

The Open Meeting Law

Charter School Board Members

Resources:

Minnesota Statutes Chapter 13D

MSBA Service Manual or Handbook, Chapter 13, Law Bulletin C

MSBA/MASA Model Policy 205

Your MSBA Staff, Telephone: (800) 324-4459

Why is the Open Meeting Law (OML) important to board members?

1. Personal liability [Minn. Stat. §13D.06]

\$300 fine for each violation

Civil penalty

No limit on dollar amount

No Coverage by E & O insurance policy

2. Reasonable costs, disbursements, and attorney's fees up to \$13,000 to any party. (These can be paid by the school district)

Attorneys fees are awarded to a winning party **if** the public body was the subject of an opinion by the Department of Administration **and** took subsequent action not in conformity with that opinion. (New 2008)

3. An action may be brought by any person in any court of competent jurisdiction.

4. If three or more actions result in a finding of violation, the person shall forfeit office. The case of *Claude v Collins*, 518 N.W.2d 836 (Minn. 1994) requires, in addition, a finding that the person holding public office is guilty of malfeasance or nonfeasance.

What is the purpose of the OML?

From *Lindale v ISD 306*, 133 N.W.2d 23 (Minn. 1965):

“The purpose of [the OML] is to prohibit actions being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning board decisions or to detect improper influences.” “The [OML] orders that the public be given an opportunity to observe.”

There is no requirement that the public be allowed to interact with the board. It is the board’s meeting. The board may control the time, place, and manner of public input.

There are three types of board meetings:

1. Regular Meetings

The schedule of the regular meetings shall be kept on file at the school district office. Once this is done, you need not post and print meeting notice for regular meetings that stay with that schedule.

If the regular meeting date or time changes, then you must provide notice.

2. Special Meetings

Special meetings may be called by the chair, the clerk, or any three members of the board [Minn. Stat. §123B.09 Subd. 6].

You are required to post written notice of the date, time, place and purpose on the district's principal bulletin board.

Notice shall also be mailed or otherwise delivered at least three days before the meeting to each person who has filed a written request for notice.

The alternative is to publish notice in official newspaper at least three days prior to the meeting.

3. Emergency Meetings

An emergency meeting is a special meeting called because of circumstances that, in the judgment of the board, require immediate consideration.

You must make good faith effort to provide notice to each news medium that has filed a written request for notice.

Notice is to be given in the same manner as notice to board members.
(Telephone, hand delivered, mailed, etc.)

Meeting After a Recess

If a meeting is recessed or continued from a previous meeting, the time and place was established during the previous meeting and recorded in the minutes of that meeting, then no further published or mailed notice is required.

Committees

Committees of the board are covered by the Open Meeting Law. Notification and voting procedures are the same as for board meetings.

Other Aspects of the Open Meeting Law

1. **Materials** - one copy of all printed materials relating to the agenda must be available to the public at the meeting. Does not include data classified as private or confidential [Minn. Stat. §13D.01 subd. 6].
2. **Quorum (board and committees)** - a meeting of less than a quorum does not fall under the law. Neither do social gatherings where no board business is discussed. Beware of how these events may appear to the public.
3. **Closed meetings** - Closed meetings may be or must be held in the following situations **only**.

Unless otherwise provided, all closed meetings, except those closed under the attorney-client privilege, **must be electronically recorded** by the public body and the recordings kept for **three years** after the date of the meeting. **(New 2008)**

a. **A meeting MUST BE CLOSED before the meeting turns to a discussion of:**

- data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults;
- educational data not classified as public (educational data = most student data except directory information);
- health, medical, welfare, or mental health data on employees;
- active investigation information collected or created by a law enforcement agency [Minn. Stat. §13.82, subd. 7];

- preliminary consideration of allegations or charges against an individual subject to school board authority. The meeting must be open at the request of the individual.

b. A meeting MAY BE CLOSED for:

Employee Performance Evaluation. Board must name the employee prior to closing the meeting (board must summarize the specific, salient points of the evaluation at the next board meeting – a “detailed summary” is required – must be more than “strengths were noted and areas of improvement were identified”);

Teacher Termination Hearing if a private hearing is requested by the teacher. Must be open at the request of the individual who is the subject of the meeting;

Pupil Expulsion or Exclusion Hearings, unless pupil or parents request that hearing be open;

Litigation Strategy meetings with attorneys involved in threatened or pending litigation. (*Prior Lake v. Mader*, 642 NW2d 729 (Minn. 2002), the possibility of litigation is not enough to close the meeting). Rely on the advice of your attorney regarding a closed meeting under the attorney-client privilege;

Sale of Property. “A public body may close a meeting to determine the asking price for real or personal property to be sold by the government entity; to review confidential or nonpublic appraisal[s]” of the property; “and to develop or consider offers or counteroffers for the purchase or sale of real or personal property.” Prior to the closed meeting, the board “must identify on the record the particular real or personal property that is the subject of the closed meeting.” The closed meeting must be tape recorded and the recording must be saved for **eight years**. The tape is available to the public after the sale. The actual purchase or sale must be approved at an open meeting. Minn. Stat. §13D.05, subd. 3, as amended in 2004;

Security. Meetings may be closed to discuss security matters “if disclosure of the information discussed would pose a danger to public safety or compromise security procedures or responses.” The subject matter must be identified before the meeting is closed. The closed meeting must be tape recorded and the recording retained for **four years**. Minn. Stat. §13D.05, subd. 3, as amended in 2004.

Electronic Mail (E-mail) and the Open Meeting Law

Correspondence between individuals and elected officials is private data on individuals, but may be made public by either the sender or the recipient. [Minn. Stat. §13.601]

A copy of information e-mailed to board members in preparation for a meeting (information pertaining to school business) should be made available at the next board meeting unless a data privacy exception applies.

Avoid discussions via e-mail, which may be interpreted as serial meetings in violation of the OML.

Never send an e-mail you don't want posted on the internet, a public bulletin board, or printed in the newspaper, because that is exactly what could happen to it.

Use a separate e-mail address for board correspondence.

See if your school can archive board members' e-mail.

E-mail is forever. Even deleted e-mails may be recoverable. A court may order your personal computer to be turned over for inspection and recovery of deleted e-mails if you use that computer for school board business.