Ten Pitfalls Board Members Should Avoid and How to Do Just That

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1. The Power of One
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Arizona Attorney General Opinion:

. . . “a school district board member has no power or right different from any other citizen notwithstanding the statutory powers of the school district board which may only be exercised by the board when lawfully convened as a body.”

The Power of One

“All powers of the Board lie in its action as a public body. . .
Individual Board members exercise authority over District affairs only by way of votes taken at a legal meeting of the Board. An individual Board member has authority only when and to the extent that the Board, by vote, has so delegated such authority.”
ASBA policy BBAA.
The Power of One:
Some examples of how this comes up.

• Letter to the editor. You can say you are a Board member but writing as an individual citizen.
  – There is a distinction between this type of public statement and Board statements in connection with an override election.

• Talking to the press.

• Appearing in front of a Legislative committee.

• Lobbying a member of the Legislature.

• Letterhead for a fundraiser.
The Power of One:  
Some examples of how this comes up.

- School site visits, including signing in.
- Access to records that are otherwise not public. Student records, individual teacher evaluations, to name a few.
  - Teaser: more to come about due process issues.
The Power of One: Some examples of how this comes up.

• Dealing with a vendor.
  – Apparent authority.
  – Vendor should know you have no authority.
  – Good to remind them.

Teaser: More to come on procurement and conflicts of interest.
2. Playing Inspector Clouseau: Don’t Do Your Own Investigations
Don’t do your own investigations: Why this is important

• *Hortonville* – is not a complete protection. It says: “Mere familiarity with the facts of a case gained by an agency in the performance of its statutory role does not disqualify a decisionmaker.”

BUT . . .

• Increases chances of more litigation.
• Opens Board member up to charges of bias and prejudging the issue.
Don’t do your own investigations: Why this is important

• Same applies in cases of student discipline.
  – Especially if this is a hot media topic, such as a fight or racially charged situations.
  – Resist temptation to get involved.

• Student due process.
Don’t do your own investigations:
Why this is important

• One buffer to consider: appointing a hearing officer.

• Another is outside investigator if this is particularly touchy or political.
3. Open Meeting Law: Avoid Serial Communications
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• Daisy chain:
  – 5 member Board
  – Board member A has a conversation with Board Member B. Okay.
  – Board member B tells Board member C what he and Board member A talked about. Bad.
Open Meeting Law: Avoid Serial Communications

Hub and Spoke theory.

• Non-Board members can be implicated and penalized under the Open Meeting Law.
Open Meeting Law:
Avoid Serial Communications

Example of how to do this without breaking the law:

Superintendent to Board Member A: I am meeting with each Board member to tell them I am recommending Board non-renew Principal X. I cannot tell you what other Board members have told me and I ask that, in order to comply with the Do not Hub and Spoke theory.

• Non-Board members can be implicated and penalized under the Open Meeting Law.
A Word on Emails and Serial Communications

• The infamous “reply all” button. Be very careful.

• 2005-Arizona Attorney General opinion: one-way communications, with no further exchanges, are not *per se* violations.
  – Unless they propose legal action.
  – Reply all changes the ball game.
4. Avoid Making Statements About District Business on Social Media.
Avoid Making Statements About District Business on Social Media

• Okay if general comments or congratulatory-”A shout out to McKinley Elementary staff for winning the spirit award.”

• Trouble if you start commenting about individual personnel or student matters
Avoid Making Statements About District Business on Social Media

A word of caution about personal liability.

• Are you acting in the scope of your duties as a Board member if you defame someone on your own Facebook page?

• Will this be covered by District’s carrier if you get sued?

• Other implications.
5. Personal Devices and the Law.
Personal Devices and the Law.

• Let us count the ways why this is bad.
  – The roar of the “Ping” during a meeting. Rude, if not, suspicious.
  – Text or email on personal device may be a public record that you have to maintain. New AGO opinion.
  – In world of instant communications, might say something you later want to take back. Yeah, right??
Know your Board Code of Ethics and Follow Them.

Most districts have policy BCA that says, among other things, that you will:

● Recognize that decisions should be made only after discussion at publicly held Board meetings;

● Render all decisions based on the available facts and independent judgment, and refuse to surrender that judgment to individuals or special-interest groups;

● Encourage the free expression of opinion by all Board members, and seek systematic communications between the Board and students, staff, and all elements of the community; . . .

● Avoid being placed in a position of conflict of interest, and refrain from using their Board position for personal or partisan gain;

● Take no private action that will compromise the Board or administration, and respect the confidentiality of information that is privileged under applicable law; and

● Remember always that a Board member's first and greatest concern must be the educational welfare of the students attending the public schools.
Know your Board Code of Ethics and Follow Them.

In light of *Berry v. Foster* --- so what?
Why even have policy BCA?

Constant feuding, disrespect, lack of common courtesy and civility toward each other undermines you and the work of the Board.
You are not a reality show.

People can see and sense tension. This can break down moral of staff and cause concern in the community.
Know your Board Code of Ethics and Follow Them

Board Policy GBEA:  
Why do we not expect Board members to demonstrate the same standards of conduct required of district employees?
Know your Board Code of Ethics and Follow Them.

Look at what we expect from employees:

Policy GBEA-

All employees of the District are expected to maintain high standards in their school relationships. These standards must be idealistic and at the same time practical, so that they can apply reasonably to all staff members. The employees acknowledge that the schools belong to the public they serve for the purpose of providing educational opportunities to all. However, every employee assumes responsibility for providing leadership in the school and community. This responsibility requires the employee to maintain standards of exemplary conduct.
Know your Board Code of Ethics and Follow Them

• Makes the well-being of students the fundamental value of all decision making and actions.

• Maintains just, courteous, and proper relationships with students, parents, staff members, and others.

... 

• Fulfills job responsibilities with honesty and integrity.

• Directs any criticism of other staff members or of any department of the school system toward improving the District. Such constructive criticism is to be made directly to the school administrator who has the responsibility for improving the situation.

• Supports the principle of due process and protects the civil and human rights of all individuals.

...
Know your Board Code of Ethics and Follow Them

- Implements the Governing Board's policies and administrative rules and regulations.

- Refrains from using school contacts and privileges to promote partisan politics, sectarian religious views, or selfish propaganda of any kind.

- Pursues appropriate measures to correct any laws, policies, or regulations that are not consistent with sound educational goals.

- Avoids using position for personal gain through political, social, religious, economic, or other influence.

... 

In the performance of duties, employees shall keep in confidence such information as they may secure unless disclosure serves District purposes or is required by law.

...
7. Dealing with the Media
Dealing with the Media

• Why is this important to be a good board member?
  – Could create more liability or litigation.
    • “I really did not think the statement of charges had any merit, but I was told I had to vote for it.”
    OR
    • “I spoke to other Board members who agreed it was a good idea to fire the Superintendent.”
  – Could violate the attorney-client privilege or executive session confidentiality.
Dealing with the Media


The Open Meeting Law does not prohibit a member of a public body from speaking to the media concerning matters that may come before the public body.
Dealing with the Media

• Best practice:
  – Speak in one voice. If you are asked to comment on a decision of the board with which you disagree, support the board’s action. Don’t fuel the fires of controversy by taking the debate to the media.
  – Remember the importance of the deliberative process.
  – When dealing with reporters, remember their role is to provide information to their readers and listeners. It is not to make the district look good. If the board argues at a school board meeting, expect to get a call after the meeting and see it in a reporter’s news story.
Dealing with the Media

• Some things to remember.
  – Reporters have a job to do.
  – Does your district have an official spokesperson?
  – Should you let District administration know?
  – Ask yourself beforehand why you are speaking to the press? What is the purpose?
  – If possible, write out what points you want to make and stay on message.
  – Keep it short. Less opportunity to be misquoted or edited so it is taken out of context. Don’t ramble or speculate.
  – Remember the headline test.
Dealing with the Media

• What is “off the record” and “not for attribution”? 
• Why “off the record” may not work. 
• What is “on background”?
8. Conflicts of Interest: Declare them and Stand Down
Conflicts of Interest: Declare them and Stand Down

A.R.S. §38-503:
A. Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.

B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.
Conflicts of Interest: Declare them and Stand Down

Arizona Attorney General:

“Once a public officer or employee determines that a substantial interest may be affected, the officer or employee must disclose the interest and withdraw from all participation in the decision or contract . . .

Even though public officers or employees may believe that they can be objective in making a decision and that the public interest would not be harmed by their participation, they do not have discretion to ignore the statutory mandate.”
Conflicts of Interest:
Declare them and Stand Down

Policy BCB
ASBA Disclosure form sample

I, ____________________________________________________________, do hereby indicate:

1. That I am presently an officer/employee of the Alhambra School District;

2. That I (or my relative[s]: ________________________________ ) have a substantial interest in the contract, sale, purchase, or service to or decision by the Alhambra School District No. 68 Governing Board as described below.

3. That I shall refrain from participating in any manner in my capacity as an employee or officer of Alhambra School District in such contract, sale, purchase, service to, or decision by the Governing Board unless specifically permitted to do so by law.

_________________________________  __________________________
Date                                      Signature

Description of Conflict:
Conflicts of Interest: Declare them and Stand Down

Do I have to leave the room? No.
Can I participate in discussion? No.
Where do I file disclosure? Board secretary or special place in the district.
Can I attend executive session when it is discussed? Probably not. Why would you go?
9. Accepting Gifts
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C. A public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.
9. Accepting Gifts

Is it valuable?
Substantial and improper influence?

If so, best practice – refuse or share.
10. Anger on Display
Anger on Display

• Personal attacks are tough business.
• Emails—don’t hit send in anger. Wait a few hours.
• At meetings – Count to ten or twenty.
• Be civil.
• Call a recess.
• Take a walk.
Questions?