

POLICY BCD

Board of Education Las Cruces Public Schools

Related Entries: BCA, BCE
Responsible Office: Board of Education

CONFIDENTIAL INFORMATION

I. PURPOSE

The Board of Education recognizes that confidential and/or privileged information will be brought to the attention of individual Board members and such information must be protected from disclosure and that public disclosure of such information may result in injury to individuals or potential harm and possible liability to the School District.

II. DEFINITIONS

1. *“Confidential Information”* means any information which is not for public consumption or may cause harm or undue embarrassment or harassment to another individual and includes, but is not limited to information related or pertaining to matters which the Board may obtain information in a closed session of the Board under the provisions of the Open Meetings Act or under any other federal or state law requiring confidentiality of information. Confidential information may also include information worthy of protection from public disclosure derived from protected files and records as permitted by law or information derived from documents which do not constitute public records under the New Mexico Inspection of Public Records Act.
2. *“Privileged Information”* means pertains to conversations and communications that take place within the context of a legally protected relationship, such as that between an attorney and client in which the law protects against forced disclosure of such conversations and communications.

III. POSITION

- A. A Board member shall honor the provisions of Board Policy BCA (Code of Ethics) and Board Policy BCB (Conflict of Interest) requiring the protection of confidential and/or privileged information from unauthorized and improper disclosure.
- B. A Board member shall not divulge or release confidential and/or privileged information which is produced for or presented during closed sessions of Board meetings or is provided directly to the Board member unless a majority of the Board members agree to release the information subject to applicable laws. Any Board member who releases confidential and/or privileged information may be publicly censured by a majority vote

of the members of the Board. Such confidential or privileged information includes, but is not limited to, the following:

- a. The substance of communications to and from the Board's legal counsel constituting attorney-client privileged communication, including such communications transmitted in written form or by electronic means;
- b. Matters relating or pertaining to actual, threatened or proposed litigation in which the Board is or may become a party;
- c. Matters relating or pertaining to the discussions in which personally identifiable information about any individual student will be disclosed, unless the student, his/her parent or guardian requests otherwise as provided by law;
- d. Matters relating or pertaining to the employment, allegations or complaints against or investigations of misconduct by staff members, the termination or discharge of School District personnel;
- e. Matters relating or pertaining to the discussion of negotiating strategy, contract negotiations or a proposed collective bargaining agreement with a labor organization bargaining unit;
- f. Matters relating or pertaining to the employment, contract, evaluation, discipline, termination or discharge of the Superintendent of Schools;
- g. Matters relating or pertaining to the consideration of suspension, expulsion, or disciplinary action taken in connection with a student of the School District subject to the due process and notice requirements of state law;
- h. Matters relating or pertaining to the security of students, personnel and visitors and/or School District property;
- i. Matters relating or pertaining to the consideration of the acceptance of gifts, bequests or donations where confidentiality has been requested by the donor;
- j. Matters relating or pertaining to the decision concerning purchases from a sole source provider in excess of \$2,500 and/or the consideration of competitive sealed bids solicited under law during the contract negotiation process; and

- k. Matters relating or pertaining to the discussion of purchase, acquisition or disposal of real property or water rights by the Board.
- C. A Board member shall keep confidential all information discussed or documents provided to Board members which fall within the categories listed above or which are presented to members of the Board in executive session, authorized to be closed by the Open Meetings Act (N.M. Stat. Ann. §10-15-1 *et seq.* (1978), as amended or recodified in the future), unless the Board authorizes disclosure by majority vote and disclosure is permitted by law.
- D. A Board member shall discuss or disclose confidential and/or privileged information only in connection with legitimate School District business and only with individuals with a legitimate right to know.
- E. A Board member shall voluntarily excuse himself/herself from discussion of confidential information and abstain from voting on matters in which the Board member has a personal or financial interest, including an interest by a member of the Board member's immediate family, or where the Board member's participation will or may compromise the confidential nature of the discussion.
- F. Where a Board member fails or refuses to voluntarily excuse himself/herself from such discussions and confidential information is disclosed as a result, the Board may enforce this Policy by requiring the Board member to excuse himself/herself from future discussions of the same or similar matters and abstain from voting on those matters; by publicly censuring the Board member; or by such other remedies available under applicable state law.
- G. The Board may exclude by majority vote a Board member from discussions held in closed session of the Board relating or pertaining to litigation in which the excluded Board member is an opposing party against the Board or the School District and where attorney-client privileged communication will be received or there will be discussion of confidential information disclosure of which could effect the defense of the Board or School District. However, in the alternative or in addition, nothing in this Policy shall prevent the Board by majority vote in delegating to another Board member or Board members the authority of the entire Board to direct legal counsel and any matter involving a Board member as an opposing party outside of closed Board meetings where the compromise of confidential or privileged information may occur.
- H. Nothing in this Policy shall prevent the Board by majority vote to seek and obtain a court order of the local district court compelling a Board member to protect confidential or privileged information where there is sufficient evidence establishing that a Board member has and/or may improperly and

without authority release or divulge confidential or privileged information, including, but not limited to, documents or electronic documents.

IV. REVIEW

This Policy shall be reviewed on an ongoing basis in accordance with the Board of Education policy review process.

Bonnie L. Votaw

Dec. 16, 2008

Board of Education, President

Date Approved

History: Formerly Policy 155; renamed as Confidential Information and approved 12.16.08

Legal Reference: §10-15-1 thru -4; 22-5-4; 22-21-1; 22-21-2 (1978).