



Common Questions Regarding Well-Functioning School Boards

School boards are elected in the spring,¹ and board members take office on the fourth Monday of April.² When boards begin their work together, often with new members, they do so toward the end of a school year. Nevertheless, boards must almost immediately become an effective operating body that works collaboratively and efficiently. This is not an easy task, particularly because board members inherently and appropriately bring different voices and viewpoints to issues facing their districts. Sometimes, those voices clash.

The fact that boards begin their terms toward the end of the school year, however, provides the impetus and opportunity for board members to quickly work together to forge an operating team. In addition to orientation programming for new board members, well-functioning boards usually engage in orientation sessions in May or early summer to set the district's course for the next year and develop a common understanding of the district's governance model outlining the roles of the board and the administration. The core principle of such work is making sure board members have a collective understanding of their powers, duties and functions — and how those interplay with the district's daily operations. This Legal Comment will address that core principle in a question-and-answer format.

■ What do boards do?

Boards are granted broad authority to operate the district on behalf of the districts' residents. In particular, boards “have the possession, care, control, and management of the property and affairs of the school district.”³ In order to do this, boards “may do all things reasonable to promote the cause of education, including estab-

lishing, providing and improving school district programs, functions, and activities for the benefit of pupils.”⁴ Additionally, the statutory duties and powers of school boards are to be “broadly construed to authorize any school board action that is within the comprehensive meaning of the terms of the duties and powers, if the action is not prohibited by the laws of the federal government or of this state.”⁵ This is a significant grant of general authority for local control by school boards. Through this general authority, districts provide for the education of children by exercising some of this authority directly and by delegating some of this authority to others (subject to board oversight).

■ What powers do boards have?

In addition to doing all things reasonable to promote the cause of education in a district, state and federal laws grant boards specific powers they may exercise. For example, in one state statute, boards (as a collective body, not as individuals) are granted over 30 specific powers.⁶ These include, among others, the power to make rules for the district, expel students, provide for insurance, enter into intergovernmental agreements, make purchases, contract for professional services, furnish meals to students, establish child care and 4-year-old kindergarten programming, sell property and borrow money.

■ Are there limitations to a board's power?

For boards in all forms of school districts, there are constitutional, statutory and common-law restrictions on board power in specific situations such as when boards are spending money, terminating employees and expelling students, among others.

Additionally, by statute, the electors of districts at the annual or special meeting for common and union high school districts are given authority over certain issues.⁷ Some of this authority is exclusively held by the electors whereas other authority is shared between the electors and the board. For example, electors have the exclusive power to set the salaries of board members, but both the electors and the board have certain authority with respect to the tax levy. However, the board has exclusive authority over the budget and subsequent adjustments to the budget.

■ What are boards required to do?

State and federal laws provide boards with specific duties they must perform. For example, one state statute sets forth over 25 specific duties that a board must perform.⁸ Importantly, as will be discussed in greater detail below, it is the school board as a whole that possesses this authority and these duties. Individual school board members do not have the authority to engage in these duties, absent specific delegation of authority from the board as a whole. Additionally, many of these duties will be accomplished through the board delegating authority and responsibility to administrators. In addition to the obligation to have possession, care, control and management of the district, boards (as a collective body) must, among other things: visit and examine district schools, advise teachers and administrative staff regarding the instruction and progress of students, exercise general supervision over schools, evaluate the effectiveness of teachers and principals, tax for the operation and maintenance of the district and for debt retirement, keep buildings insured and in good repair, determine the district's course of

study, establish school hours, and adopt a program of student participation in extracurricular and recreational school programs.

■ How do boards accomplish their work?

Boards obviously do not have the individual or collective time or expertise to operate a district on their own. Therefore, they need to delegate their authority to others to accomplish a district's mission. Boards are given the authority to hire administrators, teachers and other staff. Well-functioning boards develop a governance model in collaboration with their administrations that defines who is responsible for which tasks in operating the district. This generally takes the form of board policies.

■ What authority do the administrators have?

Certain administrators have express statutory authority.⁹ The district administrator has the authority over the "general supervision and management of the professional work of the schools and the promotion of pupils." This includes the requirement to make "written recommendations to the school board on teachers, courses of study, discipline and such other matters as the administrator thinks advisable and shall perform such other duties as the school board requires." Principals are required to "perform such administrative and instructional leadership responsibilities as are assigned by the district administrator." A business administrator must perform "such fiscal and business management and other administrative duties as are assigned by the district administrator." Consistent with these being delegated powers, these administrators are required to exercise these powers under the board's direction, and subject to the board's policies, rules, and regulations.

■ How are these delegated duties exercised in practice?

One way in which these delegated

roles are defined is through board policy. They can also be spelled out in job descriptions that form the basis for administrative positions. In general, boards serve a quasi-legislative function of adopting broad district policy and delegate to the administration the duty of implementing those policies, including through drafting administrative guidelines for such implementation.

This brings into play a second board function, the oversight of the administration's day-to-day operations. What form that oversight takes is subject to many different governance models. Each board must reach an understanding with the administration as to how this function is accomplished. One of the keys to an effective board is to recognize the difference between oversight and micromanaging these operational and administrative functions. This is particularly true with respect to personnel issues. This is not an easy task and requires ongoing and honest communication between the board and administration.

One way for boards to avoid wandering into micromanagement with respect to personnel issues is to understand the quasi-judicial functions they perform. With respect to full-time teachers and statutorily defined administrators, boards must play the final district role in non-renewing or terminating employment.¹⁰ Additionally, the board makes the final decision in the statutorily required grievance process for all employee discipline, termination, and workplace safety grievances.¹¹ Because boards are the final adjudicator of these district employment issues, boards (and individual board members) should not be involved in the substance of personnel disputes before such matters are properly before the board consistent with applicable law and policies in order to meet any applicable standards of fairness and avoid potentially creating due process issues under the 14th Amendment to the U.S. Constitution. Finally, boards exercise quasi-judicial powers in expulsion hearings. Just as with personnel

matters, board members should not be involved in the substance of student discipline matters prior to the expulsion hearing.

■ What powers do individual board members have?

With few exceptions, all of the statutory powers granted by the state to local school districts are given to the "board" collectively. Under the Wisconsin Open Meetings Law, boards can only exercise their powers at a public meeting with appropriate notice of the subjects of business given to the public. Thus, generally, the only power that an individual board member has exists during a properly noticed public meeting of the board. That power includes the ability to discuss matters on the board agenda and to act on proper motions and in accordance with the noticed agenda. Individual board members have no authority to speak on behalf of the board either at, or outside of, such meetings unless specifically delegated such authority.

In general, the only duties granted by statute to individual board members arise from certain board members' roles as board-elected officers. Boards are required to elect from their ranks a president, vice president, clerk and treasurer.¹² Each of those officers are given specific official duties to perform on behalf of the board as a whole. Additionally, unified school districts elect a school board secretary who need not be a member of the board.¹³

These limitations on individual board member power are consistent with the role board members serve. Board members are fiduciaries of the district and the people who reside within the district. Thus, board members must act in the district's best interests and never for their own personal interests. As a trustee of the public, board members owe an undivided duty to the public and are not permitted to place themselves in a position that will subject them to conflicting duties or expose them to the temptation of acting in any

manner other than in the best interests of the public. This concept is reinforced in the oral form of the oath of office for board members which states that board members “will faithfully and impartially” discharge the duties of their offices.¹⁴ Board members are also subject to a statutory code of ethics for local public officials,¹⁵ in addition to any code of ethics adopted by the board.

A New Jersey School Ethics Commission decision provides an illustration of how board members can violate ethics rules when they act as individuals outside the scope of the collective authority of the board.¹⁶ In this case, a board member directed district employees to perform errands on the board member’s behalf such as copying and faxing. The board member also interviewed, nominated and recommended the hiring of job applicants without the recommendation of the superintendent. The commission found that these actions exceeded the board member’s authority as a board member and violated state laws, including the state ethics code.

■ What are board members’ obligations with respect to public records?

The Wisconsin Public Record Law governs requests for and the disclosure of public records.¹⁷ Board members create public records in the course of performing their duties. Records that contain any material relevant to governmental functions and responsibilities are public records subject to disclosure. It is the subject matter, not the location, of a record that determines if something is a public record. Board members have a duty to disclose public records in response to public records requests, and board members have a duty to ensure that public records in their possession are preserved according to the board’s adopted records retention schedule.

If they are relevant to governmental functions and responsibili-

ties, public records could include emails, texts, social media posts, and many other forms of records. This means public records might be located on board members’ personal computers, cell phones, email accounts, and social media accounts, among other locations. Board members who wish to minimize creating public records on their personal devices and accounts should strive to communicate school board business only through official district communication channels, such as district-provided email accounts. This also simplifies the process for locating and responding to public record requests and makes it easier for the district to properly retain public records.

However, purely personal messages, even if sent from a government email address, are not public records subject to disclosure.¹⁸ If a record contains both personal messages and official messages, the district’s records custodian can redact the purely personal aspects of the record, but must disclose the rest of the record.

■ Conclusion

Well-functioning boards and effective board members understand their roles and the limits on their authority. Board members are encouraged to work with each other and their administrative teams to define the boundaries of their respective roles. Some boards facilitate this process through board and administrative in-services. Boards adopt and continually review board policies that establish those roles and duties. Boards and their administrative teams continually discuss their roles and duties and let each other know when one of them believes a line might have been crossed. More importantly, well-functioning boards focus on the district’s broad mission and empower the administration to carry that mission out, subject to the oversight, but not the micromanagement, of the board. ■

■ Endnotes

1. Wis. Stat. s. 120.06(1).
2. Wis. Stat. s. 120.06(4).
3. Wis. Stat. s. 120.12(1); see also Wis. Stat. s. 120.44(2). The statutes governing the unique aspects of Milwaukee Public Schools are located in Wisconsin Statutes Chapter 119. While there are many parallels between Chapter 119 and the other statutes discussed in this Legal Comment, there are also several unique aspects that are outside the scope of this Legal Comment.
4. Wis. Stat. s. 120.13; see also Wis. Stat. s. 120.44(2).
5. Wis. Stat. s. 118.001.
6. Wis. Stat. s. 120.13(1)-(38); see also Wis. Stat. s. 120.44(2).
7. Wis. Stat. s. 120.10(1)-(19).
8. Wis. Stat. s. 120.12(1)-(28); see also Wis. Stat. s. 120.44(2).
9. Wis. Stat. s. 118.24.
10. Wis. Stat. ss. 118.22, 118.24(6)-(7).
11. Wis. Stat. s. 66.0509(1m).
12. Wis. Stat. ss. 120.15-17; see also Wis. Stat. s. 120.43(1).
13. Wis. Stat. s. 120.43(1).
14. Wis. Stat. s. 19.01(1m).
15. Wis. Stat. s. 19.59.
16. Julia Hankerson, Woodbine Bd. Of Educ. Cape May Cty, No. C36-02 (N.J. Sch. Ethics Comm’r June 24, 2003).
17. Wis. Stat. ss. 19.21-39.
18. *Schill v. Wis. Rapids Sch. Dist.*, 2010 WI 86, 327 Wis. 2d 572, 786 N.W.2d 177.

This Legal Comment was written by Michael J. Julka, Brian P. Goodman, and Steven C. Zach of Boardman & Clark LLP, WASB Legal Counsel. Attorney Zach, the primary author of this Legal Comment, just completed 22 years of service on the Oregon School District school board, including the last 4 years as Board President.

For additional related articles, see Wisconsin School News, “Board Agendas, Voting, and Minutes” (Apr. 2017); “Board Duties and Obligations and Potential Ramifications for Non-Compliance” (Apr. 2016); “Recurring Issues for School Board Members: School Board Member Conflicts of Interest, Ethics, and Incompatibility of Offices” (May 2013); “Delegation of School Board Authority” (Oct. 2012); “The Legal Significance of School Board Policies” (Nov. 2007).