

Essential Work of Vermont School Boards



A resource from the

**VERMONT
SCHOOL
BOARDS
ASSOCIATION**

Great Governance. Excellent Leadership. Strong Communities.

3. OPERATING A LAWFUL AND ETHICAL BOARD

School boards are public bodies entrusted by the community with overseeing the system of education for children in the district. As elected officials, school board members are expected to act with integrity and adhere to the highest ethical standards. Public confidence in the education system is driven by public faith in the competence and integrity of school board members.

The strong recommendations of the VSBA for effective and ethical operations of boards are as follows:

Board members need to be clear that they have no legal authority outside of the context of the Board. Although other citizens and school staff will assume you can exercise power in various ways, your power comes from your membership on the Board, not as an individual. For example, board members should not expect that they can personally direct the work of staff, nor should they attempt to influence operational decisions (e.g. bus routes) nor specific decisions about children (e.g. assignment of a particular child to a particular teacher).

Board members must assure that schools are well run, but not run them. Boards are the accountable overseers. If education is not meeting community standards, it is incumbent upon them to address the issue with the superintendent, their chief executive officer. As is true with any large organization, the Board cannot get involved in day-to-day, school operations, but must work through their hired leadership.

Board members must avoid actual or perceived conflicts of interest. Board members must attend to the needs of students and taxpayers. They cannot be driven by personal concerns or the perception of personal considerations. When any situation arises that could compromise this principle, the Board member must recuse himself or herself from any discussion or consideration of the measure at hand. Vermont is a very small state. It is highly likely, during the tenure of a board member, that a potential conflict of interest will arise, so board members must be vigilant. When one board member perceives a potential conflict for another board member, the integrity of the process dictates that the potential issue be raised.

Board members must maintain confidentiality of executive session. School boards are public bodies. Most of their business is conducted openly in full public view. For certain statutorily-defined reasons, a board may go into executive session to discuss certain issues. To take formal, binding action, the Board must come out of executive session. It is important that if a board votes to go into executive session that discussion be focused on the designated issue and that members respect the confidentiality of the discussion.

The VSBA strongly recommends all board have their members sign the code of ethics (Section A)

3.A. VERMONT CODE OF ETHICS FOR SCHOOL BOARD MEMBERS

As a member of my local school board, I will remember that my primary concerns must be the educational welfare of the students in my district and excellent return on investment for taxpayers. I agree to conduct myself in accordance with the following commitments. I will:

Act within the scope of my official role:

1. Recognize that a board member's responsibility is to see that schools are well run, but not to run them
2. Act only as a member of the Board and not assume any individual authority when the Board is not in session, unless otherwise directed by the Board
3. Give no directives, as an individual board member, to any school administrator or employee, publicly or privately
4. Avoid making commitments that may compromise the decision-making ability of the Board or administrators

Uphold the highest ethical standards:

1. Not receive anything of value, by contract or otherwise, from the school district or supervisory union unless it is received:
 - o as a result of a contract accepted after a public bid
 - o in public recognition of service or achievement
 - o as a board stipend reimbursement or expense allowed by law for official duties performed as a member of such board;
2. Not solicit or receive directly or indirectly any gift or compensation in return for making a recommendation or casting a vote;
3. Agree to recuse and remove myself from board deliberation and votes when necessary to avoid the appearance of conflict of interest;
4. Not agree to the hiring of a superintendent, principal, or teacher already under contract with another school district unless assurance is first secured from the proper authority that the person can be released from his or her contract.

Respect my peers, my constituents, and confidentiality considerations:

1. Voice opinions respectfully and treat with respect other board members, administrators, school staff, and members of the public;
2. Maintain confidentiality of information and discussion conducted in executive session and uphold applicable laws with respect to the confidentiality of student and employee information;
3. Attend all regularly scheduled board meetings insofar as possible.

I agree to abide by the principles outlined in this Code of Ethics and will do everything in my power to work as a productive member of the leadership team.

Signature

Date

Public Comment & Minutes

School boards are also required to afford a reasonable opportunity to any person in the school district to appear before the Board and express views in regard to any matter considered by the Board, and if requested to do so, must offer reasons for its action in writing. 16 V.S.A. §554(b). The Open Meeting Law allows the chair to establish reasonable rules governing public comments. Regular board meetings are convened in a public setting; however, they are not meetings of the public. The VSBA recommends that boards have a public comment policy (Code A21) to lend consistency and predictability to the process.

School boards are also required to take minutes, which “shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting.” 1 V.S.A. §312(b). Minutes of board meetings are a matter of public record and shall include at least:

- All members of the public body present;
- All other active participants in the meeting;
- All motions, proposals and resolutions made, offered, and considered, including their disposition; and
- The results of any votes, with a record of the individual vote of each member if a roll call is taken.

The clerk or secretary of the public body is charged with taking minutes and he or she must make them available for inspection by any person upon request after five days from the date of any meeting. Meeting minutes must be posted no later than five days from the date of the meeting to the website, if one exists, that the school district maintains or has designated as its official website.

Executive Session

One question that comes up a lot for boards is when and how to enter into executive session. An executive session is essentially a closed meeting within an open meeting. According to 1 V.S.A. §313, a board may only go into executive session upon a motion and vote to do so. The motion must state the “nature of the business of the executive session”, be supported by a majority of the Board, and recorded in the minutes. Boards may not enter executive session without first meeting in open session and then voting to enter executive session.

Boards may only enter executive session to discuss a limited number of topics. One category, which includes consideration of contracts, labor relations agreements, arbitration, mediation, and civil actions, and attorney-client communications for the purpose of providing professional legal services to the body requires a finding that “premature general public knowledge would clearly place the public body or the person involved at a substantial disadvantage” in order to be an appropriate subject for executive session. Other permissible reasons to enter executive session are:

- The negotiating or securing of real estate purchase or lease options;
- The employment or evaluation of a public officer or an employee, as long as the body makes its final decision to hire or appoint a public officer or employee in an open meeting and explains the reasons for the decision

- A disciplinary action against a public officer or an employee, except if such an employee seeks a public hearing after formal charges are brought;
- A clear and imminent peril to the public safety;
- Discussion or consideration of records or documents that are not public documents under the access to public records act, provided that when the Board discusses the exempted record it may not also discuss the general subject to which the record or document pertains;
- The academic records or suspension or discipline of students;
- Municipal or school security or emergency response measures, the disclosure of which could jeopardize public safety.

While in executive session, a board may only discuss the subject matter referenced in the motion to enter the session. Attendance in executive session is limited to members of the Board, and in its discretion staff, clerical assistants and legal counsel, and those who are subjects of the discussion or whose information is needed. 1 V.S.A. §313(b). A board cannot take any action in executive session, except actions related to the securing of real estate options. Ultimate action on all other items must be taken by motion and vote in open session.

There is no specific statutory requirement that executive session deliberations remain confidential. However, breach of trust between board members and administrators, violation of the agreed upon School Board Code of Ethics, and potential litigation, particularly associated with the sharing of student records and privileged employee information, compel board members to honor the spirit of executive session law.

Public Records

School districts are required to produce public records for inspection or copying unless the record is listed as exempt in Vermont's public records law (1 V.S.A. §§315-320). A public record is defined as "any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business." This means that any correspondence regarding board business among board members, including emails, are subject to a public records request by a member of the public. The superintendent should develop procedures for responding to public records requests and board members should follow those procedures if they receive a request.

Board Member Electronic Communications Standards

School board members should follow the same standards when communicating electronically as are required under Vermont's Open Meeting Law for conducting regular school business. Just as a majority of the Board members may not meet to deliberate on school issues without notifying the public, a quorum of the Board may not deliberate or make decisions using electronic methods without notifying the public. The law as applied to electronic communication is new and developing, and so the following suggestions should guide school board actions.

What Board Members Can Do Electronically

- Send individual email to another board member or administrator to share information. The electronic dialogue may not involve the majority of board members in simultaneous communication and, thus, violate the open meeting law quorum standard.

- Receive board packet information in advance of each meeting.
- Solicit opinions and feedback from citizens on school related issues.
- Conduct a legal meeting via e mail or Internet chat or by phone if the Board follows the open meeting law requirements (e.g. legally warn that an electronic board meeting will be conducted and indicate how community members may observe and participate in the electronic meeting.)

School Board Members Should Not:

- Share confidential information via email.
- Use electronic communications to make school district decisions, as doing so prevents community members and administrators from being able to observe board deliberations and participate in the meeting.
- Convene a quorum of board members simultaneously on line to host discussions or vote on issues unless Open Meeting Law requirements have been followed.
- Put anything using email that you would not share in an open meeting. In most cases, email is considered a public record subject to disclosure under the Vermont Access to Public Records Act (1 V.S.A. § 315-319). Email is also very traceable, given that it is stored within the Internet service provider's system where, email archives can be requested by interested parties, members of the press, or through a court subpoena.