

Westchester Putnam School Boards Association

District Clerk Workshop

Presented by:

Margo L. May, Esq. Partner

Julie M. Shaw, Esq., Partner

Shaw, Perelson, May & Lambert, LLP

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District Clerk

THE DISTRICT CLERK IS:

- An officer of the school district, but not required to be a resident of the school district
- Appointed by the Board of Education at the annual organizational meeting
- Appointed for one school year
- Must take and file the oath of office

District Clerk Duties

➤ Statutory Duties

§2130, Education Law

- “Perform all the clerical and other duties pertaining to his office.”

Article 41, Education Law (District Meetings)

Article 53, Education Law (District Meetings in Small City School Districts)

Article 7, Public Officers Law (Open Meetings Law)

Article 6, Public Officers Law (Freedom of Information Law)

District Clerk's Role

What is the District Clerk's Role?

- To understand her or his duties and responsibilities
- To get along with all Board members
- To treat all Board members with respect
- To become familiar with Board Bylaws and Policies regarding meetings
- To give notice of Board meetings, committee meetings in accordance with law
- To publish agendas
- To take accurate minutes

District Clerk's Role

- To perform all functions with regard to the Budget Vote and Election, Special District Meetings (such as Special Elections or Bond Referenda)
- Gives written notice of appointment to persons appointed as election inspectors, etc.
- Gives notice immediately to every person elected or appointed to School District office
- May serve as the Records Access Officer or assist the Records Access Officer

Dr. John L. Flateau Voting & Elections Database of New York Act

Chapter 56, Laws of 2024 - Effective April 1, 2026

- Adds requirements to the Election Law and Education Law regarding reporting election results to the NY Voting and Elections Database. “Election Authority” includes school districts.
- Includes:
 - Election results at election district level
 - Voting registration lists
 - Voter history files
 - Maps or other documentation of the configuration of election districts in a format specified by NYS Board of Elections

Dr. John L. Flateau Voting & Elections Database of New York Act

- Election Results Reporting (cont'd)
 - Information about absentee and affidavit ballots (tabulations of the number of valid and invalid ballots, the reasons why the ballots were invalid, quantity and disposition of affidavit ballots [subject to the cure procedure](#) in Election Law Section 9-209[3])
 - Lists of poll sites and [early voting sites](#)
 - [Adopted districting or redistricting plans for every election in every political subdivision](#)
 - Any other publicly available data requested by the NYS Board of Elections.

NOTHING IN THE ACT REQUIRES AN ELECTION AUTHORITY TO CREATE OR OTHERWISE PROVIDE A RECORD IT IS NOT CAPABLE OF COLLECTING.

Dr. John L. Flateau Voting & Elections Database of New York Act

- Applies to all elections on or after April 1, 2026.
- Pursuant to Election Law Section 3-112, upon certification of election results and completion of the voter history file, by January 1st after the election or within 10 business days, whichever is later, the information must be transmitted to the NYS Board of Elections.
- NYS Board of Elections is supposed to issue regulations within 180 days of April 1, 2026 on data standards for the method of processing and transmitting records required to be provided by election authorities.

Dr. John L. Flateau Voting & Elections Database of New York Act

- The NYS Board of Elections will determine which election authorities have not transmitted the required records every six months, and will publish the list of those that have not complied.
- Upon publication, the election authority will have 10 business days to come into compliance or provide an adequate reason by they are not capable of transmitting the records.
- Enforcement is through the NYS Attorney General's Office

Dr. John L. Flateau Voting & Elections Database of New York Act

- The NYS Board of Elections has the responsibility to collect and publish the data, in an effort to support research and transparency.
- Within 60 days of receipt of records, the NYS Board of Elections will post records on their public facing website (but not individual voter registration records or data that would identify individual voters).
- Records retention period for NYS Board of Elections is 12 year.

Federal and State Holidays

➤ Federal Holidays

Federal law (5 USC 6103) establishes the public holidays for Federal employees.

New Year's Day

Martin Luther King's Birthday

Inauguration Day*

Washington's Birthday

Memorial Day

Juneteenth

Independence Day

Labor Day

Columbus Day

Columbus Day

Veterans Day

Thanksgiving Day

Christmas Day

When a Federal holiday falls on a Saturday the holiday is observed on Friday and if it falls on Monday it is observed on Monday.

Federal and State Holidays

- State Holidays (Section 24, General Construction Law)
 - Similar to Federal holidays, but includes Flag Day which is the second Sunday in June
 - States that if a holiday falls on Sunday (except Flag Day), it is observed on Monday.
- Does not state that if a holiday falls on Saturday, it is observed on Friday.

Federal and State Holidays

- Other holidays that affect school districts:
- Asian Lunar New Year and Diwali
 - NOT included in Section 24, General Construction Law, but Education Law, Section 3604 prohibits [NYS school districts](#) from holding session on the “first day of the second lunar month after the winter solstice in the preceding calendar year” (Asian Lunar New Year) and [New York City schools](#) from holding session on the “fifteenth day of the eighth month of the Indian calendar (Diwali)
 - Both vary from year to year.
 - Only apply if it falls on a school day.

Open Meetings Law

Quorum

- Section 41 of the General Construction Law defines a “quorum” as a majority of all seats on the Board of Education:
 - Necessary to convene a Board Meeting
 - Necessary to take any official action (pass a resolution or adopt a policy)
- Supermajority Vote Requirements
 - A school board is not authorized by law to adopt a policy requiring affirmative votes by more than a majority of the board members.
 - Robert’s Rules supermajority vote requirements do not apply to school district.

Open Meetings Law

Supermajority

- Supermajority Board voting requirements
 - 3/4ths vote to supersede a textbook within 5 years of its designation
 - 2/3rds vote to employ a teacher (administrator or teaching assistant) related by blood or marriage to a Board member
 - 3/5ths vote to standardize equipment or supplies of more than \$10,000
 - 2/3rds vote to employ a Board member who is a licensed physician as the school physician
 - 2/3rds vote to approve bond resolutions and capital note resolutions.

Open Meetings Law

Board Meetings

- ▶ Board meetings are meetings of a public body, not public meetings.
- ▶ Section 1708, Education Law requires boards of education to conduct a regular meeting at least once a quarter
- ▶ In city school districts other than NYC, monthly meetings are required
- ▶ Neither the Education Law nor the Public Officers Law prescribes the procedures to be followed at Board meetings or to prepare for meetings
- ▶ Local decisions addressed by policies and bylaws
- ▶ The rules cannot be unreasonable

Open Meetings Law

Board Meetings

- ❖ Article 7, Sections 100 - 111 of the Public Officers Law
- ❖ Legislative Declaration:

It is essential to the maintenance of a democratic society that the public business be performed **in an open and public manner** and that the citizens of this state be fully aware of and **able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy.** The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it.

Open Meetings Law

Board Meetings

- The Open Meetings Law (OML) defines how boards of education, their committees/subcommittees and other legally required committees must notice their meetings.
- Possible consequences of failure to follow OML:
 - Annulment of Board action
 - Paying the legal fees of the Petitioner who brings suit and prevails

Open Meetings Law

Board Meetings

- What is a meeting of a public body?
 - ✓ OML defines a meeting as an official convening of a public body for the purpose of **conducting public business**
- What is a public body?
 - ✓ Any entity for which a quorum is required in order to conduct public business **and** which consists of **two or more members**, performing a governmental function, or **committee or subcommittee or other similar body of the public body.**

Open Meetings Law

Board Meetings, Committee Meetings

➤ Applicable to:

- ✓ Board of Education Meetings (Regular, Special and Workshops)
- ✓ Board Committee/Subcommittee Meetings
- ✓ District Committees required by Statute or Regulations (e.g. Audit Committee, Shared Decision Making, Title I)
- ✓ Does not apply to advisory committees like community involvement committees that are established at the Board's discretion (e.g. Finance, Energy, etc.)

“A necessary function in the decision-making process shall not include the provision of recommendations or guidance which is purely advisory and which does not require further action by the state or agency or department thereof ...”

Open Meetings Law

Committee Meetings

- Advisory Opinions on Committees:
 - When the core of the committee consists of Board members and there is an equal or lesser number of other members, all of whom are District employees, OML applies.
 - Budget Committee - Three members of a seven member Board, the Superintendent and School Business Official - discusses general budget items, budget process, collective bargaining and provides feedback to the Board in open meetings - OML applies

Open Meetings Law

Committee Meetings

- Advisory Opinions on Committees (cont'd)
 - Advisory Committee (not required by law) consisting of a variety of stakeholders, such as administrators, teachers, CSEA, parents, students, consultants - OML does not apply even if one or two Board members are on the committee.
 - Committee consists of three Board members (out of nine); three additional Board members come to the meeting.
 - ✓ A quorum of the Board is present
 - ✓ If two members sit at the table with the other three Board members who are committee members, it becomes a meeting of the Board.
 - ✓ If the three Board members sit in the audience as observers and are treated the same as the other observers, it would still be a committee meeting.

Open Meetings Law

Board Meetings

- Voting and action may only be carried out at a public meeting during which a quorum of the Board members is physically present or present by traditional videoconference.
- A meeting does not occur if members have a chance encounter or meet for reasons other than for conducting business.
 - Attending a seminar or workshop
 - Social gathering (as long as school business is not discussed)

Open Meetings Law

Board Meetings

- What does it mean to conduct public business?
 - When action is taken upon a resolution/motion or policy;
 - When Board members deliberate about the business of the school district;
 - A string of e-mails or telephone calls among Board members that results in a consensus among a quorum of the Board would be an illegal meeting
- What would not constitute a meeting?
 - A Board Retreat
 - For building communications skills, interpersonal relations, training
 - Not for discussing or developing vision, mission, or goal setting
 - Not for discussing policies
 - A briefing by administration of fewer than a quorum.
 - A public hearing
 - A meeting with a Board of Education and its legal counsel (advice of counsel)

Open Meetings Law

Board Meetings

➤ Notice of Meetings

- If scheduled a week in advance (at least 72 hours)
- Special meetings within less than a week (as soon as is practicable)
- If less than 24 hours notice of a special meeting is given, the Board members sign a waiver of the 24 hours notice
- Notice includes posting on the website, sending to local media electronically, and conspicuous posting in one or more designated public places.
- If a board member will be attending via traditional video conferencing notice of that location as well and that the public can attend from that location.
- If the meeting will be live streamed over the internet, the notice must include the internet address of website streaming the meeting.

Open Meetings Law

Board Meetings

- Public Notice of agenda items and documents to be discussed at an Open Meeting
- The OML states that materials must be made available upon request and posted to the District website, to the extent practicable, at least 24 hours prior to the meeting.
 - Includes documents scheduled to be the subject of discussion at the Board meeting that would be available under FOIL, as well as resolutions, regulations, policies and amendments thereto
 - Rule of thumb: If a document could legitimately be discussed in an executive session, it would not be subject to this requirement.

Open Meetings Law

Board Meetings

➤ Traditional videoconferencing

- Location of remote attendance by Board member must be in the Notice of the meeting
- The notice invites the public to attend from the in-district and remote location(s)
- More than one Board member can attend remotely at the same meeting
- The public has the right to be present at any location from which Board members attend the meeting in-person or remotely.
- A Board member attending by traditional videoconference counts towards the quorum
- According to the Committee on Open Government, you cannot have a meeting where every member attends from a remote location and there must be at least several Board members attending from an in-district location

Open Meetings Law

Board Meetings

- Videoconferencing Under Extraordinary Circumstances (Expires July 1, 2026)
 - Expands the use of videoconferencing by public bodies to conduct open meetings under extraordinary circumstances
 - Optional
 - May be used provided that a minimum number of board members are present to fulfill the public body's quorum requirement in the same physical location or locations where the public can attend (in-district and by traditional videoconference)
 - Extraordinary circumstances defined by the District - can include disability, illness, caregiving responsibilities or other significant impediment to the Board member's physical attendance at the meeting.

Open Meetings Law

Board Meetings

Extraordinary circumstances (cont'd)

- To use video conferencing in extraordinary circumstances where the public may not attend at the remote location(s), a **public hearing must** be held, written procedures must be developed and a **resolution adopted** for such use;
- The resolution must identify the bodies for which remote video attendance would be permissible which could include: the Board meetings and, if desired, committees/subcommittees of the Board, as well as other committees of the District which are subject to the Open Meetings Law.
- Board members who videoconference from a remote location that is not open to in-person attendance **DO NOT COUNT** towards a quorum but they may fully participate and vote as long as the quorum requirement is met.
- The public viewing the meeting remotely must have the right to participate in the public comment part of the meeting in real time, if public speaking is part of the meeting.

Open Meetings Law

Board Meetings

Extraordinary circumstances (cont'd)

- The written procedures developed regarding board member and public attendance rights must be conspicuously posted on the District's website.
- Except during executive sessions, the public must be able to hear, see and identify Board members attending by videoconference.
- Minutes must include the names of members participating remotely under extraordinary circumstances (but not the address).

Open Meetings Law

Board Meetings

Extraordinary circumstances (cont'd)

- **Public Notice of the Meeting** must describe (1) the use of videoconferencing for the particular meeting, (2) where the public can view and/or participate in the meeting, (3) where required documents and records will be posted or available, and (4) identify the physical location for the meeting where the public can attend.
- The meeting must be recorded and the recordings posted or linked on the district website within 5 days following the meeting.
- Must be available for 5 years
- Upon request, the recording must be transcribed.

Open Meetings Law

Board Meetings

- The OML was amended in 2023 with regard to videoconferencing under extraordinary circumstances to provide that where a Board member has a disability (defined in Sec. 292 of the Human Rights Law) which renders them unable to participate in-person at a meeting location where the public can attend, they are considered present for purposes of fulfilling the quorum requirements, as long as all other criteria are met, AND as long as there is at least one physical location where the public can attend the meeting.

* The term “disability” means (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment, provided, however, that in all provisions of this article dealing with employment, the term shall be limited to disabilities which, upon the provision of reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held.

Open Meetings Law

Board Meetings

➤ Miscellaneous:

- The audience must be able to observe (see, hear and identify) the members of the Board at the meeting site.
- Any rules and regulations established must be reasonable
- The meeting site should be of sufficient size to house the public expected to be in attendance.
- The meeting site must be accessible to those with physical disabilities
- Unobtrusive video and audio devices must be allowed.
- The Committee on Open Government has stated that early morning meetings (7:20 A.M.) are inconsistent with the Open Meetings Law (OML-AO-3828)

Open Meetings Law

Board Meetings

Executive Sessions

- An executive sessions is part of an open meeting and must be held during the time frame of the properly convened open meeting.
- An agenda that states the executive session is prior to the public meeting is incorrect.
- An executive session indicated on an agenda must state that it is a proposed or anticipated executive session, such as “proposed executive session subject to Board approval” or “it is anticipated that the Board will move to convene an executive session.”

Open Meetings Law

Board Meetings

Executive Sessions (cont'd)

- The reason for the executive session is not required to be on the agenda but must be stated in the motion to convene the executive session
- The permissible reasons for going into executive session are prescribed by law and are exclusive.
- The reasons commonly used by school districts include:
 - Matters that will imperil the public safety if disclosed
 - Proposed, pending or current litigation
 - For current litigation, provide the name of the litigation

Open Meetings Law

Board Meetings

Executive Sessions (cont'd)

- Possible litigation is not a proper reason
- Collective negotiations under the Taylor Law - State the name of the bargaining unit(s)
- 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
 - ✓ “Personnel” is not a proper reason
- The proposed acquisition, sale or lease of real property, but only when publicity would substantially affect the value of these things.

Open Meetings Law

Board Meetings

Executive Sessions (Cont'd)

- In addition, to discuss:
 - Matters made confidential under Federal Law, such as the Family Educational Rights and Privacy Act (FERPA) - to be used, for example, when discussing student matters, appeal of student disciplinary hearing
 - Matters made confidential under State Law - such as attorney-client privileged matters.
- Additional reasons for executive session for Audit Committees:
 - To meet with the external auditor prior to the start of the audit
 - To review with the auditor any risk assessment of the District's fiscal operations
 - To receive and review the draft annual audit report and management letter, working with the auditor, to assist the Board in interpreting the documents.

Open Meetings Law

Board Meetings

Executive Sessions (cont'd)

- Merely regurgitating the statutory language or using shorthand such as “personnel” or “litigation” or “real estate” is not sufficient.
- There must be precise reasons for entering executive session.
- If the category is not named in the resolution to convene the executive session, that category may not be discussed.
- If the Board will or may take action after the executive session, the motion must include: “and the Board will (or may) take action after the executive session.”
- If that language is not included, then the Board is precluded from taken action after the executive session.

Open Meetings Law

Board Meetings

- Voting in Executive Session is restricted to voting on:
 - Section 3020-a Education Law Charges or similar due process disciplinary hearings.
 - In the past, Boards voted on arranging for the placement of students with disabilities in executive session, but that does not occur any longer.
 - All other votes must take place at an open meeting.

Open Meetings Law

Board Meetings

➤ Confidentiality

- Section 805-a of the General Municipal Law states:

“No municipal officer or employee shall ... (b) disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interest ...”
- In 2005, the Commissioner put Board members on notice that breach of confidentiality regarding a matter that can be legitimately discussed in executive session could result in the Board member's removal from the Board.
- Only a quorum vote of the Board can relinquish the protection afforded to lawful speech exchanges in executive session.
- The Commissioner will not remove a Board member for breaching confidentiality if the subject discussed in executive session is not a legitimate subject for executive session.

Open Meetings Law

Board Meetings

Regular and Special Meeting Minutes

- OML requires that minutes be taken at all open meetings of a public body which shall consist of minimally:
 - A record or summary of all motions, proposals, resolutions and any other matter formally voted upon;
 - The vote on all motions, proposals, resolutions, including who voted in favor, against and who abstained;
 - Board members present; if a Board member arrives late or leaves early, the time of arrival or departure.
 - Minutes may include a summary of public comment, Board member comments, but that is not required by law.

Open Meetings Law

Board Meetings

➤ Minutes

- Minutes must be posted on the website within two weeks of the meeting.
- Unabridged video or audio recordings or unabridged written transcripts may be deemed to be meeting minutes.

➤ Executive Session Minutes

- A record or summary of the final determination on Section 3020-a probable cause
- Minutes should not otherwise be taken
- Minutes must be posted on the District website within one week of the executive session

Open Meetings Law

Board Meetings

Public Comment

- No statutory requirement in Education Law or Public Officers Law to allow members of the public to speak at Board meetings
- The Commissioner of Education has encouraged school boards to allow public comment on matters under consideration
- Should be addressed in Board Policy
- Rules regarding public comment must be reasonable

Open Meetings Law

Board Meetings

Public Comment (cont'd)

Considerations:

- One or two public comment portions of the meeting
 - If two, one on agenda items and one on non-agenda items
- The amount of time for the public comment portions of the meeting
- Maximum amount or time per speaker
- Procedure for signing up to speak, if any

Open Meetings Law

Board Meetings

Public Comment

- Who may speak: residents vs others
 - ✓ In a 1992 Commissioner's Decision, the Commissioner said that school boards do not have to allow non-residents to speak at board meetings, even when there is a board policy allowing district residents to speak.
 - ✓ In 2006 the Committee on Open Government concurred with the 1992 Commissioner's Decision that school boards are not required to allow members of the public to speak at board meetings, but cautioned that if public participation is permitted, it may not discriminate between residents and non-residents

Board Meetings

Open Meetings Law

Public Comment

- Committee on Open Government has also stated that since any member of the public has the right to speak at Board meetings, you cannot require them to provide name, address or other information.