



Arizona's Open Meeting Law
ASAP Workshop
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Know the Purpose of the OML

Rule #1

When in doubt, the law favors open meetings

- Any indifference to the OML by a governing board brings scrutiny, suspicion and skepticism by the media and the public
- The law concerns itself with protecting the public's interest – not the interest of board members or school employees



When the OML applies

Rule #2

To any meeting of a quorum of the members of the public body

- ✓ Any “instrumentality” of the board

Quorum is a majority of the board

- ✓ includes conference calls (expressly allowed)
- ✓ cannot vote by proxy
- ✓ physical proximity not required: could have meeting of a quorum by phone or e-mail triggering OML requirements

Policy Reference—BE: School Board Meetings



Rule #2

Gathering of a quorum of members at which they:

- discuss OR
- propose or take legal action OR
- deliberate with respect to any legal action

What is “legal action” under the OML?

- Interpreted broadly: includes any matter pertaining to the governing or school district that foreseeably could become the subject of legal action by the governing board



- Meeting includes:

- One-way electronic communication by one member of the public body proposing legal action to a quorum of members
- An exchange of electronic communications among a quorum of members of the public body that involves discussion, deliberation or the taking of legal action concerning a matter likely to come before the public body for action.



Rule #2

- Series of one-on-one discussions intended to lead to an agreement among a quorum of members may violate the OML
- Superintendents can give board members information about management decisions but cannot secure approval for a proposed decision outside of a public meeting



Rule #2

Governing board members cannot direct staff members to communicate with other members if the communication would violate the OML.

Would result in an OML violation on part of both the governing board member and the staff member.



Rule #2

- Applies to all meetings of board – no matter what they are called
- Subcommittees – applies to them (on motion of board or presiding officer)
- Remember: not just about something that is on a pending agenda but anything that could come before the board
- Watch the parking lot!

Governing Board meetings must comply with the OML's requirements for:

Rule #3



- 1. Location**
- 2. Notice**
- 3. Agenda**
- 4. Minutes**

Policy Reference—BEDA: Notification of Board Meetings



LOCATION

- Regular meetings: at any public facility in the district: accessible to public, including disabled and should be adequate to allow public to attend and listen
- Special meetings: no geographic restrictions – can be held off district premises.
 - Should be somewhere public can attend
 - Best practice is to take no legal action if not at a public facility in the district

Policy Reference—BEDA: Notification of Board Meetings



NOTICE

- 38-431.02 Tells public where notices will be filed
 - ✓ Listed on your website
(must include website as posting place)
- Must be posted at least 24 hours in advance
- Written notice delivered to board members at least 24 hours in advance
- Must inform the public in a manner that is “reasonable and practicable”
 - ✓ notice/agenda in school newsletters, school offices, local newspapers

Policy Reference—BEDA: Notification of Board Meetings



AGENDA

- Posted/distributed with notice
- MUST list specific items to be addressed
 - ✓ “discussed, considered or decided” at meeting
 - ✓ Each item should contain “such information as is reasonably necessary to inform the public of the matters to be discussed or decided.”
 - ✓ Limited to those topics on agenda and “other matters related thereto”
- Requirements for executive sessions are very specific and will be discussed later.

Policy Reference—BEDB: Agenda and BEDBA: Agenda Preparation and Dissemination



MINUTES

Written minutes or recording of minutes required, including executive sessions



Minutes Requirements

- ❑ date/time/place
- ❑ members present or absent
- ❑ general description of matters considered
- ❑ description of legal action proposed, discussed or taken including names of members who propose the action
- ❑ a record of how each member voted (NEW: 2018)
- ❑ names of persons who make statements or present materials to governing board



MINUTES (continued)

- No requirement for public body to approve minutes
 - ✓ common practice is to review and approve minutes from previous meeting to ensure accuracy
- Minutes are open to public inspection (except executive minutes)
 - ✓ must be made available to public - in writing or recording within 3 days of meeting
 - ✓ Must keep recording of minutes
- Executive Session minutes discussed later

Policy Reference—BEDG: Minutes



Chair of meeting should consistently follow basic rules

Rule #4

- Formally call meeting to order
- Follow all OML and board policies
- Cover all items on the agenda
 - ✓ can change order unless time specific
 - ✓ can table items without discussion
- Cover only those items on agenda
- Require speakers to identify themselves
- Formally adjourn meeting

Policy Reference—BED: Meeting Procedures/Bylaws, BEDD: Rules of Order and BEDF: Voting Method



Citizens have a right to attend and record public meetings

Rule #5

...but do not have the right to participate in discussions unless public participation is allowed by district policy



What rights do citizens have under the OML?

Rule #5

- Right to attend and listen
- Right to record by video or audio
 - ✓ can't prevent others from viewing and listening
- Right to expect public body to follow its own rules for conduct of meetings
- Right to address the public body if policy allows it; if not, there is no right to participate



A governing board can conduct an open call to the public

Rule #6

...but cannot discuss or take legal action during the call unless the matter is on the agenda.

Policy Reference—BEDH: Public Participation at Board Meetings



Call to the Public Requirements

Rule #6

- Can limit comments to items appearing on the agenda
- If a speaker raises an issue that is not on the agenda, board members cannot discuss the issue with the speaker or among themselves
 - ✓ can ask staff to review matter or place on a future agenda
 - ✓ can respond to criticism made by those who addressed the board

Policy Reference—BEDH: Public Participation at Board Meetings



Rule #6

- Board can adopt and enforce reasonable time, place and manner regulations to promote the efficient conduct of its meetings
- CANNOT block a comment because of its content or viewpoint
 - ✓ speech protected by the First Amendment to the United States Constitution



Superintendent - Board Reports

Rule #7

Superintendent or a governing board member can give an update or summary of current events without listing matters on the agenda as long as:

- ✓ summary is on the agenda, AND
- ✓ the public body does not discuss or take legal action on any matter not specifically identified on the agenda



Rule #7

Board Reports – pitfalls to avoid

- Should be for current events/recognitions that do not foster a lot of discussion
 - ✓ If at all possible, put item on the agenda – gives you flexibility
- No discussion!
 - ✓ Can ask for matter to be put on future agenda or ask for more information
- Only a board member or superintendent can give report without listing items on the agenda



Executive Sessions

Rule #8

- A gathering of a quorum of members of a public body from which the public is excluded.
- Can only occur if one or more of NINE authorized reasons and all procedures are met

Policy Reference—BEC: Executive Sessions/Open Meetings

Procedural Requirements – Before executive session

Rule #8

- Must call meeting to order before going into ES*
 - *”Generally, the vote will be taken immediately before going into executive session. However, in some cases an agency may know that at a future date it will need to meet in executive session, in which case it can then vote at the public meeting to meet on the later date in executive session. On that future date, the agency does not have to first meet again in a public session.”
- Notice that board may go into executive session must be on agenda, with specific legal basis for doing so
 - ✓ cannot be rote recital of statutory authority but should not be so specific that it defeats purpose
- Board must agree to go into ES by a majority of those present



Procedural Requirements – During executive session

Rule #8

- Only those individuals whose presence is reasonably necessary to carry out ES responsibilities can attend
- All participants must be reminded that the discussions are confidential
- Cannot take a “straw poll” or preliminary vote in ES prior to deciding matter in open session



Procedural Requirements – After executive session

Rule #8

- Final vote or decision to take legal action must occur after the public body reconvenes in open session
 - Board can instruct third party on:
 - litigation or settlement discussions
 - negotiations with employee organizations
 - negotiations for the purchase, sale or lease of real property
- Must continue with remainder of meeting after ES concludes



NINE Authorized Reasons of Executive Sessions

- Employee Matters
 - Legal Advice
 - Records exempt from public inspection and information that must be made confidential by state or federal law
 - Contract negotiations, pending litigation or settlement discussions
- Negotiating representative
 - International/ Interstate negotiations
 - Purchase, Sale or Lease of Real Property
 - School safety operations, plans or programs
 - Security plans or systems



Employee Matters

- Have to discuss employee, not a “position”
 - Must deliver written notice to employee at least 24 hours prior
 - Employee may require discussion be done in public
- Employee has no right to attend ES unless purpose is to conduct “due process” hearing
 - Employee has right to review minutes of the ES



Superintendent Evaluations

- Evaluation in executive session should be limited to personal performance
- Extended conversation about district goals and programs should be in open session



Legal Advice

- Attorney must be present
- Must confine discussion to legal advice





Negotiating Representative

- Cannot use session on negotiating representative for overall discussion of budget or school programs – some budgetary context can be offered
- If for collective bargaining (meet and confer) discussion with negotiating representative must be confined to employee salary and fringe benefits issues



Executive Session Minutes

- Date/time/location
- Persons present
- General description of matters considered including accurate description of all instructions given
- Review of ES minutes limited to public body members, employee subject of discussion, auditor general for audits, or county atty or AG for OML investigation



Student Hearings on Student Promotion/Retention

Rule #9

Discussion about discipline or retention of students are exempt from OML but other statutory requirements must be met

Promotion/Retention

- Hearing and decision is in ES, unless parent requests public meeting
- If heard in ES, teacher must be informed and has a right to attend the ES



Student Hearings on Discipline/Suspension/ Expulsion

Rule #9

- Post notice and keep minutes
- Board must decide in ES whether to hold hearing or appoint hearing officer to make recommendation
- Hearing and decision in ES unless parent wants it in open session
- If in ES, parent has right to attend, record proceedings and review minutes



Emergency Sessions

Rule #10

Board can meet in an emergency session without notice requirements but must follow other procedures

- ✓ Emergency - sudden, unexpected event that demands immediate action
- ✓ Post notice and agenda ASAP
- ✓ Discuss details of emergency at meeting
- ✓ Put details in minutes
- ✓ Post details of emergency within 24 hours

Policy Reference—BEDA: Notification of Board Meetings



Legal action taken in violation of the OML is void

Rule #11

Can validate invalid actions but only if:

- ratification within 30 days after violation occurs or should have been discovered
- posted and detailed in minutes action that will be ratified (say based on prior action)
- detailed description of matter to be ratified must be posted with notice including all deliberations and decisions made on matter to date



Penalties for violation of OML can be severe

Rule #12

- Investigatory powers of AG and County Attorneys considerable
- Civil enforcement action can be filed by AG, County Attorneys or private citizens
- Public investigation of OML violation by a governing board member or members may prompt recall effort or make it difficult to win re-election



Violations

- First Offense: \$500 fine per violation, in addition to attorney's fees and costs, for knowingly aiding, agreeing to aid or attempting to aid another person in an OML violation (no insurance or district indemnity)
- Second offense: \$2500 fine per violation



Get Out of Jail Free...

- “If a court finds that a person who might otherwise be liable...objected to the action of the public body and the objection is noted on a public record, the court may choose not to impose a civil penalty on that person.”
- If you believe the OML is being violated, 1) verbally say so 2) ask that it be in the minutes and, possibly, 3) leave the meeting

A court (or the AG through agreement) can remove a governing board member from office for violation of the OML



In short, know the OML!!!



If you are unsure ask questions of your superintendent and or through your superintendent, your attorney. You cannot be too cautious in asking advice!!!

Policy Reference—BDG: School Attorney



ADDITIONAL QUESTIONS?

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