
Open Public Meetings

A Guide to Public Accountability for School Board Members and Superintendents

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Introduction

The Wyoming Supreme Court clearly enunciated the position that the public's business should be available to the public whenever it is possible. Governmental entities, including school districts, should be ever mindful that theirs is public business, and the public has a right to know how its servants are conducting its business. Furthermore, it is for government to remember that the written, viewing and broadcasting press is the eyes and ears of the people. The citizenry must be permitted to hear and see what public officers and their employees say and do whenever the imparting of this knowledge does not run contrary to the rights of those otherwise protected in a way that would result in disclosure, having the effect of inflicting such irreparable harm as is recognized by law.

Representative democracy relies on the informed trust of the citizen. School board members serve their communities at a crucial place, governing large sums of money and the future of the community's children. Without the informed trust of the citizens, this enterprise will fail. Trust may be lost directly or through inattention to detail. One of the critical places for school boards to work to retain the informed trust of their communities is in the conduct of meetings that are effectively run, meet the requirements of the law and address the reasonable expectations of the citizenry.

There is a great deal of "common knowledge" at large in the school board and school administrative community and among the public. That knowledge does not always reflect the actual legal requirements for meetings. The sum of the common knowledge is more restrictive than it needs to be, but some of it does not account for provisions of the law and public expectation. It is important that school board members and administrators proceed with a sophisticated and legally grounded understanding of public meeting requirements.

This material will focus on provisions of the Wyoming Open Meetings Law, W.S. §16-4-401 through 408, and the pertinent portions of the Wyoming Education Code. This is written exclusively from the perspective of school districts and school boards. It should be kept as a resource to help dispel inaccurate common knowledge and practice and to increase sophisticated compliance with laws and public trust.

Caution: Laws governing school boards and open meetings change from time to time. This guide is drafted based upon the laws in effect at the time of the publication of this guide. It is recommended that to the extent you intend to take specific action based upon the open meetings laws, that you consult your legal counsel to determine whether or not there have been any amendments or changes to those laws or significant court opinions subsequent to the date of publication of this guide.

Regular Meetings

School boards are required to hold at least one regular meeting per month. Any meeting that is not a regularly scheduled meeting is a special meeting.

How do we establish a regular meeting?

The board is required by state law to publish a notice in a newspaper of general circulation in the school district at least two times per year, once within a week after the first regular meeting in December and once as a part of the statement of revenue and expenditures of the district, setting forth the day and time each month in which regular meetings will be held, together with the location.

The board of trustees is expressly authorized to "fix the time and place of regular meetings; provided that there shall be at least one meeting per month." W.S. §21-3-110(a)(iv).

State statute mandates that the notice which is required to be published two times each year, as indicated above, utilize the following format:

Notice is hereby given that regular meetings of the board of trustees of _____ County School District No. _____, State of Wyoming, are held each month at _____ o'clock on _____ (here insert days or dates), in Room _____ of the _____ school building in _____ (city or town), Wyoming, and such meetings are open to the public.

Notice is also given that official minutes of each regular or special meeting of such board, including a record of all official acts and of all warrants issued are available for inspection by any citizen during regular office hours at the office of the clerk of said district at _____ (here insert address of office).

Chairman, Board of Trustees
_____ County School
District No. ____

Pursuant to the Wyoming Education Code, the organizational meeting of the board of trustees is required to be held at the first regular meeting after December 1 of each year. Because of the requirement to publish notice of the schedule for regular meetings within one week after the first regular meeting in December, it is mandatory that the regular meetings be set at the first meeting in December. That is also the first meeting at which newly elected members of the board of trustees will attend and take part.

Under the Wyoming Open Meetings Law (WOML), the published notice of regular meetings is the only notice required for a regular meeting of the board. It is not necessary to place a notice in a local newspaper or take further action to notify the public about regular meetings except for the two times per year indicated above.

The board should be rigorous in adhering to the regular meeting schedule, and each board member should take responsibility for being available on regular meeting dates.

Some districts also have a tradition of moving meetings from one school to the next in order to be more available to the people on each staff or the patrons in each attendance area. This is a responsive practice consistent with the spirit of the WOML. Unfortunately, it makes it difficult to comply with the letter of the law which requires stating in the published notice the location of the regular meetings of the board. If there is a fixed regular rotation of meetings, that should be spelled out in the notices published twice per year and adhered to.

Thus, whether you are permanently changing the date, place or time of a regular meeting, or are simply rescheduling an individual regularly scheduled board meeting, it is appropriate to publish the proposed change at least once before the meeting.

We need to cancel our regularly scheduled meeting because we do not have a quorum. What should we do?

If there are not a sufficient number of board members that attend a regular meeting to constitute a quorum, the regular meeting may be cancelled and a new regular meeting rescheduled after publication of a change in the regular meeting date, or alternatively, another meeting may be scheduled as a special meeting, subject to the notice provisions for a special meeting and limitations on board action, as discussed below.

We established a regular meeting schedule as required by law in December, but now we need to change the date or location of the regular meeting. What do we do?

If the board changes the time and place of its regular meetings, then such notice shall also be published in a newspaper of general circulation in the school district, once before such change shall become effective.

Agendas:

The next basic step in holding a regular public meeting is establishing the agenda. There is no legal requirement for an agenda at a regular board meeting, but it is good practice. Frequently the practice of setting an agenda is governed by board policy, and to the extent there is a board policy, it should be strictly followed. If for any reason it becomes cumbersome, antiquated or is not being followed, it must be changed. Generally, the superintendent, in close consultation and with the final approval of the board chairman, draws up the agenda and assembles the supporting material. It should be the practice of the district to assure each board member receives the board packet well in advance of the meeting.

The public has the right to have access to the board agenda and to most of the supporting material under the state Public Records Act. Some of the supporting material is not subject to public disclosure due to various exceptions in the Public Records Act. The exceptions primarily cover materials invading the privacy of employees, identifying students or preliminary briefing documents which can be kept private until a final decision is made. Whenever a public record request is made that might involve documents subject to these exceptions, the district should consult with its attorney about the application of the exceptions.

Members of the public do not have a legal right to place matters on the board agenda. Matters may come before the board through the district's complaint process, often with final appeal to the board. Some districts also allow members of the public to request to make a presentation at a set time during each regularly scheduled board meeting. Generally, it is a good idea to allow some segment of the regular board meeting for public comment and suggestions which may, at the discretion of the school board, be limited to agenda items. The board of trustees generally, through the board chairman, has authority to set reasonable time parameters on any such presentations. Similarly, to the extent any such presentations become confrontational, disruptive or infringe on the rights of others, such presentations may be terminated by the board chairman. Public comment should enhance, rather than hinder, the effective transaction of the district's business. Holding a meeting that conforms to the WOML means conducting the district's business in public, not having the public conduct the district's business.

It is recommended that individual board members work with the chairman and the superintendent to place matters of concern on the agenda. This provides for full preparation for agenda items at the board meeting. Similarly, the board chairman and superintendent should be reasonably responsive to requests from board members for agenda items. Surprise agenda amendments serve no one well.

If a board member wishes to have something addressed on the agenda that the board chairman has not included, the board member may move to have the agenda amended to include the issue. If a majority of those present agree, the agenda is amended to address the board member's concern.

While some school boards have adopted a policy requiring that board meetings be conducted in accordance with Robert's Rules of Order, those rules can be very detailed and complex, and it is not required that board meetings be held in strict conformance with Robert's Rules of Order. Wyoming School Boards Association recommends that the board utilize a policy for conducting board meetings that does not mandate strict adherence to Robert's Rules of Order.

Minutes:

State law mandates that the board of trustees of each school district shall keep minutes of all meetings at which official action is taken, and a record of all official acts, including a record of all warrants issued against the monies belonging to the school district. The minutes and records shall be public records. By law, the minutes must reflect all official acts. Generally, those are the results of official motions and votes by the board of trustees. There is no requirement for recording discussions and commentary among the board members, administrators or other persons providing information with regard to the various agenda items. While all official acts must be recorded, how much additional discussion is to be included in board minutes is left to the discretion of the board. To the extent it is the policy of a school district to have the minutes reflect only action items, then any individual board member who has a particular position they want stated in the minutes should request that the minutes reflect their particular concern or position. It is the official duty of the clerk of the board of trustees to make certain that all proceedings of the board are recorded (minutes taken) and kept in the permanent records of the school district. The clerk is not required to physically keep the minutes, but only make certain that minutes are actually kept by someone assigned to that duty. This may be an administrative secretary, the superintendent or the clerk, for example, in an executive session.

Minutes of all regular and special meetings of the board are required to be available for inspection by any citizen during regular office hours at the office of the clerk of said district and at the location stated in the notice published twice each year. Generally, this is the school district administration office.

Minutes are required to be maintained of all executive sessions. Except for those parts of minutes of an executive session reflecting a member's objection to the executive session as being in violation of the WOML, minutes and proceedings of executive sessions, shall be confidential and produced only in response to a valid court order. Minutes of executive sessions should be maintained in a secure location, such as a locked file cabinet, with only very limited and secure access. At a minimum, at least one member of the board of trustees, as well as the superintendent, should be able to access the executive session minutes.

By law, no action of the school board may be taken except during a public meeting, and as such, action should not be taken during an executive session. Thus, even though minutes of the executive session are required to be taken, and generally minutes will only reflect action items, the minutes of the executive session should have at least enough information to identify the reason for the executive session (being one of the statutory reasons for which executive sessions are allowed), and to the extent the executive session involves personnel or students, identify the persons being discussed. There is no requirement to provide any greater detail or more information pertaining to discussions among board members in executive session than would be provided during open session. Even though minutes of executive sessions are confidential, they are required to be disclosed in response to court order or subpoena. As such, it is generally the best practice to not keep detailed minutes of executive sessions.

Motions may be passed during regular or special meetings by voice vote. If a voice vote is taken, the person or chair shall announce if the motion passed or failed. If there is no contradiction by the board, the record only needs to reflect if the motion passed or failed—not each member's vote. To the extent it is determined that there should be a roll call vote, the results of the vote should be recorded by name.

Recessed Meetings:

The board of trustees may recess any regular, special or recessed regular or recessed special meeting to a place and at a time specified in an order of recess. A copy of the order of recess shall be conspicuously posted on or near the door of the place where the meeting or recessed meeting was held.

Meetings to be Open:

All meetings of the school board are public meetings, open to the public at all times, except as provided for in executive session. No action of a school board shall be taken except during a public meeting, following notice of the meeting in accordance with the WOML. A member of the public is not required as a condition of attendance at any meeting to register his name, to supply information, to complete a questionnaire or fulfill any other condition precedent to his attendance. A person seeking recognition at a meeting may be required to give his name and affiliation.

Participation by persons attending meetings of the board of trustees may be limited or denied, as discussed in the section below relating to Agendas.

Disruption of Public Meetings:

If any public meeting is willfully disrupted by a person or group of people so as to render the orderly conduct of the meeting unfeasible, and order cannot be restored by the removal of the person or people who are willfully interrupting the meeting, the board of trustees may order the removal of the person or group from the meeting room and continue in session, or may recess the meeting and reconvene at another location. Only matters appearing on the agenda may be acted upon in a meeting recessed to another location. A governing body of an agency shall establish procedures for readmitting an individual or individuals not responsible for disturbing the conduct of the meeting. Duly accredited members of the press or other news media, except those who participated in a disturbance, shall be allowed to attend any meeting reconvened to avoid the disruption.

Executive Session

Parts of board meetings can be held without the public. These portions of the meetings are called executive sessions. An executive session may be held only pursuant to a motion that is duly seconded and carried by majority vote of the members of the board of trustees in attendance when the motion is made. Although not required by law, it is generally a good idea to state the purpose of the executive session, which must be one of the purposes specified by law. The minutes of the regular session will reflect the motion made to go into executive session.

There are 11 statutory reasons for executive session. Two do not apply to school boards. Of the nine remaining, one of the following must apply to the circumstances for a school board to exclude the public from its meeting:

- To hold a meeting with the attorney general, county attorney, city attorney, sheriff, chief of police or their respective deputies, or other officers of the law on matters posing a threat to the security of public or private property, or a threat to the public's right to access.
- To consider the appointment, employment, right to practice or dismissal of a public officer, professional person or employee, or to hear complaints or charges brought against an employee, professional person or officer, unless the employee, professional person or officer requests a public hearing. The governing body may exclude from any public or private hearing during the examination of a witness, any or all other witnesses in the matter being investigated. Following the hearing or executive session, the governing body may deliberate on its decision in executive session.
- On matters concerning litigation in which the governing body is a party or proposed litigation to which the governing body may be a party.
- On matters of national security.
- To consider the selection of a site or the purchase of real estate when the publicity regarding the consideration would cause the likelihood of an increase in price.

- ❑ To consider acceptance of gifts, donations and bequests which the donor has requested in writing be kept confidential.
- ❑ To consider or receive any information classified as confidential by law.
- ❑ To consider accepting or tendering offers concerning wages, salaries, benefits and terms of employment during all negotiations.
- ❑ To consider suspension, expulsions or other disciplinary action in connection with any student as provided by law.

The board may go into executive session to "consider" several matters. Does "consider" include making a decision?

No, the executive session is limited to consideration of issues. The voting and collective decision-making should take place in an open meeting.

Executive sessions are expressly authorized to hear complaints or charges brought against an employee or officer. Generally, because of the sensitive nature of such complaints and the risk of violating an individual's privacy, or otherwise allowing individuals to publicly demean, humiliate, embarrass or possibly slander public employees, it is the best practice to consider such complaints in executive session. However, as noted, the individual against whom a complaint is made has a right to demand that such discussions take place in public. Because it is generally the best practice to hear such complaints in executive session, and because the person against whom the complaints are being made has a right to request that they be held in open session, the best practice is generally to have both the complainant and the individual being complained about attend the executive session, unless the person being complained about insists the complaint be discussed in open session. This allows the person being complained about to hear the complaint as he or she is entitled to, but does not require the complaint to be aired publicly.

When the school board is seeking legal advice which could be detrimental to the position of the school district, school boards have a right to receive the advice from their legal counsel in executive session. Advice given from an attorney to his client is privileged by law so long as it is not disclosed to the public. As such, legal advice from the school board's attorney to the school board is information classified as confidential by law, and may be received in executive session. This does not mean, however, that all requests for information or advice from the school board's attorney must be received in executive session. Much of the advice or information requested from the school board's attorney is general information for which the school board does not need to assert attorney-client privilege, and in those instances should be requested and provided in open public session.

A school board may also go into executive session to consider the appointment or employment of an employee whom the school district is contemplating employing. For example, when the superintendent makes a recommendation to employ an individual as principal, the board may discuss this, as well as other applicants in executive session. However, when the applicants are actually being interviewed, for example, for the superintendent position or to fill a vacancy on the board of trustees, the WOML and specifically executive session laws do not provide any guidance as to whether or not the interview itself can be conducted in executive session. Generally, the best approach is to conduct the interview in open session, and if necessary, ask other applicants to wait outside the meeting room while the interview takes place.

Disclosure of information acquired in executive session which is not intended for public disclosure is a violation of the Ethics and Disclosure Act and the board member who inappropriately discloses executive session information is subject to a possible penalty of a \$1000 fine and removal from office.

Special Meetings

Special meetings may be called by the clerk of the board of trustees upon the request of the chairman of the board of trustees, or upon the request of any two members of the board of trustees. Notice of a special meeting is not required to be published in any newspaper. However, notice of the special meeting must be given to each member of the board of trustees and to each newspaper of general circulation, radio or television station **requesting the notice**. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered.

Any meeting of the board of trustees that is not a regular meeting as set out in the published notice of regular meetings is a special meeting. This includes workshops, retreats, presentations, budget hearings, other hearings or gatherings for the purpose of discussing or carrying out school district business. While there is nothing wrong with holding a retreat, a workshop or a special meeting outside of the district, the notice of the meeting must clearly indicate the location, time and place and make allowance for public attendance. The WOML does not specify how or how often the media must request that they be given notice of special meetings. Thus, if a newspaper requested notice of special meetings 10 years ago, the law does not clarify whether or not that request continues to be applicable. The best practice is to post notice of the special meeting at the location where the meeting will be held and to fax or e-mail, if possible, and if not, at least call the local newspaper or any newspaper that has requested notice of special meetings, to provide them the notice. The WOML also does not specify any minimum time in advance of the meeting in which the notice must be provided. However, because there is a separate provision for emergency meetings, the law implies that special meetings would provide more notice than an emergency meeting and at a minimum, notice of special meetings should, if possible, be given at least 24 hours prior to the special meeting.

A special meeting can be held for the purpose of holding an executive session. The meeting notice should state the general reason for the executive session, i.e., student expulsion.

Emergency Meetings

The board of trustees may hold an emergency meeting on matters of serious immediate concern to take temporary action without notice. Reasonable effort shall be made to offer public notice. All action taken at an emergency meeting is of a temporary nature, and in order to become permanent, shall be reconsidered and acted upon at an open public meeting within 48 hours.

As indicated above, because there is no time line for notice of a special meeting, most matters—even those that are extremely serious and require prompt action, can be dealt with at a special meeting and be permanent without a required follow up meeting to become permanent. Emergency meetings are seldom used and should be limited to those situations in which notice can only be given a very brief time before the meeting is held.

Hearings

Hearings for matters such as budget hearings, student expulsion hearings or even employment hearings should generally be handled either as a part of a regular meeting or as a part of a special meeting. A budget hearing can simply be noticed as a special meeting in which the agenda reflects a budget hearing. A student expulsion hearing can be handled simply as part of an executive session agenda item at either a special meeting or a regular meeting. In any case, the notice provisions applicable to special meetings, and if appropriate, the procedure for executive sessions, continue to apply.

Committees

The WOML mandates that the open meeting law provisions apply to all agencies. Agencies include committees of political subdivisions such as the school district. To the extent a school board expressly establishes a formal committee for purposes of carrying out school business, the committee should conduct its business in accordance with the open meetings law, including taking minutes. It is not clear under the WOML as to whether or not informal committees, for example, without formal membership and which are comprised of community members, consultants, etc. or which are established and set up by school administration, are subject to the provisions of WOML. However, the more formal authority the committee is given, the more likely they are subject to the provisions of WOML. In many cases, it would be extremely difficult to apply WOML to a committee because in most instances a quorum is not established for the committee, and by definition, a meeting would not occur unless at least a quorum was present. The best practice is to make certain that at a minimum, committee meetings are not closed to the public.

Meetings that are NOT Meetings

The Wyoming Open Meetings Law (WOML) defines “meeting” as follows:

“An assembly of at least a quorum of the governing body of an agency which has been **called by proper authority** of the agency **for the purpose of** discussion, deliberation, presentation of information or taking action regarding public business.”

Many board members have the misunderstanding that any time a quorum of the board of trustees should happen to be in the same place and someone mentions a subject relating to the school, this constitutes an illegal meeting. This is not the case. When a quorum of board members happens to show up at the same reception, restaurant, activity, etc., and visit, this does not constitute a meeting. A meeting only occurs if **called by proper authority**. This would normally be the chairman or at the specific request of two or more members of the board **for the purpose of** discussion, deliberation, presentation of information or taking action regarding public business.

For example, even if the board chairman should ask members of the board of trustees which would constitute a quorum to attend their son or daughter’s graduation reception, wedding or a Tupperware party, this is not illegal and does not constitute a meeting. The meeting would only occur if it was called by proper authority **and** called for the purpose of discussion, deliberation, presentation of information or taking action regarding public business. It is not illegal or necessary to give notice of a special meeting merely because a quorum of the board rides in the same vehicle to a convention or some other function. In that instance, there was not a meeting called by proper authority, nor was the purpose of riding together in a vehicle to discuss, deliberate or present information.

On the other hand, if the board chairman were to request a quorum of board members ride in a vehicle so that they could discuss some specific item of school business, that would constitute a meeting and would not be allowable absent compliance with the applicable provisions of the WOML. Because such meetings are required to be open to the public, meetings in areas that cannot accommodate other members of the public should not occur.

Similarly, pre-arranged telephone conferences or internet chat meetings between members of the board of trustees constituting a quorum for the purpose of discussion, deliberation, presentation of information or taking action regarding public business would constitute a meeting and must be noticed and all members of the public wishing to hear or see the conversation must be permitted access.

There has also been a misunderstanding among some board members who believe that so long as action is not actually taken, there is no lawful meeting. For example, many boards in the past had been in the habit of holding work sessions or retreats at which no formal action was intended to be taken. Under the WOML, such gatherings constitute meetings as defined by law and must be noticed and treated the same as any other special meeting. Even if the sole purpose is to allow someone such as an engineer or an architect to make a presentation at which the board of trustees and the entire community is allowed to attend, and even if there is no other discussion, such a gathering constitutes a meeting as it is called for the purpose of presentation of information.

It would not be a good idea to try to avoid the concept of a meeting by having the superintendent call the meeting rather than the board chairman and assert that it was not called by proper authority.

Consequences for Violating WOML

No action of the school board may be taken except during a public meeting following notice of the meeting and in accordance with the Wyoming Open Meetings Law. Any action taken at a meeting not in conformity with that law is null and void and not merely voidable. The consequences of taking an action that the board deems to be prudent and appropriate, but which is not in conformity with the open meetings law renders the action null and void. This can have serious consequences for a school district that thought they had appropriately and timely taken action only to find out perhaps months later that the action was null and void. Contracts, purchase offers, employment decisions and budget approvals can be set aside and determined never to have happened by reason of the failure the school board to comply with the WOML.

In addition thereto, any member of the board of trustees who knowingly and willfully takes an action in violation of, or who conspires to take an action in violation of the WOML, is guilty of a misdemeanor. Any member of the school board who attends or remains at a meeting where an action is taken knowing that the action is in violation of this act shall be guilty of a misdemeanor unless minutes were taken during the meeting and the parts thereof recording the members' objections are made public or at the next regular public meeting a member objects to the meeting where the violations occurred and asks that the objection be recorded in the minutes. Either misdemeanor violation is punishable upon conviction by a fine of not more than \$750.

Compliance with the open meetings law is a serious matter. The penalty provisions of the act which relate to a misdemeanor violation relate to participation in a board meeting in which **an action** is taken or which the board members conspire to take **an action**. Similarly, attendance at a board meeting where **an action** is taken, knowing that the action is in violation of the act, is a misdemeanor. As such, participation in a meeting in which discussion takes place but there is no action, would not appear to be a criminal act even though it would be a violation of the open meetings law. Because the language as to what actually constitutes "conspires to taken an action" is vague, the most prudent and safest course is to presume that participation in any meeting that violates the WOML is potential grounds for criminal prosecution and should be avoided.

What are the penalties for violating WOML?

Final action taken at a meeting failing to comply with the WOML is null and void. Also, each member of the board who attends a meeting held in violation of the act at which action is taken or at which the members conspire to take action is potentially liable for a penalty of \$750.

Conclusion

Accurate application of the WOML in school board affairs allow board members, staff and the public to focus on the important policy and governance issues confronting the district rather than worry about the practical aspects of running efficient and legal meetings.

Mistakes in conducting open meetings raise unnecessary concern and criticism about the board's responsiveness to the public. Unrealistic public expectations can also undermine the effective governance of the district if members of the public are permitted to dominate meetings or violate privacy interests. Public participation can be an important aspect of a well-run meeting if it is conducted in an appropriate context. Public involvement that undermines the representative nature of the school board's service does not enhance the governance of the district.

Understanding the appropriate application of the WOML will facilitate the governance of the district and enhance the public's confidence.

Appendix

Wyoming Statute § 16-4-401 through 408
Wyoming Statute §21-3-110(a)(ii)(iv)(xvi)(A,B,C)
Wyoming Statute §21-3-119



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