



POLICY AND LEGAL SERVICES



# Open Public Meetings

A Guide for School Board Members and Superintendents

WASHINGTON STATE SCHOOL DIRECTORS' ASSOCIATION

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# Introduction

Representative democracy relies on the informed trust of the citizens. 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” in the school board and school administrator community, and among the public. That knowledge does not always reflect the actual legal requirements for meetings. Some 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 expectations. The public's trust is too delicate for school board members and administrators to proceed without a sophisticated and legally grounded understanding of public meeting requirements.

This material will focus on the provisions of Washington's Open Public Meeting Act (OPMA), but will also address other legal requirements, and nonlegal issues surrounding effective and responsive public meetings. (The full text of Chapter 42.30 RCW, the Open Public Meetings Act, begins on page 23.) 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 the law and public trust.

## Regular meetings

It makes most sense to begin with a discussion of ordinary school board meetings, and then progress to the more complex situations.

### PROVIDING NOTICE

School boards should have policies announcing when the regular meetings of the board will be held. By law (RCW 28A.343.380) the board must meet at least once per month, and can meet more often. A board's policy should identify the date, time and place of the board's regular meetings. For example, the first Tuesday of each month, at 7:00 p.m. in the central administration office would be a description of when the board will hold its regular meetings.

Under the OPMA this policy provision is the only notice required for a regular meeting of the board. It is not necessary to place a notice in the local newspaper or take further action to notify the public about regular meetings. The tradition does no harm, but it is not legally required. The law provides, and so should district policy, that if a regular meeting of the board falls on a legal holiday, the meeting is automatically held on the next business day, at the regular time and place.

The board should be rigorous in adhering to its regular meeting schedule, and each board member should take responsibility for being available on regular meeting dates. There is no provision in the law for “skipping” or “moving” a regular meeting date — except permanently — by amending the district's policy.

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 and in each neighborhood and attendance area. This is a responsive practice consistent with the spirit of the OPMA. Unfortunately, it makes it difficult to comply with the letter of the Act, which requires stating in policy the location of regular meetings of the board. If there is a fixed regular rotation of meetings, that should be spelled out in the district's policy.

— and adhered to. At the very least, an annual schedule should be developed each year and published as a procedure with the meeting policy.

Another alternative is to have a fixed location for one meeting per month and to treat the other meeting with a rotating location as a special meeting. As you will learn, special meetings can be full-fledged board meetings.

## AGENDAS

The next basic step in holding a regular public meeting is establishing the agenda. Generally the superintendent, in close consultation and with the final approval of the board president or chair, recommends 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 agenda for a regular meeting, once established, must be posted on the district website no later than 24 hours in advance of the published start time of the meeting. Subsequent modifications to the agenda are permissible.

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 materials, such as sensitive briefing materials, are not subject to public disclosure due to various exceptions in the public records act, but the exceptions are narrow. 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 records request is made that might involve documents subject to these exceptions, the district should consult with its attorney about the application of the exceptions — quickly enough to respond to the request within five business days.

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 the final appeal to the board. Some districts also allow members of the public to request time to make a presentation at the beginning or end of a board meeting.

Public comment periods at board meetings are a tradition in many districts that serve the district and community well. They are not required by law\* but are appropriate and the board should be diligent in assuring public comment takes place at appropriate times in board meetings. Public comment should enhance, rather than hinder, the effective transaction of the district’s business. Holding a meeting that conforms with the OPMA 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 president or chair 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 president or chair 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 president has not included, the board member may move under parliamentary procedure 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.

In addition to conforming with the OPMA, school board meetings should be conducted pursuant to Robert’s Rules of Order. WSSDA offers a guide to parliamentary procedure written specifically for school boards.

\* Opportunity for public comment—both oral and written—is required prior to a board adopting or amending policy that is not expressly or by implication authorized by state or federal law, but which will promote the education of K-12 students or will promote the effective, efficient or safe management and operation of the district. The proposed policy must be described in the meeting notice at which the policy will be considered. RCW 28A.320.015

## **MINUTES**

State law requires minutes be kept of each school board meeting. The superintendent has the legal responsibility to see that minutes are recorded (RCW 28A.400.030(1)).

State law also requires that “the minutes of all regular meetings except executive session shall be promptly recorded and such records shall be open to public inspection” (RCW 42.32.030). Discussion of special meetings and executive sessions follow below.

At a minimum the minutes should include: the date, time and place of the meetings; the presiding officer; members of the board in attendance; items discussed, motions made and results of votes on motions; any action to adjourn to executive session with a general statement of purpose; and time of adjournment.

Boards may have traditions of more elaborate minutes reflecting more details of discussion or how individual members voted. This is not necessary, and if it leads to disagreements regarding the conduct of meetings or the content of the minutes, it should be discontinued.

If a voice vote is taken, the president or chair shall announce 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. Some matters, election of board officers, filling board vacancies and selection of a superintendent, require a roll call vote and the results of the vote recorded by name. It should be noted the OPMA bars any secret voting by school board members and other governing officials.

## **ADJOURNMENTS AND CONTINUANCES**

Meetings may be adjourned from one time to another. Notice of the adjournment, specifically the date, time and place of when the meeting will reconvene, must be provided in writing to each board member and to any media source having requested such notice, 24 hours before the meeting is scheduled to reconvene. The notice must also be posted outside the place where the meeting was held.

A hearing that is part of a meeting may also be continued from one meeting to the next. The notice of continuance is made in the same manner as adjournment.

# Executive session

Parts of board meetings can be held without the public. These portions of the meeting are called executive sessions. If the board is going into executive session, the president or chair must announce the general purpose of the session and how long it will last. If the executive session runs longer, the president or chair must make another announcement extending the session.

The minutes should reflect the executive session and the general purpose, if it was extended and when it ended. A detailed record of the executive session should not be made. Despite the confidentiality of the matters discussed in executive session, a record of the session is subject to disclosure under the state public records act.

There are eleven statutory reasons for an executive session; three do not apply to school boards. Of the eight remaining, one of the following must apply to the circumstances for a school board to exclude the public from its meeting:

- Matters affecting national security;
- The selection of a site or the acquisition of real estate if public knowledge of the matter might increase the price;
- The minimum selling price of real estate if public knowledge of the matter might depress the price, but final action selling or leasing real estate must be taken in a public meeting;
- Negotiations on the performance of a publicly bid contract if public knowledge might increase costs;
- Complaints or charges against an employee or board member, however the person complained against may open the meeting to the public;
- Qualifications of an applicant for public employment or review the performance of a public employee, but final actions must be taken in public and discussions affecting employees generally must be held in public;
- Qualifications of a candidate for appointment to elective office, but interviews and the final appointment must be held in public; and
- Discussion with legal counsel, of enforcement actions, litigation or potential litigation, if public discussion might result in an adverse legal or financial consequence. Amendments in 2001 provided a specific definition of potential litigation.

## EXCEPTIONS

It is not permissible to go into an executive session to generally discuss personnel issues. In an executive session, a board can receive and evaluate complaints about a public employee, evaluate the qualifications of an applicant for employment or evaluate the performance of an employee. Executive sessions about personnel issues must be specifically tailored to those exceptions.

While a board can receive and evaluate complaints in executive session, the public does not have the legal right to bring such complaints and have them heard. The board should follow its complaint process before hearing a complaint directly, and be sure some other forum is not more legally appropriate to resolve the matter.

The right to evaluate the qualifications of an applicant in executive session, for instance in a superintendent search, does not mean the board may discuss the search process in executive session.

Board members are often concerned that applicants for appointment to board vacancies will sit in on interviews of other applicants for the position, trying to gain an advantage. Under the law the interviews must be conducted in public. The board may ask other applicants to wait

outside the meeting room. The applicants have the legal right to stay. The board has complete discretion regarding the filling of the appointment, and consideration of the applicants' capacity to cooperate and behave fairly are legitimate matters for consideration.

## Special meetings

Any meeting of the board that is not a regular meeting as set out in the board's policy for day, time and place, is a special meeting. A special meeting of the board may be called by the president or chair of the school board, or by a majority of the board.

Each member must receive written notice, either through the mail, by fax, by electronic mail, or personally delivered, at least 24 hours before the meeting. Any radio or television station or newspaper may file with the district a request to be notified of special meetings of the board. Any media outlet that has filed such a request must receive the same notification as board members, within 24 hours of the meeting. The notice must also be posted on the district's website unless the district doesn't have a webpage, employs fewer than ten full-time equivalent employees; or does not have an employee whose job description or employment contract provides a duty to maintain or update the website. The district must prominently display the notice at the main entrance of the district's headquarters as well as at the location of the meeting if the meeting is held at a location other than the headquarters. All required notices must be delivered or posted not less than twenty-four (24) hours prior to the meeting. The notice requirements may be waived by any board member, and are considered waived if the board member attends the meeting, even without official notice.

The notification must include the time, place of the special meeting and the business to be transacted. An agenda, or list of the business to be transacted, is required in advance of the meeting. The board cannot take final action at a special meeting on any matter not on the original notice and agenda.

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. The special meeting is called to order, the president or chair announces the board is going into executive session, and the meeting can proceed. The minutes are brief, showing when the meeting was called to order, who was present, the general purpose for the executive session and any actions taken by the board, if any, when they return to open session.

## EMERGENCY MEETINGS

Notices for special meetings need not be issued if the meeting has been called to deal with emergencies involving injury to persons or property or the likelihood of such injury, if the time requirement is impractical and would increase the likelihood or severity of injury or damage. The law also provides that fire, flood, earthquake or other emergencies are grounds for holding a meeting at another time or site and notice requirements may be suspended. Under the law, emergencies that qualify for suspending the notice requirements are extremely rare. If it is at all reasonable to adhere to the notice requirements, they should be followed.

## OTHER MEETINGS

School boards call their meetings all sorts of things, most of which do not have a legal impact under the OPMA. Study sessions and board retreats are just two examples of board gatherings subject to the OPMA. If the board has regularly scheduled study sessions, those should be noted in the board's regular meeting policy, so the district need not go through special meeting notices each time the study session is held. If study sessions are more infrequent, then the district must go through the special meeting notice process.

Despite the possibly sensitive nature of board retreats, there is no exception allowing them to be held in private or in executive session. They may be held out of the district, but the special meeting notice process should be followed. Aspects of the board retreat subject to a legitimate executive session (an evaluation of the superintendent, for instance) can be done in executive session, but the retreat as a whole is generally a public meeting. There is no provision for the board evaluating itself or each member in an executive session.

Committees of the board are also subject to the OPMA because they are subsets of the entire board. If two board members are assigned to be a committee to review a matter, that committee's meetings are subject to the OPMA if the committee will be acting on behalf of the board, taking testimony or conducting hearings.

"Sub-agencies" or government bodies are also subject to the OPMA. It is not clear if the typical school committee engaged in shared decision-making would be subject to the OPMA. The more final authority such committees or councils are given, the more likely the courts are to treat their meetings as covered by the OPMA.

The board must also be aware of when the OPMA covers events when a majority of the board is present, but which may not feel like a school board meeting:

- A meeting happens any time a quorum of the board is present and an action happens.
- Action has a broader definition than just a vote on a motion. Action is the transaction of official business, but includes receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations and final actions.

A meeting with another jurisdiction, like a city council, county commission, library board or tribal council would likely involve discussions, thus action, so it is a public meeting.

A school-community forum is likely to include public testimony before members of the board. This is an action, so the meeting must be handled as a special meeting and be open to the general public.

Attendance at a staff retreat might very well involve consideration of matters heard, possibly even discussion or deliberations. This too qualifies as a public meeting.

All of these examples are probably special meetings of the board and should be handled through the notice of a special meetings process.

# Meetings that are not meetings

While occasionally a school board will fall into the trap of meeting without understanding that the event must be open to the public, it is also possible to mishandle “gatherings” not subject to the OPMA.

It is possible for a majority of a school board or other governing body to travel together or gather for purposes not subject to the OPMA, so long as no action is taken. Recall the broad definition of action, no deliberations, discussions, considerations, reviews or evaluations may take place during such travels or gatherings.

So it is OK for the board to travel to a meeting together in the district van without announcing a special meeting, but if they discuss the performance of the football coach at last Friday’s game, they have violated the OPMA. It is also “legal” for a majority of the board to attend the same church without calling a meeting of the board, so long as they do not discuss the district’s budget together at the coffee hour after the service.

## EXEMPT MEETINGS

Some meetings frequently held by school boards are not subject to the OPMA. They are known as “private,” “closed,” or more precisely, “exempt” meetings. The board need not provide public notice or public access when it is gathering for collective bargaining sessions, grievance meetings and discussions on the interpretation or application of a collective bargaining agreement. The same is true of gatherings to plan or adopt positions or strategies for collective bargaining, professional negotiations, grievance or mediation proceedings, or for reviewing counter-proposals.

Often boards conduct such activities in executive session. There is no executive session exception for collective bargaining activities. It is more accurate to excuse the public from the meeting room without the minutes reflecting an executive session. It is also important to remember the district’s flexibility under this provision when the collective bargaining process is particularly tense, especially if a strike is contemplated or underway. The board may not want to hold a meeting that has been publicly announced if it is possible the meeting will be subject to picketing or interruptions. If the meeting regards collective bargaining strategies, no public notice or access to the meeting is required.

Quasi-judicial hearings are also exempt from the OPMA. This exemption is generally used to protect the privacy of individuals involved in appeals of discipline matters, either students or staff. Again, these hearings can and should be held without public notice and without public access to the meeting. Especially in student discipline cases, the district is obligated under the federal Family Educational Rights and Privacy Act (FERPA) to keep student information confidential. Witnesses needed to testify at the hearing may be present, and the person appealing the discipline may choose to have people present, but the hearing is not open to the general public.

# Consequences for violating the OPMA

Actions taken in a meeting violating a provision of the OPMA are invalid. Sometimes it is possible to redo or ratify the action at a later, properly held meeting. Occasionally it is not legally possible to revisit the invalidated action. This, in addition to preserving public confidence, is a critical reason for understanding and correctly applying the OPMA.

The courts enforce the OPMA. A person who believes the law has been violated must file suit in superior court. Individual board members, who attend a meeting where a violation of the Act occurs, and know the OPMA is being violated, may be subject to a \$100 civil fine.

If someone prevails in court, showing the board did violate the OPMA, the person can recover attorney fees and other costs associated with pursuing the lawsuit. If the case is found to be frivolous, the district can request recovery of its reasonable expenses and attorney's fees.

## Conclusion

Accurate application of the OPMA in school board affairs allows 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 made in conducting open meetings raise unnecessary concerns 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 school board service does not enhance the governance of the district.

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

# Frequently asked questions

**Q. How do we establish a regular meeting?**

A. The board is required by state law to adopt a board policy that identifies the date, time and place of the board's regular meetings.

**Q. We established a regular meeting schedule at the beginning of the year, but now we want to change it. What do we do?**

A. The board must amend the board policy to identify the new dates, times and places of the board meetings.

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

A. If the board knows more than 24 hours in advance, the meeting should be cancelled and rescheduled as a special meeting.

**Q. What is the difference between an executive session and a “private,” “closed” or “exempt” meeting?**

A. An executive session is that part of the meeting that can be held without the public. The specific reason for an executive session is listed in the law. The board chair must announce the purpose of the executive session and how long it will last. Private meetings, also known as closed or exempt meetings, are meetings that are not covered by the Open Public Meetings Act. For example, student disciplinary hearings and collective bargaining sessions with employee groups do not require public notice or access.

**Q. The board may go into executive session to “consider” several matters. Does “consider” include making a decision?**

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

**Q. Can we always call an executive session whenever we are having a discussion with our attorney?**

A. No, having an attorney in the room does not automatically qualify for an executive session. An executive session can be called to discuss litigation or potential litigation where the district is likely to be a party and a public discussion could result in adverse legal or financial consequences.

**Q. Are we really having a meeting if no action is taking place?**

A. A meeting can occur even if the members are not in the board room. A meeting occurs whenever action takes place. Action is “transaction of official business.” Transaction of official business can include discussion, consideration, public testimony, review, evaluation, deliberation and final action.

**Q. An issue has come up and we need to handle it immediately but our next board meeting is a month away. What do we do?**

A. The board chair or a majority of the members can call for a special meeting. Twenty-four hours written notice must be given to the members of the board and to any media organization that has requested written notice of special meetings. The notice can be sent either through the mail, by fax, by electronic mail, or personally delivered. The notice must include an agenda and the meeting can only include those items on the agenda.

Questions continued next page

**Q. The board has appointed a committee to take public input on the new curriculum offerings. Must the board committee abide by the OPMA?**

A. Yes, governing body is defined as any committee of the board when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment. If the curriculum committee is acting on behalf of the board they must abide by the OPMA.

**Q. Can the board prohibit video or sound recording of a public board meeting?**

A. No, the board cannot ban video or sound recording of a meeting required to be open to the public unless the video or recording disrupts the meeting. If disruption occurs, the board can regulate recording or taping to the extent necessary to preserve order at the meeting.

**Q. What are the penalties for violating the OPMA?**

A. Final action taken at a meeting failing to comply with the OPMA is null and void. Also, each member of the board who attends a meeting held in violation of the act is liable for a civil penalty of \$100.

**Q. Is OPMA training required?**

A. Yes. State law now requires that all school board directors complete training on the requirements of the OPMA (in addition to training on the Public Records Act and records retention) within 90 days of taking the oath of office or otherwise assuming the duties of school director. School directors must take refresher training every four years that they remain in office. All completed training needs to be documented in writing and filed in the district. Training may be completed remotely through technology or in-person. Regional training information is available on the WSSDA website.

# Chapter 42.30 Revised Code of Washington: Open Public Meetings Act

42.30.010

## **Legislative declaration.**

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The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

42.30.020

## **Definitions.**

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As used in this chapter unless the context indicates otherwise:

- (1) "Public agency" means:
  - (a) Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature;
  - (b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;
  - (c) Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies;
  - (d) Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.
- (2) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.
- (3) "Action" means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. "Final action" means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.
- (4) "Meeting" means meetings at which action is taken.

42.30.030

### **Meetings declared open and public.**

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All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.

42.30.040

### **Conditions to attendance not to be required.**

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A member of the public shall not be required, as a condition to attendance at a meeting of a governing body, to register his name and other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his attendance.

42.30.050

### **Interruptions – Procedure.**

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In the event that any meeting is interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are interrupting the meeting, the members of the governing body conducting the meeting may order the meeting room cleared and continue in session or may adjourn the meeting and reconvene at another location selected by majority vote of the members. In such a session, final disposition may be taken only on matters appearing on the agenda. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the governing body from establishing a procedure for readmitting an individual or individuals not responsible for disturbing the orderly conduct of the meeting.

42.30.060

### **Ordinances, rules, resolutions, regulations, etc., adopted at public meetings – Notice – Secret voting prohibited.**

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- (1) No governing body of a public agency shall adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void.
- (2) No governing body of a public agency at any meeting required to be open to the public shall vote by secret ballot. Any vote taken in violation of this subsection shall be null and void, and shall be considered an “action” under this chapter.

42.30.070

### **Times and places for meetings – Emergencies – Exception.**

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The governing body of a public agency shall provide the time for holding regular meetings by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body. Unless otherwise provided for in the act under which the public agency was formed, meetings of the governing body need not be held within the boundaries of the territory over which the public agency exercises jurisdiction. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day. If, by reason of fire, flood, earthquake, or other emergency, there is a need for expedited action by a governing body to meet the emergency, the presiding officer of the governing body may provide for a meeting site other than the regular meeting site and the notice requirements of this chapter shall be suspended during such emergency. It shall not be a violation of the requirements of this chapter for a majority of the members of a governing body to travel together or gather for purposes other than a regular meeting or a special meeting as these terms are used in this chapter: PROVIDED, That they take no action as defined in this chapter.

42.30.077

### **Agendas of regular meetings – Online availability**

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Public agencies with governing bodies must make the agenda of each regular meeting of the governing body available online no later than twenty-four hours in advance of the published start time of the meeting. An agency subject to provisions of this section is not required to post an agenda if it does not have a web site or if it employs fewer than ten full-time equivalent employees. Nothing in this section prohibits subsequent modifications to agendas nor invalidates any otherwise legal action taken at a meeting where the agenda was not posted in accordance with this section. Nothing in this section modifies notice requirements or shall be construed as establishing that a public body or agency's online posting of an agenda as required by this section is sufficient notice to satisfy public notice requirements established under other laws. Failure to post an agenda in accordance with this section shall not provide a basis for awarding attorney fees under RCW 42.30.120 or commencing an action for mandamus or injunction under RCW 42.30.130.

42.30.080

### **Special meetings.**

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- (1) A special meeting may be called at any time by the presiding officer of the governing body of a public agency or by a majority of the members of the governing body by delivering written notice personally, by mail, by fax, or by electronic mail to each member of the governing body. Written notice shall be deemed waived in the following circumstances:
  - (a) A member submits a written waiver of notice with the clerk or secretary of the governing body at or prior to the time the meeting convenes. A written waiver may be given by telegram, fax, or electronic mail; or
  - (b) A member is actually present at the time the meeting convenes.
- (2) Notice of a special meeting called under subsection (1) of this section shall be:
  - (a) Delivered to each local newspaper of general circulation and local radio or television station that has on file with the governing body a written request to be notified of such special meeting or of all special meetings;
  - (b) Posted on the agency's web site. An agency is not required to post a special meeting notice on its web site if it (i) does not have a web site; (ii) employs fewer than ten full-time equivalent employees; or (iii) does not employ personnel whose duty, as defined by a job description or existing contract, is to maintain or update the web site; and
  - (c) Prominently displayed at the main entrance of the agency's principal location and the meeting site if it is not held at the agency's principal location.

Such notice must be delivered or posted, as applicable, at least twenty-four hours before the time of such meeting as specified in the notice.

- (3) The call and notices required under subsections (1) and (2) of this section shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings by the governing body.
- (4) The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.

42.30.090

### **Adjournments.**

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The governing body of a public agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the governing body may declare the meeting adjourned to a stated time and place. He shall cause a written notice of the adjournment to be given in the same manner as provided in RCW 42.30.080 for special meetings, unless such notice is waived as provided for special meetings. Whenever any meeting is adjourned a copy of the order or notice of adjournment shall be conspicuously posted immediately after the time of the adjournment on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

42.30.100

### **Continuances.**

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Any hearing being held, noticed, or ordered to be held by a governing body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the governing body in the same manner and to the same extent set forth in RCW 42.30.090 for the adjournment of meetings.

42.30.110

### **Executive sessions.**

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- (1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:
  - (a) To consider matters affecting national security;
  - (b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;
  - (c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;
  - (d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;
  - (e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;
  - (f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;
  - (g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;
  - (h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;
  - (i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), “potential litigation” means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

- (i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;
  - (ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or
  - (iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;
  - (j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However, final action on these matters shall be taken in a meeting open to the public;
  - (k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information;
  - (l) To consider proprietary or confidential nonpublished information related to the development, acquisition, or implementation of state purchased health care services as provided in RCW 41.05.026;
  - (m) To consider in the case of the life sciences discovery fund authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information.
  - (n) To consider in the case of a health sciences and services authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information.
- (2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer.

42.30.120

### **Violations – Personal liability – Penalty – Attorney fees and costs.**

- (1) Each member of the governing body who attends a meeting of such governing body where action is taken in violation of any provision of this chapter applicable to him or her, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars. The civil penalty shall be assessed by a judge of the superior court and an action to enforce this penalty may be brought by any person. A violation of this chapter does not constitute a crime and assessment of the civil penalty by a judge shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.
- (2) Any person who prevails against a public agency in any action in the courts for a violation of this chapter shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. Pursuant to RCW 4.84.185, any public agency who prevails in any action in the courts for a violation of this chapter may be awarded reasonable expenses and attorney fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause.

42.30.130

### **Violations – Mandamus or injunction.**

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Any person may commence an action either by mandamus or injunction for the purpose of stopping violations or preventing threatened violations of this chapter by members of a governing body.

42.30.140

### **Chapter controlling – Application.**

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If any provision of this chapter conflicts with the provisions of any other statute, the provisions of this chapter shall control: PROVIDED, that this chapter shall not apply to:

- (1) The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation, or profession or to any disciplinary proceedings involving a member of such business, occupation, or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary; or
- (2) That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group; or
- (3) Matters governed by chapter 34.05 RCW, the Administrative Procedure Act; or
- (4)(a) Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.

42.30.200

### **Governing body of recognized student association at college or university – Chapter applicability to.**

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The multimember student board which is the governing body of the recognized student association at a given campus of a public institution of higher education is hereby declared to be subject to the provisions of the open public meetings act as contained in this chapter, as now or hereafter amended. For the purposes of this section, “recognized student association” shall mean any body at any of the state’s colleges and universities which selects officers through a process approved by the student body and which represents the interests of students. Any such body so selected shall be recognized by and registered with the respective boards of trustees and regents of the state’s colleges and universities: PROVIDED, that there be no more than one such association representing undergraduate students, no more than one such association representing graduate students, and no more than one such association representing each group of professional students so recognized and registered at any of the state’s colleges or universities.

42.30.205

### **Training**

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Every member of the governing body of a public agency must complete training on the requirements of this chapter no later than ninety days after the date the member either: (a) Takes the oath of office, if the member is required to take an oath of office to assume his or her duties as a public official; or (b) Otherwise assumes his or her duties as a public official. In addition to the training required under subsection (1) of this section, every member of the governing body of a public agency must complete training at intervals of no more than four years as long as the individual is a member of the governing body or public agency. Training may be completed remotely with technology including but not limited to internet-based training.

42.30.210

### **Assistance by attorney general.**

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The attorney general's office may provide information, technical assistance, and training on the provisions of this chapter.

42.30.900

### **Short title.**

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This chapter may be cited as the "Open Public Meetings Act of 1971."

42.30.910

### **Construction – 1971 ex.s. c 250.**

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The purposes of this chapter are hereby declared remedial and shall be liberally construed.

42.30.920

### **Severability – 1971 ex.s. c 250.**

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If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

# Chapter 28A.320

## Revised Code of Washington

RCW 28A.320.015

### **School boards of directors – Powers – Notice of adoption of policy.**

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- (1) The board of directors of each school district may exercise the following:
  - (a) The broad discretionary power to determine and adopt written policies not in conflict with other law that provide for the development and implementation of programs, activities, services, or practices that the board determines will:
    - (i) Promote the education and daily physical activity of kindergarten through twelfth grade students in the public schools; or
    - (ii) Promote the effective, efficient, or safe management and operation of the school district;
  - (b) Such powers as are expressly authorized by law; and
  - (c) Such powers as are necessarily or fairly implied in the powers expressly authorized by law.
- (2) Before adopting a policy under subsection (1)(a) of this section, the school district board of directors shall comply with the notice requirements of the open public meetings act, chapter 42.30 RCW, and shall in addition include in that notice a statement that sets forth or reasonably describes the proposed policy. The board of directors shall provide a reasonable opportunity for public written and oral comment and consideration of the comment by the board of directors.



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The Washington State School Directors' Association provides leadership and advocacy, and empowers its members with knowledge and skills to govern with excellence.

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