

# THE ROLE AND RESPONSIBILITIES OF WISCONSIN PUBLIC SCHOOL BOARDS AND INDIVIDUAL BOARD MEMBERS

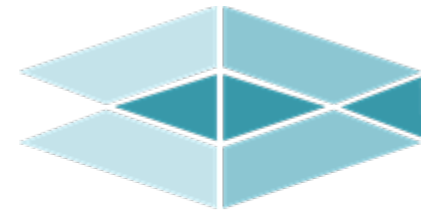
SCHOOL DISTRICT OF DELAVAN DARIEN  
SEPTEMBER 12, 2022

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*The speaker would like to thank Attorney Laura Pedersen  
for her contributions to the materials.*

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# WISCONSIN PUBLIC SCHOOL DISTRICTS

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- Limited Authority  
Entity or  
Enumerated Powers  
Doctrine

- Expanded Authority  
Entity and Broad  
Powers Doctrine
  - Wis. Stat. § 118.001
  - Wis. Stat. § 118.01(1)

*1995 WI Act 27* 

# SCHOOL BOARD DUTIES - WIS. STAT. § 120.12

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(1) Management of school district.	(2) General supervision.
(2m) Educator effectiveness.	(3) Tax for operation and maintenance.
(4) Tax for debt retirement.	(4m) Calculation of total base wages increase for collective bargaining.
(5) Repair of school buildings.	(6) Insurance on school property.
(7) Depository.	(9) Discussion of public questions.
(11) Indigent children.	(12) Sanitary facilities.
(13) Declaration of Educational Standards.	(14) Course of study.
(15) School hours.	(16) Immunization of children.
(17) University of Wisconsin System tuition.	(18) Continuity of educational programming.
(19) Initiative to provide coordinated services.	(20) Prohibition of tobacco.
(21) Consideration of effects on historic properties.	(22) Advanced placement examinations.
(23) Pupil participation in school activities.	(24) Health care benefits.
(25) Early admission to kindergarten and first grade.	(26) Enrollment of pupils.
(27) School closings and reopenings.	(28) School board vacancies.

# SCHOOL BOARD POWERS - WIS. STAT. § 120.13

(1) School government rules; suspension; expulsion.	(2) Insurance.
(3) Agreements with governmental units.	(4) On-farm training to veterans.
(5) Books, material and equipment.	(6) Federal aid.
(7) Exchange teachers and administrators.	(8) Funds for rewards.
(9) Architects and engineers.	(9m) Legal services.
(10) School food service.	(11) Nurses and dentists.
(12) Historical records.	(13) Prekindergarten classes.
(14) Child care programs.	(15) Special high school courses.
(16) School board organization; fee.	(17) Temporary use of school property.
(18) Property for ecological, agricultural or vocational instruction.	(18m) Renewable resource facilities.
(19) Community programs and services.	(19m) Sale of Property.
(20) Options to purchase real property.	(21) Lectures.
(22) Cable television and data processing services.	(23) Bonds for officers and employees.
(24) Contracts with other governmental units.	(25) Lease school property.
(26) Contracts with private education services.	(26m) Contracts with county children with disabilities education boards.
(26r) Contracts for mental health and developmental disabilities services.	(27) Transportation of persons who are not pupils.
(27m) Transportation of indigent pupils.	(28) Records custodian.
(29) Borrowing.	(30) Hunter education programs.
(31) School crossing guards.	(32) School board orientation.
(33) Spending authority.	(34) Street trade and child labor permit officer.
(35) Presence in school buildings.	(36) Prekindergarten and kindergarten program agreements.
(37) Awarding high school diplomas to veterans.	(37m) Single-sex schools and courses.
(38) Hunting in school forests.	

# PRIMARY RESPONSIBILITIES OF THE SCHOOL BOARD

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- Mission.
- Policymaking.
- Decision-Making.
- Student Achievement.
- Budget.
- Employer.
- Public Relations.
- Political Relations.
- Ethical Leader.
- Impartial Tribunal for Due Process purposes.
- Supervision of the District.

# PRIMARY RESPONSIBILITIES OF THE ADMINISTRATION

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- Chief Administrative Officer.
- Instructional leader.
- Primary professional advisor to the Board.
- Establish and maintain educational plan.
- Implement instructional plan.
- Evaluate professional and support staff.
- Keep the Board informed of school operations.
- Prepare Board Agendas in consultation with Board President.
- Recommend to the Board regarding changes in instructional and staffing patterns.
- Take action in absence of Board policy.

# AUTHORITY OF INDIVIDUAL SCHOOL BOARD MEMBERS

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## POWERS

- Only as members of the governmental body.
- As delegated by the governmental body.
- Officers have statutory powers.
- Vote.

## RESPONSIBILITIES

- Avoid conflicts of interest.
- Public Records Law.
- Open Meetings Law.
- Respect the chain of command/organizational chart.

# PUBLIC EXPRESSION OF BOARD MEMBERS

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- The Board President is the official spokesperson for the Board.
- Occasionally, individual Board members may make public statements on school matters.
- Unless explicitly authorized to speak on behalf of the Board:
  - ALL such statements should make it clear that the Board member's views do not necessarily reflect the views of the Board or their colleagues on the Board.
  - This is true for statements and/or writings made on social media or to the media, legislators, or other officials.
- Board Policy 143.1



# SCHOOL BOARD MEMBERS AND INQUIRIES FROM THE PUBLIC

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- **When Community Members and/or Staff Members Participate in the Public Comment Period at Board Meetings.**

- There is no legal obligation to offer a public comment period.
- If a public comment period is offered, it must appear in the meeting notice. Wis. Stat. § 19.84(2).
- A Board “may discuss any matter raised by the public” during a period of public comment, but must not take action. Wis. Stat. § 19.83(2).

- **When Community Members and/or Staff Members Wish to Discuss Personnel Issues with Board Members.**

- Board member should refer the matter to the appropriate administrator.
- Board member must not investigate in order to preserve due process and impartial tribunal responsibilities.

- **When Community Members and/or Staff Members Wish to Discuss Student Issues with Board Members.**

- Board member should refer the matter to the appropriate administrator.
- Board member must not investigate in order to preserve due process and impartial tribunal responsibilities.

- **When Community Members and/or Staff Members Share District Records With Board Members.**

- Board member must preserve the correspondence and any records because the communication is a public record.
- Board member should be cautious about redisclosing the records to anyone other than the appropriate administrator.
- Board member should refer the matter to the appropriate administrator.
- Board member must not investigate in order to preserve due process and impartial tribunal responsibilities.

- **When Community Members and/or Other Board Members Share Rumors and Hearsay With Board Members.**

- Board member must be careful not to share the rumors or hearsay with other members of the Board.
- Board member should refer the matter to the appropriate administrator.
- Board member must not investigate in order to preserve due process and impartial tribunal responsibilities.

# SCHOOL BOARD MEMBER ACCESS TO RECORDS/INFORMATION

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- The Administration should:
  - Make every effort to provide information pertaining to agenda items before meetings; and
  - Disseminate requested documents to all Board members upon request.
- The District Administrator should:
  - Have staff gather existing documents responsive to a Board member's request; and
  - Consult with the requesting Board member if the documents do not exist to determine if (1) the request requires consideration by a Board committee or (2) other documents might suffice.
- Board members requesting lengthy research or investigation from the administration must:
  - Notify the District Administrator who will distribute copies to the Board for review at the next meeting, if possible; and
  - Ensure that any disseminated confidential information remain confidential at all times in accordance with state and federal law.
- Requests for documents which would be exempt from disclosure to the general public must first be presented to the Board for review.
- Board members may access confidential information if the information:
  - Pertains to current Board business; or
  - Relates to the scope and responsibilities of the Board.
- Board Policy 143.2
- Confidential information must be disseminated to all Board members during executive session.
  - Board members must maintain and protect confidential records (e.g., student records and other records protected from disclosure under the Public Records Law). Board Policy 0144.5.
  - Board members must keep confidential, to the maximum extent possible, all medical information pertaining to an employee's leave whether written or verbal. Board Policy 1630.01.

# BOARD MEMBER BEHAVIOR AND CONDUCT

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- Board Policy 144.5 outlines the general expectations for all Board members:
  - Prepare for and attend meetings.
  - Familiarize himself/herself with Board policies, laws and regulations.
  - Be informed about current educational issues.
  - Conduct himself/herself with integrity, honesty, and in a manner that reflects positively on the Board and the District.
  - Be accountable for and respect Board decisions.
  - Avoid actual and perceived conflicts of interest.
  - Do not use the Board for personal or partisan gain.
- Make decisions only after full discussion at publicly held Board meetings.
- Make decisions based on the facts presented to the Board.
- Communicate with and respect the opinions of other Board members.
- Collaborate and cooperate with other Board members.
- Respect the chain of command.
- Respect confidentiality.

# SCHOOL BOARD MEMBER ETHICS: CODE OF ETHICS FOR LOCAL PUBLIC OFFICIALS, WIS. STAT. § 19.59

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- No school board member may use his/her office to obtain financial gain or anything of substantial value for the private benefit of himself/herself or his/her immediate family, or for an organization with which he or she is associated.
- No school board member may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence his/her vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction.
- No school board member may:
  - Take any official action substantially affecting a matter in which the school board member, a member of his/her immediate family, or an organization with which the board member is associated has a substantial financial interest.
  - Use his/her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the school board member, one or more members of the official's immediate family either separately or together, or an organization with which the school board member is associated.
- “Anything of value” means any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment.
- “Associated,” when used with reference to an organization, includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.
- “Immediate family” means:
  - Spouse, and
  - Relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his/her support from the individual or from whom the individual receives, directly or indirectly, more than one-half of his/her support.
- Penalties:
  - Forfeiture of not more than \$1,000 for each violation.
  - Action may be voided.

# SCHOOL BOARD MEMBER ETHICS: CRIMINAL STATUTES

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- **Private Interest in Public Contract, Wis. Stat. § 946.13.**

- When a school board member in his/her private capacity, negotiates or bids for or enters into a contract in which he/she has a private pecuniary interest, direct or indirect, if at the same time, the officer or employee is authorized or required by law to participate in the school board member's official capacity in the making of that contract or to perform in regard to that contract some official function requiring the exercise of discretion.
- Applies to contracts valued in the aggregate at \$15,000 or more.
- Strict liability – no obligation to prove criminal intent.
- Class I felony – fine no more than \$10,000 or imprisonment not to exceed 3 years and 6 months, or both.
- Void contract.

- **Bribery, Wis. Stat. § 946.10.**

- When a school board member directly or indirectly accepts or offers to accept any property or any personal advantage, which he/she is not authorized to receive, pursuant to an understanding that the school board member will act in a certain manner in relation to any matter which by law is pending or might come before the board or that the school board member will do or omit to do any act in violation of his/her lawful duty.
- Class H felony – fine not to exceed \$10,000 or imprisonment not to exceed 6 years or both.

- **Misconduct in Public Office, Wis. Stat. § 946.12.**

- Intentionally failing or refusing to perform a known mandatory, nondiscretionary, ministerial duty of the officer's or employee's office or employment within the time or in the manner required by law.
- In his/her official capacity, doing an act which the school board member knows is in excess of his/her lawful authority or which he/she knows is forbidden by law to do.
- Exercises a discretionary power in a manner inconsistent with the duties of the school board or the rights of others and with intent to obtain a dishonest advantage for the school board member or another.
- Intentionally falsifies school district records.
- Intentionally solicits or accepts for the performance of any service or duty anything of value which the school board member knows is greater or less than is fixed by law.
- Class I felony – fine no more than \$10,000 or imprisonment not to exceed 3 years and 6 months, or both.

# SCHOOL BOARD MEMBER ETHICS: INCOMPATIBILITY OF OFFICES/POSITIONS

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- **Incompatibility of Office/Position.**

- “[T]wo offices are incompatible if there is a conflict of interest or duties, so that the incumbent of one office cannot discharge with fidelity and proprietary duties of both. Incompatibility is not simply a physical impossibility to discharge the duties of both offices at the same time, but is an inconsistency in the functions of the two offices.” 58 Wis. Op. Att’y. Gen. 247 (1969).
- Incompatibility is generally understood to mean a conflict or inconsistency in the function of two (2) offices. It is almost always found to exist where one (1) office is subordinate to another or subject to its supervision or control; where one (1) office has the power of appointment or removal from the other; or where the exercise of authority in one (1) office creates a conflict of interest related to the other office (i.e., salary negotiations, supervision and evaluation, auditing, etc.).

- **2015 Wis. Act 92; Wis. Stat. § 120.20.**

- (1) A school board member may serve as a volunteer coach or a supervisor of an extracurricular activity if all of the following apply:
  - (a) The school board member does not receive compensation for serving as a volunteer coach or supervisor.
  - (b) The school board member agrees to abstain from voting on any issue that comes before the school board that substantially and directly concerns the activity that he or she coaches or supervises while he or she is serving as a volunteer coach or supervisor.
  - (c) The school board receives the results of a criminal background investigation of the school board member conducted by the department of justice or the federal bureau of investigation.
- (2) Subsection (1) (b) may not be construed to require a school board member who is serving as a volunteer coach or supervisor to abstain from voting on the school district's annual budget.

# WISCONSIN'S OPEN MEETINGS LAW

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- “In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.” Wis. Stat. § 19.81(1).
- “To implement and ensure the public policy herein expressed, all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.” Wis. Stat. § 19.81(2). (Emphasis added).
- The Open Meetings Law is to be liberally construed (any doubts should be resolved in favor of openness). Wis. Stat. § 19.81(4).
- Every meeting must begin in open session.
- The Board must only convene in closed session for a valid purpose and after complying with the procedural requirements.

# WISCONSIN'S OPEN MEETINGS LAW: NOTICE

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- Generally, every meeting of a governmental body must be preceded by public notice.
- Notice must be communicated to the public:
  - By posting in one or more places likely to be seen by the public, OR
  - By publication in a medium likely to give notice in the area.
- Posting in 3 places is recommended and is customary, but it is not specifically required.
- Media:
  - Notice also must be given to the official newspaper for the community in question.
  - If there is no official newspaper, notice must be given to a news medium likely to give notice in the area.
  - Notice also must be given to any news media that have filed a written request for notice.
- The meeting notice must reasonably inform the public of the time, date, place, and subject matter of the meeting. Wis. Stat. § 19.84(2).
- The Wisconsin Supreme Court has said that the description must be reasonable under all of the relevant circumstances of the particular case. *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71.
- Relevant circumstances include:
  - The burden of providing more detail.
  - The degree of public interest in the subject.
  - Whether the subject is non-routine.
- A notice should not use generic, uninformative subject-matter designations, such as:
  - Old or new business.
  - Agenda revisions.
  - Miscellaneous business, etc.



# WISCONSIN'S OPEN MEETINGS LAW: WALKING QUORUM

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- The Open Meetings Law defines “meeting” broadly.
- Communications between a quorum of Board members through technology (e.g., phones, email, texts, social media) may constitute a “meeting” under the Open Meetings Law.
- Walking quorums may occur as a result of Board members engaged in a series of communications with one another.
- In addressing these questions, courts are likely to consider such factors as the following:
  - the number of participants involved in the communications;
  - the number of communications regarding the subject;
  - the time frame within which the electronic communications occurred; and
  - the extent of the conversation-like interactions reflected in the communications.
- Email use by Board members (especially REPLY ALL) continues to create concerns regarding Open Meetings Law violations.
- Often discovered in the context of compiling records in response to public records requests. Note: The District cannot refuse to release a public record simply because it is evidence of an Open Meetings Law violation.
- What can you do?
  - Reminder to be cautious.
  - When emailing other Board members use the BCC line so they cannot REPLY ALL.

# CLOSED SESSION: VALID PURPOSES

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- Judicial or Quasi-Judicial Matters. Deliberations concerning a case which is the subject of any judicial or quasi-judicial trial or hearing before the governmental body. Wis. Stat. § 19.85(1)(a).
- Discharge/Discipline. Considering dismissal, demotion or discipline of a public employee provided the public employee is given actual notice of the evidentiary hearing prior to the final action being taken and the notice contains a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. Wis. Stat. § 19.85(1)(b).
- Compensation and Evaluation. Considering the employment, promotion, compensation or performance evaluation of a public employee. The discussion must pertain to a specific employee, as contrasted with general policies which do not involve specifically identified employees. Wis. Stat. § 19.85(1)(c).
- Competitive or Bargaining Reasons. Deliberating or negotiating the purchase of public properties, the investing of public funds, or conducting other specific public business, whenever competitive or bargaining reasons require a closed session. Wis. Stat. § 19.85(1)(e).

# CLOSED SESSION: VALID PURPOSES (CONT'D)

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- Personnel Matters. Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where Wis. Stat. § 19.85(1)(b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations. Wis. Stat. § 19.85(1)(f).
- Conferring With Legal Counsel. Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. Wis. Stat. § 19.85(1)(g).
- Crime Prevention. Considering specific applications of probation or parole or considering strategy for crime detection or prevention. Wis. Stat. § 19.85(1)(d).

# CLOSED SESSION PROCEDURES

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- Follow the procedures set forth in Wis. Stat. § 19.85(1):
  - Convene in open session;
  - Announce the specific nature of the business to be discussed as well as the applicable statutory exemption(s) – this must be done by the Board President;
  - Pass a motion, by majority vote, to convene in closed session;
  - Record the vote of each member in the minutes;
  - Discuss only such business which relates to matters provided in the notice and Board President’s announcement; and
  - Record and preserve all motions and roll call votes of each closed session by noting the motion(s) made, who initiated and seconded the motion(s), how each member voted, and all votes taken by the Board.
- Avoid reconvening in open session upon the conclusion of the closed session, unless prior public notice was given.
- Prohibit recordings of closed sessions, unless the Board has given prior approval to do so.
- The prohibition does not apply to expulsion hearings.
  - If the Board approves such a recording, the recording must be maintained in accordance with the Public Records Law.
- Use sparingly and only when necessary to protect public interest and where holding an open session would be incompatible with the conduct of governmental affairs.
- Aside from Board members, the Board may admit into a closed session anyone whose presence the Board determines to be necessary for consideration of the matter (e.g., legal counsel, District Administrator, other administrators).

# CLOSED SESSION: TAKING ACTION

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- Governmental bodies can take action by voting in closed session, but only when necessary to preserve the confidentiality of the subject matter that is properly addressed in closed session.
- Guidelines for determining the appropriateness of voting in closed session:
  - The governmental body must be in a proper closed session.
  - The same reason for convening in closed session must apply to the need to vote in closed session, i.e., to keep the action in confidence.
  - Mere convenience of voting in closed session is impermissible. The better practice is to notice a meeting to convene in open session, adjourn to closed session, and then reconvene into open session for action where voting in open session is preferred.
- Be careful about using “consensus” instead of action by the Board in closed session.
- When action is taken in closed session, the motion, second, and vote must be preserved and recorded in the meeting minutes like any other action.

**Thank You.**

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