

# ASBSD/SASD Joint Convention

## Board Governance Issues and Practical Tips from School Attorneys

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# DISCLAIMER

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*The legal information presented is a general service to ASBSD member school boards and board members, and SASD member administrators. The information provided does not establish an attorney-client relationship. The information provided is for general information purposes only, and the information provided should not be interpreted or used as a substitute for a legal opinion from your school attorney. Before making legal decisions, school boards and administrators should consult with their school attorney.*

# TOPICS

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- ✖ Public School Board Powers
- ✖ School Board Member Duties
- ✖ Role and General Functions of the Superintendent
- ✖ The Board and the Superintendent
- ✖ Additional Thoughts on Boards and Superintendents
- ✖ Characteristics of Board Effectiveness



# SCHOOL BOARD POWERS

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- ✕ **Recognizing School Board Authority from the State Legislature:**
  - + **SDCL 13-8-1.** School board defined. The school board is an elected body created according to the laws of the state to serve as the governing board of a School District for the purpose of organizing, maintaining, and locating schools and for providing educational opportunities and services for all citizens residing within the School District.

# SCHOOL BOARD POWERS

## ✕ Recognizing Board Authority from the State Legislature:

- + **SDCL 13-8-39.** Management of schools by board--General powers. As provided and limited by law, the school board has general charge, direction and management of the schools of the District and control and care of all property belonging to it. The school board may levy taxes, borrow money, employ any necessary personnel, lease real and personal property, carry liability and other insurance, or in lieu of insurance, make other arrangements, including entering into agreements with others, which agreements may create separate legal or administrative entities pursuant to chapter 1-24, to protect and assist the school board in meeting obligations arising from such acts or omissions for which the school board may be legally liable, purchase all necessary books and equipment, purchase real property and erect necessary buildings for the operation of such schools.

# GENERAL BOARD MEMBER DUTIES

## Duty of Care

- ✘ “The duty of care requires that first, a board member be informed; and second, a board member discharge his [or her] duties in good faith, with the care that an ordinarily prudent person in a like position would reasonably believe appropriate under similar circumstances.”
- ✘ “The duty of care does not speak to the question of the correctness of the decision, but rather to the manner in which the board member carried out the decision.”
- ✘ Among other things, board members must:
  - + attend meetings regularly (and review materials before meetings!)
  - + stay adequately informed about the organization
  - + exercise independent judgment when voting



# GENERAL BOARD MEMBER DUTIES:

## Duty of Loyalty

- ✘ [B]oard members “must give undivided allegiance to the organization when making decisions affecting the organization.”
- ✘ “The duty of loyalty speaks to the responsibility of the board member to act in a manner that will not harm the organization served ... and prohibits board members from obtaining personal benefit or gain that rightly belong to the nonprofit organization.”
- ✘ “The duty of loyalty primarily relates to: conflicts of interests; corporate opportunity; and confidentiality.” Also, “the board member’s duty of loyalty lies with the interests of the entity, not to any constituency group—but to all constituencies.”

Source: National Council of Nonprofits

# GENERAL BOARD MEMBER DUTIES:

## Duty of Obedience

- ✖ The duty of obedience “mandates that board members carry out the purposes of the organization as spelled out in legal documents and policy.”
- ✖ Internal – Board members have a duty to ensure “the organization remains obedient to its central purposes” as shown in the law, regulations and policies.
- ✖ External – Board members have a duty to ensure the organization complies with laws, such as federal and state laws concerning school operations.

Source: National Council of Nonprofits



# SCHOOL BOARD RESPONSIBILITIES

Within the framework of school board responsibility, several dimensions of board accountability warrant special attention:

- ✘ Fiscal integrity: entails the legal responsibility for approving the district's annual budget and monitoring the institution's fiscal welfare through rigorous compliance with applicable federal, state, and local laws.
- ✘ Board performance sets the standards that guide the rest of the district including district-wide governance and management and includes the board's regular assessment of its own performance.
- ✘ Educational quality: includes defining the educational mission of the institution and determining generally the types of academic programs the institution offers; in addition, the board is ultimately accountable for the quality of the educational experience.
- ✘ The Board establishes a roadmap for the district's future through strategic planning.
- ✘ Superintendent appointment, assessment, and compensation: entails selecting a new superintendent, assessing his or her performance, and setting the appropriate compensation level for the superintendent; includes establishing and following appropriate processes for all these responsibilities.

# ROLE AND GENERAL FUNCTIONS OF THE SUPERINTENDENT:

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- ✗ Serves as the “CEO” of the District and is employed at the pleasure of the Board.
- ✗ Administers the District in accordance with board policies and guidelines, rules, regulations, state and federal requirements.
- ✗ Delegates authority to other staff members but at all times has the final responsibility and accountability for carrying out the mandates of the Board.
- ✗ Provides educational leadership to the Board, staff, students, and community.
- ✗ Responsible for the overall operation of the schools, supervision of the instructional programs, and management of all personnel.
- ✗ Recommends to the Board the District’s organizational structure.
- ✗ Identifies needs of the District and reports them to the Board.



# ROLE AND GENERAL FUNCTIONS OF THE SUPERINTENDENT (CON'T.):

- ✘ Is aware of and tracks state and national educational developments and reports these to the Board.
- ✘ Participates with appropriate professional associations, attends conferences, workshops, and other professional development opportunities to upgrade their professional knowledge and qualifications.
- ✘ Implements the comprehensive long-range plan focused on student achievement.



# THE BOARD AND THE SUPERINTENDENT



Think of the school district as a school bus. The board, in an oversight role, looks out the back and out the front, including the engine (**past and present performance**). In a strategic role, the board and superintendent look out the front window together, deciding the bus's direction (**the organization's future**). They even get off the bus (**to explore and gather information**). They also ensure the right staff are on the bus (**people**)—asking “who” before “what.”

Jim Collins, *Good to Great: Why Some Companies Make the Leap...And Others Don't* (2001);  
Grant MacDonald, *Governance as a Bus* (2018).

# BOARDS AND THE SUPERINTENDENT

## An Effective Board/Superintendent Relationship:

- Research shows the most effective boards have distinct role responsibilities and boundaries between the superintendent and board members.
- Strong communication and trusting relationships between school boards and superintendents positively impact school leadership and student achievement.
- Effective school governance includes establishing the “policy governance” model as well as adopting a general “governance mindset.”
- Superintendent-school board teams should consider adopting a code of civility to ensure respectful, productive meetings.



# BOARDS AND THE SUPERINTENDENT

## Best Practices for School Governance:

- Establish Clear Roles and Responsibilities
  - Multiple research studies show the most effective school boards spend most of their time creating policies to improve student achievement within a shared district vision, leaving the policy implementation and day-to-day operations to the superintendent and their professional staff.
  - Districts should consider establishing a policy that carefully outlines specific guidelines and responsibilities the superintendent and school board each share.
- Sustain Model Communication Channels
  - School boards and superintendents must develop a strong communication plan to avoid common communication pitfalls that come with increased use of information technology.
- Build Strong Relationships
- Implement a Governance Mindset
  - Effective school boards and superintendents establish clear boundaries of roles and responsibilities as well as clear methods of communication.



# BOARDS AND THE SUPERINTENDENT

## Best Practices for School Governance:

- Adopt a Code of Civility
  - Superintendent-school board teams should consider adopting a code of civility to ensure respectful, productive meetings.
- Resolve Conflicts Through Value-Based Dialogue
  - With school boards more often becoming places of contentious debates, boards and superintendents must be able to manage conflicts effectively and collaborate with those who have different mindsets.
- Build Consensus and Agreement
  - Achieving common agreement on the best solution to a problem or question.
- “Turning the Flywheel” is not an instantaneous process
  - The process resembles relentlessly pushing a giant, heavy flywheel, turn upon turn, building momentum until a point of breakthrough, and beyond.

Sources: NSBA, MSBA, AASA, Jim Collins, “Turning the Flywheel.”

# BOARDS AND THE SUPERINTENDENT

## SOME ADDITIONAL THOUGHTS...

What to avoid in the annual superintendent evaluation:

- ✗ Do not initiate a review in response to a crisis or special event.
- ✗ Do not impose an assessment process on the superintendent. Rather, include the superintendent in shaping the process.
- ✗ Do not breach confidentiality.
- ✗ Do not use rating scales and survey sheets, which are not adapted well to the complexities of the superintendency.

# BOARDS AND THE SUPERINTENDENT

## SOME ADDITIONAL THOUGHTS...

A board's succession planning process should address the following:

- ✗ Permanent and temporary transitions of the superintendent.
- ✗ Methods for conducting a superintendent search process.
- ✗ Criteria for viable candidates.
- ✗ Process for integration of the new superintendent.
- ✗ Detailed “mapping” of process from start to finish.
- ✗ Process for identifying and developing potential internal candidates.



# BOARDS AND THE SUPERINTENDENT

## SOME ADDITIONAL THOUGHTS...

A board's orientation for new members is one strong key to success. Effective orientations generally contain the following elements:

- ✘ The orientation program allows for sufficient time and opportunity for new members to learn the board's methods for meeting all of its board responsibilities.
- ✘ Sufficient time is allocated to provide time at the institution to learn physical layouts, design, and needs.
- ✘ Orientation is geared toward helping new board members quickly master basic knowledge of the institution's important features and statistics, including an executive summary that has the mission statement, numbers of students by category, key budget information, graduation rates, names of major academic programs, current tuition and fees, faculty statistics such as percent with terminal degrees and percent tenured, and other pertinent information that can help during the orientation and beyond.

# BOARDS AND THE SUPERINTENDENT

## SOME ADDITIONAL THOUGHTS...

A board's orientation for new members is one strong key to success. Effective orientations generally contain the following elements (cont.):

- ✘ Identify current institutional strengths, challenges, needs, and priorities. The orientation should cover the typical elements of finances, enrollment management, academics, staffing patterns, key academic and staff leaders, and physical plant needs.
- ✘ Provide an opportunity for new board members to offer feedback on the effectiveness of the orientation so it can be improved for the next time.



# BOARDS AND THE SUPERINTENDENT

## SOME ADDITIONAL THOUGHTS...

Board self-assessments are designed to do the following:

- ✘ Identify gaps and improve performance. (The chair and the executive director then better understand where they may need to support board members with training, coaching or member partnering to help a member meet goals and objectives.)
- ✘ Hold the board accountable for its performance. (The evaluations create transparency and add credibility to board decision-making.)
- ✘ Offer an opportunity to communicate objectively. (The evaluations offer a vehicle to openly discuss strengths and weaknesses and realign board members with the organization's identity, mission, values and goals.)
- ✘ For the chair, provide important feedback on leadership style and facilitation skills. (The evaluations highlight the chair's strengths and weaknesses in handling challenges, and his or her ability to keep board members engaged.)



# BOARDS AND THE SUPERINTENDENT

## SOME ADDITIONAL THOUGHTS...

### Board self-assessments – Tips:

- ✘ It is important to assess each board member's performance. (Individual board members' performance can be tied to a full board assessment process by asking board members to rate their own performance at the same time that they rate board performance.)
- ✘ Tie the assessment into the board's responsibilities.

# BOARDS AND THE SUPERINTENDENT

## SOME ADDITIONAL THOUGHTS...

Strategic planning for a school board should be guided by several basic planning principles:

- ✘ A clear and comprehensive grasp of external opportunities and challenges.
- ✘ A realistic and comprehensive assessment of the district's strengths and limitations.
- ✘ Sharing of responsibility by board and staff members.
- ✘ Proper linkage between planning and budgeting.

# A SCHOOL BOARD “CHARACTERISTICS OF EFFECTIVENESS”

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- ✘ A school board will complete its basic responsibilities demonstrating these operational characteristics:
  - + The superintendent displays appropriate leadership.
  - + The board is focused on strategic priorities.
  - + The board president and superintendent have an effective working relationship.
  - + The superintendent and administrative staff are regularly welcomed into board conversations.
  - + The district’s teachers are meaningfully engaged in institutional activities.
  - + The board operates in a culture of cohesiveness, candor, and transparency.



# SCHOOL BOARDS AND OVERSIGHT

## **SOME FINAL THOUGHTS ON BOARDS...**

*“Son, I just asked you what time it is, not how you made the watch.”*

*“Eyes on but Hands Off.”*

# **BOARD GOVERNANCE ISSUES AND PRACTICAL TIPS FROM SCHOOL ATTORNEYS**

**THANK YOU!**