



# GUIDE TO OPEN MEETINGS LAW

FOR CHARTER SCHOOLS AUTHORIZED BY  
THE STATE UNIVERSITY OF NEW YORK BOARD OF TRUSTEES

# INTRODUCTION

Charter school education corporation boards of trustees are required to follow the Open Meetings Law allowing members of the public to have notice of, and attend and observe, board meetings. The law provides certain provisions governing notice of such meetings to the public and specifics regarding types of board activities that may be done out of public view.

This guidance breaks down each component by applicable charter agreement provision(s), applicable laws and regulations, discussion, and responsible tasks. Responsible tasks include items the board of trustees and school leadership should include in annual compliance review.

If you have any questions regarding the information provided in this guidance please contact the legal department of the SUNY Charter Schools Institute.

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# OPEN MEETINGS LAW

## A. Applicable Charter Agreement Provision

The following images show the applicable provision from the Model Charter Agreement:

- Section 7.2, Freedom of Information and Open Meetings Laws.

7.2 Freedom of Information and Open Meetings Laws. The Education Corporation shall maintain and implement policies in order to ensure that it is in compliance with Articles Six (“FOIL”) and Seven (“Open Meetings Law”) of the New York Public Officers Law and all corresponding regulations.

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(b) The Education Corporation Board shall: (1) promulgate an Open Meetings Law policy that is accessible to parents in each school; (ii) post notices and provide a media advisory in accordance with the Open Meetings Law regarding each Education Corporation Board meeting; and (iii) take and maintain minutes of all meetings and executive sessions of the Education Corporation Board and its committees, if any.

## B. Applicable Laws and Regulations

- New York Education Law (“Education Law”) § 2854(1)(e)
- New York Public Officers Law (“Public Officers Law”) Article 6

## C. Open Meetings Law Discussion

### i. Meeting

The Open Meetings Law defines a “meeting” as a convening of a public body for the purpose of conducting public business.<sup>1</sup> This would include all regularly scheduled, special and emergency board meetings. Yet, what about other convenings of the board? The most important aspect of determining whether a convening of the board is a “meeting” for which the requirements of the Open Meetings Law apply, is the purpose of the convening. The meeting must be for the purpose of conducting school-related business. This includes work sessions where a quorum of the board is present. Social gatherings and trainings are not considered meetings for these purposes as long as no more than passing reference to business occurs. For instance, if all of the board is present for a graduation ceremony it is not a “meeting” of the board as the trustees’ attendance is not to conduct school business.

<sup>1</sup>Public Officers Law § 102(1).

Board retreats may pose a mix of purposes. While many board retreats include aspects of board training, which would not be open to the public, strategic planning sessions are as strategic planning directly correlates to the business of the education corporation. Therefore, a portion of the day may not be open to the public but another portion would be and require the applicable notices.

## *ii. Notice*

When the board determines it will hold a “meeting” to which the Open Meetings Law applies, the public must be provided appropriate notice. The notice requirements include the following:

- for meetings scheduled more than a week in advance, notice must be given no fewer than 72 hours prior to such meeting;
- for meetings scheduled less than a week in advance, notice must be given “to the extent practicable” at a “reasonable time prior” to the meeting<sup>2</sup>;
- provide date, time, and location of meeting<sup>3</sup>;
- be provided to the news media, which may be electronic;
- be posted in one or more designated public locations (usually the school(s)); and,
- be posted on the education corporation’s website.

If board meetings are held in the same place and at the same time on a consistent basis, it is acceptable to post a yearly schedule at the beginning of the school year.

## *iii. Executive Session*

Once a meeting is called into open session, the board may vote, by majority of the entire board, to go into an executive session, which is the portion of the meeting not open to the public.<sup>4</sup> The Open Meetings Law limits the reasons why the board may enter into executive session, which are solely for:

- matters which will imperil the public safety if disclosed;
- any matter that may disclose the identity of a law enforcement agent or informer;
- information relating to current or future investigation or prosecution of a criminal offense that would imperil effective law enforcement if disclosed;
- discussions involving proposed, pending, or current litigation;

<sup>2</sup>Public Officers Law §104(2).

<sup>3</sup>If there will be a videoconference link and a board member to be counted for quorum is in the remote video location, the notice must provide the location of the video location and such location must allow public access.

<sup>4</sup>Public Officers Law § 105(1).

- collective negotiations pursuant to Article 14 of the New York Civil Service Law;
- the medical, financial, credit, or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal, or removal of a particular person or corporation;
- the preparation, grading, or administration of exams; or,
- the proposed acquisition, sale or lease of real property or the proposed acquisition, sale, or exchange of securities, but only when publicity would substantially affect the value. (Public Officers Law §§ 105(1)(a)-(h)).

The motion to go into executive session must identify the subject matter of the executive session with particularity. The board minutes should reflect this. Contrary to popular belief there is no authority to go into executive session for the purpose of discussing “personnel matters.” There needs to be further specificity of the personnel matter without stating the individual’s name. For instance, as opposed to saying “personnel matters,” the motion and minutes should reflect that executive session was entered into to “discuss the discipline of a staff member.”

Matters discussed in a lawfully convened executive session are confidential. The New York General Municipal Law prohibits board members, education corporation officers, and employees from disclosing confidential information acquired by them in the course of their official duties.<sup>5</sup> Therefore, board members or any officer or employee permitted to attend the executive session may not disclose information they have acquired unless such information is otherwise available through public channels. A board may collectively decide to release such information. A board member may be compelled to disclose such information pursuant to legal proceedings. Due to the confidential nature of executive session, the recording of executive session is prohibited.<sup>6</sup>

All members of the board may attend an executive session<sup>7</sup> unless it pertains uniquely to a trustee (e.g., a related party transaction). The board may determine who else may attend but, due to the confidential nature of the information, the board should exercise discretion in deciding whom to invite into executive session. Therefore, the board should limit attendance to those having special knowledge, expertise, or function that relates to the subject of the executive session. This may include the board’s counsel, school leader, or other administrator.

With certain limited exceptions, no official action can be taken on issues discussed in executive session without first returning to open session<sup>8</sup> via motion and vote. The board may not vote to appropriate public money during an executive session.<sup>9</sup>

<sup>5</sup>General Municipal Law § 805-1(a)(b).

<sup>6</sup>Stephenson v. Bd. of Educ. of Hamburg Cent. School Dist., 31 Misc. 3d 1227 (Sup. Ct. Erie Co. 2011).

<sup>7</sup>Public Officers Law § 105(2).

<sup>8</sup>Matter of Crapster, 22 Ed. Dep’t Rep. 29 (1982).

<sup>9</sup>Public Officers Law § 105(1).

#### *iv. Meeting Materials*

While the Open Meetings Law requires boards to post notices of all meetings, the law does not require a board to provide an agenda or summary of discussion points for the meeting. The law does require boards to make the documents scheduled to be discussed at a board meeting available upon request, to the extent practicable as determined by the board, both prior to and at the meeting during which the records will be discussed.<sup>10</sup>

If the school maintains a website which is regularly and routinely updated, and utilizes a high speed connection, the records to be discussed at a board meeting must also be posted to the website prior to the meeting, to the extent practicable.<sup>11</sup> The board may not have to post records which are voluminous and come into the board's possession shortly before a meeting due to the volume of materials and the effort needed to scan the papers in order to convert them to electronic format. However, if voluminous records are prepared and submitted electronically they would have to be posted to the website. If records are generated too close in time to the start of the public meeting to be posted online it is recommended that the public body provide paper copies at the meeting. If a document is not permitted to be released under FOIL it does not have to be posted under these requirements. To the extent that a draft document is not a proposed policy, resolution, law, or rule but is scheduled to be discussed during an open meeting, portions of the material may be subject to disclosure. Draft documents would generally fall under the category of "intra-agency material," which is largely exempt from disclosure. Portions of such documents that include statistical or factual tabulations or data; instructions to staff that affect the public; or final agency policy or determinations would need to be disclosed and posted online pursuant to Public Officers Law §103(e). Memoranda, research materials, and similar documentation that may have been prepared in support of or opposition to a proposed resolution, law, rule, or policy need not be disclosed or posted to the school website.

#### *v. Minutes*

Formal minutes must be taken at all board meetings.<sup>12</sup> The minutes must consist of a record or summary of:

- all motions, proposals, resolutions, and other matters formally voted upon;
- the final vote of each board member on each item including the election of officers<sup>13</sup>; and,
- the result of any vote.

<sup>10</sup>Public Officers Law § 103(e).

<sup>11</sup> Id.

<sup>12</sup>Public Officers Law § 106(1).

<sup>13</sup>Public Officers Law § 87(3)(a).

While minutes should not be a verbatim transcript of everything said at a meeting, minutes need to be provide sufficient detail as to the proposal/resolution to allow the reader to understand the action that took place. For instance, stating that a contract was voted to be amended is insufficient. The minutes must reflect how the contract was amended by the vote.<sup>14</sup> It is highly recommended that the appended minutes include a copy of the substance of any proposal/resolution.

The record of votes may not be destroyed.<sup>15</sup> While boards are very limited in the actions they may take in executive session, where they do have such authority, the meeting minutes should reflect the final determination, the date, and the vote of the matter taken in executive session. The information provided may be limited so as not to release information that would not be available to the public under the FOIL.<sup>16</sup>

Minutes of the board meetings must be made available to the public within two weeks of the date of the meeting. Minutes recording action taken by formal vote at an executive session must be made available within one week.<sup>17</sup> Under the Monitoring Plan of the Charter Agreement, minutes must be submitted to the Institute within 30 days. In many instances these will be draft minutes as boards do not normally approve the minutes of the meeting until the next scheduled meeting normally one month away. The available minutes may indicate they are draft but may not be withheld from the public for not being finalized. Please note there is no requirement under the law to approve the minutes but it is best practice to ensure the corporate records accurately reflect the conduct of the board. Minutes may be amended to clarify what actually occurred at a meeting, but not to reflect a change of mind which occurred after the meeting. Minutes may be amended or corrected only upon the majority vote of a public body.

#### vi. *Public Participation*

The Open Meetings Law requires reasonable efforts are made to hold meetings in rooms that can “adequately” accommodate members of the public who wish to attend.<sup>18</sup> For example, if the board anticipates that a particular item on the agenda will prompt greater public attendance at a board meeting than is typical, the board should consider whether the current meeting place can accommodate the anticipated extra attendees. If not, the board should choose another location where the attendance of extra members of the public may be accommodated.

There is **no** requirement that the board allow members of the public to speak at board meetings.<sup>19</sup> That said, it is good practice to allow the public including teachers, parents, and students, to be heard. Therefore, it is good practice for a board to set up ground rules for public comments to allow the public opportunity while providing for efficiency in the conduct of the meeting. The presiding officer of a public

<sup>14</sup>Mitzner v. Goshen Central School Dist. Bd. of Educ., (Sup. Ct, Orange County April 15, 1993).

<sup>15</sup> Public Officers Law §§ 87(3)(a), 106(1).

<sup>16</sup> Public Officers Law § 106(2).

<sup>17</sup>Id. at § 106(3).

<sup>18</sup>Public Officers Law § 103(d).

<sup>19</sup> Appeal of Wittenben, 31 Ed. Dep’t Rep. 375 (1992).



body also has the ability to limit remarks from the public which are “repetitive” and “offensive.” However, a public body cannot limit comments simply because they are negative or critical.<sup>20</sup> Boards may justifiably restrict the ability of members of the public speaking at their meetings from offering public commentary on matters involving privacy issues otherwise protected by law. School boards may also restrict the use of signs, banners, and visual displays brought into a meeting by the public if such material obstructs the view of other attendees, violates the fire code, or contains obscene language.<sup>21</sup>

The public may record a meeting as long as the device is unobtrusive.<sup>22</sup> Meetings may be photographed, broadcast, webcast, or otherwise recorded and/or transmitted by audio or video means.<sup>23</sup> Boards may adopt reasonable rules governing the use of cameras and recording devices, but such rules must be written, conspicuously posted, and provided to the public upon request.

#### **D. Responsible Tasks**

- Post notice of each board meeting publicly at the school, on the school’s website, and provide to the news media.
- Ensure that quorum is present and that meetings are open to the public. If the board goes into executive session, include the motion and the specific reason for doing so.
- Ensure the board votes to leave executive session and closes the meeting in public session.
- Create minutes within two weeks of each board meeting (one week for executive session) and provide a copy to the Institute within 30 days.
- Include in the minutes a summary of all motions, resolutions, and matters formally voted and the results of those votes.

<sup>20</sup>NYS Department of State, Committee on Open Government, OML-AO-5296 June 12, 2012.

<sup>21</sup>NYS Department of State, Committee on Open Government, OML-AO-5296 June 12, 2012.

<sup>22</sup>*Mitchell v. Board of Educ. of Garden City UFSD*, 113 A.D.2d 924 (2d Dep’t 1985).

<sup>23</sup>Public Officers Law § 103(d).



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