
2013 Summer Board Conference



School Law Basics for Board Members

Presented by:

Haley Percell, Attorney

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Oregon School Boards Association



Agenda

- Scope of Authority
- Election and Qualifications
- Public Meetings Law
- Student Laws
- Employment Laws
- Financial Management
- Public Records
- Ethics
- Board Member Liability



Scope of Authority

- The school board is authorized to transact all business coming within jurisdiction of district.
- The board has control of the district schools and is responsible for educating children residing in the district.





Scope of Authority (cont'd)

- Basic duties and authority:
 - ◆ Develop and implement policies.
 - ◆ Adopt a budget.
 - ◆ Approve curriculum.
 - ◆ Hire, evaluate and supervise the superintendent.
 - ◆ Approve hire/renewal/dismissal of licensed staff.
 - ◆ Enter into collective bargaining agreements with labor associations.



Scope of Authority (cont'd)

- Delegation of authority:
 - ◆ Day-to-day operations like employee discipline, employee evaluations, and terminations of some employees.
 - ◆ Board may not delegate superintendent or designee to enter into and approve payment on collective bargaining agreements or service contracts that include the provision of labor performed by employees of the district.



Elections & Qualifications for Board Members

- Qualifications (ORS 332.018):
 - ◆ Person must be an elector in the district.
 - ◆ Person must have resided in the district for the period of one year immediately preceding the election or appointment.
 - ◆ If there are zones, person must reside in the zone for which they are elected or appointed.
 - ◆ No board member shall receive compensation for their service other than reimbursement for reasonable and necessary expenses.
 - ◆ Term is for four years.



Elections & Qualifications for Board Members (cont'd)

- School board shall declare a vacancy in the following situations (ORS 332.030):
 - ◆ The death or resignation of a board member.
 - ◆ When a board member is removed from office or the election of the board member has been declared void by a court.
 - ◆ When a board member fails to perform the duties of office for two consecutive months unless due to illness.



Elections & Qualifications for Board Members (cont'd)

- ◆ When a board member fails to perform the duties of office for four consecutive months for any reason.
- ◆ When a board member is recalled.



Elections & Qualifications for Board Members (cont'd)

- What does the board do when a vacancy is declared?
 - ◆ Meet and appoint a person to fill vacancy.
 - ◆ Person must satisfy requirements of ORS 332.018.
 - ◆ If district is zoned, person must reside in the zone in which vacancy occurs.
 - ◆ Appointed member shall serve until June 30 following next regular election.
 - ◆ At that election, successor shall be elected to serve remainder of term. If the term has expired, the successor is elected to a new term.



Elections & Qualifications for Board Members (cont'd)

- What happens when a majority of board seats are vacant at same time?
 - ◆ The ESD or if no ESD, governing body of county meet and appoint persons to fill vacancies.



Elections & Qualifications for Board Members (cont'd)

- What happens if a board member moves?
 - ◆ A vacancy must be declared.
 - ◆ Board member shall continue to serve until June 30 following the next regular election.
 - ◆ At election, successor shall serve remainder of term unless the term to which the director was elected expires then successor shall be elected to full term.



Board Organization and Meetings

- No later than at the next regular meeting following July 1, the board must meet and organize by electing a chairperson and a vice chairperson.
- No member shall serve as chair for more than four years in succession.



Board Organization and Meetings (cont'd)

- A majority of the members of the district school board shall constitute a quorum.
- A quorum is required to transact any business.



Public Meetings Law

Policy behind public meeting laws:

“An informed public must be aware not only of the decisions of government, but also of the information upon which such decisions were made.”


ORS 192.620



Public Meetings Law (cont'd)


- What is a meeting?
 - ◆ A quorum deliberating district business.
 - ◆ A quorum deciding district business.
 - ◆ Email chains may be considered public meetings.
 - ◆ Telephone calls may be considered public meetings.





Public Meetings Law (cont'd)

- What is not a meeting?
 - ◆ On site inspection of a project or program.
 - ◆ Attendance at a national, regional or state association conference.
 - ◆ Purely social gathering.



Public Meetings Law (cont'd)

- Must give notice of public meetings.
- Notice must be reasonably calculated to give actual notice to interested persons ORS 192.640.
- Notice must contain time, place and agenda.



Public Meetings Law (cont'd)

- How much advance notice of meeting must be given?
 - ◆ Regular Meeting – within a “reasonable” amount of time.
 - ◆ Special Meeting – more than 24 hours notice.
 - ◆ Emergency Meeting – less than 24 hours notice.
 - Fire, flood, school shooting, etc.



Public Meetings Law (cont'd)

- Executive Sessions:
 - ◆ Only limited circumstances for executive sessions.
 - ◆ Must cite to statutory authority for executive sessions. See ORS 192.660.
 - ◆ Vote must take place in open session unless a student matter.



Student Related Laws

- Any hearing held regarding an expulsion or pertaining to student records must be done in executive session unless student or parent requests open session.



Student Related Laws (cont'd)

- The following may not be made public:
 - ◆ The name of the student;
 - ◆ The issue, including any student records;
 - ◆ The board's discussion;
 - ◆ The board's vote.



Student Discipline

- Develop policies and guidelines for student conduct
 - ◆ Some laws mandate certain course of conduct (e.g. weapons)
- Involvement in student discipline
 - ◆ Expulsion Hearings
 - **This can be delegated to hearings officers**



Student Related Laws

- Family Educational Rights and Privacy Act (FERPA)
 - ◆ Prohibits disclosure of student's records without parental consent
 - ◆ Directory information





Other Student Related Laws

- Individuals with Disabilities Education Act (IDEA)
 - ◆ Must provide special education services to students to enable them to receive an educational benefit.
 - ◆ Individualized Education Program (IEP)



Other Student Related Laws (cont'd)

- Section 504
 - ◆ Must provide equal access to school services for disabled students.
 - ◆ District will have 504 Handbook and Individual 504 plans



Employment Decisions

- Board must approve collective bargaining agreement ORS 332.075
 - ◆ The Board must hire and fire licensed staff
 - Classified employees by superintendent
 - ◆ March 15
 - Teachers/administrators must be notified by this date of renewal or nonrenewal of their contracts



Employee Discipline

Board often acts as neutral arbiter for disciplinary issues if there is an appeal of the superintendent's disciplinary decision





Employment Laws

- State and federal law prohibit the school district from discrimination on the basis of a protected class or protected activity.



Protected Classes

- Race
- Color
- National Origin
- Sex (including pregnancy-related conditions)
- Sexual orientation
- Gender identity
- Age (18 and older)
- Veteran status
- Physical or mental disability
- Familial relationship
- Marital status
- Religion



Protected Activities

- FMLA/OFLA protected leave
- Requesting reasonable accommodation for a disability
- Good faith discrimination complaints
- Military service
- Association with person who belongs to a protected class or has engaged in protected activity
- Filing a workers' compensation claim



Protected Activities (cont')

- Lawful use of tobacco products on off-duty hours
- Jury duty
- Testifying at an unemployment hearing
- Opposition to health and safety conditions



Financial Management

- Budget Process
 - ◆ Appoint budget committee
 - ◆ Adopt a budget based on budget committee's recommendation
 - ◆ Abide by the budget or authorize budget changes





Public Records

- What is a Public Record?
 - ◆ Every document regarding District business
- Public Records are open to inspection by anyone
 - ◆ Generally regardless of who or why they are requesting it





Public Records (cont'd)

- Numerous exceptions to public inspection (over 400, specifically)
 - ◆ Generally:
 - **Personnel files and employee discipline**
 - **Student records**
 - ◆ Most are conditional exceptions:
 - **Must balance desire to keep confidential with public interest in disclosure**



Ethics

- Prohibits gifts and use of office for financial gain except in limited circumstances
- Requires disclosure of conflicts of interest





Board Member and District Liability

- Basic forms of liability
 - ◆ State Law (Oregon Tort Claims Act)
 - ◆ Constitutional Liability under § 1983
- Immunity
 - ◆ Discretionary immunity for state law
 - ◆ Qualified immunity for § 1983 claims
 - ◆ Legislative



Board Member Liability

- Fines from Oregon Government Ethics Commission
 - ◆ Ethics violations
 - ◆ Executive session violations



Questions?

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