OPMA and ETHICS

1. Adequate Notice and OPMA
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OPMA- ADEQUATE NOTICE

N.J.S.A. 10:4-9 states that public bodies may not meet except upon “Adequate notice” to the public.

However…

Upon the vote of ¾ of the members present, a public body may met without adequate notice if:

- Urgent and important matter likely to result in substantial harm to public interest if the public body must wait to provide notice
- Meeting must be limited to urgent matter
- Notice provided ASAP
- Unforeseeable; or foreseeable but the public body failed to act
Adequate notice” means written advance notice of at least 48 hours, giving the time, date, location and, to the extent known, the agenda of any regular, special or rescheduled meeting, which notice shall accurately state whether formal action may or may not be taken and which shall be:

- Prominently posted
- Mailed, telephoned, telegrammed, or hand delivered to at least two newspapers
- Filed with the clerk of the municipality
N.J.S.A. 10:4-10 requires a statement of adequate notice in the minutes, and read at the start of each meeting:

"In accordance with the State’s Sunshine Law, adequate notice of this meeting was provided by mailing a notice of the time, date, location, and, to the extent known, the agenda of this meeting on [INSERT DATE THE NOTICE WAS MAILED] to the [INSERT ALL LOCAL PAPERS TO WHOM NOTICE WAS MAILED]. Copies of the notice have also been posted in the board office on [INSERT DATE THE NOTICE WAS POSTED] and filed with Flemington Borough and the Raritan Township Clerk and in each of the district schools on [INSERT DATE THE NOTICE WAS FILED WITH THE CLERK AND DISTRICT SCHOOLS]."
OPMA- ADEQUATE NOTICE

Fun Facts:

- Notice does not actually have to be published in the papers
- Electronic notice (i.e. website posting) does not satisfy notice requirement
- Agenda must only be posted “to the extent known”
- Attachments to agenda are not required as part of notice
- Group email/text discussions can be considered “meetings” under OPMA – DON’T REPLY ALL
OPMA- CLOSED SESSION

Three Pillars of Executive Session

1. Say what you are going to say
   - Board must first adopt resolution at public portion of meeting stating why, how long, whether action will be taken, etc.

2. Say it
   - Personnel, litigation, student matters, negotiations, security,

3. Say what you said (…or don’t!)
   - Minutes must be kept and made available when the need for confidentiality no longer exists
When does the need for confidentiality no longer exist?

- Personnel → when an employee seeks a public discussion
- Hiring staff → successful candidates resumes post hire
- Negotiations → post ratification of contract
- Contract for acquisition of land → post sale
- Reductions in Force → discussions of budget and number of positions to be eliminated
Information that will remain confidential:

- Student matters → HIB, discipline, etc.
- Hiring staff → Unsuccessful candidates resumes
- Negotiations → Strategies, proposals not accepted
- Legal advice → Legal advice will almost always remain confidential due to concerns about waiving privilege
- Strategies/Deliberations → Could compromise future negotiations, compromise privacy
Code of Ethics for School Board Members

“Uphold all laws”


- I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

Intersection of OPMA and the Code

- Violating OPMA may also be a violation of the Code (i.e. holding private meetings, engaging in email or text discussions with a quorum of the Board
- Engaging in discussions during executive session on topics not permitted under OPMA
OPMA and Ethics

Code of Ethics for School Board Members
“Maintain confidentiality”

N.J.S.A. 18A:12-24.1(g)
- I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

Intersection of OPMA and the Code
- Disclosing confidential information about staff members or students
- Disclosing confidential executive session discussions before it is appropriate
Code of Ethics for School Board Members

“No personal promises and/or private action”


- I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

Intersection of OPMA and the Code

- Disclosing attorney/client privileged information causing the privilege to be waived
- Disclosing deliberative information that could weaken the Board’s position in future negotiations
OPMA, Ethics and Social Media
Why is a Policy necessary?

- Provide guidance to BOE members
  - Avoid conduct that violates public trust or creates the impression that public trust is being violated
  - Remind BOE member that they are held to higher standards and to exercise care in setting boundaries between their personal and public online behavior
  - Remind BOE members that content posted on social media can be cause for sanctions under the SEA or Code
Policy 0169.02
BOARD MEMBER USE OF SOCIAL MEDIA

1. Not post anything that violates board policies
2. Uphold respect for individuals, and avoid defamatory statements about BOE, District, employees, students, families
3. Not disclose confidential information about District or privy to because of board position
4. Not use BOE title to promote business, nor post or reference confidential information obtained through BOE membership
Policy 0169.02
BOARD MEMBER USE OF SOCIAL MEDIA

4. Refrain from communicating with other BOE members to avoid OPMA violation
5. Not respond to any postings regarding BOE or District or respond to inquiry
6. Not post any information determined by SEC to be a violation of SEA
Ethics Update: Volunteering – PTA Involvement

- Advisory Opinion A15-18 (April 2018)
  - Question of whether newly elected Board member could still serve in following PTA positions as a board member:
    - PTA President
    - District Communication Committee
    - Homeroom Parent
    - Homeroom Parent Coordinator
    - Coordinator of Movie Night
    - Coordinator of Field Day
Ethics Update: Volunteering – PTA Involvement

● Advisory Opinion A15-18 (April 2018)
  – For Volunteering SEC looks to degree of involvement a BOE member has with staff and students, as well as the degree to which BOE member has authority to give and receive directions and orders to staff during the involved volunteer activity.
  – In prior opinion, SEC advised that where the Board member was in a supervisory position and generally oversaw staff or students, such interaction would be inconsistent with the Act.
  – SEC finds roles as Homeroom Parent, Homeroom Parent Coordinator, Coordinator of Movie Night, and Coordinator of Field Day passive in that the BOE member defers to the Principal and/or teaching staff as they help support the activity for which they are volunteering. So No Violation.
Volunteering – PTA Involvement

- Advisory Opinion A15-18 (April 2018)
  - SEC also finds roles as PTA President and substitute member of the DCC, as not being subject to a widespread level of direction from staff, students or other Board members. Member is not prohibited from serving in any other PTA Executive Positions.
  - SEC advised when volunteering in various PTA or other roles BOE members should advise the Superintendent and relevant staff that they will be performing this work and are doing so as a volunteer and parent, not as a Board member.
Ethics

It is not the FLOOR (i.e. a code of conduct)
- Laws, Board Policies, Court Orders

It is not the CEILING (i.e. a set of morality rules)
- Personal beliefs, potentially subjective
OPMA and Ethics

A Code of Ethics exists somewhere in between and can help navigate the grey areas.

- Facilitates the recognition of potential ethical dilemmas
  - Provides the language to discuss the dilemma
  - Protects the Board Member and the District

*Don’t fear the Code…embrace it!*
QUESTION & ANSWER

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