision or order of commissioner
  – By the school board
    • Official misconduct
Role of School Attorneys

- District discretion choose attorneys
- One counsel for everything or retain specialists in certain areas
- Potential duties
  - Negotiations, tax certiorari proceedings
  - Drafting individual employment contracts
  - Special education, student discipline
  - Attending board meetings/daily guidance
Selecting Attorney

• Not required by law to appoint attorney
  – If do attorney is not district officer

• Professional services exception to competitive bidding - may use RFP

• Annually report to AG, comptroller, SED all lawyers providing services to district and
  – If independent contractor or employee
  – All remuneration/compensation paid
School Board Meetings

• Physical presence required to vote (unless using videoconferencing)

• Agendas not required by law but good practice (follow district policy if have one)

• Minutes- record of all motions, proposals, resolutions and other matters formally voted on, the result and how each member voted
  – No secret ballots
Public Participation at Meetings

- Rules for maintenance of order on school property apply to attendance at meetings.

- Public comment period not required; if permit comment:
  - Can set time limits, limit subjects, determine place on agenda for comment.

- Public has right to record meetings for broadcast by audio or video means.
TV News Report: Board Meeting Goes to Hell
Public Comment Session Gone Awry
Open Meetings Law

• The OML applies to:
  – Board meetings, work sessions and planning meetings of the school board
  – Committees consisting solely of board members
  – Committees performing gov’t function

• OML does not apply to:
  – casual encounters or developmental retreats
  – Advisory committees (not solely board members) with no power to take final action

• Notice requirements set out in law
Disclosure of Records to be Discussed

• School district must post to website and provide copies (if requested) of:
  – Any records to be discussed which would be available pursuant to a Freedom of Information Law request.
  – Any proposed resolution, law, rule, regulation, policy or any amendment thereto.
Executive Sessions

• Discussions involving proposed, pending or current litigation
• Collective negotiations
• Medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of particular person or corporation

**Note law allows audit committees to enter executive sessions for additional reasons**
Executive Sessions

• Requires majority vote of board to enter
• No time limit for executive session (PR issues)
• Board may invite guests
  – No formal vote needed, do not have to identify guests in motion to enter
  – Only remain for segment asked to participate in
• Charges against a tenured teacher (3020-a)
  – Discuss and vote on in executive session as per law
Consequences for Violations

• Court determines a violation occurred:
  – Declare public body violated law
  – Declare void any action taken without prejudice to its reconsideration at properly convened meeting
  – Require public body to participate in training sessions by committee on open government
  – Award costs and attorneys fees to prevailing party
Consequences for Breach of Confidentiality

[Section 805-a] clearly prohibits a Board member from disclosing confidential information obtained at an Executive Session of a meeting of a Board . . .”

Executive Session:
Defiant Board Member
Consequences for Breach of Confidentiality

- Appeal of Nett and Raby:
  - Executive sessions are called to discuss matters in confidence.
  - A single board member cannot be allowed to undermine the effective functioning of the school board by unilaterally disclosing information properly discussed in executive session.
School District Records

• FOIL- grants public access to district records (examine or request copies)

• Record: any information kept, held filed, produced by with or for the district in any physical form whatsoever

• Only existing records subject to disclosure

• Certain records are exempt and protected from disclosure
Access to Student & Personnel Records

- **Student records**: protected by FERPA access allowed by parental consent or in delineated situations

- **Personnel records**: access allowed in executive session in limited circumstances
  - Decision on personnel matters (ex. Tenure)
  - Develop/implement personnel policies
Employment of Instructional Staff

• Probationary appointment: any vacant unencumbered position
  – Recommendation of sup’t required
• 3 year probationary period unless
  – Previously tenured (2 years)
  – Regular substitute service of 1 semester or more immediately preceding appointment can receive up to 2 years credit
  • Can only used one of these reductions cannot aggregate
Granting Tenure

- Superintendent’s written recommendation required
  - Board may reject recommendation to grant tenure (except NYC & Buffalo)
  - Cannot refuse to grant based upon philosophical objection to tenure system
- Board vote rejecting tenure is advisory must reconsider at second meeting
  - Must give 30 days notice to teacher of intention to deny tenure and date of meeting
- Tenure becomes effective upon date specified in resolution
Discipline & Termination of Tenured Teachers

• Disciplined only for just cause
  – Misconduct
  – Excessive absence
  – Conduct unbecoming a teacher
  – Pedagogical incompetence

• Due process established by statute
  – Notice of charges and requested penalty
  – May request hearing
Abolition of Positions

• Abolish teaching positions
  – No longer necessary to system
  – Resolution must identify tenure area
  – Notice to teacher (check CBA)
  – Teacher with least seniority in tenure area dismissed

• Similar position created thereafter excessed teacher must be appointed to that position at same rate of pay if record of faithful/competent service
  – Similar means more than 50% of functions same
Bumping & Reappointment

• May exercise bumping rights if accrued seniority in second tenure area greater than least senior teacher in second tenure area

• Exceded teachers placed on Preferred Eligible List (PEL) for reappointment
  – Eligible for reappointment to similar position for 7 yrs
  – Ranked according to seniority in district
  – Must be offered regular substitute positions of at least 5 mos. Duration and part time positions
Teacher & Principal Evaluation

• §3012-c establishes process for evaluation
• Districts & BOCES must annually adopt and implement an APPR plan that describes how APPR requirements will be fulfilled
  – Plans must be approved by the commissioner

• Certain aspects of plan must be negotiated
• Triborough Rule applies if new plan not timely adopted
Teacher & Principal Evaluation

- Evaluations must result in a single composite score that incorporates multiple measures of effectiveness:
  - 20% student growth on state assessments
  - 20% locally selected measures of student achievement
  - 60% locally developed
Employment of Non Instructional Staff

• School board responsible for all appointments in school district in cooperation with local civil service agencies
  – Competitive class appointments

• Non instructional employees entitled to union representation during questioning if appear be subject to potential discipline

• Entitled to due process hearing prior to discipline being imposed
Collective Bargaining

• The Taylor Law grants public schools and employees rights, i.e.:
  – Negotiate terms and conditions of employment free from strikes
  – Recognize or withhold recognition of unions
  – Join (or not join) a union
  – Designate employee organization as representative

• Duty to bargain in good faith
  – Sincere desire to reach agreement
  – Actively participate in negotiations with present intent to find basis of agreement
Triborough Rule

• If a CBA expires before a successor agreement is negotiated all provisions of expired contract continue in full force and effect until new agreement reached.

• Exceptions
  – Ceases to apply if union strikes or causes, instigates, encourages or condones strike
  – Provisions with sunset clauses
Parties to Negotiations

• School Superintendent
  – Technically responsible for negotiations as CEO under Taylor Law

• Board of Education

• Employee Organization (Union)
  – Recognized union has exclusive right to:
    • negotiate on behalf of employees
    • receive dues and agency shop fees
Board of Education’s Role

• Five Basic Roles/Responsibilities:
  – Select Negotiating Team / Spokesperson
  – Set and Prioritize Negotiation Goals
  – Set Negotiation Goal Parameters
  – Keep Informed About Negotiation Progress
  – Contract Ratification / Legislative Approval
Student Attendance

- Compulsory attendance ages 6-16
- Board must adopt comprehensive attendance policy, promote it to community & review it annually.
- Daily attendance records must be maintained for each student.
- Part time attendance- only as authorized by dual enrollment provisions applicable to nonpublic school students
Student Residency

- Physical presence & intent to remain
- May have only 1 legal residence
- Students presumed to be residents of district where parents reside. This may be rebutted by evidence of:
  - Total & permanent transfer of custody
  - Student’s emancipation
  - Student resides apart from parents for other bona fide reasons
- Residency determinations- allow parents to submit information regarding child’s right to attend
Homeless Students

• Protections under federal McKinney-Vento Act and state law/regulations

• Right to
  – Designate school to attend (3 options)
  – Be informed of all rights under law and education opportunities including transportation
  – Be immediately enrolled and remain so for 30 days and/or until final resolution of any dispute as to homeless status
Child Abuse Reporting

- Mandated Reporters: Required to report to child protective services when reasonable cause to believe student abused or neglected
  - Identity of reporter is confidential
  - Immunity from liability for mandated reporters who make report in good faith
- District must develop policies & implement training program for all employees regarding reporting child abuse
Reporting Abuse in Educational Setting

• Who must report:
  – Teachers, school nurses, guidance counselors, school psychologists, social workers, administrators, school board members, other person holding teaching or administrative license

• File written report with school principal upon receipt any oral or written allegation of abuse

• Training all employees and school board members
Student Free Speech Rights

• Student free speech rights are not coextensive with rights of adults in other settings
  – Must be applied in light of special characteristics of school environment

• Material and substantial disruption test

• Generally no authority punish for off campus speech and activities
  – Exceptions involving nexus to school

• 1\textsuperscript{st} amendment rights may extend to clothing including buttons, armbands, flags, etc.
Freedom of Religion

• Establishment Clause- separation of church and state
  – School prayer unconstitutional
• Free Exercise Clause- freedom of individual belief & religious expression
  – Balance gov’t interest with individual right
  – Accommodations for students
    • Objections to curriculum
Fourth Amendment Rights

• Reasonable Suspicion Standard
  – Search justified at its inception
    • reasonable grounds to suspect search turn up evidence
  – Scope of search must be reasonably related to circumstances which justified it
    • relate to objective of search; are not excessively intrusive in light of age and sex of student and nature of infraction

• Drug testing students may only be done with parental consent under NY law
Access to Students

• Removal of students by child welfare workers
  – Seizure that requires warrant/probable cause
  – Exception if child be subject to danger before warrant can be obtained

• SED Opinion of Counsel police may remove student only when
  – Have warrant
  – If crime committed on school grounds
  – Police may not remove students for questioning or question on school grounds without parental consent
Fifth Amendment

• Miranda warnings not required for school investigations of misconduct
  – If police direct questioning or give input to school officials Miranda warnings would be required
    • Mere presence of police during questioning doesn’t require Miranda warnings

• Statements obtained from students may be used as evidence in school disciplinary proceedings
Codes of Conduct

• Must be developed in cooperation with specified stakeholders and adopted after public hearing

• Include provisions governing conduct on school grounds and at school events regarding:
  – conduct, dress, language, disciplinary procedures and penalties
  – Prohibition of discrimination, harassment and bullying (including cyber bullying) based on race, color, weight, national origin, religion, disability, sexual orientation, gender or sex
Suspension Procedures

• **Short term**: 5 days or less
  – Prior to suspension written notice of charges & informal conference with building principal

• **Long term**: more than 5 days
  – Due process hearing required
  – Parents entitled to notice of charges
  – Burden of proof on school district
Students with Disabilities

• Many laws apply to education of students with disabilities
  – IDEA, ADA, sec. 504 of Rehabilitation Act

• **IDEA**: District’s basic legal obligation: provide a free appropriate public education (FAPE) in the least restrictive environment (LRE) by developing and implementing an individualized education plan (IEP) that spells out the child’s special education and or related services
School Responsibilities - Examples

• Child Find: identify, locate, evaluate children who reside or attend private schools in district
• Provide special education services until child receives HS diploma or reaches age 21
• Establish CSE and CPSE
• School Board must review CSE recommendation and arrange for programs required by IEP
• Ensure testing and evaluation materials meet legal requirements (not discriminatory)
Committee on Special Education

• Composed of individuals specified by law
  – With limited exceptions all must be present when holding CSE meeting

• Functions of CSE
  – Identify, evaluate, review and make recommendations for educational placement
  – Annually report to board status of services & facilities for special education
  – Maintain & revise register of children (child find)
  – Comply with timelines dictated by law
Parental Challenges

- Impartial hearing re: parent disagrees with classification, evaluation or placement of child
  - District must attempt to resolve issue before hearing
- Hearing conducted by IHO in accordance with timelines set by law
- Stay put placement of child
School District Liability For the Actions of Staff

Murray v. Watervliet City School District & Rings
Contact Information

www.nyssba.org

1-800-342-3360