

Bylaw: State Board Member Code of Conduct

Attendance/Participation

State Board members should:

- Attend all regularly scheduled meetings insofar as possible; and
- Inform the Department or the Board President if a member knows he or she will be late or unable to attend a meeting.

Preparation

State Board members should:

- Be informed concerning the issues to be considered at the meetings; and
- Read written materials in preparation for Board meetings and decision making.

Policy Making/Decision Making/Individual Activity

State Board members should:

- Actively participate in decision-making;
- Encourage the free expression of opinion by all Board Members; seek systematic communications between the Board, Commissioner, staff and constituents; request staff research and assistance through the Commissioner's Office as specified in Policy B19; and respect the line and staff relations of Department employees as specified in Policy D2;
- Treat fellow Members and staff with kindness, civility, respect, patience and honesty;
- Make policy decisions based on available facts, individual judgment and the best interests of the state;

- Support actions and positions once they are approved or adopted by the Board;
- Respect and protect the confidentiality of matters discussed in Executive Session and of all information and material that is privileged (see Appendix A);
- Comply with State Board Policy B2 regarding public statements by Board Members; and
- Comply with State Board Policy B18 regarding political activity, use of Department resources and accountability and disclosure; Policy B20 regarding acceptable use of Department computer equipment, Internet access and electronic mail; Policy B7 regarding Board Member expenses; and Policy D12 regarding ethics and accountability and disclosure.

#### Governance

##### State Board Members should:

- Understand the State Board's role under Neb. Rev. Stat. 79-301(2) to be the policy-forming, planning, and evaluative body for the state school system and the Commissioner's responsibility under Neb. Rev. Stat. 79-301(3) for carrying out the requirements of law and of board policy, standards, rules and regulations and for providing the educational leadership and services deemed necessary by the Board for the proper conduct of the state school program.

#### Continuing Education

##### State Board Members should:

- Stay informed on current educational issues by individual study and by attending conferences specifically related to Board functions (pursuant to Policy B7, Board Members' expenses for out-of-state conferences will be reimbursed only if attendance is authorized by the State Board).

Board Action History

- 6/9/04 – Prior B21  
(NEW)
- 9/7/06 – B21  
(Added Appendix A and several wording changes on page 1.)

Cross-References

- 79-301(2) – Board role.
- 79-301(3) – Commissioner's role.
- State Board Bylaws B2, B7, B18, B19 and B20
- State Board Policies D2 and D12

## APPENDIX A

### Confidentiality and the State Board

The State Board of Education is a public body. Generally, the Board's meetings and records are open and available to the public under state law (the Open Meetings Act and the Public Records Act). However, there are certain important exceptions. These exceptions are as follows:

**Executive Sessions** – When the Board meets in Executive Session, the discussion that takes place is confidential and is not meant to be shared with others. The public is not entitled to know the substance of the discussion. The State Board Code of Conduct (Bylaw B21) says that State Board members should respect and protect the confidentiality of matters discussed in Executive Session and of all information and material that is privileged.

**Attorney-Client Privilege** – When Board members talk to, or exchange documents with, any of the Board's attorneys or the agency attorneys in the context of receiving legal advice, the conversation and the documents are subject to the attorney-client privilege so long as none of the Board members waive the privilege. This means that the conversation and the documents are confidential and cannot be required to be disclosed in legal proceedings or pursuant to a public records request. The privilege is waived if a member of the Board reveals the conversation or gives the documents to another person. When this happens, the conversation and documents can be required to be disclosed in legal proceedings or pursuant to a public records request.

**Documents and Information Required to be Kept Confidential Under Privacy Laws**  
Certain information and documents maintained in the Department are required by various privacy laws to be kept confidential under most circumstances. Criminal penalties, loss of federal funds or civil liability may result from some unlawful disclosures. The following must not be shared:

- Personally identifiable student information (*protected by the Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA)*)
- Social Security Numbers (*the Privacy Act*)
- Personally identifiable information from applications for free or reduced lunches or free milk (*the National School Lunch Act*)
- Employees' individually identifiable health information (*the Health Insurance Portability and Accountability Act (HIPPA)*)
- Personally identifiable information about Vocational Rehabilitation Consumers (*the Rehabilitation Act*)
- Information contained in the Department's personnel records that is considered confidential (*NDE Personnel Rules*)

- Sensitive personal information with respect to which an individual has a reasonable expectation of privacy (*First Amendment and common law relating to invasion of privacy*)

**Documents Permitted to be Kept Confidential under the Public Records Act**

Certain documents belonging to the Department need not be made available under the Public Records Act. The Department's policy is to keep these records confidential. The following records need not be shared and should be kept confidential:

- Certain student records not covered by FERPA or IDEA;
- Security information;
- Investigatory records;
- Job application materials, except for those submitted by finalists;
- Appraisals and negotiation information relating to the sale of real or personal property; and
- Trade secrets, academic research work in progress and unpublished, and proprietary or commercial information which, if released, would give advantage to business competitors and serve no public purpose.

**Notes and drafts** of documents within the Department which remain subject to approval by upper management and which have not been issued are preliminary materials which are not "records" or "documents" and, therefore, are not subject to public records requests.