Role of the Board

- Set Policy—Goals and rules of the District with regard to student achievement, employee performance, safety/security, etc.
- Governance—Foster a culture that enables excellence at all levels.
- Establish Job Descriptions—For all supervisory/administrative personnel. 279.23A
- Empower Administration—To carry out and enforce policy and to hire and develop employees available to meet the District’s goals.
Two Biggest Areas of Influence in Human Resources

❖ Collective Bargaining
  ▪ Composition of negotiations teams varies. Often includes board members in addition to supt., chief administrators and legal counsel.
  ▪ No negotiations should occur with individual board members.
  ▪ The Board ultimately ratifies or rejects the CBA. The CBA cannot be changed without both parties’ agreement.

❖ Board Policy
  ▪ Classified/support staff or other non-unionized staff conditions of employment
  ▪ Non-mandatory topics of bargaining – social media use, etc.
  ▪ Can be unilaterally changed by the Board
Board Policy Issues and Collective Bargaining Decisions Impacting Human Resources

- Types of Job Positions/Categories
  - Number of Administrators
  - Number of Personnel (Factors: Money, Class Size, RIFs)
  - Part Time v. Full Time

- Salary/Wages
  - Salary Schedule
  - Hourly Wage Rate
Board Policy Issues and Collective Bargaining Decisions Impacting Human Resources

- Types and Amounts of Leaves/Benefits
  - Paid vs. Unpaid
  - Duration
  - Early Retirement
- Hiring/Evaluation/Termination Authority and Process for Classified Employees
- Hiring/Evaluation Procedures for the superintendent
- Personnel/Public Grievance Process
Other Things Impacting Board’s Role in Human Resources

- Board Members Code of Ethics
- Board of Education Examiners Code of Ethics Professional Responsibility
- Board has Different Roles Depending On:
  - Type of employee (support staff, non-teacher coaches and other non-279 employees, teachers and other 279 employees, administration (not superintendents), and superintendents
  - Type of employment action (hiring, evaluation, investigation, discipline and termination)
Personnel Issues Governed by:

- Federal Law
  - Constitution/Due Process
  - FMLA/FLSA
  - ACA
  - ADA
- State Law
  - Iowa Code Chapter 279
  - ICRA
- Case Law
- Master Contract
- Board Policy
Hiring and Contracts

- **Support/Classified Staff**
  - Employment terms are generally covered by policy or CBA (if unionized).
  - Letter of Assignments or Contracts may be used.
  - At-will employees—In the absence of a valid employment contract, an employer may discharge an employee at anytime, for any reason, or no reason at all.
    - Exception—violations of public policy (ICRA)
    - Where unilateral contract is created by employer’s handbook or policy
  - Board approves individual contracts and Board President signs contracts upon approval unless otherwise provided in policy.
  - 279.20—Board may delegate authority to hire support personnel and sign the support personnel contracts, if applicable, if the Board adopts a policy authorizing the superintendent to perform such duties and specifies in policy the support positions the superintendent is authorized to fill.
Hiring and Contracts

- **Coaches (Two Forms)**
  - Coaches who are teachers in the district
    - 279.19A Contracts—They continue from year to year in the same manner as teaching contracts.
    - Employment salary and terms are often covered under CBA and supplemental salary schedule.
    - Board approves and signs contract unless delegated by policy.
  - Coaches who are not teachers in the district.
    - Serve at the pleasure of the Board under 279.19B(2).
    - Could be hired with a contract or letter of assignment.
Hiring and Contracts

- **Non-279 Director (SBO, Transportation Director)**
  - Posting, application review and interviews done by administration.
  - Board generally hires upon recommendation from the superintendent.
  - Best practice is to leave the hiring recommendations up to the administrative team.
  - Board President signs contract.
  - Board secretary/treasurer - Board appoints directly as officers.
Hiring and Contracts

- Teachers
  - Posting, application review and interviews done by administration.
  - Board Approves upon recommendation from superintendent.
  - Board President signs contract except, unless the Board has adopted a policy authorizing the superintendent to sign teaching contracts, when tendered. 279.13
  - All teacher contracts are governed by Iowa Code 279 and are one year continuing contracts. If the contract is not timely terminated or modified in any year pursuant to procedures in 279, the contract will continue with the same terms, except as modified by a CBA.
Hiring and Contracts

Administrator (not Superintendent)

- Defined as: assistant supts., educational/curriculum directors, principals, assistant principals, other certified school supervisors.
- For assistant superintendents, and some other cabinet level positions representatives of the Board may be involved in the hiring process.
- Board approves upon recommendation from superintendent.
- Board President signs the contract.
- Board can issue a one year or two year contract after an administrator has served nine months of the administrator’s first one year contract.
- Continuing contract for one year periods even if the contract is a multiple year.
Hiring and Contracts

- Superintendent Hiring
  - Completely different than all other hiring from Board perspective.
  - Board is actively involved, often with assistance from an outside consultant, board secretary and/or legal counsel.
  - Process for hiring superintendent is an important one and should generally involve input from teachers, other administrators, support staff, students, parents and community.
  - Board can issue a superintendent contract for up to three years. However, the contract will automatically renew for one year terms at the end of the contract term if not terminated.
Evaluation

❖ Support/Classified
  - Board can set performance expectations and standards of performance via Board Policy, employment contract or through the evaluation article of a CBA (if unionized).
  - Board should not be involved in the actual evaluation of the employee (possible due process issues).

❖ Non-279 Director
  - Board can set performance expectations and standards of performance via Board Policy or employment contract.
  - Board should generally not be involved in the actual evaluation of the employee, except for Board Secretary.
Evaluation

Teachers

- 279.14—The Board shall establish evaluation criteria and shall implement evaluation procedures.
- Evaluation procedures must be negotiated into the CBA.
- Standards of performance expected of school district personnel shall be an exclusive management right of the school board and is not a mandatory negotiations topic.
- Board should not be involved in the actual evaluation of the employee (possible due process issues).
- The superintendent is responsible for having licensed evaluators measure the performance of teachers in accordance with Iowa law and the Board’s expectations.
Evaluation

- Administrator (Not Superintendent)
  - 279.23A—The Board shall establish written evaluation criteria for administrators and shall establish and annually implement evaluation procedures.
  - Board generally is not involved in administrator evaluations in accordance with policy. The superintendent is responsible for having licensed evaluators measure the performance of other administrators in accordance with Iowa law and the Board’s expectations.
  - Generally no due process issues here if Board is involved in some evaluation since Board initiates the 279 termination process for all administrators, not just superintendents.
Evaluation

- Superintendent Evaluation
  - Board’s role is completely different from all other employees.
  - 279.23A—The Board shall establish written evaluation criteria and shall establish and annually implement evaluation procedures.
  - Board is required by law to evaluate the superintendent at least annually.
  - Entire Board should be actively involved in the evaluation process.
Personnel Investigations

- Board members are accountable to their constituents and often want to help or be responsive when hearing about a complaint regarding an employee.

- While tempting to seek out information, Board members should avoid the temptation and, instead, notify the administration of the complaint received.

- Superintendent may advise the Board generally that an investigation is being conducted regarding an employee. Board members must stay clear of the investigation process in personnel issues involving all employees, except the superintendent.

- The Board, itself may need to investigate the superintendent’s conduct or hire an outside consultant or legal counsel to do the investigation.

- Individual Board members should avoid conducting their own personal investigations in all personnel situations.
Termination

- **Classified/Support Staff**
  - Role of the Board in termination is governed by policy.
  - Some policies allow superintendent to terminate and others require a recommendation to terminate be brought to the Board.
  - Generally these employees are at-will making termination fairly simple.
  - Most school districts have a grievance policy allowing an employee to appeal a decision of the administration to the Board.
  - Often board policy will say that “due process” procedures will be followed prior to termination of classified/support staff.
  - Bus drivers get a hearing before the Board by statute. Iowa Code 321.375
Termination

- **Non-Teacher Coaches and Non-279 Directors**
  - Separation/resignation agreements are generally negotiated by the administration and the teacher and approved by the Board.
  - By statute, non-teacher coaches serve at the pleasure of the Board and so Board should act to terminate following a recommendation from superintendent.
  - Non-279 directors are usually of significant enough importance that Board action is necessary and appropriate.
  - Normally, a recommendation to terminate is brought to the Board by the superintendent for action.
Termination

❖ Teachers and Teacher Coaches

- Separation/resignation agreements are generally negotiated by the administration and the teacher and approved by the Board.
- If no agreement for resignation is reached, superintendent recommends termination to the Board.
- Must have “just cause” to terminate a teacher’s contract under Iowa Code Chapter 279.
- Termination may be done at the end of the year for performance or RIF or termination may be done immediately for misconduct.
- Teachers are entitled to a hearing before the Board, if requested. The Board acts as the trier of fact (judge/jury).
Termination

- Administrators (except Superintendent)
  - Separation/resignation agreements are generally negotiated by the superintendent for principals and other administrators and approved by the Board.
  - If no agreement for resignation is reached, superintendent recommends termination to the Board.
  - Must have just cause to terminate an Administrator’s contract under Iowa Code Chapter 279.
  - Termination may be done at the end of the year for performance or RIF or termination may be done immediately for significant misconduct.
  - Unlike teachers, the Board initiates the termination process and votes to “consider termination of administrator’s contract”. If administrator appeals it goes to an impartial ALJ for hearing.
Termination

- Superintendent
  - Separation/resignation agreements are generally negotiated between the Board and the superintendent and then approved by the Board in open session.
  - If no agreement for resignation is reached, Board initiates the termination process and votes to “consider termination of administrator’s contract.” If superintendent appeals it goes to an ALJ for hearing.
  - Must have just cause to terminate a superintendent mid-contract term.
  - Don’t need just cause to terminate a superintendent at the end of a contract term. (Different from other administrators.)
“Just Cause”

- No one definition of just cause.
- Can be divided into two categories:
  - Faults attributable to the licensed employee (performance, misconduct);
  - Financial conditions, enrollment changes and budgetary requirements of the school district that require changes in personnel (RIF).
A friend of yours comes to you, on your own personal time, and expresses concerns about her child’s teacher. Your friend explains that she has heard that this particular teacher has had poor performance issues and the students are not achieving at the same level as students in other rooms. Your friend has asked you to look into this issue because her child is being impacted.
Why can’t board members get involved in personnel matters, but first…

Why would you, as a Board member, want to get involved?
Why can’t board members get involved?

- It’s not their role to run the district and conduct investigations.

- Administrators are hired for their expertise in this area and this is part of their job.

- Most importantly, the Board needs to remain impartial in the event a disciplinary situation involving a student or employee rises to the board level – simple due process guaranteed by US Constitution.
Due Process of Law

- Comes from Due Process Clause of U.S. Constitution
- The “State” may not deprive a person of a liberty or property without “due process of law.”
  - Liberty: good name and reputation
  - Property: contract interest in employment
- Due Process does not apply to private entities.
Due Process of Law

- Notice and Opportunity to Be Heard
  - The type of notice and opportunity to be heard varies based on status of employee and increases as the deprivation of the liberty or property interest increases.
  - Written reprimand vs. termination
  - At will employees vs. 279 employees
Iowa Code Chapter 279 Rights

- In addition to basic due process rights applicable to all employees.
- Iowa Code Chapter 279 provides specific due process rights to teachers and administrators.
- Due process for these employees involves advance notice and a hearing in front of an impartial decision maker.
Impartial Decision Maker

- In cases involving teachers Board is the judge/jury.
  - Also the situation with student disciplinary hearings (expulsions).

- In cases involving recommendations/hearings or appeals (via Board policy) to the Board in support staff or other non-279 terminations the Board is also the judge/jury.

- Being an impartial decision maker means making a determination only on the evidence presented at the hearing without preconceived bias or knowledge of additional information.
When board members get a complaint regarding personnel matters...

- While tempting to get involved in these issues, let the complainant know the board member is not the appropriate recipient of the complaint.

- Encourage individuals with complaints to follow proper chain of command. Point out the chain of command policy and let the individual know where he or she needs to focus their complaint in order to get a response more quickly.

- Make sure the individual knows why board members can’t get involved in the complaint process. (Due process issues)

- Ultimately, it is in everyone’s best interests to protect board members from prior knowledge of situations so they can be impartial during the appeal process, should it come to the Board.
Public Comments Regarding Personnel

- Your approach to public comments should be clearly outlined in your board policy.
  - If you have time limits in policy, stick to them consistently or provide rationale for any deviation from policy.
  - Try to treat all speakers the same…regardless of who is being talked about.

- You can’t prohibit someone from speaking bad about an employee. Must balance first amendment rights of the speaker in an open forum with any potential disruption.
  - Make clear that Board may remove someone who is disruptive.

- Don’t respond to comments or make any promises to the speaker that the matter will be investigated, reviewed or addressed in some way.

- Make a statement at the beginning of public comment making it clear that any comments are those of the speaker and not the District.
Public Comments Regarding Personnel

Opening statement from the Board President to public comment:

“I want to remind all speakers that while this is an open forum the Board does expect all speakers to maintain a civil tone and refrain from using profanity, raising their voices or making statements that are threatening or harassing toward others. Any speaker who creates a disruption by his/her comments or actions may be asked to leave the meeting. I want to also remind all speakers that any comments that may be made during public comment are done so at the risk of the person making the comment and that the District will not be responsible for any inflammatory or potentially defamatory statements which may be made toward or about another person. It is the Board’s practice not to engage or respond to speakers during the public comment session. If the Board wishes to further discuss or address an item or concern raised, it will do so by establishing an agenda item at a future board meeting or by delegating responsibility to the administration to look into or address an issue, and if necessary, provide a future recommendation to the Board.”
Questions?