



# Conflicted: Conflicts and “Conflicts of Interest” in the Board Room

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November 2019

**SEDOR WENDLANDT EVANS FILIPPI**

# Conflicts are serious business



**SEDOR WENDLANDT EVANS FILIPPI**



SEDOR WENDLANDT EVANS & PHILLIPPI LLC



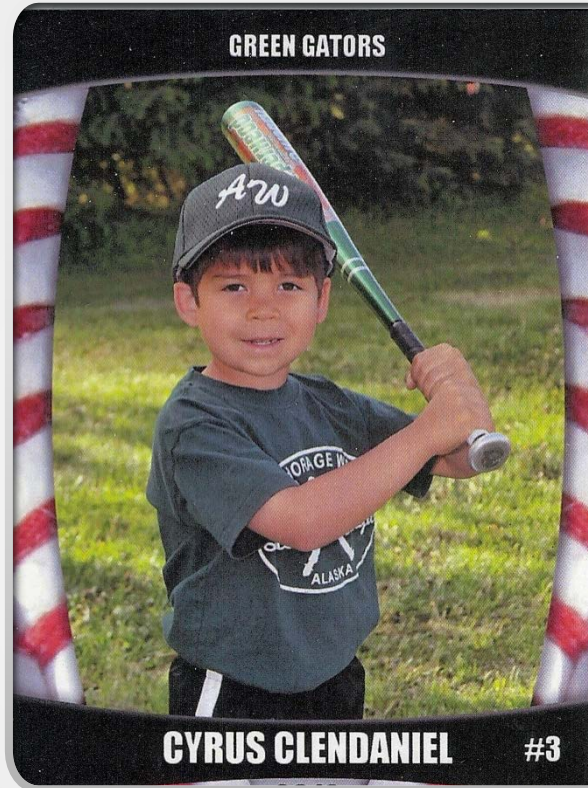




# Governing Law

## Employment of Board Members

- **Sec. 14.14.140. Restriction on employment; compensation of board members.** (a) While serving on the school board, a member may not be employed by that local school board. Members of the immediate family of a school board member may not be employed by the school board except upon written approval of the commissioner.  
(b) Members of the immediate family of a chief school administrator may not be employed by the chief school administrator except upon written approval of the school board.  
(c) A school board member may receive compensation for time spent in the performance of duties as a school board member if the compensation is authorized by resolution adopted by the school board. The restriction in (a) of this section does not apply to this compensation.



Who is a family member?

# Definition of a Family Member


4 AAC 18.900. Definitions (a)  
"Immediate family" as used  
in AS 14.14.140 means (1)  
husband and wife; (2) father  
and son, or daughter; (3)  
mother and son, or  
daughter; (4) brother and  
sister.

# Procedure for Employment of a Family Member

## 4 AAC 18.031. Employment of members of immediate families of school

board members (a) The commissioner's approval of a school district's new employment of a member of the immediate family of a school board member, required by AS 14.14.140, must be given upon the written certification by the chief school administrator that the person for whom the approval is requested (1) is the most qualified applicant for the position; and (2) has been approved by the school board for employment in the position. (b) The school board approval required by (a)(2) of this section must be in the form of a motion passed by a majority of a quorum of the board. The motion must be limited to the matter of the employment of the person for whom approval under this section is requested, and must state that the approval of the commissioner is required because the person is a member of the immediate family of a school board member.





**Sec. 29.20.010. Conflict of interest.** (a) Each municipality shall adopt a conflict of interest ordinance that provides that

(1) a member of the governing body shall declare a substantial financial interest the member has in an official action and ask to be excused from a vote on the matter;

(2) the presiding officer shall rule on a request by a member of the governing body to be excused from a vote;

(3) the decision of the presiding officer on a request by a member of the governing body to be excused from a vote may be overridden by the majority vote of the governing body; and

(4) a municipal employee or official, other than a member of the governing body, may not participate in an official action in which the employee or official has a substantial financial interest.

(b) If a municipality fails to adopt a conflict of interest ordinance by June 30, 1986, the provisions of this section are automatically applicable to and binding upon that municipality.

(c) This section applies to home rule and general law municipalities.



# Standard Conflict of Interest Board Policy

- In order to instill public confidence in public office and provide public accountability, School Board members shall disclose and avoid conflicts of interest involving any matter pending before the School Board. A conflict of interest exists when a member has a personal or financial interest on a matter coming before the Board that could render the member unable to devote complete loyalty and singleness of purpose to the public interest. School Board members owe the public a duty to act in the best interests of the district.



# Decision Making

- **Decision making.** The Board recognizes that when no conflict of interest requires abstention, its members must vote on issues before the Board. If a board member or his or her family member may benefit personally or financially from a Board decision, that board member must provide full disclosure of the conflict or potential conflict of interest to the Board. The Board, without that member's participation, will then approve or disapprove of the member's deliberations and voting on the issue. If the Board determines a conflict of interest prohibits participation, the member shall abstain from deliberations and voting.

# Appearance of impropriety

- **Appearance of impropriety.** When a situation may create the appearance of impropriety, even where state and federal laws do not require any action, the board member shall fully disclose the circumstances. The Board, without that member's participation, will then approve or disapprove of the member's deliberations and voting.
- Board members who have an actual or potential conflict of interest requiring disclosure shall not seek to influence the decisions of staff or other board members on the underlying matter, or on the member's participation in the matter.

## Other duties

- **Other duties.** School Board members are expected to avoid conflicts of interest in their other duties. This includes:
- **a. Confidential information.** School Board members shall not disclose or use confidential information acquired during the performance of official duties as a means to further their own personal or financial interests or the interests of a family member.
- **b. Gifts.** School Board members shall not accept a gift or economic benefit that would tend to improperly influence a reasonable person or where board members know or should know the gift is offered for the purpose of influencing or rewarding official action.
- **c. Business dealings with staff.** School Board members shall not engage in financial transactions for private business purposes with district staff whom board members directly or indirectly supervise.
- **d. Compensation for services.** School Board members shall not receive any compensation for services rendered to the district from any source, except compensation for serving on the School Board and reimbursement of expenses incurred as a board member, as allowed by policy and law.



# The school board as quasi judicial body.

## *Section 9000 – Bylaws of the Board*

- **BB 9000: Role of the Board and Members**
  - (1) Governance Functions**
  - (2) Executive Functions**
  - (3) Judicial Functions - positive personnel and public relations rely on the ability to hear and resolve grievances, complaints and criticisms.**



# What Types of Appeals Does a Board Hear?



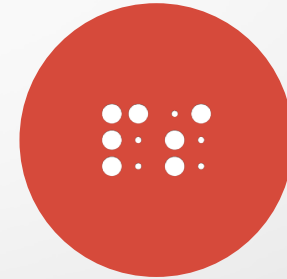
# Appeals of Personnel Decisions



NONRETENTION OF  
NONTENURED STAFF. BP/AR  
4117.6.



DISMISSAL OR NONRETENTION  
OF TENURED TEACHER. AS  
14.20.180; BP 4117.4.



APPEAL BY CLASSIFIED STAFF?  
SOME DISTRICTS PROVIDE THIS  
RIGHT.



# Appeals of Student Discipline Decisions

1. Long-term suspension by Superintendent or Principal. BP/AR 5144.1-5144.2.
2. Expulsion by School Board. BP/AR 5144.1-5144.2.

# Administrative Appeals

- The “final” decision of a School Board may be appealed in the Superior Court within 30 days from the date the decision is distributed.
- The 30-day period does not begin to run until the School Board has issued a decision that clearly states it is a final decision and there are thirty days to appeal.

*Appellate Rule 602(a)(2)*

# School Board's Role

- Conduct a fair hearing
- Judge the credibility of witnesses
- Weigh and appraise the evidence
- Determine the issues of fact
- Announce its conclusions

*Watts v. Seward School Bd.*, 421 P.2d 586 (1966)



# Review of School Board's Decisions

- School Board's determination will not be reversed in light of the whole record if supported by substantial evidence, i.e. such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

*Watts v. Seward School Bd.*, 421 P.2d 586 (1966)



# What can I know?

- Can the Board be apprised of a personnel issue if it might be the subject of an appeal?
  - A teacher is arrested for selling drugs? Can the Superintendent tell the Board about it?
- Can the Board be apprised of a student discipline issue if it might be subject of an appeal?
  - There is a fight at school and a student is injured.

Shocking Developments

**It's Amazing**

**Surprising News!**

You Won't Believe It

**Unbelievable!**

**What Everyone is  
Talking About!**

Ripped From the Headlines!



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT JUNEAU

THE ALASKA LEGISLATIVE COUNCIL, )  
On Behalf of THE ALASKA STATE )  
LEGISLATURE, )

Plaintiff, )

v. )

HONORABLE MICHAEL J. DUNLEAVY, )  
In His Official Capacity as Governor of the )  
State of Alaska, KELLY TSHIBAKA, In Her )  
Official Capacity as Commissioner of )  
Administration for the State of Alaska, and )  
MICHAEL JOHNSON, In his Official )  
Capacity as Commissioner of Education and )  
Early Development for the State of Alaska, )

Defendants, )

and )

COALITION FOR EDUCATION )  
EQUITY, )

Intervenor. )

Filed in the Trial Courts  
STATE OF ALASKA, FIRST DISTRICT  
AT JUNEAU

NOV 07 2019

By AS Deputy

Case No. 1JU-19-753CI

**ORDER RE: CROSS MOTIONS**  
**FOR SUMMARY JUDGMENT**

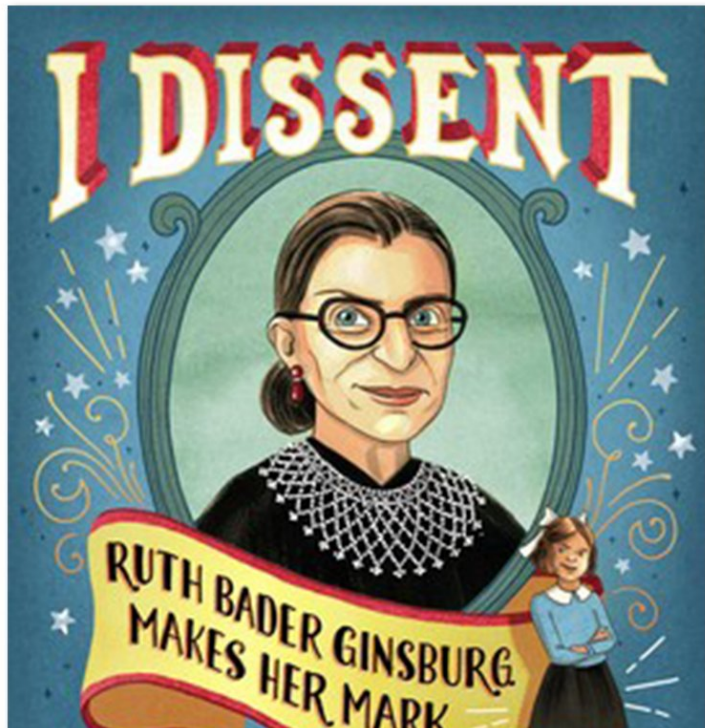
Before the court are cross motions for summary judgment filed by the parties pursuant to their agreement which was adopted by the court on August 20, 2019. Oral



Back to Conflict on the Board

# Civility and a Common Goal





What to  
do when  
there is  
Dissent?







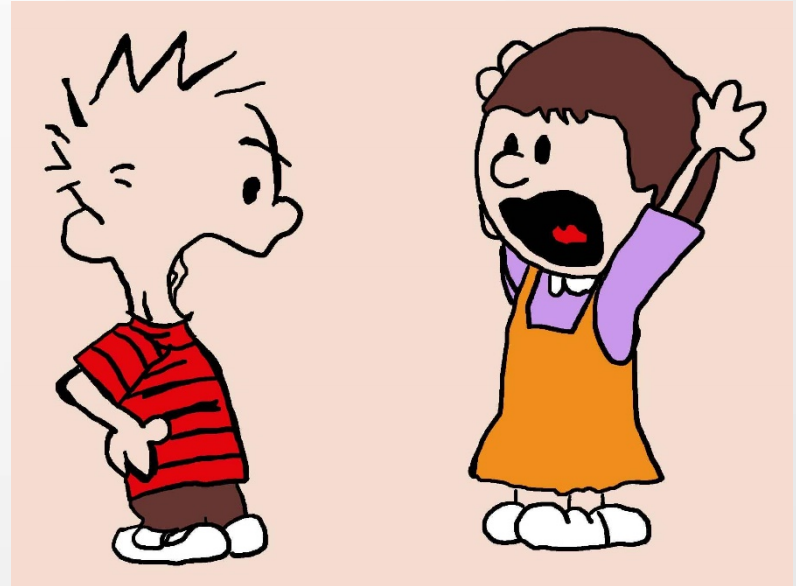
## Fiduciary Duty

All Board Members owe a duty to the School District and ultimately the students.

But Board Members can disagree on the best path forward for the School District.



Agree to  
Disagree





# Teamwork

Thanks!

