

# BULLETIN BOARD

## Maintaining Confidentiality

By virtue of their roles on a school board, school board members often hear or receive information that is confidential under law or policy. Maintaining confidentiality in regard to that information is one of the more significant ethical responsibilities that is placed on a board member. This obligation is emphasized in MASB's *Michigan School Board Governance Standards*: "The individual school board member is motivated by and focuses on what is in the best interest of all students. Does the board member maintain confidentiality when expected to do so?" School boards also stress confidentiality in their locally adopted Code of Ethics—"I will take no private action that compromises the board or administration and respect the confidentiality of information that is privileged under applicable law."

In addition to the ethical concerns related to breaching confidentiality, it is also very important to keep confidential information private from a legal perspective. When a school board member publicly divulges confidential information, the school district and the board member may be subjected to legal liability.

For example, the Open Meetings Act states that closed meeting minutes are not available to the public and shall only be disclosed if required by a court order. If a board member discloses closed meeting minutes, there may be legal consequences. The Michigan Attorney General has ruled that "a public official who discloses closed session minutes to the public in violation of the Open Meetings Act risks criminal prosecution and civil penalties." (OAG, 2000, No 7061.)

Courts have also interpreted the disclosure restriction to include not only the actual minutes document, but also to include dialogue that occurs during a closed meeting, even if not recorded in the minutes. Thus, any information that is presented in a closed meeting should never be publicly discussed with anyone other than the closed meeting participants or other school board members who were unable to attend the meeting. And, board members should always err on the side of confidentiality when discussing an issue or topic that was the subject of a closed session. Even if some information was previously known or disclosed to the public, a school board member should refrain from referring to that information during an open meeting if it was discussed in a closed session.



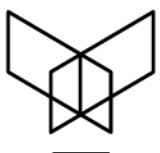
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Confidential information may also involve personnel matters. If an employee is being investigated for alleged misconduct, disclosing the unsubstantiated accusations during the course of the investigation could violate the employee's due process rights. Even if the misconduct is substantiated and discipline is documented in the employee's personnel file, the disciplinary information should not be publicly disclosed without following the school district's rules and guidelines on releasing personnel records. In

general, most employment information about school employees is considered public information, but Michigan's law on personnel records as well as many collective bargaining agreements include specific requirements that must be followed before releasing an employee's disciplinary record to a third party. So, board members should always refrain from publicly disclosing information involving personnel complaints, investigations or disciplinary decisions that has been shared with the school board.

Student record information must also be kept confidential. While the Family Educational Rights and Privacy Act allows a school district to disclose student records under specific and limited circumstances, school board members should not publicly discuss or disseminate any student record related information that has been shared with them, even if it involves student accomplishments and recognitions. The best practice here is to let the administration publish student news and then it can be publicly shared by school board members.

If you have any legal questions, please reach out to MASB's Legal Team at 517.327.5900, or contact your district legal counsel.



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