

When Silence is Golden

Sometimes confidentiality is a must for school board members

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“I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools.”

The above statute, from N.J.S.A. 18A:12-24.1(g), is part of the Code of Ethics for school board members. Its intent could not be more clear: when board members are entrusted with confidential information, they are to keep it confidential.

It sounds fairly simple, but breaching confidentiality is one of the most common violations of the school ethics act.

There are countless examples of New Jersey board members not keeping information confidential. A school board member reveals to a local newspaper details of the contract negotiations between the school district and a superintendent candidate. A board member excuses himself from an executive session meeting – to telephone a local radio station about some news discussed in session. A board member announces the board’s agreed-upon strategy for negotiating with the district’s teachers – including how high the board is willing to raise salaries. A board member tells his son about a disciplinary matter involving a teacher – and the son posts the details on Facebook. A board member faxes a letter marked “confidential” from the board’s attorney to the interim county superintendent.

One of the most difficult tasks new board members have is understanding the importance of maintaining confidentiality. There are times you can’t tell anyone what you know – not your spouse, your best friend, or your neighbor – even if they promise to keep the secret. NJSBA field service representatives often tell board members who are frustrated to scream in their cars, or go home and tell their dog or cat. But you can’t disclose things to anyone else.



What’s Confidential? The list of what matters are confidential is fairly straightforward. Matters involving individual students, including disciplinary measures, must be kept quiet. Almost all personnel matters involving district employees, including performance evaluations, are confidential. Both students and employees have individual rights to privacy that must be respected.

Matters involving labor negotiations, anticipated and pending litigation and any purchase of land or property should not be disclosed to outsiders.

In fact, everything discussed in executive session should be kept confidential by individual board members. That’s why there are exceptions to the Open Public Meetings Act that permit certain topics to be discussed (although not voted upon) in private.

The reasons for keeping informa-

tion confidential vary. As with students and employees, disclosing something might trample on someone else’s rights. Improperly disclosing information can open the district up to a lawsuit.

Spilling the beans on labor negotiations strategy or a district’s plan to purchase land can jeopardize a board’s goals and strategy.

In a broader sense, disclosing a board’s confidential information can discourage the free exchange of information and opinions in executive session, destroy the trust that board members should have in each other, and hurt the credibility that the board has with its community. Disclosing information about your administrators can undermine them and their ability to do their job.

Confidential Isn’t Always Forever When a board goes into executive session, matters discussed there are considered confidential until such time when the need for confidentiality no longer exists. For some items, such as the pending litigation, it’s clear when there is no longer a need for confidentiality.

For other topics – including student and employee information – the need for confidentiality is permanent. If you have some doubt as to whether or not information can be released after the fact, check with your board attorney.

Executive Session Facts It’s important to note that when boards go into executive session, they need to pass a resolution. That resolution must describe, in broad terms, what the board will be discussing while in executive session and should be as specific as possible on the topics to be discussed, without revealing privileged information. A board going into executive session should also let the public know if there will be action taken when the board re-convenes in public.

A board should keep minutes of what was discussed during executive session. The minutes need not be as detailed as they would be for the regular board proceedings that are open to the public, but there should be minutes kept. When the need for confidentiality has passed, those minutes may be made public.

Votes can only be taken in public sessions, although a board can discuss a vote during executive session to see if there is a consensus of opinion on a matter. If a vote is being taken on a confidential student or employee matter, an identification number or other type of confidential identifier will be used to mask the identify of the person.

Remember, too, that when you come out of executive session, a resolution has to be passed by the board closing executive session, and a separate public

motion passed ending the board meeting, if that's what you intend to do.

When Do Board Members Tend to Talk?

Sometimes confidentiality is breached completely by accident, but it is more common that an unhappy board member intentionally broadcasts something that is not to be disclosed. They may be trying to embarrass someone else on the board or an administrator, or they may simply think "if only the public knew the real story." Whatever the motivation, there's no excuse for such behavior.

One of the most frustrating situations for board members, especially new ones, is when the board doesn't renew the contract of a popular teacher or administrator, and members of the public come to a meeting to protest. While community members vent, the board, which may know

that a nonrenewal was completely justified, must sit quietly by. Your board president can make a statement such as: "Employees have certain privacy rights and we cannot make any comments on personnel matters." But that's about all you can say—to anyone, anywhere. It is indeed frustrating, but that's part of what you signed up for when you joined a board.

It is worth repeating that violating confidentiality is a violation of the School Ethics Act. If someone brings charges against you with the School Ethics Commission, you could be publicly reprimanded, censured, suspended, or even removed from your board. **sl**

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