

# Panel Discussion: Open Meetings, Open Records and Conflicts of Interest

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NORTH DAKOTA SCHOOL  
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# Panelists

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# Scenario #1

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Your district has a board with 5 members. Over the course of a few weeks, all of the board members are contacted by several parents of students in the district. The parents express numerous concerns about a 3<sup>rd</sup> grade teacher and their beliefs that he is not adequately preparing students to transition to 4<sup>th</sup> grade. These concerns seem to be reflected in testing and assessments.

Three of the board members call each other individually by phone to discuss the parents concerns. They all agree that they should meet with the Superintendent to discuss how they think the situation should be handled. A meeting occurs at the school the next day and the Superintendent promises to look into the issue at the direction of the board members.

Any problems so far?

# Scenario #1 (Cont.)

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A few days later, the board president receives a request from a group of parents to be placed on the agenda at the next board meeting to discuss their concerns about the teacher with the board.

The board president grants the request, calls a special meeting for later that day, and tells the business manager to prepare a notice with this item on the agenda. The board president also says to include an anticipated executive session for the board to discuss the situation outside of the public eye.

The business manager prepares a notice for an upcoming special meeting with the agenda items described as:

1. Parent Presentation regarding Concerns
2. Anticipated Executive Session regarding parent concerns

Any issues here?

## Scenario #2

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At a board meeting, the board discusses a request from a parent in the district to consider adopting a Transgender Student policy. A board member suggests that the Superintendent put together a group of parents, community members, and other stakeholders to gauge the desire of the community to have such a policy in the district. All board members agree that this may be an appropriate first step. The board will receive any recommendations or thoughts the group may have regarding a policy. The superintendent has the freedom to determine who the members are and when/where they meet.

The superintendent puts together a group of 10 individuals from the community and they begin to meet once a month. No board members are part of the group.

Any open meeting concerns/issues?

## Scenario #2 (Cont.)

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After a few months, the superintendent reports the progress of the meetings of the group to the board at a meeting. It appears as though the group wants to work to develop a policy for the board's consideration. The board directs two of its members to join in on the group's discussions for the purpose of discussing the development of a policy that will be handed over to the board policy committee.

The two designated board members start to attend the group meetings each month.

Any open meetings concerns/issues?

A third board member (in addition to the two designated members) sits in a few of the meetings and offers her thoughts to the group.

## Scenario #3

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At a recent meeting, a school board discussed the prospect of reorganizing with two neighboring school districts. There are strong opinions on all sides within the community. Over the past few weeks, the board members, as well as the superintendent, have received numerous phone calls and emails from concerned citizens voicing their support or opposition to the idea of reorganization. The issue has also received attention from local media. Some of the individual board members have given interviews to the media.

## Scenario #3 (Cont.)

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On a Saturday morning, the board president receives an email from John Smith who identifies himself as a “concerned citizen.” In the email, Mr. Smith requests copies of all emails, text messages, or other correspondence relating to the issue of reorganization: (1) between any board members of the district; (2) between any board members and administration; (3) between any board member and any member of the public; and (4) between any board member and any representative of the media.

The following Tuesday, the board president finally gets around to responding to the email and instructs Mr. Smith that he is not the correct person to send such a request and advises that he write a letter to the business manager asking for the documents. The board president never hears back from Mr. Smith.

Any concerns or problems with what the board president did here?

## Scenario #3 (Cont.)

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A week later, the business manager receives a voicemail message from Mr. Smith inquiring as to the status of his open records request. The business manager has no idea to what he is referring. She asks the superintendent if he has received anything from Mr. Smith and the superintendent says no. They agree that it must be a mistake and do not respond.

Any other problems or issues thus far?

What if business manager did return his call and asks him to send his request to her via email? What if she asks him to include a reason and to provide a copy of his driver's license so that she can confirm he is a resident of the district?

## Scenario #3 (Cont.)

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Two weeks later, the district receives a letter from the Office of Attorney General notifying them of a complaint that has been filed with their office regarding an open records request from Mr. Smith. The Attorney General asks for any and all information regarding the request from Mr. Smith.

What should the district do now?

## Scenario #4

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Two board members were recently elected to serve on their local 7-member school board. One of the new members is married to a teacher employed by the district. The other new member has a sister that also serves on the school board. During their campaigns, both new members were very vocal about their disagreement with several recent decisions made by the board and the management style of the superintendent. They also campaigned on a promise to raise teacher salaries.

A few months later, the two board member sisters and the other new school board member come into the district office to speak to the business manager. They instruct the business manager to schedule a special meeting for the following day and to prepare an agenda with several items.

## Scenario #4 (Cont.)

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Here is the proposed agenda:

1. Superintendent's contract
2. Reopen negotiations with teachers and proposed revisions to negotiated agreement
3. COVID-19 hazard pay for teachers and custodians

Unsure what to do, the business manager calls the board president. The board president tells the business manager not to schedule the meeting because the board president and the superintendent are the ones who decide what items are placed on the meeting agenda.

Any problems here?

## Scenario #4 (Cont.)

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The board president contacts the district's legal counsel and is informed that any two board members may call a special meeting. Soon thereafter, a special meeting is scheduled with the proposed items included in the agenda.

The board president adds another item to the agenda: "Board discussion regarding public censor of board members for unethical conduct in violation of board policy."

After the meeting is called to order, the vice president makes a motion to add a public comment period to the meeting agenda. The motion is seconded and passes by a vote of 4-3.

Thoughts? Any problems here?

## Scenario #4 (Cont.)

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The board then moves through the agenda. One of the new board members who is married to a teacher makes a motion to re-open the superintendent's contract to reduce the superintendent salary for the purpose of increasing the base in the teacher salary schedule in the negotiated agreement.

The motion is seconded and the board discusses the motion. The board takes a roll call vote and the motion fails by a vote of 4-3.

Any problems? What about any of the other agenda items?

## Scenario #4 (Cont.)

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Let's pretend that you are on this board. You recognize the likely conflicts of interest in this scenario.

What happens if a board member with a conflict of interest fails or refuses to declare it at the meeting? What should/can you do?

## Scenario #5

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Due to increased enrollment numbers, the district is in need of a new elementary school. The board (5 members) has considered several proposed locations for the new school. One board member mentions his neighbor that has indicated to him a desire to donate several acres of property to the district for purposes of building a new school. The board member jokes: "I would love for this to happen! It would be a great location for the district, and would do wonders for my development plans. You know what that will do to my property value!" The other board members know that this board member is working to subdivide his property for purposes of residential development.

## Scenario #5 (Cont.)

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After considering other location options, the board president calls a special meeting to consider whether to accept the property donation from the patron. At the meeting, a motion is made to accept the property donation from the patron and the motion is seconded. The motion passes by a roll call vote of 5-0.

Any concerns with a conflict of interest here?

## Scenario #6

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The superintendent of a district receives an anonymous report from a member of the community that several members of the football team were at a party last weekend. The patron forwards to the superintendent several pictures and videos posted that the patron says were screenshots from a student's snapchat story. In the pictures and videos, football players and other students can be seen in the background taking hits from a bong. You can also see numerous red solo cups strewn about. The superintendent recognizes several students in the videos and pictures.

The superintendent investigates. A few students confess to drinking alcohol and also confirm that several of the football players (including several seniors) were smoking marijuana from a bong at the party.

## Scenario #6 (Cont.)

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Following the investigation, the superintendent suspends the football players and other identified students for six weeks. The championship football game is on the following Saturday. Board members are inundated with verbal complaints from the community that the superintendent shouldn't have disciplined the students based on an anonymous report. The patrons are upset that several senior football players will not be able to play in the state championship game.

The superintendent receives a call from the board president, who wants to see the video and pictures used to discipline the students. The board president is aware that the video and pictures have been circulated throughout the community.

The superintendent also receives a call from the local sheriff who wants to meet with the superintendent in connection with a criminal investigation into possible drug possession charges.

What should the superintendent do?

## Scenario #6 (Cont.)

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The superintendent tells the board president that it would be inappropriate for the board president to have access to the video and pictures.

Later that week, the board president calls a special meeting to discuss the verbal complaints from the community and the superintendent's handling of the student disciplinary matter.

The meeting notice indicates that the discussion will occur in executive session pursuant to FERPA.

Thoughts?

## Scenario #7

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It is a negotiations year in your district. One of your board members is the cousin of two teachers on staff in the district. This board member has expressed interest in being a member of the board negotiations committee. The board president has agreed to this request and the issue is on the agenda for the next meeting.

Thoughts? What if one of the related teachers is on the teacher negotiations team?

## Scenario #7 (Cont.)

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The board decides not to approve the appointment of the board member to the negotiations committee. After the board completes the recognition process, the board holds its first planning meeting in advance of the first negotiations meeting with the teacher reps. The board expects to go into executive session to discuss negotiation strategy

Can/should the board member participate in the executive session? What should the board do?

## Scenario #7 (Cont.)

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Throughout the negotiations process, the board negotiation team regularly seeks strategy input/direction from the full board. These strategy discussions usually take place in executive session.

Can/should the family board member be included?

What about when the parties reach an agreement? What should/can happen then with respect to this issue?

## Scenario #7 (Cont.)

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Here is a twist on this scenario.....what if instead of the board member being a relative of two teachers, it is the business manager that is the relative of two of the teachers. The business manager sits in on all executive sessions with the board.

Does this present any problems legally? Or practically?

## Scenario #8

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In your district, you have a teacher that has had a lot of difficulty with her co-workers over the past few years. The superintendent has documented various incidents over that time and has also placed letters of reprimand in the teachers personnel file.

The board president receives a lengthily email from the husband of another school employee with numerous complaints about this teacher. The email includes a request for a copy of the entire personnel file for this teacher. In addition, the husband seeks copies of all discipline-related records for this teacher.

What should the board president do?

## Scenario #8 (Cont.)

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The husband of the employee calls the business manager to check the status of the request. He says that he would like to come in and review all of the documents in person (to avoid a charge for copies).

What should the business manager do?

Should the teacher whose file will be reviewed be informed?

What if the husband/requester takes pictures of various contents of the file while he is reviewing the file at the school office?

## Scenario #9

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Your district business manager has provided notice to your board that he intends to retire at the end of the current school year. The district publishes an ad in the local newspaper seeking candidates for the position. After a few weeks, the board receives applications from 6 candidates. At first glance, all but one seem qualified for the position.

The day before the closing of the application, one of the board members submits an application for the position. The rest of the board members are surprised, but are aware that the applicant board member has qualifying experience.

Any problems here?

## Scenario #9

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The board schedules a special meeting for the next week to discuss the applicants and their qualifications. The notice/agenda contains the following agenda item:

1. Board review and consideration of applicants for business manager position.

The board hopes to narrow down the applicants to finalists, who they intend to interview.

Any issues so far?

## Scenario #9 (Cont.)

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After the board reviews and discusses the applications, a motion is made to designate two applicants as finalists. One of the designated finalists is the board member applicant.

What should the board and the board member applicant do going forward?