

# New Board Member Gathering Webinar

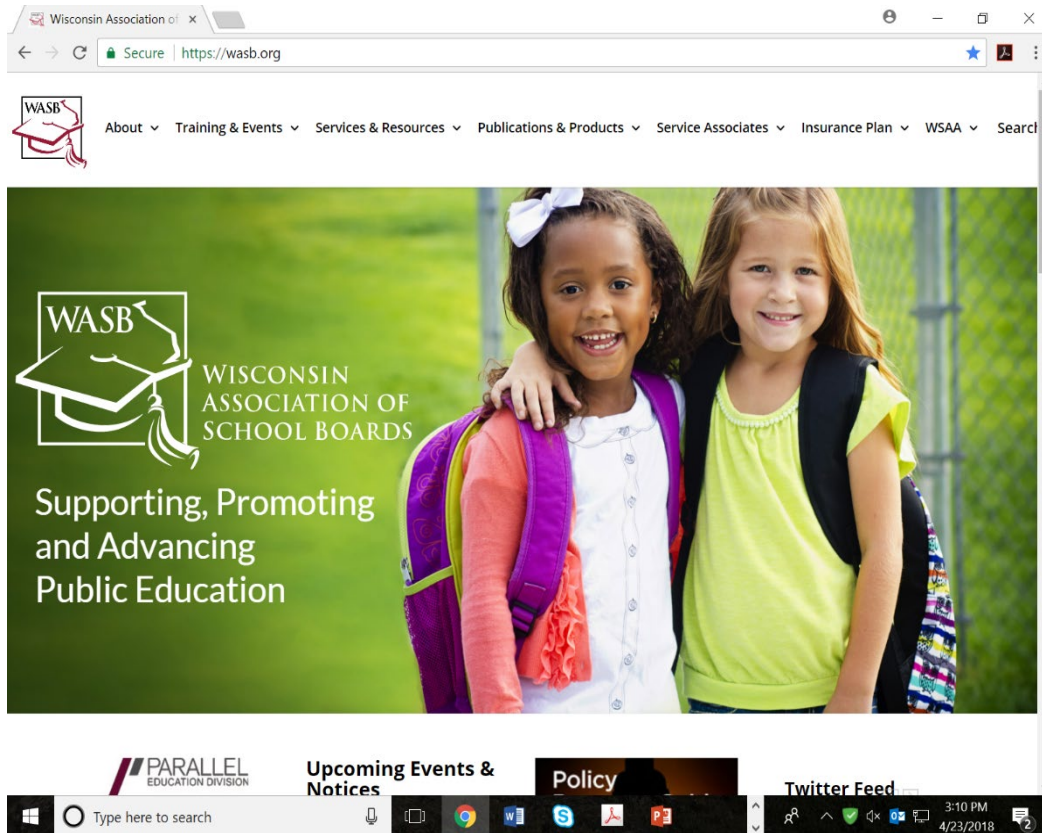


## Legal Roles & Responsibilities

*Presented by the WASB Legal Services Staff*

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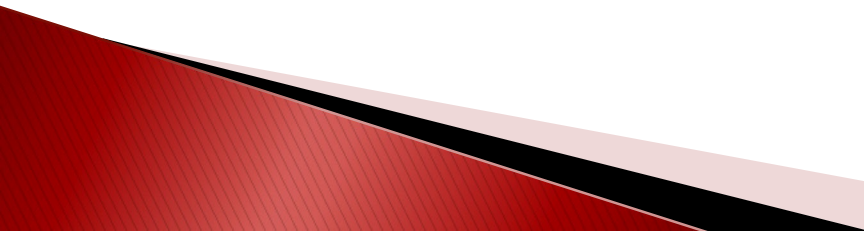
# Welcome and thank you!



How you can reach the WASB with your questions and comments:

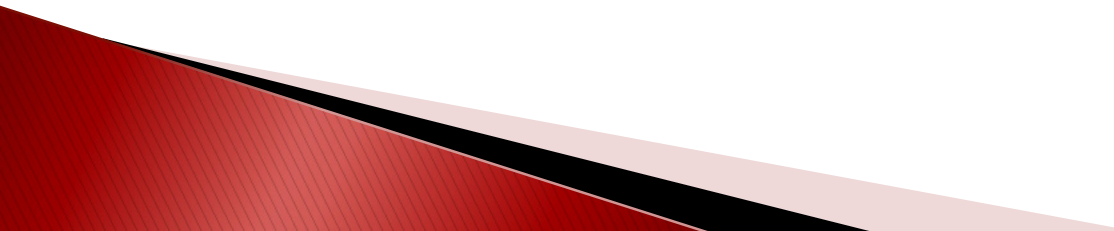
- ▶ [www.wasb.org](http://www.wasb.org)
- ▶ [info@wasb.org](mailto:info@wasb.org)
- ▶ Call WASB toll-free at 1-877-705-4422
- ▶ [WASB Executive Director, John Ashley's Welcome Message](#)

# You've won the election ... what happens next?

- A “Certificate of Election” should be issued by the school board clerk.
  - You must take and file the written oath of office on or before the 4<sup>th</sup> Monday in April. (See the upcoming slides for more detail).
- 

# Oath of Office

## ► Administration of oath

- The school district clerk has authority to administer the oath of office.
  - In the absence of the clerk, a notary public or other person with the authority to administer oaths may also administer the oath to newly elected members.
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# Oath of Office

## ► Administration of oath

- Other individuals authorized to administer the oath.
  - Notary: Anyone who is a notary authorized to administer oaths in Wisconsin.
  - Others (e.g., judges, court commissioners, court reporter, municipal/county clerks) also have authority to administer the oath. Please see Section [887.01\(1\)-\(2\)](#).
  - The school board president is not listed in that statute and wouldn't be able to administer the official oath unless the President also serves in one of those capacities or is a notary.

# Oath of Office

## ► Administration of oath – Virtual?

- The oath most likely must be done in person: [Emergency Guidance - Remote Notarization.pdf \(wdfi.org\)](#)
- The oath must be on the prescribed written form.
  - The Elections Commission maintains an [official oath form \(EL-154\)](#).
  - If desired, the oath may be administered orally in addition to the written oath (e.g., during open session of a school board meeting), but such additional administration should be considered largely ceremonial. [Section 19.01](#).
- The oath doesn't have to take place at a board meeting, but it does have to be administered on or before the fourth Monday in April (April 26, 2021).

# Taking Office

## ► Taking Office

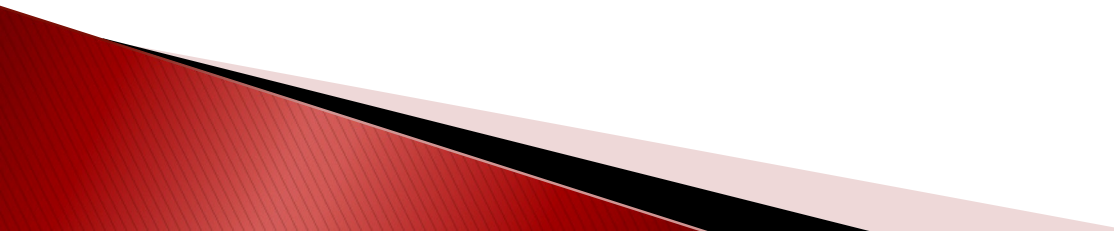
School board members take office, provided they have taken and filed the official oath, on the fourth Monday in April. Sections [120.06\(4\)](#) and [120.42\(2\)](#).

It is the WASB's understanding that failing to take and file the oath of office by the statutory deadline creates a vacancy in the office (i.e., the person loses their seat on the school board).

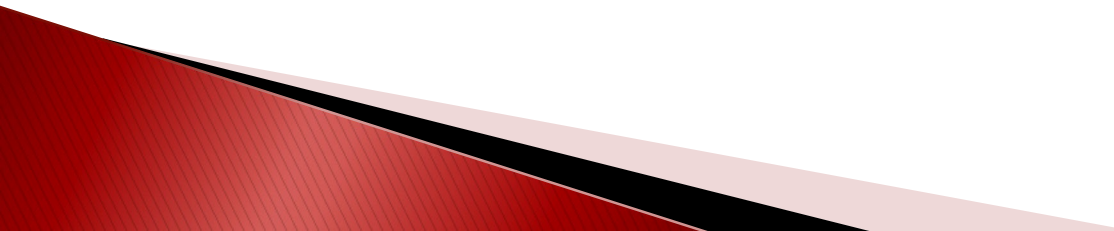
► Please see [Section 17.03\(7\)](#)



# Get your bearings and find some direction!

- Use the time between the election and taking office for orientation-type activities.
  - Some school boards have an established orientation process for new members.
  - In some school districts, the process is very informal.
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# Review some of the key documents through which the school board governs

- [WASB New School Board Member Handbook](#)
  - [Complete WASB's "What Every New School Board Member Needs to Know" Guide.](#)
  - The strategic plan and the board's priority goals
  - School board policies
  - The annual budget
  - The district administrator's contract and job description
  - Handbooks/Collective bargaining agreements(if any)
- 

# What is the WASB?

- ▶ A non-profit, voluntary association serving Wisconsin's 421 school boards and 12 CESA boards of control.





# Why Choose the WASB?

## ► Your State Association

- Innovative ideas
- Timely information
- Legislative advocacy
- Essential services
- Quality resources
- Relevant programs





# WASB Areas of Service



- ▶ Advocacy & Government Relations
- ▶ Communications
- ▶ Governance & Leadership Development
- ▶ Legal Services
- ▶ Organizational Consulting Services
- ▶ Policy Services
- ▶ Superintendent Search Services

# Advocacy & Government Relations



- ▶ A strong voice representing the interests of Wisconsin school boards at the Capitol.
- ▶ Resources and regular legislative updates to help school board members be effective advocates for their school districts.

# Governance & Leadership Development

## Building effective leadership.

- ▶ Providing information, tools, and support to help boards respond to emerging trends, engage with their communities, and foster strong relationships.





# Legal Services

**Helping you make sound management decisions.**



- ▶ General legal and human resources information
- ▶ Sample employment policies, compensation data and other resources
- ▶ Individual, fee-based services

# Policy Services

**From development through implementation.**

- ▶ The [Policy Resource Guide](#) (PRG) is a Web-based policy tool designed to assist Wisconsin school boards and administrators in the important tasks of policy development and implementation.
- ▶ Policy Library, including thousands of sample policies, articles, guidance documents, and other resources.



# Organizational Consulting



- ▶ The WASB provides comprehensive, customized training, support, resources, and inspiration to school boards and superintendents to maximize their effectiveness in carrying out their respective leadership roles.

# Superintendent Search Service

Helping you find the right match.



- ▶ Customized search process for each board.
- ▶ Transition services to help boards and their new administrators begin their journey together.



# Conferences and Seminars

- ▶ State Education Convention
- ▶ Legal and Human Resources Conference
- ▶ Legislative Advocacy Conference
- ▶ Monthly Workshops and Webinars
- ▶ Leadership Conference
- ▶ School Law Conference
- ▶ Day at the Capitol
- ▶ Regional Meetings



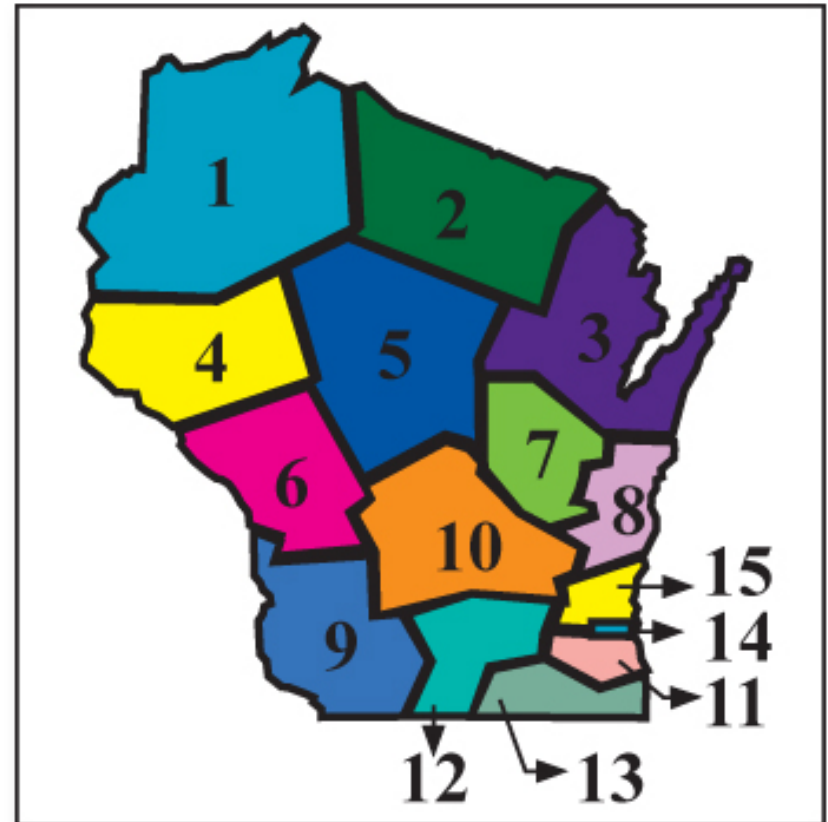
# Publications & Subscriptions

- ▶ Award-winning magazine
- ▶ Legislative updates
- ▶ Policy and legal newsletters
- ▶ Policy Resource Guide web-based tool
- ▶ Model Employee Handbook
- ▶ Special Issue Publications and Bulletins



# WASB Board of Directors

- ▶ Each member board has one vote to elect a regional representative to the WASB Board of Directors.
- ▶ The executive director is responsible for carrying out the policies of the Board of Directors and coordinating Association programs and services.



# WASB Delegate Assembly



- ▶ Each member board has one vote on the policy positions determined at the annual WASB Delegate Assembly, held in conjunction with the State Education Convention.

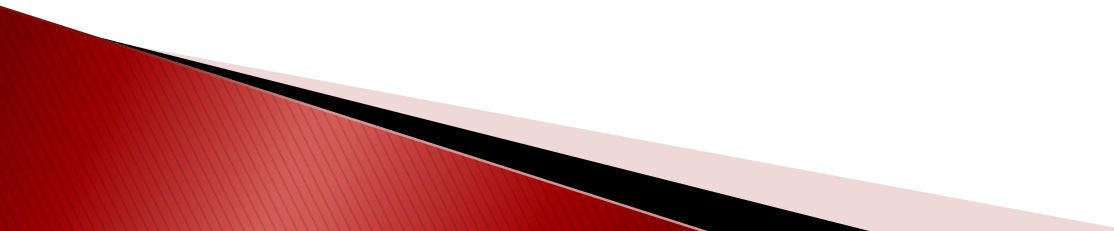


# Get to know the WASB ... it's your Association!

- Test your login ID and establish your personal password for the WASB website ([www.wasb.org](http://www.wasb.org))
- Consider attending WASB programs (upcoming programs are listed on the WASB website and promoted in various WASB publications)
- Look for WASB materials to arrive by both email and U.S. mail
- Contact us directly via email ([info@wasb.org](mailto:info@wasb.org)) or telephone (toll-free: 1-877-705-4422)
- WASB  
122 W. Washington Ave., Suite 400  
Madison, WI 53703  
608-257-2622  
[wasb.org](http://wasb.org)

# **Wisconsin's Open Meetings Law**

# Open Meetings Law – Core Concepts

- ▶ **Notice:** Governmental bodies must give **appropriate and timely notice of the time, date, place, and subject matter of their meetings.**
  - ▶ **Accessibility:** Meetings of a governmental body **shall be open and accessible to interested members of the public, unless the meeting has been lawfully convened in a closed session.**
  - ▶ A governmental body **shall not conduct public business** (including meeting to gather information or discuss issues within the board's jurisdiction) **outside of the context of a properly noticed meeting.**
- 



# Open Meetings Law

## ▶ **Governmental Body**

- The term “**governmental body**” includes school boards, subunits, and committees created by a board.
- Exception for bodies created for or meeting for the purpose of collective bargaining.
  - However, exchange of initial proposals and discussion/ratification of CBA must be in open session.

# Open Meetings Law

## ► Meeting

- In order for there to be a “meeting,” the “numbers” and “purpose” requirements must be met.
- **Numbers**: Typically, if one-half or more of the members of a governmental body is present, the numbers requirement is met.

# Open Meetings Law

## ▶ Meeting

- **Numbers**: A “negative quorum” can be created if fewer than one-half of the members can determine the outcome of a vote.
- **Purpose**: Members must be present to conduct governmental business (e.g., discussion, decision, or information gathering).

# Open Meetings Law

## ▶ Meeting

- **Walking quorum**: Series of gatherings of separate groups of members, each less than a quorum, who agree to act uniformly in sufficient number to reach a quorum.
- **Electronic communications**: Depending on how they are used, electronic communications such as e-mail or texting could create a meeting.

# Open Meetings Law

## ► Requirements

- If the open meetings law applies, there are a series of requirements that must be met.
- **Notice** to:
  - (1) the public;
  - (2) news media that has requested notice; and
  - (3) official newspaper or, if no official newspaper, to a news medium likely to give notice in the area.

# Open Meetings Law

## ► Requirements

- In almost all circumstances, notice must be given at least **24 hours in advance** of the meeting unless “for good cause” such notice is “impossible or impractical.”
- If “good cause” exists, the notice should be given as soon as possible and must be given **at least two hours** in advance of the meeting.
- **Notice must contain time, date, place, and subject matter of the meeting.**

# Open Meetings Law

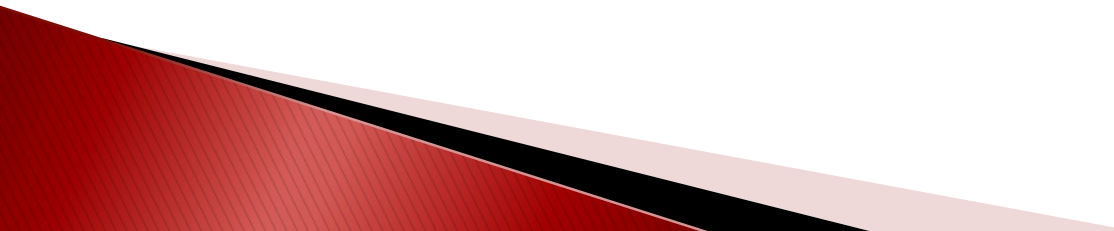
How specific must the subject-matter description of the meeting notice be?

- ▶ The factors to be considered include:
  - The burden of providing more detailed notice,
  - Whether the subject is of particular public interest, and
  - Whether it involves non-routine action that the public would be unlikely to anticipate.”



# **Closed Sessions**

# Open Meetings Law – Closed Session

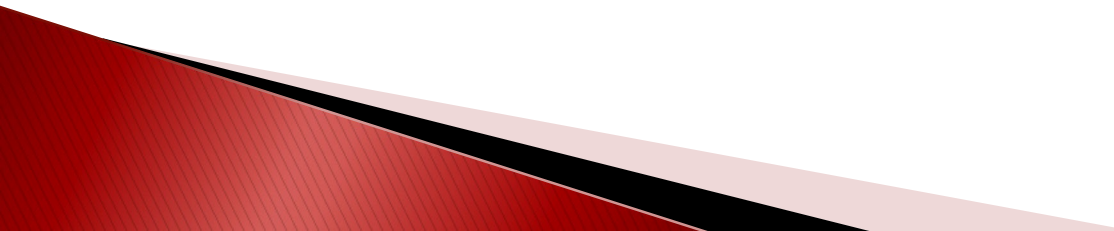
- ▶ A board can enter into closed session if one of the statutory exemptions applies. See [Wisconsin Statutes §§19.85\(1\)\(a\) - \(h\)](#)
  - ▶ Meeting must initially be convened in open session.
  - ▶ **Procedure**: Convene initially in open session, motion is made to convene into closed session, presiding officer makes a public announcement regarding the nature of the business to be discussed and of the closed session exemption that applies, vote is taken, and the individual votes on the motion to convene in closed session are recorded.
  - ▶ Board can discuss only those items for which it legitimately convened into closed session.
- 

# Open Meetings Law – Closed Session

Example closed session agenda item:

- ▶ *“Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.” [Wisconsin Statute §19.85\(1\)\(c\)](#).*
- “The Board may convene into closed session to consider offering an employment contract extension to a principal.”

# Confidentiality of Closed Session Information

- ▶ Why is it important to keep closed session information confidential?
    - Confidentiality is sometimes required by law.
    - Keeping the information confidential is in the school district's interest.
    - Disclosing closed session information destroys trust between board members and between the board and administration.
    - Disclosure could result in legal liability for the individual who discloses the information.
- 

# Open Meetings Law – Closed Session

- ▶ What happens when the closed session ends?
  - If your board returns to open session, the public notice of the closed session must also give notice of the subsequent open session, see section 19.85(2).
  - The meeting can be adjourned while either in closed or open session.
  - Once the meeting is adjourned, board members should not continue to discuss school business – no post meeting conversations between board members in the parking lot after the meeting.

# Open Meetings Law

## ▶ Virtual meeting considerations

- Notice & accessibility requirements still apply
- Presumption of open session applies – can only go into closed session if an exemption applies.
- Provide virtual access information in the meeting notice and contact information for anyone with questions, concerns, etc.
- How will public comment periods be handled?
- Review board policy/contact board counsel regarding virtual closed sessions – virtual meetings may not be appropriate for some closed sessions.

# Open Meetings Law

## Resources

- ▶ [Wisconsin Statutes §§19.81-98](#)
- ▶ Department of Justice [2019 Open Meeting Law Guide](#)
- ▶ WASB [Open Meetings Law Brochure](#)
- ▶ WASB Legal Comments, Aug. 2007, May 2006, Sept.-Oct. 2004 ([www.wasb.org](http://www.wasb.org); go to the “School Law Information” drop-down menu; click on “Quick Links;” click on “WASB Legal Comments”).

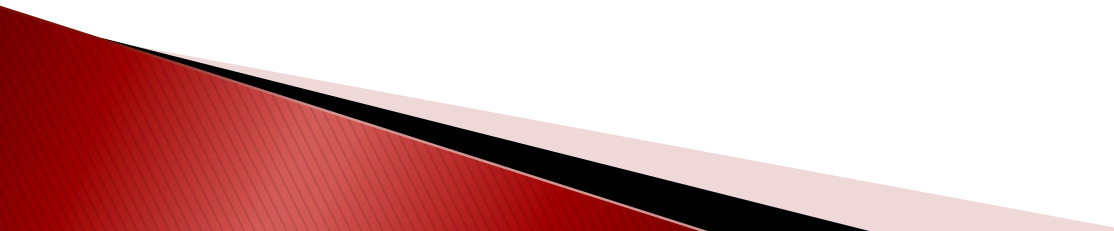




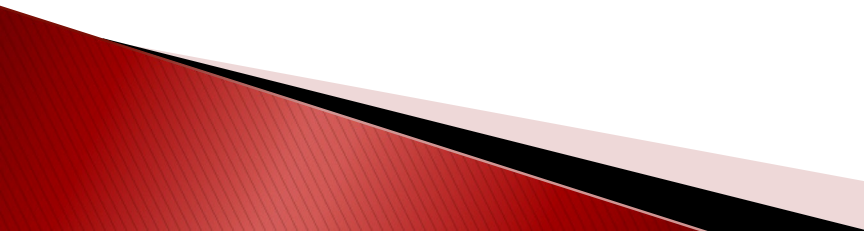
# **Wisconsin's Public Records Law**



# Public Records

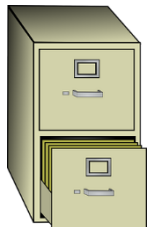
- “Record” means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority.
  - In other words, a “record” is any information created or kept in connection with the official purpose or function of the school district.
- 

# Public Records

- ▶ Not all documents or information constitute a public record.
  - ▶ A record does not include:
    - Drafts, notes, preliminary documents and similar materials prepared for the originator's personal use.
    - Published material available for sale or at the library.
    - Material with access limited due to copyright, patent, or bequest.
    - An identical copy of an otherwise available record.
- 

# Public Records: Core Concepts for Board Members

- **Board member** obligations:
  - Because a board member is a local public official, the board member is also the records custodian of his or her records.
  - A board member may not individually designate a district employee to serve as the legal custodian of his or her own records (but the board can designate such a custodian under [Wisconsin Statute §120.13\(28.\)](#))
- Therefore, board members must:
  - Retain their records;
  - Be prepared to respond to requests.
- Individual board members are not, however, required to adopt or post a “public records notice.”



# Public Records: The core concepts

- **Board member** – key considerations:
  - Emails regarding matters within the authority of the board are subject to records retention requirements and are likely subject to release as public records, ***regardless of whether the email is from a district or personal email account.***
  - ▶ Which email account should school board members use?
    - School district account.
    - Personal account.
    - Private sector employer account.
    - Public sector employer account.

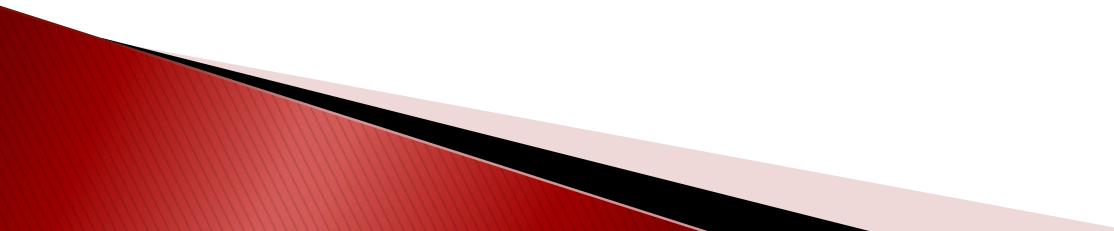


# Public Records: The core concepts

- **Board member** – key considerations (cont.):
  - Blogs, social media entries and even text messages can be subject to the public records law.
  - Once a records request is received, the record(s) subject to the request may only be destroyed under very limited circumstances.



# Public Records: The core concepts

- **Board member** – key considerations (cont.):
    - Upon receiving a request for a record that has not also been maintained by the board's records custodian, the board member must respond to the request "as soon as practicable and without delay."
    - Criminal penalties exist for the alteration or falsification of public records, as well as for the destruction, concealment, damage or removal of public records with intent to injure or defraud.
    - Board members must pass on any official records of their office to their successor.
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# Public Records:

## Suggestions for Board Members

- Review your board's public records notice.
- Establish sound practices in regard to the use of email (and for other inter-meeting correspondence) from the start. Strongly consider securing a school email address and using it for all board-related business so that all of your school-related emails are automatically retained by the district's records' custodian/server.
- If you receive a public records request, review it with your district's records custodian (and possibly legal counsel) immediately.
- Review your board's related records policies and any retention schedule that the board has approved.




# Public Records Resources:

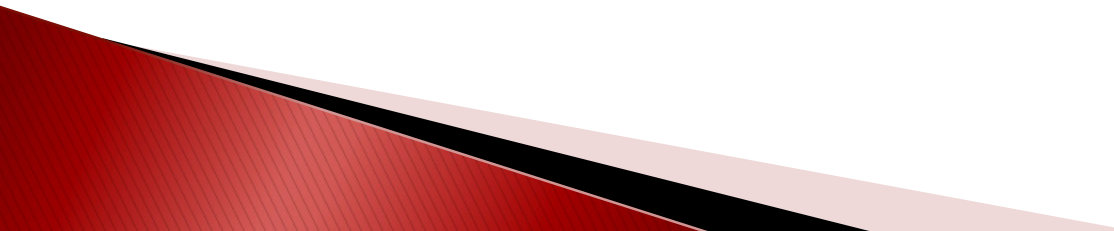
- ▶ [DOJ 2019 Public Records Law Compliance Guide](#)
- ▶ WASB Legal Comments:
  - “Recent Statutory Changes to the Public Records Law [September 2003](#), [October 2003](#).”
  - “Final Candidates Under the Wisconsin Public Records Law,” [August 2008](#).
  - “Open Records Requests for Employee Investigative Records” [May 2017](#)
  - “Records Retention Schedules,” [October 2002](#)
  - “Electronic Communications Records and the Public Records Law,” [December 2010](#)

# **Conflicts of Interests for School Board Members**

# Overview

- ▶ Common law conflicts of interest.
  - ▶ Code of ethics for public officials. [Wisconsin Statute §§19.41-59](#)
  - ▶ Criminal liability under [Wisconsin Statute §946.12](#) (misconduct in public office) and [Wisconsin Statute §946.13](#) (private interest in public contracts) of the Wisconsin statutes.
  - ▶ Doctrine of incompatible offices. Some exceptions for volunteer positions.
  - ▶ Spousal conflicts of interest.
  - ▶ Bias and partiality.
- 

# Common Law Conflicts of Interest

- ▶ The conflict-of-interest doctrine developed through the common law
  - ▶ School board members owe an undivided duty to the public, which he or she serves.
  - ▶ No board members can vote on any question or contract in which they have a direct, personal, or financial interest.
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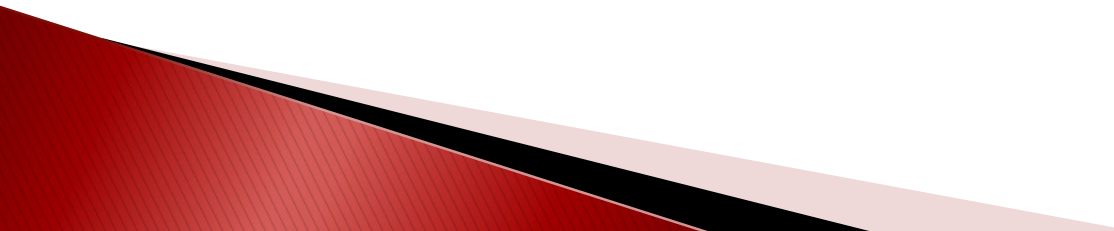
# Common Law Conflicts of Interest

- ▶ A board member's violation of the conflict-of-interest doctrine may result in the invalidation of a contested vote, or the voiding of an agreement entered into by the board.



# **Criminal Conflicts of Interest**

## **946.13 Wis. Stat.**

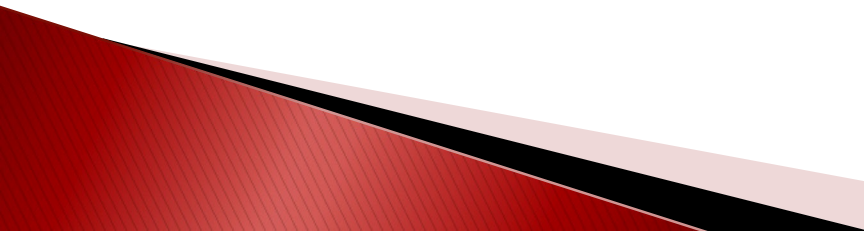
- ▶ School board members are prohibited from participating in contracts in which they have a private financial interest.
  - ▶ The statute is a strict liability statute which means that the state does not have to prove that a board member intended to violate (or knew he or she was violating) the statute in order to prove a violation.
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# **Criminal Conflicts of Interest**

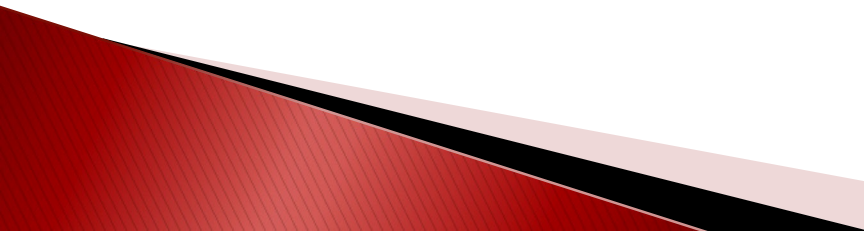
## **946.13 Wis. Stat.**

- ▶ Board members can violate this statute in their public capacity as a board member or in their private capacity as a party negotiating or entering into a contract with the school district.
- ▶ There are several exceptions:
  - One Example: Section 946.13 does not apply to contracts that do not involve receipts and disbursements greater than \$15,000 in any year.

# **Codes of Ethics for Local Government Officials, Employees and Candidates – 19.59 Wis. Stat.**

- ▶ Four types of prohibited conflicts of interest:
    - (1)(a) Board members may not use board position to obtain anything of substantial value for himself or herself or a family member or an organization with which he/she is associated.
    - (1)(b) No one may give a board member, and a board member may not accept, anything of value if it could be reasonably expected to influence the board member's vote, official action, or judgment.
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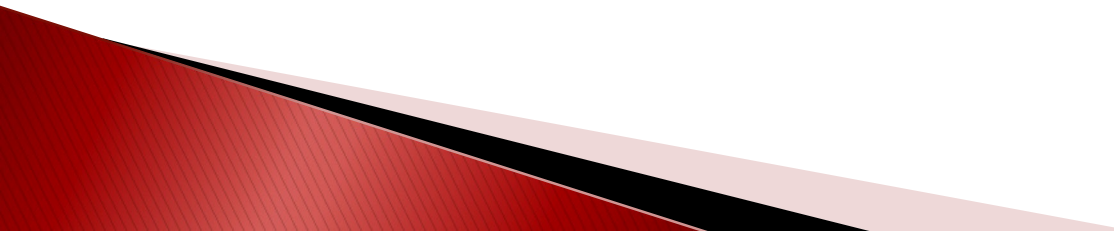
# Codes of Ethics for Local Government Officials, Employees and Candidates – 19.59 Wis. Stat.

- ▶ Four types of prohibited conflicts of interest:
    - (1)(br) No board member may act or offer to act or refrain from acting in exchange for the promise of a political contribution.
    - (1)(c) No board member may take an official action or use his or her office in a manner that substantially affects or provides a substantial financial benefit to himself or herself, a family member or organization with which he/she is associated.
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# Incompatibility of Office and Position

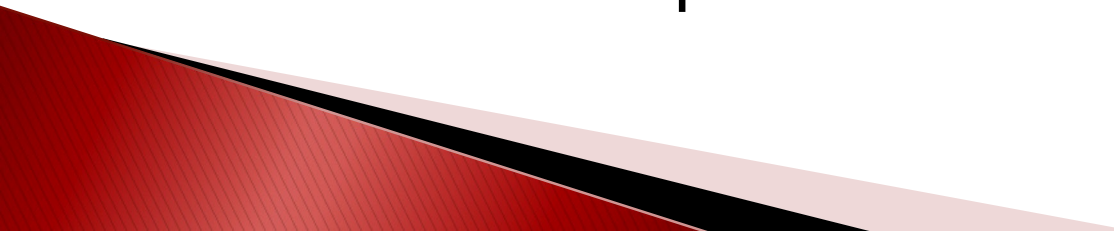
- ▶ Generally, the doctrine of incompatibility bars a person from holding two governmental offices where one office is superior to another
  - Board members cannot also be employees of the district.

# Incompatibility of Office and Position - Examples

- ▶ Teacher and School Board Member:
  - ▶ The attorney general has opined that the position of teacher and the office of school board member are incompatible.
    - The office of school board member is superior to the position of teacher because board members have the collective authority to hire, discharge and negotiate the wages, hours and conditions of employment for teachers.
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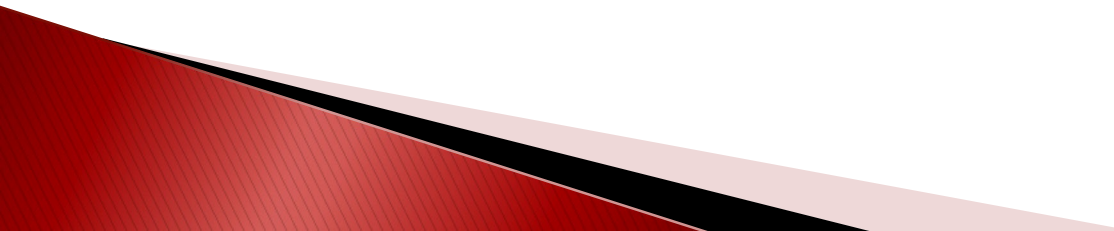
# Incompatibility of Office and Position - Examples

- ▶ Teacher and Board Member (Spouse)/District Administrator (Spouse):
  - ▶ Doctrine of incompatibility has not been extended to situations in which a board member's or administrator's spouse holds a position of public employment in the same school district as the board member.
  - ▶ Note potential for criminal conflict of interest and code of ethics problems.
- 

# Spousal Conflicts of Interest

- ▶ The Ethics Board advises that a school board member whose spouse is employed as a teacher by the school district:
  - (1) not participate in negotiations, discussions, or votes on the teachers' contract;
  - (2) may vote on the district's budget if the school board has already entered into a contract that establishes teachers' salaries and benefits for the period covered by the budget but may not vote on the budget if the budget will substantially affect teacher salaries or benefits;

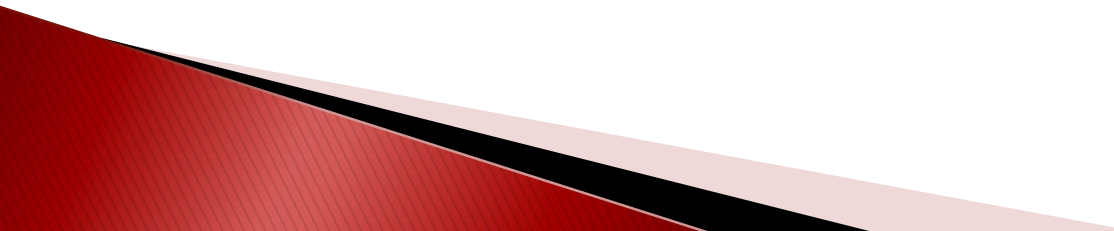
# Spousal Conflicts of Interest

- (3) not participate in negotiations, discussions, or votes on the terms of another union's contract if it will affect the terms of the teachers' contract in other than an inconsequential manner;
  - (4) may participate in a disciplinary or similar matter affecting another teacher if the action does not result in a school board member's spouse obtaining a substantial benefit or anything of substantial value from such decision;
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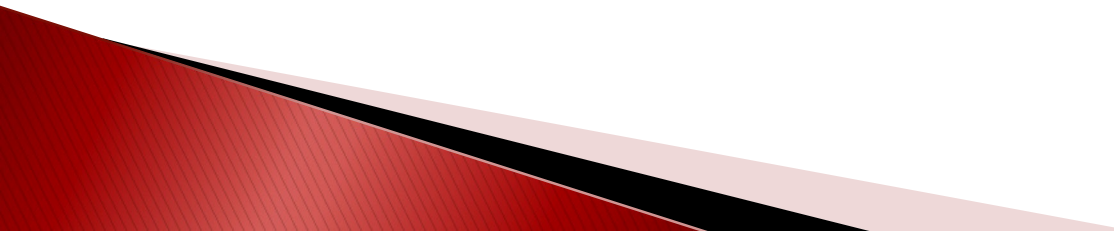
# Spousal Conflicts of Interest

- (5) may participate in decisions affecting class size, teaching hours, other general school district policy decisions if the effect on the school board member's spouse does not differ materially from the effect on other teachers.

# Incompatibility of Office and Position - Examples

- ▶ School volunteer and school board member: Incompatibility is possible, depending upon the nature of the volunteer position.
  - ▶ Volunteers for more informal activities, have less potential for conflict of interest and may not be incompatible.
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# **Board members as volunteer coaches and activity supervisors**

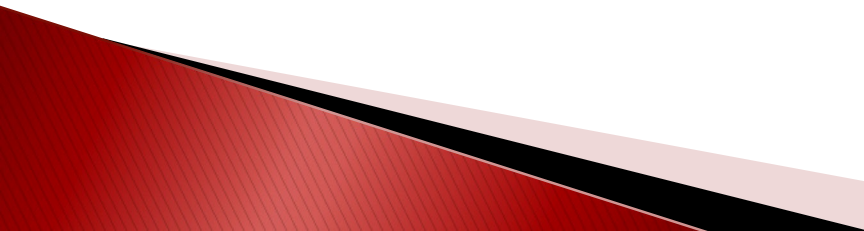
- ▶ Board member is able to serve as a volunteer coach or volunteer supervisor of an extracurricular activity under the following conditions:
    - The board member must not receive compensation;
    - The board member must agree to abstain from voting on any issue that substantially and directly concerns the activity he or she coaches;
    - The school board must receive the results of a criminal background investigation of the school board member.
- 



# Bias and Partiality

- ▶ Sources of bias and partiality:
  - A board member has a financial interest in the outcome of a board action.
  - A board member has a significant personal conflict with another person who is the subject of a due process hearing such as an expulsion or a termination.
  - A board member has an intense personal or family interest in a matter before the board.

# Bias and Partiality

- ▶ If a board member is biased, that board member participating in board deliberations and voting on a matter may be grounds for a court or other tribunal to void the board action on the matter.
    - This is of particular concern when the school board sits as an impartial decisionmaker in a due process hearing such as a termination or expulsion.
    - District legal counsel representing the board in a due process hearing will ask board members if they have biases. Board members should answer truthfully.
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# **Powers and Duties of School Board Members**

# Board Duties and Powers

- ▶ [§120.12](#) of the state statutes enumerates a list of specific ***duties*** of a school board in common and union high school districts.
- ▶ [§120.13](#) of the state statutes enumerates a list of specific ***powers*** of a school board in common and union high school districts.
- ▶ [§120.10](#) of the state statutes enumerates a list of specific ***powers of an annual meeting*** (which, for unified school districts, are powers of the school board).
- ▶ [§120.44\(2\)](#) of the state statutes gives unified school districts the powers and duties of the common school board and annual meeting.

# School Board Duties

- ▶ “The school board of a common or union high school district **shall**, subject to the authority vested in the annual meeting, have the **possession, care, control and management of the property and affairs of the school district.**” (§120.12(1))
- ▶ (2) GENERAL SUPERVISION.
- ▶ (2m) EDUCATOR EFFECTIVENESS.
- ▶ (3) TAX FOR OPERATION AND MAINTENANCE.
- ▶ (4m) CALCULATION OF TOTAL BASE WAGES INCREASE
- ▶ (5) REPAIR OF SCHOOL BUILDINGS.
- ▶ (6) INSURANCE ON SCHOOL PROPERTY.
- ▶ (14) COURSE OF STUDY.
- ▶ (15) SCHOOL HOURS.
- ▶ (28) SCHOOL BOARD VACANCIES.



# School Board Powers

- ▶ School board of a common or union high school district may do **all things reasonable** to promote the cause of education, including establishing, providing and improving district programs, functions and activities for the benefit of pupils, and including. (§120.13)
- ▶ (1) SCHOOL GOVERNMENT RULES; SUSPENSION; EXPULSION.
- ▶ (5) BOOKS, MATERIAL AND EQUIPMENT.
- ▶ (9) ARCHITECTS AND ENGINEERS.
- ▶ (9m) LEGAL SERVICES.
- ▶ (11) NURSES AND DENTISTS.
- ▶ (13) PREKINDERGARTEN CLASSES.
- ▶ (14) CHILD CARE PROGRAMS
- ▶ (17) TEMPORARY USE OF SCHOOL PROPERTY.
- ▶ (37) AWARDED HIGH SCHOOL DIPLOMAS TO VETERANS.
- ▶ (38) HUNTING IN SCHOOL FORESTS.





# School Board Duties and Powers – Unified School District

- ▶ “A unified school district is a body corporate with the power to sue and be sued, to levy and collect taxes, to acquire, hold and dispose of property and to do **all other things reasonable** for the performance of its functions in operating a system of public education.” (§120.44(1))
- ▶ The school board shall have the powers and duties of the school board and annual meeting in a common school district. The officers of a unified school district have the powers and duties of the officers of a common school district. No annual meeting shall be held in a unified school district.



# Delegating Powers and Duties

- ▶ “Broad powers” implies that schools boards have the power to delegate many (but not all) powers and duties.
- ▶ Delegation can occur through policy, through specific board action/authorization, and sometimes the delegation of authority is implied through practices.
- ▶ Some **non-delegable** acts are of obvious significance (e.g., adopting and amending the budget, approving questions to submit to referendum, employment and dismissal of teachers and administrators, etc.)
- ▶ Some arguably **non-delegable** acts don’t seem all that significant in light of other responsibilities that can be delegated (e.g., a statute provides that each school board shall adopt written policies *that include procedures* for the storage of pupil medications).



# Additional Resources

- ▶ [WASB October 2012 Legal Comment](#) – *Delegation of School Board Authority*
- ▶ [WASB December 1996 Legal Note](#) – *The New Era of Expanded Powers and Duties for Wisconsin School Boards*
- ▶ [WASB May 2013 Legal Comment](#) – *Recurring issues for school board members: School board member conflicts of interest, ethics, and incompatibility of offices*

# Presenter Bio

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