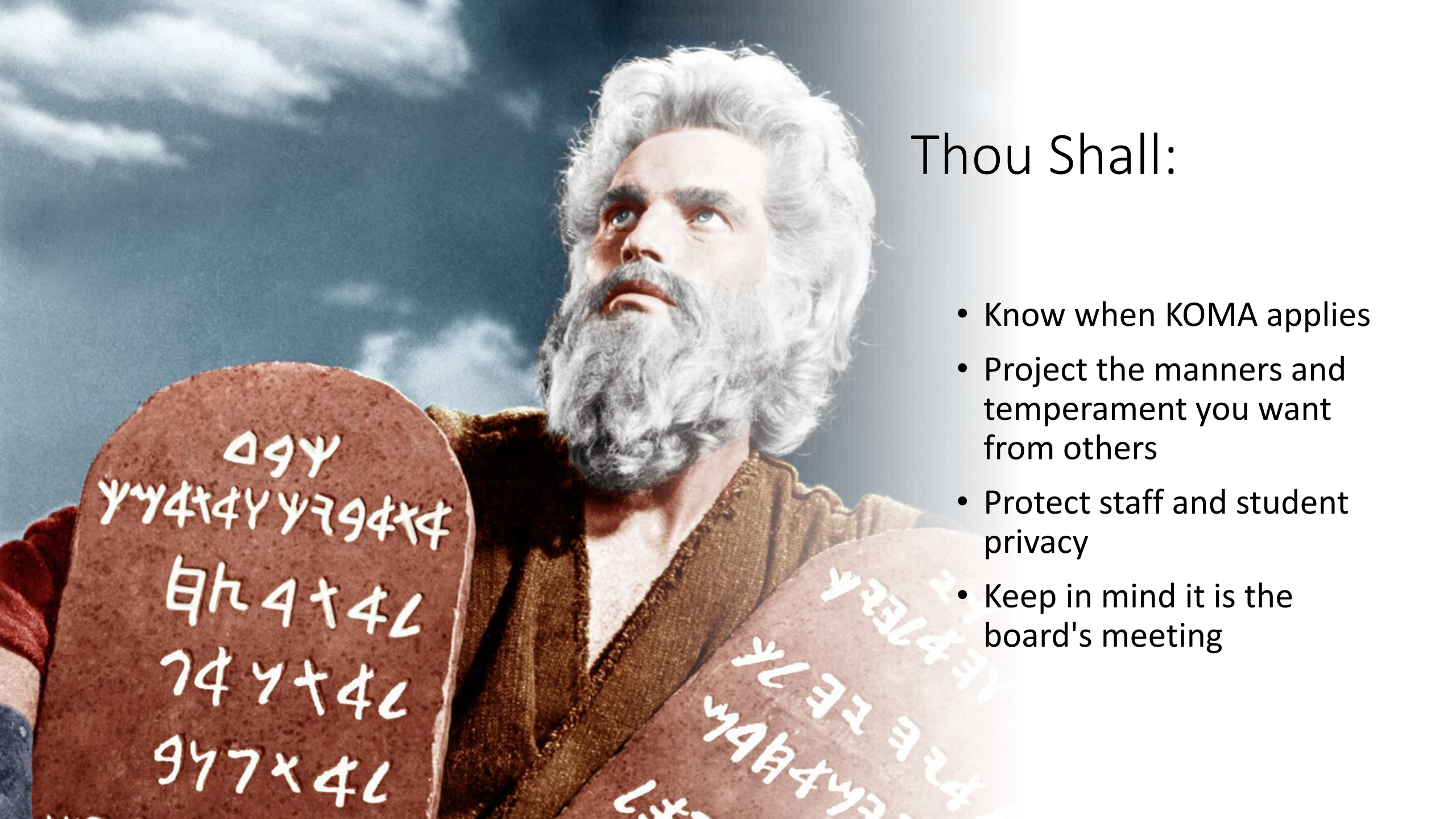


# Dos and Don'ts At a Board Meeting

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Presented by Angie Stallbaumer,  
KASB Deputy Director/General Counsel





# Thou Shall:

- Know when KOMA applies
- Project the manners and temperament you want from others
- Protect staff and student privacy
- Keep in mind it is the board's meeting



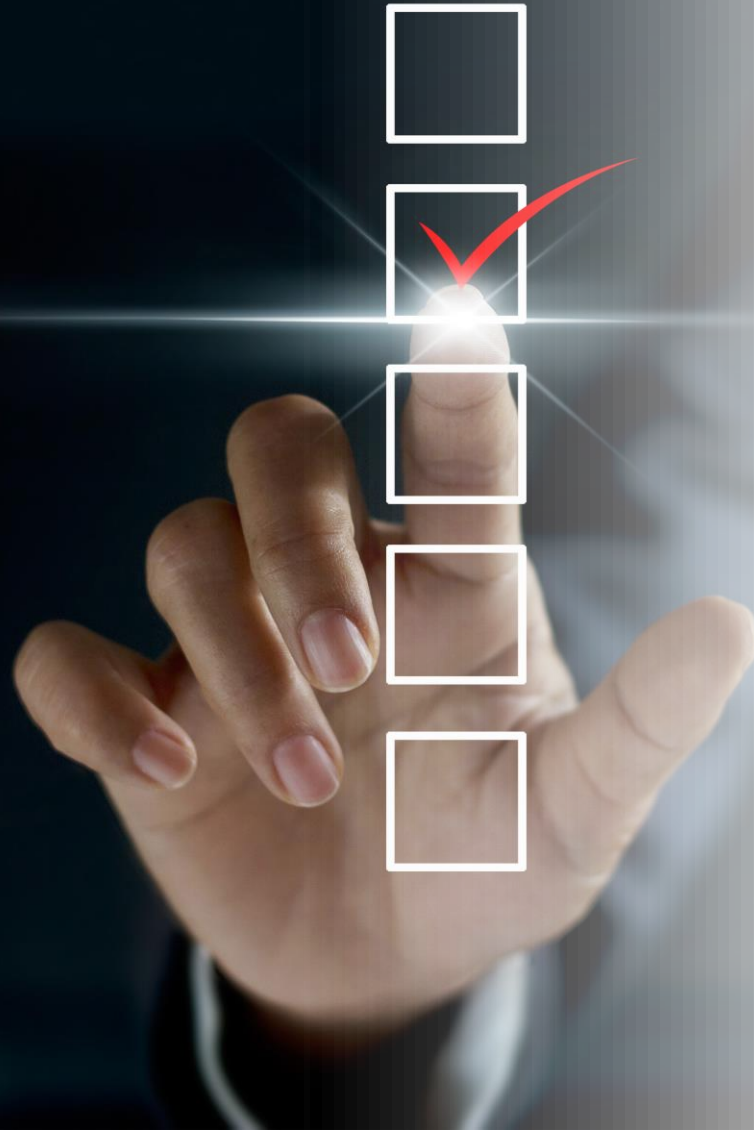
# Do #1: Know When You're Meeting → Kansas Open Meetings Act ("KOMA")

- The act was designed to ensure government business is conducted in the open where interested citizens have access to the proceedings and the written records of the public body. (See K.S.A. 75-4317 *et seq.*)

If you get that feeling you are being watched...you are.



# Requirements of KOMA



- Conduct business in open public meeting; no binding action by secret ballot
- Provide notice of date, time and place of meeting to those requesting notice
- Make agenda available, if one is made
- Recess to executive session only for statutorily allowed reasons



# #thoughtexchange

- Meetings under KOMA have 3 Elements:
- An **interactive communication**;
  - Interactive communication would include, but may not be limited to, e-mails, chat rooms, instant messaging, Facebook messaging and wall posts, and text messages.







# #simplemajority

- The communication must include a **majority of the membership** of the board.
- With seven members on the board, four or more members would constitute a majority.



#socialmedia=openmeeting?

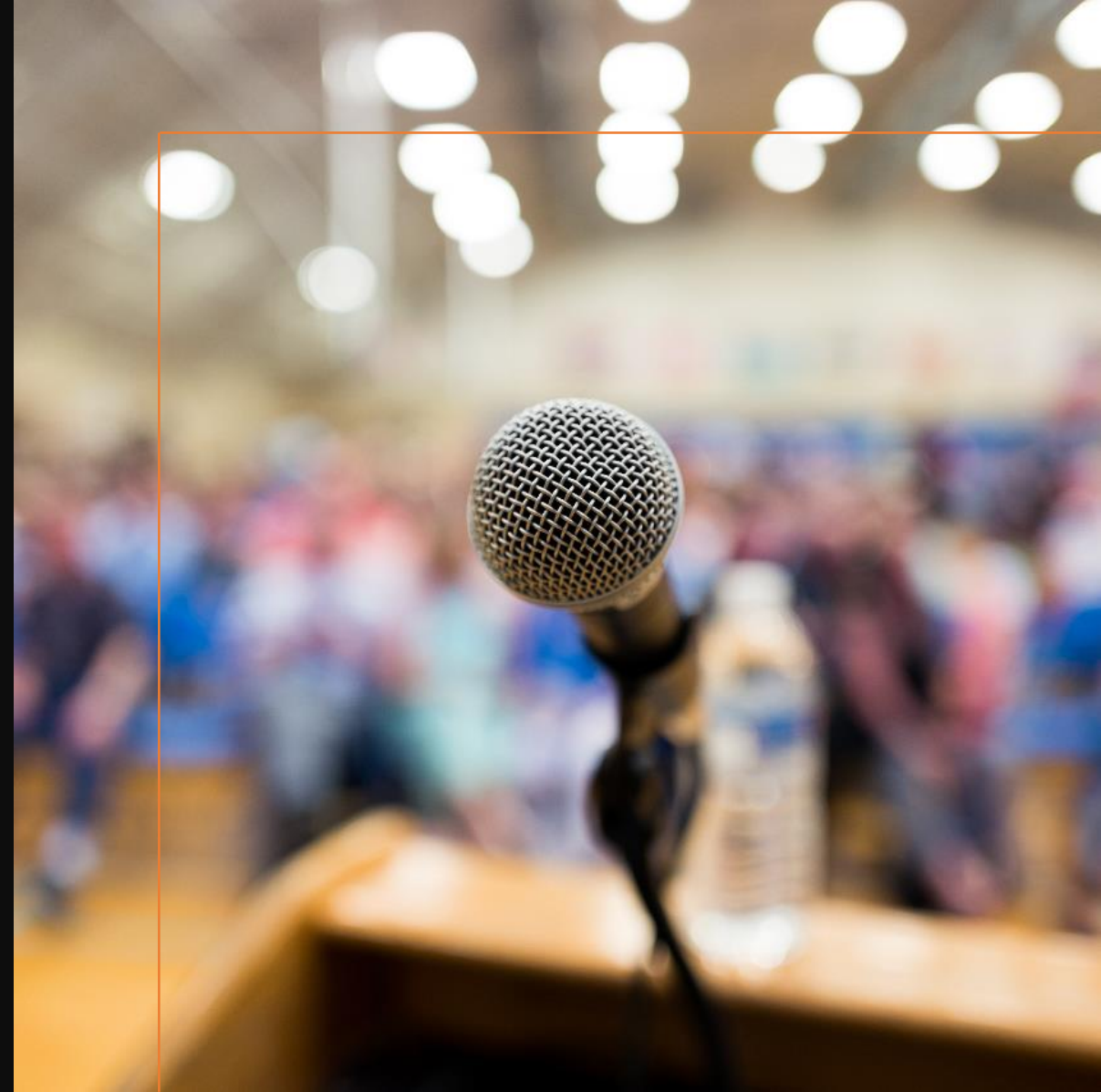
- The majority of the board must be discussing school business.
  - Does it require a vote of the board?



# Scenario: Town Hall Beating

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- Your board recently took a necessary, but largely unpopular action to close a school building. You followed the right process, sought input, and jumped through all the hoops first.
- However, your city council is not prepared to let bygones be bygones, and asked your full board to join them at the city council meeting, where the school board's action to close the building will be discussed, and options, if any, available to tax payers to overturn this action will be considered.
- Is this a meeting of your board?





# Serial Meetings

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- **Collectively involve four or more** board members
- Share a **common topic of discussion** concerning school business, and
- Are **intended** by any or all of the participants to **reach agreement** on a **matter that would require binding action** to be taken by the board.



# Serial Meetings

This two-hour meeting was almost as productive as a single, well-written email.



som<sub>ee</sub>cards

- A majority of members do not have to be present at one time, nor do all of the communications have to take place at one time.
  - As long as four or more board members are involved in the communications at some point, there is a common topic of discussion, and an agreement is reached, a serial meeting has taken place and must be open to the public to avoid a KOMA violation.



# Scenario: A Little Too Quiet

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- You serve as hearing officer for student disciplinary appeals. Your process is to hear the appeal, put together a report with recommendations, and send it to the board for them to accept, reject, or modify your proposals.
  - This Friday, you sent the report to the board, so they had some time to contemplate privately before Monday's meeting. When you get back to work on Monday, 5 of the board members have already weighed in on the contents of the report and suggested changes.
  - On Monday, by the time you reach this part of the agenda, the board immediately votes to modify the hearing officer's recommendation to a full academic year expulsion. There is no discussion, and there is immediate action.
  - Is there anything you need to brace for here?
-



## Be a serial killer! Wait, what?!

*#wordchoicematters*

- Find opportunities to help educate your board, especially those that are new to their positions and are unfamiliar with KOMA, on this topic.
- When you find yourself in a call, email, text, or social media vortex with board members, consider calling them individually to suggest the flurry stop.
- Don't put board members in positions where they can reply all and unleash the beast.





Do #2: Project the Manners and Temperament You Want From Others



Do #3:  
Protect Staff  
and Student  
Privacy





# Student and Employee Privacy Rights

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- For students, see Family Educational Rights and Privacy Act “FERPA”, 20 U.S.C.A. 1232g; statutes protecting records and privacy, including the Student Data Privacy Act at K.S.A. 72-6311 *et seq.*
- For employees, most protections are in case law, but there are protections built into KOMA and the Kansas Open Records Act to help keep those conversations private.



# CONFIDENTIALITY



Where individual privacy rights are involved, such as confidential student or employee information, a staff or board member's discussion outside of executive session may result in the violation of the individual's privacy right.

Likewise, sharing an attorney-client privileged discussion may end up damaging a litigation position or waiving the attorney-client privilege, which belongs to the board as a whole, not the individual board member or any staff member.





## PERSONNEL RECORDS

### Scenario: Doing Her Homework

- You have a young board member that has had a bee in her bonnet about your math teacher ever since he gave her that A- in Trigonometry. As you have contract extensions and nonrenewals on the agenda for tonight, she has come in demanding access to his entire personnel file. Do you provide it?



# All Access Pass

- With some exceptions based on leadership roles, the board members only hold power to act when sitting and acting as a board or when specifically directed by the full board to carry a message or do a task.
- A single board member acting independently has no greater access to school records, school staff, or district facilities and no greater authority to share messages on the board's behalf than a regular person.
- We encourage the board to direct the superintendent to act and to leave the implementation of board wishes and discussion with staff to the chain of command already established within your administrative framework.





Do #4: Keep in mind it is  
the board's meeting

# Unpacking Parent Rights in the School Setting with our Friend, Magic 8 Ball:





# Basis for Parental Rights



- “...the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court.” “...the “liberty of parents and guardians” includes the right “to direct the upbringing and education of children under their control.” Troxel v. Granville, U.S. 57; 120 S.Ct. 2054 (2000).

# Basis for Public School Educational Rights

## Article 6 of the Kansas Constitution on Education

- § 1. Schools and related institutions and activities.
  - The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.
- § 2. State board of education and state board of regents.
  - (a) The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law.
  - (b) The legislature shall provide for a state board of regents and for its control and supervision of public institutions of higher education. Public institutions of higher education shall include universities and colleges granting baccalaureate or postbaccalaureate degrees and such other institutions and educational interests as may be provided by law. The state board of regents shall perform such other duties as may be prescribed by law.
  - (c) Any municipal university shall be operated, supervised and controlled as provided by law.
- § 5. Local public schools.
  - Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature.

# “HOME RULE” → K.S.A. 72-1138

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- (e) (1) The board may transact all school district business and adopt policies that the board deems appropriate to perform its constitutional duty to maintain, develop and operate local public schools.
- (2) The power granted by this subsection shall not be construed to relieve a board from compliance with state law.
- The power granted by this subsection shall not be construed to relieve any other unit of government of its duties and responsibilities which are prescribed by law, nor to create any responsibility on the part of a school district to assume the duties or responsibilities which are required of another unit of government.



# Basis for Parent Rights in School

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K.S.A. 38-141. Parents' rights to exercise primary control over the upbringing of their children; cause of action.

- *(a) As used in this section:*
  - *(1) "Child" means a person under 18 years of age; and*
  - *(2) "parent" means and includes a natural parent, an adoptive parent, a stepparent or a guardian or conservator of a child who is liable by law to maintain, care for or support the child.*
- *(b) It shall be the public policy of this state that parents shall retain the fundamental right to exercise primary control over the care and upbringing of their children in their charge. It is further the public policy of this state that children shall have the right to protection from abuse and neglect.*
- *(c) Nothing in subsection (b) shall be interpreted to expand, diminish or in any way alter the scope of the rights of parents or children to the extent such rights exist as of the effective date of this act.*
- *(d) Any parent may maintain a cause of action in state court or in any court of competent jurisdiction for claims arising under the principles established in subsection (b). Any person authorized by law to act on behalf of a child may maintain a cause of action in the name of such child in any court of competent jurisdiction for claims arising under the principles established in subsection (b).*

# Parental Objections to Activities

- K.S.A. 72-3120(f)
  - *No child attending public school in this state shall be required to participate in any activity which is contrary to the religious teachings of the child if a written statement signed by one of the parents or a person acting as parent of the child is filed with the proper authorities of the school attended requesting that the child not be required to participate in such activities and stating the reason for the request.*





Similarly, a parent can challenge decisions or materials.

- Complaints:

- General Complaints under Board Policy KN
- Student Complaint Policy JCE (focus on discrimination and school rules concerns)
- Enrollment or class assignment issues under Board Policy JBC
  - Specifics on homeless students and foster care students in JBCA and JBCB respectively
- Promotion and retention in Board Policy JFB
- Religious objections under Board Policy IKDA
- Bullying under Policy in JDDC
- Suspension and expulsion in JDD
- Sexual harassment in JGEC
- Racial or disability harassment in JGECA
- Food service program concerns in JGH
- Student record hearing request JRD

- Textbooks and materials challenges:

- Board policy IF:
  - *Any student, parent, or legal guardian of a student currently enrolled in the district having a complaint about textbooks, media center, or other instructional materials shall meet with the teacher, media specialist, or principal. If the concern is addressed to a teacher or media specialist, they shall report the matter to the principal. If the matter cannot be resolved, the principal shall notify the superintendent and ask the complainant to complete a request for review form which is available through building principals or at the district office. After receiving the completed form, the superintendent shall review and consider the request.*
  - *If the issue outlined in the request is not resolved after review by the superintendent, the requestor may seek review by the board. If the board chooses to consider the request, it shall forward all appropriate written materials to a review committee...*



# Magic 8 Ball, must we redesign our curriculum due to CRT concerns?

Parent has concerns about Critical Race Theory being taught in the school setting. She demands the district, through direct appeal to the board, immediately cease and desist from teaching this material. She also puts in a request under the Kansas Open Records Act for all records the district maintains including the words “white”, “black”, “race”, “critical”, “theory”, “privilege”, and “oppression”.

**Does the district need to overhaul its curriculum?**

**Must the district comply with the KORA request?**

**What mechanisms are in place for the parent to seek redress of grievances?**





## Magic 8 Ball, should I have Beulah step outside?

Beulah Bookburner is a parent upset about the reading material accessible to her children in the high school library. She likens it to the backroom at Blockbuster and demands that you do a full-scale recall of any books not deemed appropriate for 14-year-olds. She also wants to be the one deeming which is appropriate.

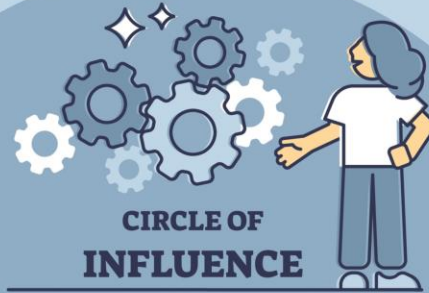
She's demanded an audience with the board in Monday's board meeting, and she is encouraging other parents to pick a Sign Up Genius Slot to block the entrance to the library, which happens to be in a separate building from the high school all day Monday in protest.

What can or should be done here?





**CIRCLE OF  
CONCERN**



**CIRCLE OF  
INFLUENCE**



**CIRCLE OF  
CONTROL**





# The Board's Meetings are Required to be Accessible to the Public

- Notice to those requesting it must be given within a reasonable time
- Public participation is not guaranteed (unless your policy requires it...see Policy BCBI)
- It is a right to watch, not a right to speak
- Keep in mind, if you are closing a building, having a budget hearing, or performing a function for which a public hearing is required, you need to be more accommodating.

# Once a Forum for Speech is Created at a Board Meeting:

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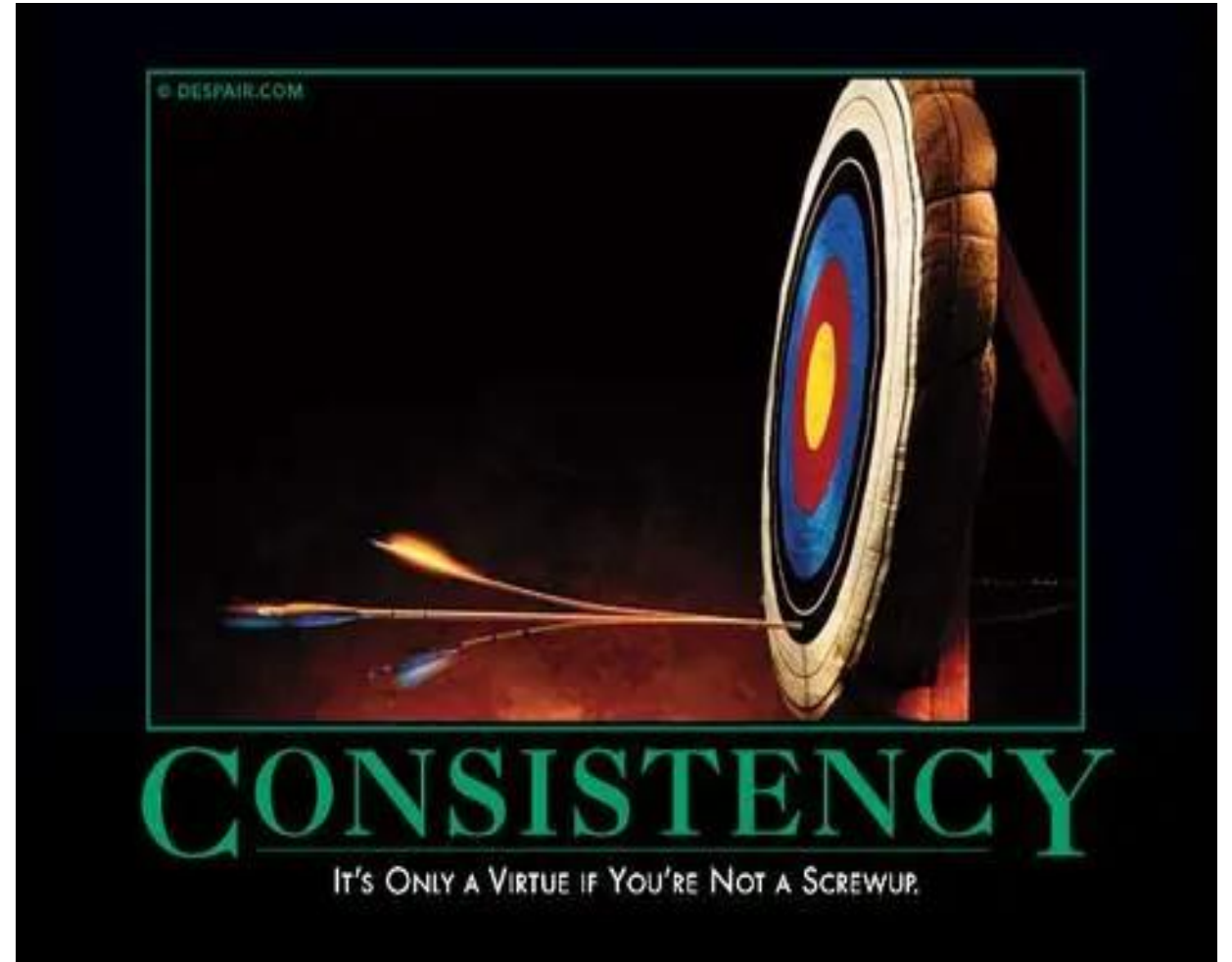
- You can put reasonable time, place, and manner restrictions in place.
- You can put public comment as the last item on the agenda, limit it to a total of 20 minutes, limit each speaker to 2 minutes, limit it to a single topic, etc.
- But you cannot viewpoint discriminate.



# Thou Shalt Not:

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- Misuse Executive Session
- Circumvent your policy and procedures
- Write, type, or say something you would not want on a billboard with your face on it
- Forget Meeting and Voting Procedures



# Don't #1: Misuse Executive Session

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- Recess, not adjourn into it
- Motion:
  - Ms. President, I move we go into executive session [fill in subject] pursuant to [fill in justification], and the open meeting will resume in the board room at [fill in time].
- No one except the board has a right to attend; others join by invitation
- The complete motion must be recorded in minutes and maintained as permanent record.





# JUSTIFICATIONS FOR EXECUTIVE SESSION MOTION

NON-ELECTED  
PERSONNEL

CONSULTATION WITH  
ATTORNEY ON MATTERS  
DEEMED ATTORNEY-  
CLIENT PRIVILEGED

ACTIONS ADVERSELY OR  
FAVORABLY AFFECTING  
A STUDENT

DATA RELATING TO  
FINANCIAL AFFAIRS OR  
TRADE SECRETS

EMPLOYER-EMPLOYEE  
NEGOTIATIONS

PRELIMINARY  
DISCUSSIONS OF THE  
ACQUISITION OF REAL  
PROPERTY

SCHOOL SECURITY  
MATTERS TO ENSURE  
THE SECURITY OF THE  
SCHOOL

EXAMPLES OF SUBJECTS	JUSTIFICATION
<p>To discuss an individual employee's performance; or</p> <p>To discuss an individual employee's contract; or</p> <p>To discuss evaluation of an employee</p>	<p>The non-elected personnel exception under KOMA</p>
<p>To discuss a student issue; or</p> <p>To hold an appeal hearing for a student</p>	<p>The exception relating to actions affecting a student under KOMA</p>
<p>To discuss coding mechanisms Powerschool uses to secure student data with Powerschool representatives</p>	<p>The exception for data relating to the financial affairs or trade secrets of a business under KOMA</p>
<p>To discuss potential litigation with our legal counsel</p>	<p>The exception for matters which would be deemed privileged in the attorney-client relationship under KOMA</p>
<p>To discuss the latest proposal for increasing the base pay from the teachers; or</p> <p>To discuss items noticed or to be noticed negotiation; or</p> <p>To discuss the board's position on teacher benefits</p>	<p>The exception for employer-employee negotiations under KOMA</p>
<p>To discuss potential properties for a new middle school</p>	<p>The KOMA exception for preliminary discussion of the acquisition of real property</p>
<p>To discuss the high school crisis plan;</p> <p>To discuss exact placement of security cameras and alarms in the school buildings</p>	<p>The KOMA exception for discussion of security measures</p>



## Scenario: Man Down

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- Your trusted legal counsel has bad news. He will be in trial during your special meeting on Wednesday and will not be able to join your discussion. In his absence, he has provided a strongly worded memo for the superintendent to share with the board. The board uses an executive session for attorney-client privilege to discuss it. Is this okay?
- 



# KEEP IT CONFIDENTIAL

- Board members—and anyone invited to executive session—must not disclose matters discussed in the session to anyone.
- Executive session under KOMA exists to protect either a public interest or the privacy interest of a particular individual.
- Any improper disclosure erodes public trust.





A person in a dark suit and a red tie is surrounded by a dense cluster of microphones from various news organizations. The microphones have labels such as 'TV Network', 'PRESS', 'Radio', 'NEWS', and 'TV'. The scene is dimly lit, with the person's face not visible, focusing attention on the media presence.

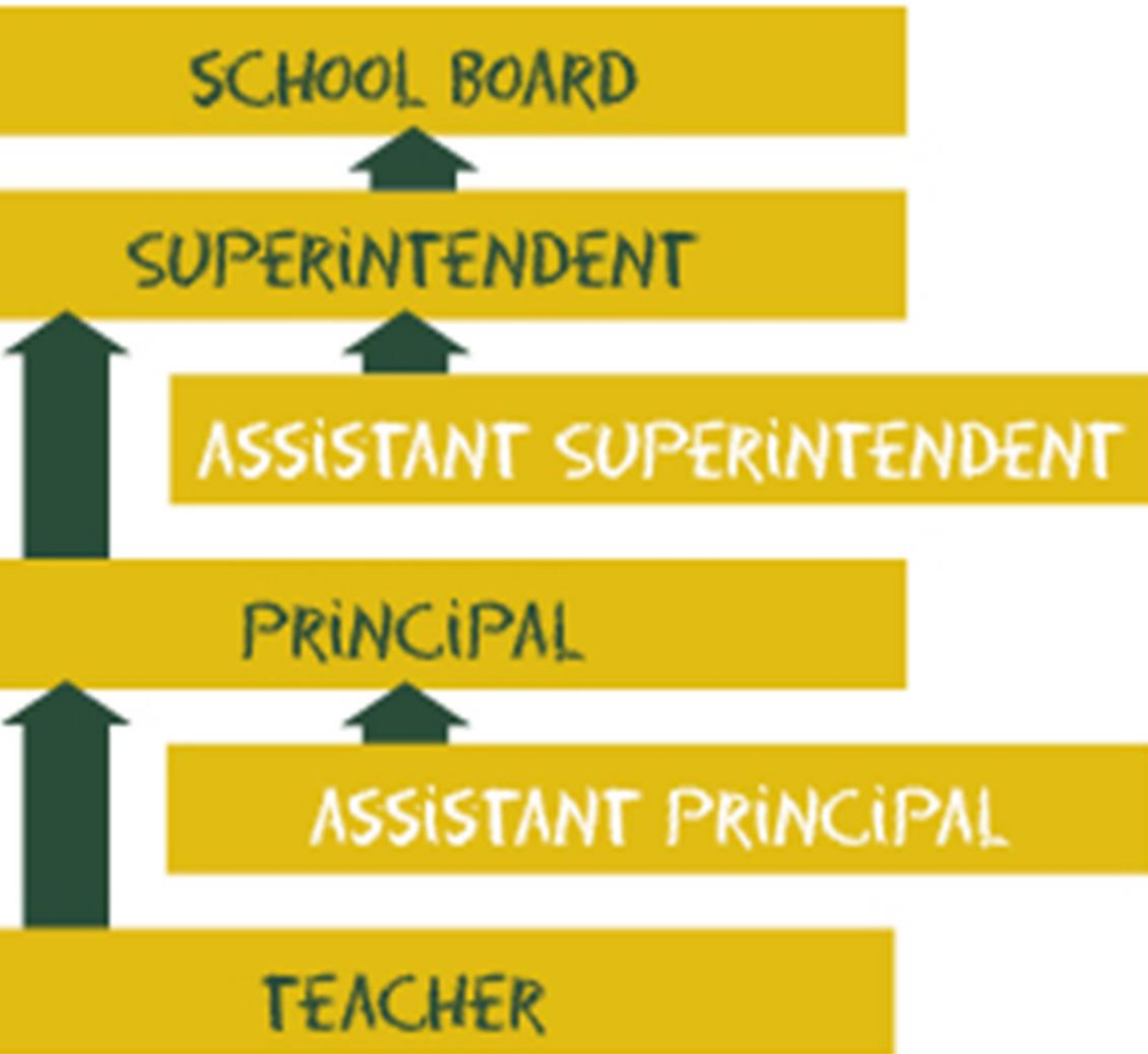
# Scenario: Listen, listen, hear all about it!

- You settle into your Thursday night Netflix routine just to be interrupted by a frantic text from the superintendent. A beloved counselor at your middle school has been arrested for aggravated indecent liberties with a child. Your board has a special meeting to discuss this at 7:30 a.m. on Friday and gives you all marching orders for next steps.
- Before the meeting adjourns, three news outlets are asking you for comment. What can/should you say?



A man wearing a white and green wrestling mask with red eye cutouts is shown from the chest up. He has a wide, toothy grin and is holding a thick, dark rope. The background is a plain, light-colored wall.

Don't #2: Circumventing Your Policy and Procedures, Especially When Wrestling with a Complaint



## What is the chain of command?

- In an organizational structure, “chain of command” refers to a district’s hierarchy of reporting relationships -- from the bottom to the top of the district, who must answer to whom. The chain of command not only establishes accountability, it lays out a district’s lines of authority and decision-making power.

Just because  
they come to the  
board doesn't  
mean they are  
the ones that  
have to handle it  
at that time.

- Do they want to speak in open forum? (BCBI) → Meeting in public not public meeting; Board President may elect not to allow
- Do they want to go into executive session to discuss staff and/or students? (BCBK)
  - From BCBI: “Any patron wishing to speak to the board shall first notify the superintendent seven days prior to the meeting and state the reason(s) for the request. The superintendent shall determine whether said request can be solved by the staff without appearance of the patron before the board.”
- Do they want to file a complaint? (KN or other policy depending on nature of complaint)
  - From BCBI: “Only in those cases where satisfactory adjustment cannot be made by a principal or the superintendent, shall the superintendent refer complaints to the board.”





# Who's Your Complainant?

- Is it a staff member covered by the negotiated agreement? If so, do grievance provisions apply?
- If not covered by negotiated language, do you have an employee complaints policy? (GAE)
- Does it involve sexual, racial, or disability harassment? (GAAB, GAAC, GAACA, KN)
- Does it involve bullying? (GAAE)
- Have you followed the chain of command in addressing the complaint?



# Tips On Handling Complaints



- Know your policies and grievance language
- Don't disregard unwritten or emailed complaints
- Follow the timelines in policy and negotiated language
- Respect and follow the chain of command
- Investigation may be necessary
- Take prompt, remedial action to cure any wrongdoing, provide support to any victims, and discipline students/staff or deal with contractors/patrons responsible
- Understand that circumventing your policy and procedure to go directly to the board could have legal repercussions.



Don't #3: Write, type, text, post, or say something in a meeting you would not want on a billboard with your face on it



# KANSAS OPEN RECORDS ACT (KORA)

- Requires any recorded information made or maintained by school district be accessible to public (lots of exceptions)
  - Most records are subject to KORA
  - Excluded are personal records made or held by individual school board members





# Keys to Remember About KORA

- When using your district-provided laptop, iPad, or email address, board members and staff members must be mindful that material posted therefrom or maintained thereon could be subject to disclosure given the right request.
- Similarly, there's always the chance that communications sent not from school equipment or emails but made in the capacity as a board member or staff member on topics related to the operation of the district will be requested to be disclosed.
  - **Think about work texts sent from your personal phone!**







And, there's  
always the  
chance you  
are being  
recorded.



# Scenario: Testy Text Express

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- In hour two of public comment, you, the superintendent, and board leadership starts venting via text message. The dialogue is a roast of the public commentary champions, and you are both tickled at the collective wit of the group and thankful that you had an outlet for your frustration.
  - Fastforward 3 days, and someone has spilled the beans. Somehow, word of your zingers via SMS have gotten out in the community, and the parent that used his public comment time to read potty words out of library books he thinks you ought to ban has put in a KORA request for all of these parties' text messages sent during the board meeting.
  - Can he do that?
-



Don't #4:  
Forget Voting  
and Meeting  
Procedures



## K.S.A. 72-1133: Board Leadership Selection



HAPPY  
PRESIDENTS DAY!

- The board shall elect a president and vice-president, both of whom shall be members of the board. The president and vice-president shall each serve for a term of one (1) year and until a successor is elected and qualified.
- The president shall preside at meetings of the board and perform such other duties as are provided by law.
- In the absence or inability to act of the president, the vice-president shall perform the duties of the president. In the absence or inability to act of both the president and vice-president, the remaining members shall select a member to act in the capacity of president.



# BOARD PRESIDENT

- Has same authority to vote as the other six members
- May make motion, second a motion, discuss a motion
- Presides over the meeting and keeps the meeting moving (BCBF)
- Other duties as assigned by law or policy, such as compiling the agenda with the superintendent (BCBD-R) and determining whether to allow public comment on an agenda item (BCBI)





*Special*

## Special Meetings

- President or three board members can call special meeting.
- Each board member entitled to two days' written notice of time, place and purpose of special meeting.
- Board member may waive right to receive advance written notice.
- Persons requesting notice entitled to receive personal notice of special board meetings.
- Notification should be given within reasonable time.

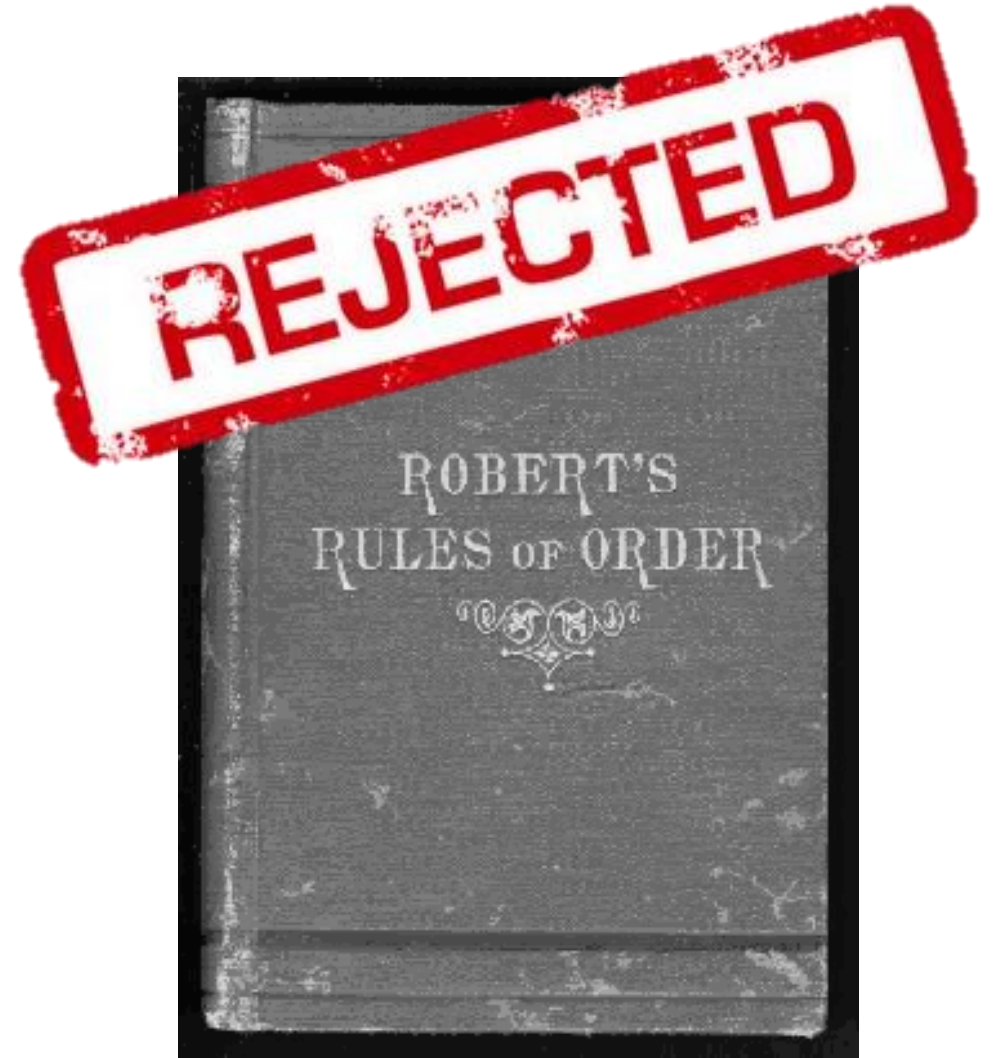


# QUORUM AND RULES OF ORDERS

Four board members for quorum

Roberts Rules of Order not required or recommended

Four affirmative votes required to take any action



# VOTING PROCEDURES

Voice vote, show of  
hands

Paper ballots not  
recommended

- Ballot must be signed  
and maintained

Public must be able  
to see or hear

No proxy or secret  
ballot

Policy BCBG says  
must be “yes” or  
“no” vote

K.S.A. 72-1138  
states abstentions  
or remaining silent  
are “no” votes

# MANAGING CONFLICT OF INTEREST



## CONFLICTS OF INTEREST

- Legal or equitable interest
- Announce conflict
- Leave meeting
- Member counted as not voting
- Only member can decide to declare conflict





Questions?

[astallbaumer@kasb.org](mailto:astallbaumer@kasb.org)

800-432-2471