

**WESTPORT BOARD OF EDUCATION**

**SPECIAL MEETING**

**AGENDA \***

(Agenda Subject to Modification in Accordance with Law)

**SPECIAL NOTICE ABOUT PROCEDURES FOR THIS ELECTRONIC MEETING:**

Pursuant to the Governor's Executive Order No. 7B, there will not be a physical location for this meeting. This meeting will be held electronically and live streamed on westportps.org and shown on Optimum Government Access Channel 78 and Frontier Channel 6021.

**PUBLIC SESSION//PLEDGE OF ALLEGIANCE**

7:00 p.m., Held Remotely Via Zoom Pursuant to Executive Order 7B

**DISCUSSION**

1. Roles and Responsibilities of the Board and the Superintendent

Ms. Candice Savin

**ADJOURNMENT**

\* A 2/3 vote is required to go to executive session, to add a topic to the agenda of a regular meeting, or to start a new topic after 10:30 p.m. The meeting can also be viewed on Cablevision on channel 78; Frontier channel 6021 and by video stream @www.westportps.org



**SHIPMAN & GOODWIN<sup>LLP</sup>**  
COUNSELORS AT LAW

**LEGAL RIGHTS AND RESPONSIBILITIES OF BOARD MEMBERS**

- I. Responsibilities of the Board of Education
  - A. Agent of the State
  - B. Policy-maker for the district
  - C. COMPARE Administration responsibility for district operations
- II. Rights of Board members
  - A. Authority at meetings only
  - B. Otherwise same rights as other citizens
  - C. Free speech and teamwork
  - D. Role of the Chairperson
- III. Duties of Board members
  - A. Confidentiality/Educational need to know
  - B. Parent complaints
  - C. Impartial judge
    - 1. Expulsion hearings (Conn. Gen. Stat. § 10-233d)
    - 2. School accommodations hearings (Conn. Gen. Stat. § 10-186)
    - 3. Transportation Hearings
    - 4. Teacher tenure hearings (Conn. Gen. Stat. § 10-151)
    - 5. COMPARE: Grievance hearings

- D. Other statutory duties
  - 1. Budget
  - 2. Policies
  - 3. Negotiations
  
- IV. Freedom of Information
  - A. Documents
  
  - B. Meetings
    - 1. Caucus
    - 2. Action by quorum
    - 3. Committees
    - 4. Executive session and Collective bargaining
  
  - C. E-mail
  
- V. Board Deliberations
  - A. Decision-making process
  - B. Conflicts of interest
  - C. Information requests
  - D. Administration as Board agent
  
- VI. Parliamentary procedure
  - A. Agenda
  - B. Taking and recording Board action
  - C. Point of order
  - D. Committees
  - E. Comments by citizens



**SHIPMAN & GOODWIN LLP**  
COUNSELORS AT LAW

TO: Westport Board of Education  
FROM: Tom Mooney and Jessica Richman Smith  
RE: Caution on Board Member Communication by Email  
DATE: April 20, 2020

It is important that Board members understand the dangers in communicating by email. One concern is that such communications are “public records.” Any such communication is a “public record” when it relates to the board of education operation – the Freedom of Information Act (FOIA) defines a “public record” as “any recorded data or information *relating to the conduct of the public’s business* prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.” Conn. Gen. Stat. § 1-200(5)

Another concern is that such communication could evolve into a “discussion” among a quorum of the Board members, thereby constituting an illegal meeting of the Board of Education. This concern is based on the definition of “meeting” under the FOIA, set forth in Conn. Gen. Stat. § 1-200(2), which provides in relevant part:

(2) “Meeting” means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and *any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power.*

If the Board holds a “meeting,” it must post that meeting (along with the agenda) at least twenty-four hours in advance. Therefore, if a meeting occurs, even inadvertently, the failure to post and provide public access would constitute a violation of the FOIA.

In this context, the elements of a “meeting” are (1) communication among a quorum (2) to discuss or act upon Board business. Since communication among a quorum occurs frequently (*e.g.*, the Board packet), the key issue is whether the communication results in a “discussion.” While there are various definitions in the dictionary, one definition apropos of the concern over email communication is “an exchange of views on some topic,” with the key question being whether there is an “exchange” of views.

Exactly when communication becomes a discussion (resulting in an illegal meeting) is not self-defining. The Freedom of Information Commission tried to define such “meetings” in 2001 in a proposed declaratory ruling (Draft Declaratory Ruling # 94), and ultimately it decided to withdraw the proposed declaratory ruling and continue to consider such matters on a case-by-case basis (Report of Counsel, April 14, 2004). With the resulting knowledge that the Commission will thus rule on a case-by-case basis, we can suggest the following general guidelines:

- Email communication on Board business by Board members to each other (or to or from the Superintendent to Board members) is permissible.
- Such email communications are subject to public disclosure unless they are exempt (in whole or in part) from disclosure under the FOIA (*e.g.*, personally identifiable student information, attorney/client information).
- The status of email communication as a public record is governed by the author and the subject matter, not by where the communication was generated. The Commission has ruled that public officials must disclose email communications related to their public responsibilities, even if they are written on their personal computers at home.
- Where email communication is *unilateral*, it will likely not be considered a “meeting” that would trigger FOIA concerns. For example, when the Superintendent sends out the Board packet (whether in hard copy or by email), such communication to a quorum would not be considered a “discussion” because there is no exchange of views.
- Where such a communication generates responses that are shared with a quorum of the Board, it is possible that a “discussion” (and hence a “meeting” in violation of the FOIA) will be found. Along the continuum of case-by-case determination, the more such responses are provided, the more likely it is that an illegal “meeting” will be found. However, even one “Reply All” could result in such a finding, because such a communication would be an exchange of views among a quorum of the Board.
- Communication among less than a quorum, by email or otherwise, does not trigger the “meeting” provisions of the law. However, where communication among less than a quorum is then conveyed, even by an individual, to other Board members so that a quorum ultimately is aware of the communication, a “meeting” may be found. For example, “Joe, Sally and I were talking, and we thought that the district should abolish the Chess Club. What do you think?”



Westport Board of Education  
April 20, 2020

## SCENARIOS FOR DISCUSSION

### *Scenario One:*

- Yesterday, [WestportNow.com](http://WestportNow.com) published a front-page story about a teacher employed by the Westport Public Schools who was arrested for running a meth lab. The article identifies the teacher by name and school.
  - Parents from that school come to the next Board meeting, and during public comment, several of them address the Board to express concern that this teacher must be fired immediately
  - A fourth parent who comes up to speak attacks the Board for sitting there silently “like bumps on a log,” and asks the Board members what they are going to do about this bad teacher.
- Should the Board members just sit there like bumps on a log?
  - Can a Board member reassure the public that the Board will fire this teacher if he is guilty as charged?
  - What can the Superintendent tell you about the situation?

### *Scenario Two:*

- The Policy Committee has been updating certain policies and deleting others.
  - The Policy on Public Complaints has received a lot of public attention because some members of the public are concerned that the Board may eliminate the policy and thus deprive them of their forum for complaining to the Board.
  - Given the public attention, some Board members who are not on the Policy Committee want to attend the meeting of the Policy Committee at which the Public Complaint Policy will be discussed.
- Is it a problem if a quorum of the full Board of Education attends a meeting of the Policy Committee?
  - If a quorum of the Board of Education is present, how should the meeting be conducted?
  - Is the full Board bound by the recommendation of the Policy Committee concerning the possible elimination or amendment to the Public Complaint Policy?

*Scenario Three:*

- Some Board members are more engaged than others, and they ask the Superintendent for *a lot of* information.
  - Once the Superintendent responds to one Board member's request for information, other Board members hear about it and want the same information for themselves.
  - Some Board members are dissatisfied with the occasional delays in receiving the information from the Superintendent, and they complain to each other over email and sometimes even reach out to staff for information before the Superintendent responds.
- 
- What protocol should the Superintendent use for responding to Board member requests for information?
  - Should the Chairperson serve as a buffer between the Board members and their demands for information and the Superintendent?
  - When is it appropriate for a Board member to reach out to principals directly for information?
  - Are Board member emails to each other public records even when they do not include a quorum of the Board?

*Scenario Four:*

- As a Board member, you hear a lot from parents and others in the community.
  - A parent has been a reliable source in the past, and he tells you that a teacher at Staples was reported to have been using sexual innuendo in class.
  - You check in with the Superintendent, who tells you that he has dealt with the situation.
  - A week later, the parent contacts you again and tells you that the teacher is still teaching, expressing concern that the teacher may still be saying inappropriate things in class.
- 
- How do you reconcile this conflicting information?
  - How should you investigate on your own?
  - How detailed should the information from the Superintendent be, and how often should he report back to you?

***Scenario Five:***

- With the disruption caused by the COVID-19 health emergency and distance learning, many parents have come to you with concerns that the prospects for admission of their children to elite colleges will be impaired.
  - The Commissioner of Education has issued guidance that grading this semester should be Pass/Fail.
  - The Superintendent presents his plan to change district grading practices to a modified Pass/Fail system this spring.
  - WestportNow.com publishes an opinion piece criticizing the plan as disadvantaging Westport students.
- 
- Do you have to wait until the next Board meeting to get more information from the Superintendent on the plan?
  - Whose job is it to change grading practices in response to the COVID-19 health emergency?
  - Can the Board discuss this issue in executive session?

***Scenario Six:***

- You run into an acquaintance at Trader Joe's, and she complains that her son's fourth grade teacher has not returned homework to her students in two months.
  - After reviewing Board policies, you determine that there is no Board policy on whether and when teachers must return homework to students.
  - You check with other Board members on whether they have received similar complaints about this teacher, and they have not.
- 
- Do you share this information with the Superintendent?
  - What can he tell you?
  - When and how should you report back to the parent who raised the complaint?