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HOW TO CONDUCT GOOD (AND PAINLESS) SCHOOL BOARD MEETINGS

by

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I. COMPLIANCE WITH THE OPEN MEETING LAW

A. Purpose

As its name implies, the Open Meeting Law (Minn. Stat. § 13D.01 et seq.) creates a presumption that all meetings of governing bodies are to be open to the public. The Minnesota Supreme Court has held that the “Open Meeting Law” is to be broadly construed in favor of the public: *Merz v. Leitch*, 242 N.W.2d 141, 145 (1984). The Court has described the purposes of the law as follows:

1. To prohibit actions being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning board

decisions or to detect improper influences. *Lyndale v. Independent School District No. 306*, 133 N.W.2d 23 (1965). In short, the law prevents public bodies from using executive sessions except as specifically authorized by law.

2. To assure the public's right to be informed. *Channel 10, Inc. v. Independent School District No. 709*, 215 N.W.2d 814 (1974).
3. To afford the public an opportunity to present its views to the board. *Sullivan v Prairie River Township*, 270 N.W.2d 502 (1974).

B. GATHERINGS COVERED BY THE LAW

1. School Board Meetings. Whenever the school board meets, the meeting must comply with the Open Meeting Law. In addition, the Open Meeting Law applies to meetings of certain committees and sub-committees that are created by the board.
 - a. The definition of a meeting for purposes of the law has been interpreted as a “gathering of a quorum or more members of the governing body ... at which members discuss, decide, or receive information as a group on issues relating to the official business of that governing body.” *Moberg v. Independent School District No. 281*, 336 N.W.2d 510 (Minn. 1983). In essence, a “meeting” occurs when a quorum of the board gathers and is involved in a discussion that relates to official business.
 - b. Even if a quorum of the board is present, “chance social gatherings” are not a “meeting” for purposes of the Open Meeting Law. *St. Cloud Newspapers, Inc. v. District 742 Community Schools*, 332 N.W.2d I (Minn. 1983). But the social gathering cannot be used for purposes of conducting official business unless the notice requirements of the law are satisfied. *Moberg*.
 - c. A training program that is attended by a quorum of a board to develop skills and understanding regarding board responsibilities and is directed toward general municipal matters, rather than specific problems, is not a meeting. Op. Minn. Any. Gen., 63a-5 (Feb. 5, 1975).
 - d. The law generally does not apply to telephone conversations or letters between fewer than a quorum of the board. *Moberg*.
 - e. However, the courts have noted that serial meetings of less than a quorum, which are held for purpose of avoiding the requirements of the law or fashioning an agreement in advance, may violate the

law depending on the facts and circumstances of the case.
Moberg.

2. Committee Meetings. The Minnesota Court of Appeals has limited the law's application to committees possessing decision-making authority on behalf of the governing body.
 - a. Courts will presume that a committee has decision-making authority (i.e. the capacity to act on behalf of a school board) if a quorum of the school board is on the committee. Courts may also presume that a committee has the capacity to act on behalf of a school board if the board has delegated some decision-making authority or power to a committee. *Sovereign v. Dunn*, 498 N.W.2d 62 (Minn. App. 1993).
 - b. From a legal standpoint, the safest approach is to provide notice of meetings of committees and sub-committees and conduct those meetings in public.

C. NOTICE REQUIREMENTS

1. Regular Meetings. A schedule of the regular meetings of a public body must be kept on file at its primary office. If a public body decides to hold a regular meeting at a time or place different from that stated in its schedule of meetings, it must give notice of the meeting in the same manner as for a special meeting.
2. Special Meetings. Notice must be posted three days before the meeting. The notice must state the date, time, place and purpose of the special meeting. The notice is to be posted on the school district's principal bulletin board or, if there is no bulletin board, the door of the regular meeting room. The principal bulletin board must be located in a place which is reasonably accessible to the public. *Rupp v. Mavasich*, 533 N.W.2d 893 (Minn. App. 1995). Notice must also be mailed or otherwise delivered to each person who has filed a written request for notice of special meetings. Alternatively, the public body may publish notice in the official newspaper three days prior to a special meeting.
3. Emergency Meetings. An emergency meeting is a meeting that is called because of circumstances that, in the judgment of the public body, require immediate consideration by the public body.
 - a. A good faith effort must be made to provide notice to news media that have filed a request for notice of special meetings. The notice must include an explanation of the subject matter of the meeting.
 - b. Notice must also be given by telephone or any other reasonable method to board members.

- c. There is no requirement that notice of an emergency meeting be posted or published.
 - d. If matters not directly related to the emergency are discussed or acted upon at an emergency meeting, the minutes of the meeting must include a specific description of that discussion or action.
- 4. Recessed or Continued Meetings. No published or mailed notice is necessary for a recessed or continued meeting so long as the time and place of the meeting was established during the previous meeting and recorded in that meeting's minutes.
 - 5. Closed Meetings. The notice requirements discussed above apply to closed meetings, as well as open meetings.

D. PARTICIPATION IN MEETINGS FROM A REMOTE LOCATION

- 1. Interactive Television. Meetings may be conducted by interactive television, so long as the following requirements are followed:
 - a. All members of the board must be able to hear and see one another and hear and see all discussion and testimony presented at any location at which at least one member is present.
 - b. Members of the public present at the regular meeting location must be able to hear and see all discussion and testimony and all votes of board members.
 - c. At least one member of the board must be physically present at the regular meeting location.
 - d. Each location at which a member of the board is present must be open and accessible to the public.

If ITV is used, to the extent practical, the board must allow a person to monitor the meeting electronically from a remote location. The board may require the person to pay for the “documented marginal costs” the board incurs as a result of the additional connection.
 - f. The board must provide notice of the regular meeting location and notice of any site where a member of the board will be participating in the meeting by ITV.
- 2. Telephone Conference. School Board meetings may be held by telephone if a health pandemic or other emergency exists making in person meetings not practical. Other requirements apply

E. MATERIALS REVIEWED AT A MEETING

1. Materials Available to the Public. At least one copy of the agenda and other written materials must be available in the meeting room for public inspection during the meeting if the materials are: (1) distributed to all members at the meeting; (2) distributed to all members before the meeting; or (3) available in the meeting room to all members.
2. Materials Not Available to the Public. The following materials are not available to the public even if they are available or distributed to all members of the board at or before the meeting:
 - a. Data classified as non-public under the Government Data Practices Act shall not be released in written form at a public meeting.
 - b. Data relating to matters discussed at a closed meeting shall not be released to the public in written form.

F. VALID REASONS FOR CLOSING A MEETING

1. Labor Negotiations
 - a. A board may close a meeting to the public to discuss strategy for labor negotiations, including negotiation developments or the discussion and review of proposals.
 - b. A majority vote of the board is required to close the meeting to discuss strategy for labor negotiations. A written roll must be taken of the members and other persons present at the closed meeting.
 - c. The closed meeting must be tape recorded and retained for two years after the contract is signed. The tape must be available to the public after all contracts have been settled for the current budget period. This is the only type of meeting required to be tape recorded by the Open Meeting Law.
2. Preliminary Consideration of Allegations Against an Employee
 - a. The board must close one or more of its meetings to give preliminary consideration to allegations or charges against an employee. The meeting, however, must be open if the employee so requests.
 - b. If the board decides that discipline may be warranted as a result of the charges, further meetings relating to those charges held after that conclusion is reached must be public.

3. Performance Evaluations. A board may close a meeting to evaluate an employee's performance. The meeting, however, must be open if the employee so requests. Before the meeting is closed, the board must identify the employee. At its next open meeting, the board must summarize its conclusions regarding the evaluation.
4. Discussion of Certain Types of Data. Pursuant to the Open Meeting Law, a public body must close any portion of a meeting where the following types of data are going to be discussed:
 - a. Data identifying victims or reporters of criminal sexual conduct, domestic abuse, maltreatment of minors or vulnerable adults.
 - b. Active investigation data relating to child abuse and neglect, as defined in Minn. Stat. § 13.82.
 - c. Internal affairs data relating to allegations of law enforcement personnel misconduct.
 - d. Education data, health data, medical data, welfare data and/or mental health data defined as not public data under the Minnesota Government Data Practices Act.
5. Attorney-Client Privilege. A meeting may be closed if permitted by the attorney-client privilege. The attorney-client privilege allows closure of the meeting to discuss matters pertaining to pending or threatened litigation. A board may not close a meeting merely to seek general legal advice basic to the deliberative process of any public body.
6. Competitive Reasons Relating to Purchase or Sale of Property. A school board may close a meeting to: (1) determine the asking price for real or personal property to be sold by the school district; (2) to review an appraisal of real property that is classified as confidential or nonpublic under Minn. Stat. § 13.44, subd. 3; and (3) to develop or consider offers or counteroffers for the purchase or sale of real or personal property.
 - a. Before holding a closed meeting under this paragraph, the public body must identify on the record the particular real or personal property that is the subject of the closed meeting.
 - b. The proceedings of a meeting closed under this paragraph must be tape recorded at the expense of the school board. The recording must be preserved for eight years after the date of the meeting and made available to the public after all real or personal property discussed at the meeting has been purchased or sold or the school board has abandoned the purchase or sale. The real or personal property that is the subject of the closed meeting must be specifically identified on the tape.

- c. A list of members and all other persons present at the closed meeting must be made available to the public after the closed meeting.
 - d. An agreement reached that is based on an offer considered at a closed meeting is contingent upon approval of the public body at an open meeting. The actual purchase or sale must be approved at an open meeting.
7. Security Briefings and Reports. Meetings may be closed to receive security briefings and reports, to discuss issues related to security systems, to discuss emergency response procedures, and to discuss security deficiencies in or recommendations regarding public services, infrastructure, and facilities--but only if disclosure of the information would pose a danger to the public safety or compromise security procedures or responses.
- a. A meeting closed for this purpose must be tape recorded at the expense of the school board, and the recording must be preserved for at least four years.
 - b. Financial issues related to security matters must be discussed and all related financial decisions must be made at an open meeting.

G. PROCEDURES FOR CLOSING A MEETING

- 1. Before going into closed session, the board must state the specific ground permitting the meeting to be closed and must describe the subject to be discussed. The specific ground should not include non-public data.
- 2. Materials reviewed in a closed meeting should not be distributed to the public. The meeting minutes should simply state that a closed meeting was held, the statutory grounds for closing the meeting, and a generic description of the subject that was discussed.

H. DISCUSSING PRIVATE DATA AT A PUBLIC MEETING

- 1. Meetings cannot be closed simply because private or confidential data will be discussed, unless one of the exceptions described above is met. So long as the meeting is not required to be closed, private data may be discussed in public without liability or penalty if the disclosure relates to a matter within the scope of the board's authority and is reasonably necessary to conduct the board's business.
- 2. The Minnesota Government Data Practices Act provides that data that is not public may be discussed at an open meeting to the extent provided in Minn. Stat. § 13D.05, subd. 1.

3. The votes of board members on any action taken in a meeting required to be open to the public must be recorded in a journal kept for that purpose. This journal must be open to the public during normal business hours. The vote of each member must be recorded on each appropriation of money, except for payments on judgments, claims and amounts fixed by statute.

II. PROPERLY REGULATING PUBLIC PARTICIPATION AT MEETINGS

A. TEN SIGNIFICANT LEGAL PRINCIPLES

1. The school board controls its own meetings, agendas, parliamentary procedure, and all other aspects of its own business and function. See Minn. Stat. § 123B.09. subd. 7.
2. The public has the right to receive notice of, and to attend, all regular, special, and emergency meetings of the full school board and its committees, unless the meeting is closed in accordance with the Open Meeting Law.
3. The Open Meeting Law permits but does not mandate an opportunity for public comment during school board meetings.
4. Speech on public issues and political matters lies at the heart of protected speech. *Hurley v. Irish-American Gay Lesbian and Bisexual Group of Boston*, 515 U.S. 557 (1995). Freedom of speech, however, is not absolute.
5. The government may restrict speech when it has a legally sufficient justification. *Frisby v. Schultz*, 487 U.S. 474. 479 (1988).
6. The extent to which a school district may restrict speech or expressive activity on public property depends, in part, upon the character of the public property in question. *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37, 44 (1983).
7. The *Perry Case* categorized public property in three ways for purposes of defining First Amendment free speech rights:
 - a. “Traditional public forum” such as public parks and streets;
 - b. “Non-public forum” such as public building that has never opened for public communication either by tradition or designation;
 - c. “Designated public forum” or the “limited public forum.”
8. When a school board affords the public an opportunity to address the board at its meeting, at a minimum the board creates a “limited public

forum.” However, a court is more likely to conclude that a designated public comment period constitutes a “designated public forum.” (*Ely of Madison, Joint School District No 8 v. WERC, supra.*; *Brown v. Smythe*, 780 F. Supp. 274 (E.D.Pa. 1991); *Zapach v. Distnake*, 134 F. Supp. 2d 682 (E.D.Pa. 2001).

9. A designated public forum is created by a school board through an intentional decision to open a meeting to public comment. *Cornelius v. NAACP, supra.*; see also *Christ's Bride Ministries, Inc. v. Southeastern Pa. Transportation Authority*, 148 F.3d 242 at 248 (3d Cir. 1998).
10. Once a designated public forum is created by a school board, it still may restrict speech, as to time, place, and manner provided:
 - a. The restrictions are justified without reference to the content of the regulated speech (content neutral);
 - b. The restrictions are narrowly tailored to serve a significant governmental interest; and
 - c. The restrictions leave open ample alternative channels for communication of the information from the public.

B. TIME, PLACE, AND MANNER RESTRICTIONS

1. Sign in requirements
2. Time limits
3. Relevancy and germaneness requirements
4. Disruptive, inappropriate, and redundant comments
5. Sanctions
6. Alternative avenues of communication

C. HYPOTHETICAL: RULE OF PROCEDURE

ORDER OF BUSINESS: The business of all regular meetings of the Board of Education (hereinafter “Board”) shall be transacted as follows; provided, however, that the Presiding Officer may, during a Board meeting, rearrange items on the agenda to conduct the business before the Board more expeditiously.

Call to order by the Presiding Officer.

1. Approval of Minutes.
2. Reports of the Board Committees.

3. Consideration of issues presented by persons of the general public concerning matters pertaining to the agenda or germane to matters of administrative concern.
 - a. Persons wishing to address the Board shall sign in prior to the meeting, listing their name, address, and the matter on which they will speak.
 - b. Persons addressing the Board shall speak in the order in which they sign in.
 - c. A person addressing the Board shall give his or her name and address and be recognized by the Presiding Officer.
 - d. The Presiding Officer shall limit the comments of each person addressing the Board to five (5) minutes.
 - e. Persons addressing the Board shall confine their comments to matters pertaining to the agenda or germane to matters of administrative concern.
 - f. There shall be no demonstrations during or at the conclusion of any speaker's presentation.
 - g. A person addressing the Board shall refrain from the following:
 - (1) attempting to engage individual Board members in conversation;
 - (2) insults;
 - (3) obscenity or profanity;
 - (4) attacks against any person in his or her personal capacity;
 - (5) physical violence or threat thereof;
 - (6) comments that are not relevant to matters on the agenda or to matters of administrative concern;
 - (7) comments that are unduly repetitious;
 - (8) comments that exceed the five-minute time limit, or other such comments or conduct that disrupts, disturbs, or otherwise impedes the orderly conduct of any Board meeting:
 - h. Any person who breaches these rules shall, at the discretion of the presiding officer or a majority of the Board, be given an oral

warning by the presiding officer to refrain from disturbing or disrupting the meeting. If, after receiving such a warning, the person continues to breach these rules, he or she will be barred from further audience before the Board at that meeting.

- i. If, after receiving an oral warning from the presiding officer and being barred from further audience before the Board at a meeting, a person persists in disturbing or disrupting that meeting, the Presiding Officer may order him to leave the meeting. If such person does not remove him or herself, the presiding officer may request a law enforcement officer who is on duty at the meeting as sergeant-at-arms to remove that person from the meeting.
- j. It is the intention of the Board, by adoption of these rules, to ensure that the affairs of the Board are conducted in an open, orderly and efficient manner, that persons desiring to address the Board on matters pertaining to the agenda or germane to matters of County legislation or administrative concern are afforded an opportunity to speak in the order in which they sign up to speak, that persons in attendance may observe and hear the proceedings of the Board without distraction, and that the member of the Board and its employees are able to transact the business of the Board with minimal disruption.

Nothing in these rules shall deny any person the right to attend any meeting of the Board or to individually contact any Board member to lobby, educate, or request action by the Board. Nor do these rules preclude persons from delivering written materials to the Board.

- 4. Public Hearings (if required).
- 5. Reports of the Various Departments.
- 6. Old Business.
- 7. New Business.
- 8. Superintendent's Report.
- 9. Approval of Claims.
- 10. Adjournment.

No meeting shall be permitted to continue beyond 10:30 P.M. without approval of a majority of the Board members who are present and eligible to vote. A new time limit must be established before taking a Board vote to extend the meeting. In the event that a meeting has not been closed or continued by Board vote prior to adjournment time, the items not acted on shall be deferred to the next regular

Board meeting, unless the Board, by a majority vote of members present, determines otherwise.

D. ADDITIONAL TIPS FOR DEALING WITH LARGE CROWDS

1. Large crowds should be advised of the procedure to be followed before the meeting or hearing begins, including, but not limited to, as any time limits or signature requirements.
2. Advise the crowd that individuals may submit written comments.
3. Inform the crowd that the Board will receive and consider written materials, and that individuals are discouraged from reading letters at the podium.
4. Do not permit members of the public to cross-examine others; inform participants that all comments should be addressed to the Board.
5. Encourage individuals to not only express their opinion, but the reasons for their opinion.

III. PROPERLY REGULATING BOARD MEMBER PARTICIPATION

A. THE AGENDA. The written agenda can be a valuable tool for efficiently running a meeting and keeping board members focused on the business of the district.

1. A school board may adopt reasonable rules regarding placement of items on the agenda for board meetings, including who may request that items be placed on the agenda and how far in advance such a request is to be made.
2. Generally, changes to a board meeting agenda may be made *before* the agenda is approved by the board at the start of the meeting.
 - a. To amend the agenda before it has been approved, a board member must request that a change be made. The board chair should then ask the board whether any members are opposed to the change. If there is no opposition, the board votes on whether to approve the agenda with the change that was requested.
 - b. If a board member asks to change the agenda after the board has voted to approve the agenda, then a 2/3 vote would be required pursuant to Robert's Rules of Order.
3. Use of a consent agenda allows the school board, through one vote, to approve items which do not warrant discussion. Members may request that items be taken off the consent agenda for discussion.

B. PROCEDURAL RULES GOVERNING BOARD MEMBER PARTICIPATION

1. Reason for Rules.
 - a. Efficiency: It is easier to work in a group that has rules.
 - b. Focus: A group should only deal with one substantive matter at a time.
 - c. Equality: Rules assure all members have a right to participate.
 - d. Consensus: Rules allow discussion to lead to a decision reflective of the will of the majority.
 - e. Fairness: Rules protect the rights of the minority.
 - f. Information: Every voting member must understand what he/she is voting on, and the effect a decision will have.
2. Parliamentary Procedure. Many school districts have adopted Robert's Rules of Order as the primary rules which govern the participation of board members.

C. MOTIONS

1. Proper Motion Procedure
 - a. Member X presents a motion (When possible, it is a good practice to write out the motion to ensure that it is worded correctly).
 - b. Member Y seconds the motion. If no member seconds the motion, it is not put before the board for discussion or consideration. The general rule is that a motion must be seconded in order to be considered by the board.
 - c. If there is a second, the Chair should state the motion. For example: "It is moved and seconded that the district establish a varsity tennis team." Once the Chair states the motion, it is considered to be "pending."
 - d. Members "debate" the motion. Debate means an opportunity for discussion on the merits. At this time, the member who made the motion should present the reasons for the motion if they are not obvious.
 - (1) Note that not all motions are "debatable." Examples of motions that are not debatable include a motion to adjourn, to limit debate, to recess, or to suspend the rules.

- (2) Example: “I move to limit debate on the motion to four minutes per board member.” Or “I move that debate on the pending motion be limited to ten minutes in total.”
 - (3) A motion to limit debate generally requires a two-thirds vote.
 - e. The Chair puts the question to vote. The Chair states: “Those in favor say ‘aye.’ Those opposed say ‘no’”.
 - f. The Chair announces the result.
- 2. One Substantive Matter at a Time – the “Main Motion.” A school board generally may consider only one substantive matter at a time. When a board member makes a motion concerning a substantive matter the motion is considered a “Main Motion.” When a Main Motion has been made and seconded and repeated by the Chair, the board should not consider any other substantive matters until the motion has been voted on. However, “Subsidiary,” “Privileged,” and “Incidental” motions may be considered while a Main Motion is pending.
- 3. “Subsidiary Motions.” Subsidiary Motions assist a body in disposing of a Main Motion. Subsidiary motions take precedence over a Main Motion. Subsidiary motions relate to the subject matter of the Main Motion and include, for example, a motion to postpone indefinitely, a motion to amend, a motion to refer, a motion to limit debate, and a motion to table.
- 4. “Privileged Motions.” Privileged Motions do not relate to pending business, but have to do with special matters of immediate importance. Examples include a motion to recess, a motion to adjourn, and a motion to fix the time to adjourn. A Privileged Motion takes precedence over other motions.
- 5. “Incidental Motions” are motions that relate to the transaction of business. Incidental motions must be decided immediately. One example of an Incidental Motion is when a board member makes a Point of Order.
- 6. Point of Order! A point of order should be handled in the following manner:
 - a. If a board member believes that a rule has not been followed, the board member states, “Point of order!”
 - b. The board Chair then states, “the member will state his/her point of order.”
 - c. The member then states how he/she thinks the rules are being violated.

- d. The Chair then rules on the point of order by stating either: “The point of order is well taken” or “the point of order is not well taken.” The Chair should then *briefly* give the reason(s) for the ruling.
 - e. The Chair should refer to the specific rule that has been violated.
 - f. If a board member disagrees with the Chair's ruling on a point of order, the board member may state: “I appeal from the decision of the chair.”
 - g. An appeal requires a second before debate may occur amongst the board members.
 - h. After receiving a second and any debate (which is initiated and concluded by the Chair), an appeal may be put to a majority vote. To do so, the Chair states, “Shall the decision of the Chair be sustained? Those in favor say ‘aye’ .---”
 - i. The board members then proceed to vote. The board as a whole has the final authority to determine whether a rule has been violated.
7. Hypothetical Situation. Board Member A makes a motion to reduce the District's budget and its teaching staff. Member B seconds the motion. After stating the motion, the Chair asks the board members if they have any comments or points of discussion. Member D says nothing, but groans loudly and shifts in his seat. The Chair then puts the question to a vote. As a majority of the members say “aye,” Member D stands and loudly states, “Point of Order! Member A's motion is nothing more than an attempt to fatten the wallets of administrators in this District at the expense of education in the classroom. I move that we look at firing administrators instead of teachers.” How should the Board Chair respond?
- a. Is the point of order well taken?
 - b. Should the Board consider any other substantive matters until Member A's motion has been voted on?
 - c. Should the Chair rule that Member A's motion is out of order?

D. TIPS FOR DEALING WITH DIFFICULT BOARD MEMBERS

- 1. Comments Must Be Germane. A board member's remarks must be germane. This means that the remarks must be material to whether the pending motion is to be adopted. A board member who ventures off on irrelevant topics may be ruled out of order.

2. Personal Attacks. The motion and not the board member who has made it, should be the subject of debate or discussion. A board member who begins to personally attack another board member may be ruled out of order. The board chair may remind the other board members that the debate should focus on the motion, and not the person who made the motion.
3. Stick to the Formalities. Complying with formalities helps avoid unpleasant personalities. Along these lines, board members should direct their comments to the Chair, and not to individual board members. A board member who directs personal comments to an individual member may be ruled out of order and instructed to direct his or her comments to the Chair or to the board as a whole.
4. Closing “Debate.” A school board can immediately end all debate on a pending motion. This can be helpful if the board has one rogue member who is using the time to “debate” a pending motion to make comments that are not constructive or are intended merely to curry favor with certain community members.
 - a. To close debate immediately, a board member must first be recognized by the Chair. The member then states: “I move the previous question.”
 - (1) By moving the previous question, a board member is moving to have the board vote the pending motion immediately and without further discussion.
 - (2) It is not appropriate to interrupt a fellow board member to move the previous question. To move the previous question, a board member must first have the floor, meaning he or she has been recognized by the Chair.
 - b. A motion to move the previous question (i.e. to close debate or discussion) is itself not subject to debate or discussion. However, a *two-thirds vote is required* to pass a motion to move the previous question.
5. Referring a Matter to a Committee. Occasionally, a board member will make a motion out of left field. When this happens, the board as a whole may be caught off guard or may lack sufficient knowledge to vote on the motion. To address this problem, any board member may move to refer the motion to a committee and to instruct the committee to report back to the board. Alternatively, a board member may move to refer the matter to the superintendent to gather additional information and to report back to the board at a later date.

- a. A “motion to refer” is amendable. This means, for example, that another board member may move to amend the motion to add additional conditions such as: “I amend the motion to state that the superintendent must report back to the board at the next meeting rather than two months from now.”
 - b. A “motion to refer” is debatable. This means that the board members may discuss whether it is desirable to refer the matter to the superintendent or to a committee.
- 6. Motion to Postpone Indefinitely. When one board member makes an offensive or objectionable motion, another board member may move to postpone the motion indefinitely. A majority vote is required to adopt a motion to postpone indefinitely.
- 7. Responding to a Motion to Reconsider. On occasion a school board member will be in the majority in voting for or against a motion. Unhappy with the result, the board member will move to have the board reconsider the motion. The board is not required to do so. Under Robert's Rules of Order, a motion to reconsider may only be made by a member who voted on the winning side.
 - a. If a board member who was not on the winning side of a motion moves to have the board reconsider the motion, the board Chair may rule the motion out of order. Ideally, the Chair would state that under Robert's Rules of Order (or other rules adopted by the board), a motion to reconsider may only be made by a member who voted in favor of the motion (if it was passed) or against the motion (if it was defeated).
 - b. Technically, a motion to reconsider may only be made at the same meeting where the original motion was made. If a board member desires to attack the original motion at a different meeting, the proper action is a motion to rescind or a motion to amend.
 - c. If a motion to reconsider passes by majority vote, then the board must then vote again on the original motion. Voting in favor of a motion to reconsider does not, itself, constitute a vote on the underlying motion.

E. TIPS FOR DEALING WITH ROGUE BOARD MEMBERS

- 1. Penalties for Violating Open Meeting Law.
 - a. A civil penalty not to exceed \$300 for each violation may be imposed upon each person who intentionally violates the Open Meeting Law. This penalty cannot be paid by the public body.

- b. A board member can be removed if found to have been involved in three separate and unrelated violations of the Open Meeting Law.
 - c. In addition, the court may award up to \$13,000 for costs and attorneys' fees to each plaintiff. This amount may be paid by the public body.
 - d. The Open Meeting Law provides that a public body may pay any costs and disbursements or attorneys' fees incurred by any of its members under this section. However, such claims are not actions for damages and thus a municipality is not required to reimburse members for such expenses under the Municipal Tort Liability Act, Minn. Stat. § 466.07.
2. Penalties for Violating Minnesota Government Data Practices Act.
- a. Misdemeanor. The MGDPA states that any person who willfully violates the provisions of the MGDPA is guilty of a misdemeanor. Minn. Stat. § 13.09.
 - b. District liability can be significant.
 - c. Personal liability?
3. Disorderly Conduct. Under Minnesota Statute 609.72, any person who does the following is guilty of a misdemeanor if the person knows or should know that the conduct will tend to alarm, anger, or disturb others or to provoke an assault or breach of the peace: (a) engages in brawling or fighting; (b) disturbs an assembly or meeting in a manner that is not unlawful in character; (c) engages in offensive, obscene, abusive, boisterous, or noisy conduct or in offensive, obscene, or abusive language tending to arouse alarm, anger, or resentment in others.
4. Violation of Fiduciary Duties. Board members owe a fiduciary duty to the board as a whole. There are many ways in which a board member can violate that duty. In other states, the law has developed to hold that a board member who intentionally violates a fiduciary duty may be guilty of malfeasance and may be criminally prosecuted. Feeding private or confidential information to the plaintiff in a law suit against the district is an example of a violation of a fiduciary duty.
5. Responses to Inappropriate Conduct By A Board Member. After conducting an investigation and consulting with legal counsel, a school board could consider the following options for addressing a board member's inappropriate behavior:
- a. Inform the board member of the potential consequences, including potential loss of immunity for inappropriate acts. (Immunity is

only available if a board member acts within the scope of official duties.)

- b. Adopt new standards to address the situation.
- c. Censure the board member.
- d. Ask for the board member's resignation.
- e. Disavow the board member's conduct.
 - (1) The school board would need to pass a resolution that carefully balances the board member's constitutional rights with the disavowal of the inappropriate behavior.
 - (2) Consultation with legal counsel is strongly advised to determine whether disavowal would increase or decrease the district's liability exposure.
- f. Remove the board member. Minnesota law provides: “the board may remove, for proper cause, any member or officer of the board and fill the vacancy; but such removal must be by a concurrent vote of at least four members, at a meeting whose time, place, and object the charge member has been duly notified, with the reasons for such proposed removal and after an opportunity to be heard in defense against the removal.” Minn. Stat. § 123B.09, subd. 9.
 - (1) This is a higher standard than it appears. Constitutional provisions essentially require proof of malfeasance or nonfeasance.
 - (a) Nonfeasance is a failure to perform a specific legal duty which is required as part of the duties of the board member.
 - (b) Malfeasance is the willful commission of an unlawful or wrongful act in the performance of a board member's duties. The act must occur outside the scope of the school board member's duties.