



PUBLIC MEETINGS LAW, BOARD MEETINGS AND EXECUTIVE SESSIONS

**A GUIDE FOR PUBLIC SCHOOL,
EDUCATION SERVICE DISTRICT AND
COMMUNITY COLLEGE BOARDS**



LEADERSHIP TO LIFT OUR PROMISE OF GRADUATION

March 2018

Dear Board Member:

When we created this handbook to help you comply with Oregon's public records and meetings law, we put into plain language the answers to typical questions our experts have gotten from members over many years of OSBA serving public education boards. In addition to addressing the particulars about meetings, taking and keeping minutes, and disclosing records according to the law and public information requests, we've included sample notices and pertinent sections of Oregon law so you will have it handy when you need it.

We suggest you keep this handbook in your board notebook so it will be available during meetings. You can print publications online for free from the OSBA website at www.osba.org. Click on the "My OSBA" tab, then "Member Resources."

Please call or send an email to us whenever you have a question about the legalities and procedures related to public meetings and records. And don't forget to check out "Ask OSBA" at www.osba.org, where OSBA staff answer common questions about board meetings and more.



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PUBLIC MEETINGS LAW

Under Oregon law, all meetings of governing boards and governing boards' sub- and advisory committees are subject to the Public Meetings Law (ORS 192.610-192.695), which covers state and local governmental boards, commissions, councils, committees or subcommittees consisting of two or more members.

The Public Meetings Law also applies to committees without decision-making authority when they are delegated to advise a public body, except when the committee's sole purpose is to advise an individual public official. School councils under the Oregon Educational Act for the 21st Century are covered by the Public Meetings Law. (For definition of such councils, see ORS 329.704.)

Remember that the Public Meetings Law is a public attendance law, not a public participation law. The right of public attendance guaranteed by the Public Meetings Law does not include the right to participate by public testimony or comment. However, governing bodies are encouraged to allow public participation at their meetings.

MEETING REQUIREMENTS

A meeting occurs when a quorum is present to gather information or decide or deliberate on any public matter. The law specifies the following:

- All meetings of governing bodies shall be conducted in public unless specifically exempted.
- No quorum of a governing body may meet in private to decide or deliberate toward a decision on any matters except those exempted by law. (See page 8, Executive Sessions.)

Onsite inspections of any project or program and attendance by members of a governing body at meetings of national, regional or state associations to which the public body or its members belong are not considered meetings of the public body. A quorum may attend social gatherings, but cannot discuss school business.

ORS 192.610, 192.620, 192.630.

WHERE MEETINGS CAN BE HELD

The governing body must meet within its geographical boundaries, at its administrative headquarters, or at the nearest practical location,

except in the case of emergency meetings and training sessions where no deliberations toward a decision are involved. Other rules pertaining to where meetings are held:

- Joint meetings of two or more governing bodies must be held within the boundaries of one of the governing bodies or at the nearest practical location.
- If an actual emergency requires immediate action by the governing board, the limitations on locations where the meeting may be held do not apply.
- The governing body may not meet in any place that discriminates on the basis of race, creed, color, sex, sexual orientation, age, national origin or disability.
- The meeting location must be accessible to the handicapped. Interpreters for the hearing impaired must be provided if a request is made at least 48 hours prior to the meeting.

ORS 192.630.

CALLING A BOARD MEETING

A board must provide notice for the time and place of its regular meetings. The board may adjourn a regular meeting until the next regular meeting or call a special meeting before the next regular meeting, as long as 24 hours' notice is given. In this case, "special meeting" simply means a meeting outside of the regular schedule. Regular and special meetings may be convened in the following circumstances:

- By order of the chair.
- Upon request by three board members of a school district, or by four members of a community college board, at least 24 hours before such a meeting is to be held.
- By common agreement of the board members.

ORS 332.045, 341.283.

NOTICE REQUIREMENTS

Reasonable notice of time and place is required for all board meetings. The Public Meetings Law requires the notice for regular meetings to be "reasonably calculated to give actual notice to interested persons including news media which have requested notice."

- Twenty-four-hour notice is required for special meetings. Appropriate notice is required for emergency meetings. In this case, notice should include phone calls and emails to media representatives.
- Notice that includes an executive session must cite the section and subsection of the statutory authorization for the executive session.
- Any meeting notice must list the principal subjects to be considered at the meeting; however, this does not preclude the discussion of other subjects at the meeting.

ORS 192.640.

OSBA has these recommendations about meeting notices:

- Make sure notice is given for all executive sessions. This is typically done by listing the executive session on the regular board meeting agenda or by issuing a meeting notice if the sole purpose of the meeting is for an executive session.
- If an unexpected event or topic arises during a regular board meeting – for instance, the need to review records that are exempt from public disclosure – the chair or presiding officer should schedule a special meeting that will include an executive session for a future date. The notice for the special meeting must be given at least 24 hours before the meeting and must include the statutory authority for going into executive session.
- When the need for an executive session arises after the regular board agenda has been published, but before a meeting, the executive session can be added to the meeting if the agenda can be changed in time to provide at least 24 hours' notice of the executive session.
- Do not automatically or routinely list an executive session on the regular meeting agenda. This can leave a bad impression with the public that you regularly meet in private.
- When holding an executive session that will be followed by a decision in open session, be sure to include an agenda item for the decision. If you are holding a meeting that will consist of only an executive session, you cannot adjourn the executive session to an open session unless the open session has been properly noticed.
- When the board is going into executive session under ORS 192.660(2)(b) or ORS 192.660(2)(i)

the public official who will be discussed must be given written notice of the meeting at least one business day or 24 hours in advance of the meeting in order to afford him or her the opportunity to have the meeting held in open session.

REGULAR MEETING NOTICE

Paid advertisement in local newspapers or any other form of paid advertisement to notify the public about board meetings is *not* required by law. You should publicize regular meetings by means of the following:

- Notices to local news media.
- Notices to interested parties maintained on a mailing list, e.g., budget and advisory committee members, parent club officers, key public and business officials, others who request notice.

ORS 192.640.

Boards may also publicize meetings using the following:

- Postings in school buildings or on the district/ community college website.
- Notices in building newsletters or other publications of the district, ESD or community college.
- Electronic notices.
- A yearly calendar of board meetings, published and distributed by whatever means is considered most effective for the particular area.

SPECIAL MEETING NOTICE

You must announce a special meeting at least 24 hours before the meeting is held. News releases or phone calls to news media and notice to interested parties by mail, phone or email can be considered adequate notice. ORS 192.640(3).

EXECUTIVE SESSION MEETING NOTICE

If a meeting will include an executive session, the notice must include reference to the specific provision of law authorizing the executive session. ORS 192.640(2), 192.660.

EMERGENCY MEETING NOTICE

An emergency meeting – one called on less than 24 hours’ notice – may be held only if there is business that cannot wait for a special meeting. The law states that the notice of the meeting must be appropriate to the circumstances. Minutes of such an emergency meeting must describe the emergency that required holding the meeting before 24 hours’ notice could be given.

Notice of an emergency meeting must be given, even if it’s less than the 24 hours’ notice required of special meetings. Make phone calls to media representatives and interested parties, particularly those groups or individuals whose concerns are to be discussed at the emergency meeting. ORS 192.640(3).

PHONE OR VIDEO MEETINGS

Any meeting, including an executive session, of a public governing body may be held by telephone or video conferencing in accordance with public meetings statutes. For meetings other than executive sessions, the public body shall make available to the public at least one place where the public can listen to the communication at the time it occurs. ORS 192.670.

VOTING REQUIREMENTS

A majority of the members of a board (a quorum) must be present to legally conduct business. A quorum consists of the following:

- Three members of a five-member board.
- Four members of a seven-member board.
- Five members of a nine-member board.

ORS 332.055, 334.100, 341.283.

Affirmative votes by a majority of a board are required to transact business. For example, if three members of a five-member board are present, all must vote affirmatively to transact any business. While three members of a five-member board constitute a quorum, an affirmative vote of two to one defeats a motion because the affirmative votes don’t represent a majority of the board. For a seven-member board, four affirmative votes are required. For a nine-member board, five affirmative votes are required. ORS 332.055, 334.100, 341.283.

VIOLATIONS OF THE PUBLIC MEETINGS LAW

There are two ways a citizen can bring a complaint regarding a violation of the Public Meetings Law.

A complaint can be filed in local circuit court. If the court finds the board violated the Public Meetings Law and that violation is the result of willful misconduct by a member or members of the board, the court can hold the members liable for legal costs incurred by the plaintiff. ORS 192.680.

The Oregon Government Ethics Commission (OGEC) has been another avenue anyone can use if he/she thinks a public body has violated certain laws pertaining to executive sessions. OGEC will review and may investigate. If it decides to investigate, the OGEC may interview witnesses, review board meeting minutes and other records, and request other information it deems relevant to its investigation. Although complaints that result in violations don’t always result in fines, the OGEC can fine individual board members up to \$1,000. If the governing body acted on the written advice of legal counsel, no civil penalty may be imposed. ORS 192.685, 244.260, 244.350.

It is important to note that complaints can be filed in circuit court and with the OGEC against *individuals*, not boards as a whole. If the OGEC opens a review of the board member identified in the complaint, a review may be opened on each member of the governing body who participated in the meeting. OAR 199-040-0025. Check the OGEC website for details about complaint procedures, www.oregon.gov/ogec.

For complaints in circuit court, the individual bringing the legal action must be affected by the action taken in violation of the executive session statute.

Two of the most common violations are discussing a topic in executive session other than the one stated in the meeting notice and discussing topics that are not covered under the law pertaining to executive sessions.

When someone presents evidence in circuit court that a governing body has violated the Public Meetings Law, it is the governing body’s responsibility to prove that it complied with the law. The court can grant the relief it deems appropriate to the circumstances and award attorney fees to the successful plaintiff at the trial level and on appeal.

Even if the court finds the Public Meetings Law was violated, the decision of the governing body will not be voided by the court unless it can find no other equitable relief.

An individual member of a governing body, e.g., a board member, found to have knowingly and willfully violated the Public Meetings Law may be liable for attorney fees and whatever equitable relief is ordered by the court. ORS 192.680, 192.695.

CONFLICTS OF INTEREST

The Code of Ethics for public officials prohibits the use of an official position or office to obtain financial gain for the official, an official's relative or a business with which the official or relative is associated. ORS 244.040.

In Oregon law, "conflict of interest" includes actual conflicts of interest and potential conflicts of interest. ORS 244.020(1), (13).

An actual conflict of interest is "any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated" ORS 244.020(1).

A potential conflict of interest is "any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated" ORS 244.020(13).

A relative is defined as the public official's spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law; or the parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse of the public official; or any individual for whom the public official has a legal support obligation; or any individual for whom the public official provides benefits arising from employment or from whom the public official receives benefits arising from that individual's employment. ORS 244.020(16).

When an item of business before a board may represent an **actual** conflict of interest for an individual board member, the board member must publicly announce the nature of the conflict. The board member must refrain from any discussion of

the item and may not vote on the issue. However, if the board member's vote is necessary to meet the requirement for the minimum number of votes needed to take official action, the board member may vote, but may not take part in any discussion of the item for which the actual conflict of interest exists. This is limited to situations when all board members are present, but the number of board members who have actual conflicts of interest and cannot vote make it impossible for the board to take any action.

When an item of business before a board may represent a **potential** conflict of interest for an individual board member, the board member must announce publicly the nature of the potential conflict of interest before taking any action on the item in question.

There are some exceptions to the conflict of interest law, including actions that affect a whole class of people similarly situated, not just the public official as an individual (e.g., approving a new union contract). ORS 244.020(13)(b). This exception is narrowly applied and OSBA recommends contacting OGEC for specific guidance.

There are penalties for violating the laws governing the conduct of public officials acting in an official capacity. The Oregon Government Ethics Commission is responsible for enforcing these laws.

The commission's *Guide for Public Officials* is free; download it from the OGEC website, www.oregon.gov/ogec.

If any board member is in doubt about whether a proposed action would violate the law, the board member should consult the district's legal counsel or seek a written opinion from the OGEC. If a public official acts in accordance with an advisory opinion of the commission or information in the *Guide for Public Officials*, the official will not be held liable for violating the law. ORS 244.280, 244.282, 244.284, 244.320.

MINUTES - REGULAR MEETINGS

Boards and committees are required to take minutes at all meetings. Neither a full transcript nor a recording is required, but written minutes must truly represent all matters discussed at the meeting. All minutes (except executive session minutes) must be available to the public within a reasonable time after the meeting.

Minutes should include the following:

- All members of the governing body present.
- All motions, proposals, resolutions, orders, ordinances and measures and their disposition.
- The substance of the discussion on any matter.
- Results of all votes and the vote of each member by name, except for those of public bodies of more than 25, unless requested by a member of that body. (No secret ballots.)
- Reference to any document discussed at the meeting so that the public may review them unless they are exempt from disclosure under the Public Records Law.

ORS 192.650(1).

Minutes for an emergency meeting (one held with less than 24 hours' notice) must describe the emergency justifying short notice. ORS 192.640(3).

Each member's vote must be recorded by name for each official action taken. In the case of a unanimous affirmative vote, the statement "unanimously approved" is adequate because board member names appear in the opening section of official minutes. Names of members voting in opposition or abstaining must also be recorded. The chair must either vote or be recorded as abstaining. ORS 192.650(1).

HEARINGS, VACANCIES AND MORE

HEARINGS

Members of a community often request that boards hold hearings on topics of high public interest; however, state law requires official hearings for at least two reasons:

- To make decisions regarding student expulsions. ORS 332.061.
- Budget hearing. ORS 294.453.

Because state law does not govern how such hearings must be conducted, you may adopt provisions in your board policy or procedures for conducting them. Before you set policy or procedures regarding hearings, check your labor contracts for hearing procedures governing collective bargaining agreements.

Boards should hold public forums to collect feedback on issues of public interest or controversy, such as school site decisions and boundary changes. Official hearings to get public input are not required by law. However, OSBA strongly recommends that boards adopt practices encouraging public input on such decisions. Consider conducting a forum, a work session, or an information gathering session scheduled during a regular board meeting.

OSBA can recommend several models suited to the issues boards face.

FILLING BOARD VACANCIES

All board vacancies must be filled during a public meeting. Discussions about filling positions must also be conducted during a public meeting. State law allows boards to declare a position vacant when an incumbent:

- Resigns or dies.
- Is removed from office or his/her election is declared void.
- Ceases to be a resident of the district or zone from which nominated (subject to certain provisions).
- Ceases to discharge the duties of office for two consecutive months unless prevented by sickness or other unavoidable cause.
- Ceases to discharge the duties of office for four consecutive months for any reason.
- Is recalled.

ORS 332.030.

OSBA recommends adopting a policy to establish parameters for declaring a position vacant.

Special provisions apply when the majority of positions on a district school board become vacant at the same time, i.e., when three positions are vacant on a five-member board, four positions are vacant on a seven-member board, or five positions are vacant on a nine-member board. In such cases, the ESD board selects persons to fill the vacancies from among qualified voters of the district or zones in which the vacancies occur. ORS 332.030(5).

The county governing body performs this duty when a majority of community college board positions are vacant. ORS 341.335(4). For ESDs, the state Board of Education steps in. ORS 334.090(9).

SELECTING CANDIDATES

There is no statutory guideline for selecting potential candidates to fill a vacant board position. However, there are statutory qualifications. Citizens applying for school district and ESD vacant positions must be registered voters and residents of the district for one year immediately preceding the appointment. ORS 332.018(2); ORS 334.090(5). Community college board members do not have the one-year residency requirement. ORS 341.335(3). Citizens who meet these residency requirements in their district prior to its merger with another district are eligible to serve on the board of the merged district even though they technically have not met the one-year residency requirement. ORS 330.103.

If the school district is zoned for board member positions, the applicants must reside in the zone that is vacant. However, if no one applies from the vacant zone after the position is advertised for a 20-day period, an individual may be appointed from the district at large. ORS 332.124. (This does not apply to ESDs or community colleges.)

Although boards are free to develop their own process to fill vacancies, the following methods are typical:

- Citizens from the district are asked to give their names to the chief executive officer within a specified time. This often includes a letter of interest or application and an interview. The board then screens the applicants and selects from among the applicants.

- The board may appoint a committee that selects candidates and submits two or three names to the board for final action. The committee should give the board the list of all candidates from which it made its recommendations.
- If there is a local advisory committee, it may be instructed by the board to screen and submit recommendations.

ELECTING A REPLACEMENT

The board's selection of a replacement must be made in a public meeting and meeting minutes must record each board member's name and vote.

TERM OF OFFICE FOR A REPLACEMENT

The person selected by the board to fill a vacancy serves until the June 30 following the next regular district election (in May of odd-numbered years). At that election, an individual is elected to serve either the unexpired portion of the four-year term or a new four-year term.

If a vacancy occurs too late to meet the secretary of state's election timeline, the person selected by the board to fill a vacancy serves until the June 30 following the next board election in May of an odd-numbered year. ORS 332.030, 341.335, 334.090.

All school district, ESD and community college board member elections are held on the third Tuesday in May in odd-numbered years. ORS 255.335(1).

RELATED REQUIREMENTS

Electronic communication

With the proliferation of electronic communication, public officials should remember that any email message they write or reply to about school and board issues is considered a public record regardless of whether the equipment is publicly owned or the personal property of the public official. Deleting emails does not eliminate them from the record – they can be recovered. The same applies to messages posted in forums, web chat rooms and list serves, and sent via text message.

Smoking

It is illegal for anyone to smoke, use inhalants, or carry a lighted smoking instrument, including cigars, cigarettes and pipes, in a public place or within 10 feet of an entrance, exit, window, ventilation intake or accessibility ramp of a public place. ORS 433.845. A public place means an enclosed area that is open to the public. ORS 433.835. This generally includes spaces where board meetings are held.

DISCRETIONARY AUTHORITY

While *Robert's Rules of Order* provides a systematic method for conducting board meetings, a board may establish its own procedures for carrying out its business, as long as the procedures result in compliance with pertinent statutes relating to the transaction of business. Whatever procedures are used, however, should be formally adopted as board policy at a public meeting. ORS 332.107 for school districts; ORS 334.125(7) for ESDs; ORS 341.283(4) for community colleges.

EXECUTIVE SESSIONS

A board may meet in executive session during a regular, special or emergency meeting to discuss certain matters.

Whenever an executive session is called, the presiding officer must identify the section and subsection of ORS 192.660 (listed reasons) or 332.061 (expulsion or medical records of a minor student) that authorize the executive session's purpose. For example:

- For an executive session dealing with a student expulsion, the presiding officer must say: "The board will now meet in executive session to discuss the expulsion of a minor student under ORS 332.061."
- For an executive session dealing with real property transactions, the presiding officer must say, "The board will now meet in executive session to discuss a real property transaction under ORS 192.660, Section 2, Subsection e."

You may *not* meet in executive session to conduct the following business:

- Fill a vacancy in an elective office.
- Fill a vacancy on any public committee, commission or other advisory group.
- Consider general employment policies.
- Hire the chief executive officer (i.e., superintendent, president) or any other employee if the vacancy has not been advertised, hiring procedures have not been adopted by the board, and there has been no opportunity for public input about hiring the chief executive officer. Standards, criteria and policy directives to be used in hiring chief executive officers must be adopted by the board in an open public meeting.

ORS 192.660(7).

- Discuss compensation, including salaries and benefits, for individual employees.
OAR 199-040-0020(2).

PURPOSES FOR WHICH EXECUTIVE SESSION MAY BE CALLED

With some exceptions, the purposes for which executive sessions may be held and the citations authorizing them are as follows:

- To consider the employment of a public officer, employee, staff member or individual agent. ORS 192.660(2)(a).
- To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or agent, unless he or she requests an open meeting. ORS 192.660(2)(b).
- To conduct deliberations with persons designated by the governing body to carry on labor negotiations. ORS 192.660(2)(d).
Labor negotiations between the board and union are held in open session unless both parties agree to executive sessions. ORS 192.660(3).
- To conduct deliberations with persons designated by the governing body to negotiate real property transactions. ORS 192.660(2)(e).
- To consider records exempt by law from public inspection. ORS 192.660(2)(f).
- To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. ORS 192.660(2)(h).
- To review and evaluate the performance of the chief executive officer or any other public officer, employee or staff member, unless the person whose performance is being reviewed and evaluated requests an open hearing. ORS 192.660(2)(i).
- To consider matters relating to school safety or a plan that responds to safety threats made toward a school. ORS 192.660(2)(k).
- To conduct a hearing on the expulsion of a student or to review a student's confidential medical records. ORS 332.061(1).

EMPLOYMENT

You may call an executive session to consider the initial hiring of a district/community college employee. ORS 192.660(2)(a). This subsection of the law does not apply to filling a vacancy on a board, committee or advisory group, which is not to be done in executive session.

How to avoid problems

- You must do the following before you hold an executive session to discuss employment issues:
 - 1) In the case of an officer, give the public an opportunity to comment on the employment of the officer.
 - 2) Establish hiring procedures in advance.
 - 3) Advertise the position vacancy.
 - 4) In the case of the chief executive officer, the board has adopted standards, criteria and policy directives in open meetings with the opportunity for public comment.
- Discuss salaries and benefits in an open meeting. 42 Op. Att’y Gen. 362 (1982); OAR 199-040-0020(2).
- Interview candidates for an open board position in an open meeting.
- Standards, criteria and policies used in hiring a superintendent or president must be adopted in an open meeting during which the public may comment. Each time you change a standard, do it in an open meeting.
- Adopt procedures for hiring an interim superintendent or president as well as other employees.

DISCIPLINE, DISMISSALS

You may call an executive session to consider the dismissal or disciplining of, or hear complaints or charges brought against, a public officer, employee, staff member or individual agent. ORS 192.660(2)(b).

How to avoid problems

- Follow your established complaint or discipline policies, procedures and employee collective bargaining agreements.
- Remember to discuss only the specific issue at hand, not general personnel issues.
- The public officer, staff member or individual against whom the action is being taken must be given notice of the executive session and the option for the meeting to be held in open session. The key is the district must notify the person in writing at least one business day or 24 hours, whichever is longer, prior to the meeting that a complaint or charge has been filed and provide him/her with an opportunity to request an open hearing. OAR 199-040-0030.

- Make sure you understand your union and individual employee contracts and check with an attorney before considering an executive session on discipline, dismissal or complaints.

LABOR NEGOTIATOR CONSULTATION

You may meet in executive session with persons designated by the board to conduct labor negotiations. ORS 192.660(2)(d).

How to avoid problems

The news media can and should be excluded from these sessions.

NEGOTIATIONS

All labor negotiations are required to be conducted in open session unless both parties request to bargain in executive session. Executive sessions for labor negotiations are not subject to notice laws and may be held without further public notice. ORS 192.660(3).

How to avoid problems

Individual contract negotiations cannot be done in executive session, nor can an executive session be held if the board wants to negotiate with an individual employee or a number of employees (such as the superintendent or administrators) who don’t have bargaining rights under Oregon’s collective bargaining law. See ORS 243.650.

REAL ESTATE TRANSACTIONS

You may meet in executive session with persons designated by the board to negotiate real estate transactions. ORS 192.660(2)(e).

How to avoid problems

- Do not discuss general property needs such as adding space to buildings or possible locations for new schools in executive session.
- These executive sessions are to develop purchasing, sales or lease strategies for real property.
- After the offer (or counteroffer) has been discussed and the board is ready to make a decision, you must return to open session if a vote is needed to purchase, sell or lease property.

EXEMPT PUBLIC RECORDS

A board may go into executive session to review records that are not open to the public. ORS 192.660(2)(f). Examples include student records and staff/student medical records.

How to avoid problems

- Know which records are exempt from public review. Also understand the term “public record.” It can be confusing because public doesn’t always refer to an accessible record. A public record is any record that pertains to a public body.
- Regardless of whether you meet in open or executive session, the nature of the document doesn’t change. For instance, if you discuss a superintendent’s evaluation initially in executive session, the evaluation is still disclosable. Always consult with legal counsel if you question whether documents are confidential.
- Always include what exempts the record from disclosure when giving notice of the executive session.

LEGAL COUNSEL

You may consult with an attorney in executive session concerning the legal rights and duties of the school board regarding current litigation or litigation likely to be filed. ORS 192.660(2)(h). To meet the requirements for this type of executive session, the consulting attorney must be present, either in person, by telephone, or by other means of concurrent oral or video electronic communication. OAR 199-040-0050.

EVALUATING THE TOP EXECUTIVE

Typically, boards only evaluate superintendents or presidents. The top executive is responsible for other staff evaluations. You may review and evaluate the top executive’s job performance in executive session unless he or she requests an open meeting. ORS 192.660(2)(i).

How to avoid problems

- After the top executive’s evaluation document is completed and discussed with the person, the document is available to the public.
- Salary and benefits must be discussed in open session. 42 Op. Att’y Gen. 362 (1982); OAR 199-040-0020(2).

- An executive session may deal with the performance of the superintendent or president and the effect on operations and programs. Do not include a general evaluation of a district or community college goal, objective or operation in the evaluation or direct the executive to change district/college goals, objectives, operations or programs. For example, a superintendent’s goal may be to increase student test scores by 3 percent – the superintendent’s performance in relation to this goal can be discussed in executive session in conjunction with the evaluation. A district goal of increasing test scores, which could involve a variety of programs and departments, must be discussed in open session.

SCHOOL SAFETY

You may meet in executive session to discuss school safety or a school safety plan that responds to threats. ORS 192.660(2)(k).

How to avoid problems

- There are some details of school safety that should be kept confidential to ensure student safety. This may include some details of evacuation plans or reunification plans, tactical strategies with law enforcement and first responders, or any other strategies that could be used by a perpetrator to endanger student safety. These confidential details should be discussed in executive session.
- Other details regarding school safety are to be discussed in open session. These may include certain drill procedures, terminology such as lockdown and lockout, and communication channels.

STUDENT EXPULSION, MEDICAL RECORDS

Any hearing held by a board or its hearings officer about expulsion of a minor student from a public elementary or secondary school or pertaining to examination of confidential medical records of a student, including that student’s educational program, must be conducted in executive session or privately by a hearings officer unless the student or the student’s parent or guardian requests a public hearing. The decision to expel can be made during executive session, which means board members may vote in an executive session conducted pursuant to ORS 332.061.

If an executive session or hearing is held, the following shall not be made public:

- Name of the minor student.
- Issue, including a student's confidential medical records and that student's educational program.
- The discussion.
- Board members' votes on the issue.

News media are not permitted to attend these sessions. ORS 192.660(4).

How to avoid problems

- Remember that the news media should be excluded from these sessions. Remind them at the beginning of each session.
- Know what information is not to be made public. ORS 332.061 indicates the student's name and reasons for expulsion are not to be made public. However, this does not prevent this information from being recorded in the executive session minutes, which are not available to the public.
- Executive session minutes about student expulsions should be taken and kept the same as other executive session minutes.

NEWS MEDIA – EXECUTIVE SESSIONS

News media representatives may attend executive sessions; however, they may be excluded in four cases:

- When the board meets with labor negotiators to discuss bargaining strategies.
- When the board meets to consider expelling a student.
- When the board discusses a student's medical or educational records.
- When the board discusses litigation against the district or community college in which the reporter or the reporter's media organization is involved.

ORS 192.660(4), 192.660(5), 332.061.

How to avoid problems

The board should always specify that the information discussed at the executive session is not to be made public by the media. But remember that the news media may report discussions of any matters in executive session not within the scope of executive session authority. (See Sample Script on page 15.)

FINAL ACTION – EXECUTIVE SESSIONS

The law states that “no executive session may be held for the purpose of taking any final action or making any final decision.” ORS 192.660(6). However, there are two exceptions:

- The expulsion of a student. ORS 332.061(1)(a).
- Matters pertaining to or examination of the confidential medical records of a student, including that student's educational program. ORS 332.061(1)(b).

Decisions made by a public body in executive session or in violation of sections 192.610-192.690 of the Public Meetings Law may be voidable and open to legal action by any person affected by the decision. ORS 192.680.

EXECUTIVE SESSION MINUTES

Minutes of executive sessions must be kept in accordance with requirements of minutes for a regular meeting. However, portions of the minutes that cover executive sessions are not required to be made public. Excluded materials may be examined privately by a court in any legal action and the court will determine their confidentiality. ORS 192.650(2).

OSBA recommends written minutes about the basic facts of any executive session.

COMMON MISTAKES – EXECUTIVE SESSIONS

Avoid the following:

- Discussing subjects other than what was announced to be discussed. If an “oh, by the way” thought crosses your mind, make sure it applies to the subject at hand. If reporters attend, they may report on the subjects discussed that were not identified in or covered by the executive session announcement.
- Discussing general personnel matters as a result of addressing specific issues for which the meeting was originally called.
- Filling a vacancy on the board, committee or advisory group.
- Hiring a top executive and interims without meeting the prerequisites required by law. The vote to appoint or hire must be done in open session.

- Not citing the complete law, including subsection that applies to your topic, along with a brief description of the topic. Make sure this law is announced as you go into executive session and on any printed notices, postings or news releases.
- Scheduling just an executive session. OSBA recommends that executive sessions be scheduled as agenda items of regular, special or emergency meetings.
- Forgetting to remind the news media that they are not to report on topics discussed during executive session. Do this at every session attended by the media, regardless of how well you know the reporter.

COMMON QUESTIONS ABOUT EXECUTIVE SESSIONS

Q: *Can boards make decisions during executive sessions?*

A: Only when it pertains to student expulsions or a student's medical records. For other matters, boards may reach consensus regarding any appropriate topic discussed in executive session as long as the actual vote is taken in an open session.

Q: *If we hold an executive session and an open session afterward to take a vote, do we have to notify the news media and public of both? By when?*

A: OSBA recommends that executive sessions be scheduled as agenda items of regular, special or emergency meetings. Unless it's an emergency, at least 24 hours' written notice of the meeting should be given to news media and public. Examples of emergencies include disasters such as fire and flood damage. Your notice must announce the fact that you're having a meeting, the type of meeting and what you plan to discuss. A vote held after the executive session may be scheduled as an item on the meeting agenda. If a meeting is scheduled as an executive session only, a separate meeting must be noticed in order to take a vote on a final decision (unless the final decision can be made in executive session).

Q: *How detailed do executive session notices need to be?*

A: Every meeting notice including an executive session should indicate the specific statute, with subsection, which governs the topic you intend to address and a brief description of the topic.

Q: *Do we have to take minutes during executive sessions?*

A: Yes. Minutes of executive sessions are required. In deciding how you'll record meeting minutes, remember that minutes may be subpoenaed during litigation. OSBA recommends they note the discussion and basic facts. OGEK suggests executive sessions be audiotaped. As these minutes must be kept permanently, a hard copy must also be kept. OAR 166-017-0045(2).

Q: *Who can decide to call an executive session?*

A: A school district board may be called into a regular or special meeting, including an executive session, by the chair, at the request of three other board members, or by common consent of the board. ORS 332.045. A community college board may be called into a regular or special meeting, including an executive session, by the chair, upon the request of four other board members, or by common consent of the board. ORS 341.283(2).

Q: *Who can attend executive sessions?*

A: Board members and anyone else the board invites. Typically, that includes the superintendent/president and those involved in the topic to be discussed in executive session. The news media may attend executive sessions, with four exceptions (see next question).

Q: *Can reporters be excluded from executive sessions?*

A: Yes, in four instances. Reporters may be excluded from executive sessions: 1) to deliberate with labor negotiators; 2) to consider expulsion of a student; 3) to review a student's confidential medical records, including educational program; and 4) if the reporter or the reporter's media organization is involved in litigation against the district that is being discussed at the executive session.

Q: *What law states that reporters must not report on topics discussed at executive sessions?*

A: ORS 192.660(4), but there are no legal penalties if reporters choose to ignore this law. It is common practice that if reporters attend an executive session, they are honor-bound not to report anything that the board announced it would discuss and has asked reporters not to disclose. It is recommended that, at the beginning of each executive session, the board remind media not to executive session material.

EXECUTIVE SESSION STATUTE: ORS 192.660

**** Indicates section does not apply to school district, ESD or community college boards.

192.660 Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits.

(1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

(2) The governing body of a public body may hold an executive session:

(a) To consider the employment of a public officer, employee, staff member or individual agent.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.

(c) ****

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider information or records that are exempt by law from public inspection.

(g) ****

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

(j) ****

(k) To consider matters relating to school safety or a plan that responds to safety threats made toward a school.

(L) ****

(m) ****

(n) To discuss information about review or approval of programs relating to the security of any of the following:

(A) A nuclear-powered thermal power plant or nuclear installation.

(B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.

(C) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

(iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(iv) Petroleum products;

(v) Sewage; or

(vi) Water.

(D) Telecommunication systems, including cellular, wireless or radio systems.

(E) Data transmissions by whatever means provided.

(3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640.

(4) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061(2) but the governing body may require that specified information be undisclosed.

(5) When a governing body convenes an executive session under subsection (2)(h) of this section relating to conferring with counsel on current litigation or litigation likely to be filed, the governing body shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

(6) No executive session may be held for the purpose of taking any final action or making any final decision.

(7) The exception granted by subsection (2)(a) of this section does not apply to:

(a) The filling of a vacancy in an elective office.

(b) The filling of a vacancy on any public committee, commission or other advisory group.

(c) The consideration of general employment policies.

(d) The employment of the chief executive officer, other public officers, employees and staff members of a public body unless:

(A) The public body has advertised the vacancy;

(B) The public body has adopted regular hiring procedures;

(C) In the case of an officer, the public has had the opportunity to comment on the employment of the officer; and

(D) In the case of a chief executive officer, the governing body has adopted hiring standards, criteria and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria and policy directives.

(8) A governing body may not use an executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member to conduct a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

(a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of licensee or applicant conduct investigated by a health professional regulatory board.

(b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of registrant or applicant conduct investigated by the State Landscape Architect Board or an advisory committee to the board.

(10) Notwithstanding ORS 244.290 (General duties of commission), the Oregon Government Ethics Commission may not adopt rules that establish what entities are considered representatives of the news media that are entitled to attend executive sessions under subsection (4) of this section.

APPENDIX

SAMPLE MEETING NOTICES

Notice of Meetings

Meeting notices do not have to be signed by board members or employees. A notice mailed or otherwise delivered is sufficient. It must be mailed or delivered to any news organization that has requested notice, and to those who have requested notices or who are known to be interested. Notification of the general public is also necessary, and a notice merely posted on a bulletin board is ordinarily not sufficient. Such posting and notification to appropriate newspapers, radio stations, wire services and websites is appropriate. Paid legal notices aren't required. For emergency executive sessions, notice by phone or email is advised. (Attorney General's *Public Records and Meetings Manual*, Appendix K-5)

Sample Notice of Regular, Special or Emergency Meetings

Notice of [Regular, Special or Emergency] Meeting

"The Crabtree Creek School Board will hold a (regular/special/emergency) meeting at 7 p.m. at the Crabtree District Office, 100 High Street, Lacombe, Oregon, on May 16, 2017.

[A copy of the agenda of the meeting is attached.]

(Attorney General's *Public Records and Meetings Manual*, Appendix K-5)

Sample Script to Announce Start of Executive Session

"The school board will now meet in executive session for the purpose of [limit description to purposes as outlined in statute/section]. The executive session is held pursuant to ORS 192.660() (), which allows the board to meet in executive session to [list activities].

Representatives of the news media and designated staff [shall/shall not*] be allowed to attend. [*Include if news media are allowed to attend:* "Representatives of the news media are specifically directed not to report on or record any of the deliberations during the executive session, except to state the general subject of the session as previously announced."] All other members of the audience are asked to leave the room.** No decision may be made in executive session, except for a student expulsion. At the end of the executive session, we will return to open session."

(Attorney General's *Public Records and Meetings Manual*, Appendix K-9)

* "Shall not" refers to the four exceptions: student expulsions, consultation with labor negotiators, discussing student medical records, including educational programs, and cases in which they or their media organization are involved in litigation with the district that will be discussed during the executive session.

** For the convenience of a larger audience, OSBA recommends that the board adjourn to another room and return to the open meeting if board members are to make a decision or continue agenda items after the executive session.

RESOURCES

OREGON SCHOOL BOARDS ASSOCIATION

OSBA also publishes:

- *Boardsmanship for Oregon School District, Education Service District and Community College Board Members*
- *A Guide to Parliamentary Procedure*
- *Board Chair's Guide*
- *Budget Committee Handbook*

You can print publications online for free at www.osba.org:

- Click on the "My OSBA" tab
- Select "Member Resources" (login required)

OREGON DEPARTMENT OF JUSTICE

The Attorney General's *Public Records and Meetings Manual* is available from the Oregon Department of Justice: www.doj.state.or.us/public_records/manual/pages/index.aspx

CONTACT US

The Oregon School Boards Association is your direct link to expert assistance with board development, policy, communications, legislative issues, public meetings law, the PACE insurance pool, labor and legal services.

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