



# **Preparing for a Successful Year: Essential Guidance for Trustees**

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### **Key Roles and Responsibilities of a Board**

School Board Leadership can be characterized as the key to keeping our public schools focused on the most important task at hand: Education and growth of each community's children. School boards adopt policies that govern the operation of the district, as well as the budget that determines the priorities and values of the district. Policy and budgets are the most explicit expressions of a school district's priorities and values. It is the adoption of policy and operating budgets, therefore, that provide the Board with its greatest opportunity for creating an educational environment that is conducive to high student achievement.

A board's primary duties can be characterized as follows:

- ✓ Adopt goals and evaluate outcomes
- ✓ Adopt and evaluate policies
- ✓ Hire and evaluate the superintendent and delegate all administrative duties
- ✓ Approve the school district's budget and set the local levies and bond amounts
- ✓ Communicate with the community

Perhaps the single most important job of a school board is to employ a superintendent and to hold him or her responsible for managing the schools in accordance with state law and the school board's policies. The Board also should set educational goals for the schools based upon state laws and community values and see that the superintendent and the total staff vigorously pursue those goals.

The education and administrative leadership responsibilities of the superintendent are complementary and interdependent with the public leadership, governance, and policymaking responsibilities of the Board. To avoid confusion and provide harmonious and progressive direction for the district, both superintendent and board must strive to keep the distinctions between their respective leadership roles clearly in mind.

### **Historical Background of School Boards**

The concept of local control of schools dates back more than 200 years in the history of the United States. A tremendous amount of change has occurred over the last 200 years, but the basic function of school boards today remains the same: To provide local citizen control over public education in the communities served. This means that the school board should represent the citizens of the school district--not just some of the citizens, but all of them. Because different citizens have different ideas about schools, this responsibility always presents a challenge and requires significant diplomacy skills. How you manage this responsibility with the other trustees on your Board largely determines the quality of public education in your community.

### **Local Control Under The Montana Constitution**

Unlike many states, where the state takes the lead role in education, the ultimate responsibility for quality public education in Montana rests with the local school board. The Montana Constitution is unique in placing both supervision and control of public education in the school boards' hands. Article X, Section 8 of the Montana Constitution articulates this vision

eloquently and directly:

**School district trustees.** The *supervision and control* of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

As clearly enunciated in Montana's Constitution, the role of school boards in public education is pivotal. It is important to note, however, that the role belongs to the school board as a whole, and belongs to individual trustees only to the extent that they each function as part of that whole.

The other constitutionally-empowered agency in education is the Board of Public Education. Article X, Section 9 of the Montana Constitution specifies the Board of Public Education's authority as follows:

(3) (a) *There is a board of public education to exercise general supervision over the public school system* and such other public educational institutions as may be assigned by law. Other duties of the Board shall be provided by law.

(b) The Board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the Board.

In addition to the Board of Public Education and local school boards, the other elected officials directly involved in public education include the Superintendent of Public Instruction and the county superintendents.

### **Trustee's 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.

### **Individual Authority**

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.

## **District Policies**

The board of trustees will implement policies to govern the operation school district. Clear and up to date policies provide the framework for all issues facing a school district including but not limited to personnel matters, student instruction and discipline, financial procedures and community relations. The policies adopted by the board of trustees are the foundations of school district. The policies will answer many of the questions a community member, parent, student or new trustee will have regarding school procedures.

Policies will reflect the board and district's philosophy and vision. While some district policies can be required by state and federal law, all policies provide guidance and direction for administration and staff. Perhaps most importantly, district policies provide the basis for the board to handle matters in a fair, reasonable and evenhanded manner. When a policy is written appropriately, it gives clear expectations to all involved in a particular matter. By providing clear understanding of matters facing the district the board will obey the law and operate efficiently by making a decision that can withstand subsequent scrutiny.

Familiarize yourself with the district's policies you will become more comfortable with how the district operates and the issues facing the district. You will also be prepared when an issue reaches the board that may be controversial. That familiarity with policy ensures the policy is honored and the district remains in compliance with state or federal law. By honoring policy, you can assist the district in avoiding litigation that can cost your district substantial time and resources. Most importantly, you can ensuring the board meets the letter and spirit of the law while promoting a positive learning environment.

## **Collecting 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.

## **Speaking with 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.

## **Speaking with community members**

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.

### **Questions about a Board decision**

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.

### **Media Inquiries**

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. 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.

### **Parent 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.

### **Role of Superintendent at 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.

### **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.

### **Requesting an agenda Item**

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.

### **Complaints during public comment**

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.

### **Ask questions at a 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.

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.

### **Superintendent Evaluation**

The board will typically evaluate the superintendent annually according to procedures developed by the board in consultation with the superintendent. The evaluation usually takes place prior to the February 1 deadline for notifying the superintendent of nonrenewal (for second and subsequent contracts).

The superintendent's evaluation should be a comprehensive and objective review of his or her performance during the preceding year. Whatever instrument the board chooses to use, the evaluation should be based on a consensus of the board's assessment of the superintendent's performance relative to the stated objectives for the position.

The superintendent should be provided with a written copy of the board's evaluation and should discuss it with the board in executive session.

### **Disagreement**

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.

### **Serious Issues**

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.

### **Board responsibilities and Superintendent responsibilities**

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.

### **Communication 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.

### **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.