



F3 Law

CONFIDENTIALITY

The Key to Building Confidence
and Trust in Local Leadership

Topics include:

- Legal Foundation
- Confidential information for Closed Session and Exempt Meetings
- Real Consequences of Breaching Confidentiality
- Best Practices for Maintaining Confidentiality
- Board Policies and Procedures
- Legal and Ethical Guidelines
- Resources and Support

About F3 Law

F3 Law is more than just a law firm; we are partners in education. We've committed ourselves to serving more than 500 public education institutions, including rural, and urban TK-12 school districts, higher education institutions, county offices of education, charter schools, Special Education Local Planning Areas (SELPAs), and related agencies.

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Confidentiality refers to the obligation of school board members and trustees to protect sensitive information discussed in closed sessions or marked as confidential. This duty is critical to maintaining trust, protecting individual privacy, and ensuring the effective functioning of the school district. By upholding confidentiality, board members and trustees uphold the law and foster an environment of trust and respect among stakeholders, including staff, students, and the community.



Legal Foundation

School board members and trustees are subject to the Brown Act, a law that mandates open meetings for local government bodies in California, but allows for closed sessions to be held for specific matters requiring confidentiality.

Some examples of items that would be allowed in closed session are:

- Student discipline discussions
- Employee matters
- Labor negotiations
- Security
- Litigation or anticipated litigation

It is important to understand that there can be significant legal repercussions for violating the Brown Act. Additionally, violations of the Brown Act can erode public trust in the board's governance abilities.

The Brown Act ensures transparency while balancing the need for privacy in certain situations.

Confidential Information for Closed Session

Personnel Matters

Protecting personnel information ensures a fair process for all employees and maintains trust in the district's human resources practices.

In order to safeguard against unwarranted speculation, unfair damage to professional reputations, and potential legal challenges, information related to employee performance, disciplinary actions, grievances, and contract negotiations is considered confidential and is addressed by a school board in closed session.

Student Records

Maintaining the confidentiality of student records is essential to protecting students' privacy rights and fostering a safe and respectful educational environment.

The Family Educational Rights and Privacy Act (FERPA) protects student information, including, but not limited to, academic records and disciplinary actions. Discussions that include student information take place in closed session. Unauthorized disclosure of FERPA-protected information is a serious violation that can result in loss of funding for the district and personal repercussions for any board member or trustee involved.

Legal Matters

To ensure that the district can navigate legal challenges effectively and with integrity, legal information must be protected.

Confidentiality is crucial in legal matters, including litigation, potential lawsuits, and settlements, to protect the district's legal position and avoid prejudicing court cases. Disclosing information about legal strategies or pending litigation can undermine the district's case and lead to unfavorable outcomes.

Negotiations

Confidentiality in bargaining helps build trust between the district and its employees, fostering a collaborative working environment.

Labor negotiations, including collective bargaining agreements and contract discussions, require confidentiality to ensure fair and effective negotiation processes. Revealing negotiation strategies or positions can weaken the district's bargaining power and lead to less favorable terms.

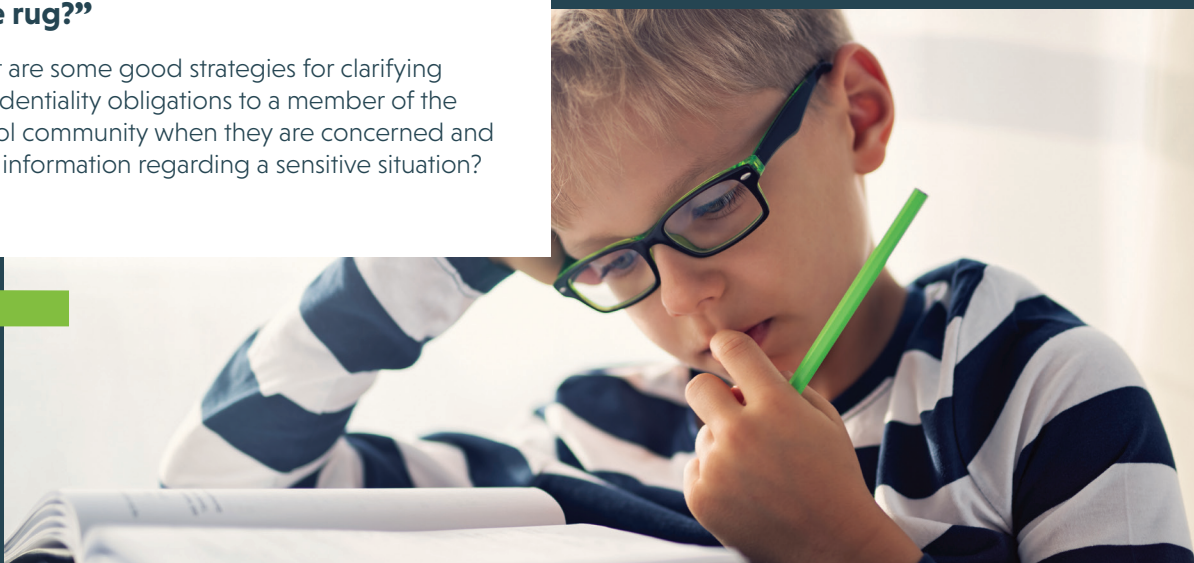
Security

Safe campuses optimize conditions for teaching and learning.

School safety plans, security protocols, and emergency response plans are discussed in closed session in order to ensure confidentiality for the safety and security of students and staff. Disclosing these details could compromise the effectiveness of security measures and potentially put individuals at risk. Board members and trustees play a critical role in safeguarding this information and ensuring that it is only shared with authorized personnel.

“What was the discipline for that incident? Will someone be expelled or are you going to push this under the rug?”

What are some good strategies for clarifying confidentiality obligations to a member of the school community when they are concerned and want information regarding a sensitive situation?



Real Consequences of Breaching Confidentiality

Breaching confidentiality is a serious matter. It can result in civil penalties and criminal charges.

Legal Consequences

Board members and trustees must understand that violating confidentiality is not only unethical but it is illegal, and can carry significant personal and professional risks.

Legal actions can be taken by individuals whose privacy was violated or by the district itself. These legal repercussions can be severe, leading to fines, legal fees, and in some cases, criminal prosecution

Board Consequences

The ability of a board member or trustee to serve effectively can be impacted by a breach of confidentiality.

The board, as a whole, has the authority to impose disciplinary actions against a fellow member, such as censure, removal from committees, and requests for resignation. Persistent breaches can severely affect board dynamics and effectiveness, undermining the board's ability to function cohesively.

Trust Consequences

Maintaining confidentiality is essential to sustaining positive and productive relationships with all stakeholders.

Confidentiality breaches erode trust between the board and the community, staff, other board members, and trustees. This loss of trust can lead to decreased community support and engagement, which are vital for the district's success. Restoring trust after a breach can be a long and challenging process, requiring transparent and consistent efforts from all board members and trustees.

Operational Consequences

Ensuring confidentiality helps maintain focus and allows the board to operate smoothly and effectively.

Confidentiality breaches can disrupt board operations, leading to inefficiencies and distractions from the board's primary responsibilities. The district's reputation may suffer, affecting partnerships and other opportunities. Such disruptions can hinder the board's ability to make effective decisions and carry out its duties.

Email, Texting and Public Records

When discussing confidential matters with the superintendent or staff via email are they protected or public documents?



Best Practices for Maintaining Confidentiality

Secure Handling of Documents Containing Sensitive Information

- Store confidential documents in locked cabinets
- Shred sensitive papers when no longer needed
- Exercise caution when transporting confidential documents outside of secure environments

Communication

Discuss confidential matters only in closed sessions, in exempt meetings, or with authorized individuals.

- Avoid discussing sensitive information in public places
- Be mindful of surroundings when discussing confidential topics, ensuring that conversations cannot be overheard

Closed Session

Strictly follow procedures for closed sessions, including:

- Proper noticing of meetings
- Care in setting the agenda
- Limiting attendance to authorized individuals
- Maintain the integrity and confidentiality of closed session discussions by ensuring that all participants understand the importance of confidentiality and their responsibilities in maintaining it

Digital Security

- Use secure online and digital platforms for communicating or storing sensitive information.
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- Avoid using personal devices for confidential district matters unless they are properly secured with up-to-date security software
- Regularly update passwords and consider using two-factor authentication to protect digital accounts
- Be aware of the risks associated with phishing attacks and other cyber threats
- Take proactive measures to safeguard digital communications

“Do you have a minute? I need to bring something to your attention.”

What is the best way to handle email from an employee or community member in which they share confidential information?



Board Policies and Procedures

Each board member or trustee should understand their specific responsibilities regarding confidentiality. This includes adherence to legal requirements and board policies designed to protect sensitive information. Clear role-specific guidelines can help prevent misunderstandings and ensure that all members know what is expected of them.

Current Policies

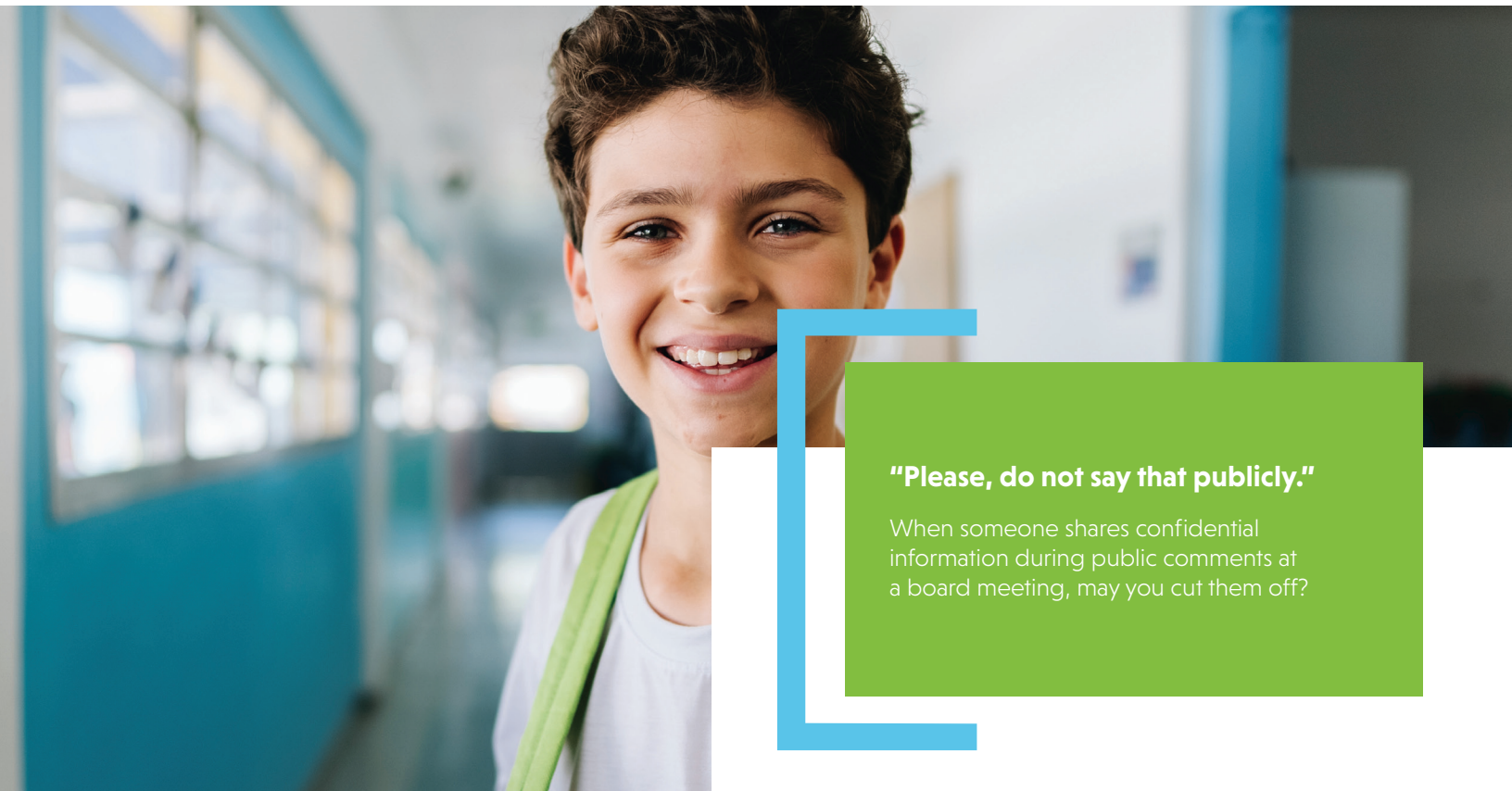
Review the district's policies on confidentiality, including specific protocols for handling sensitive information.

- Review the district's policies on confidentiality, including specific protocols for handling sensitive information
- Ensure policies are up-to-date and clearly communicated to all board members or trustees.
- Provide training sessions on policies to help reinforce their importance
- Ensure that all members understand their responsibilities
- Actively participate in policy reviews to stay informed about any changes or updates

Reporting and Addressing Breaches

Transparency in handling breaches can help restore trust after a breach and demonstrate the board's commitment to confidentiality.

- Establish policy for clear procedures to report confidentiality breaches
- Ensure that all members know the steps to take if they become aware of a breach and the potential consequences of not reporting it
- Procedures should include measures for investigating breaches and taking appropriate corrective actions



"Please, do not say that publicly."

When someone shares confidential information during public comments at a board meeting, may you cut them off?

Legal and Ethical Guidelines

Ethical Standards

Ethical conduct fosters trust and credibility, which are essential components for effective governance.

Board members and trustees are expected to uphold high ethical standards, demonstrating integrity, honesty, and respect for the privacy of others. Adhering to these standards helps ensure that the board's actions are fair, transparent, and in the best interests of the community.

Legal Obligations

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Resources and Support

Support Systems

Building a strong network of support helps create a culture of accountability and trust.

Having a support system in place ensures that board members and trustees have access to the resources they need to maintain confidentiality. These contacts can also provide assistance in handling breaches and navigating complex situations.

Conclusion

By adhering to these best practices and understanding the importance of confidentiality, school board members and trustees can maintain the trust and respect necessary to effectively govern and support their school district.

This guide is intended to serve as a resource for ensuring that board members and trustees have a clear understanding of their obligations with respect to confidentiality. When confidentiality is upheld, board members and trustees can foster a positive and productive environment for all stakeholders.

Understanding the legal framework helps board members and trustees make informed decisions and avoid actions that could lead to legal consequences.

Identify key contacts within the district, such as the superintendent or board president, who can provide support and guidance on confidentiality matters.





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