School Board

Exhibit - School Board Records Maintenance Requirements and FAQs

Open Meetings Act

The Open Meetings Act (OMA) requires public bodies to "keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording." 5 ILCS 120/2.06(a). Minutes must include, but are not limited to: (1) the date, time, and place of the meeting; (2) the members of the public body recorded as either present or absent and whether the members were physically present or present by means of video or audio conference; and (3) a summary of discussion on all matters proposed, deliberated, or decided, and record of any votes taken. Id.

The remainder of 5 ILCS 120/2.06 addresses the approval of open meeting minutes, the treatment of verbatim recordings of closed meetings, the semi-annual review of closed meeting minutes, the confidential nature of closed meeting minutes, and the right of persons to address public officials under rules established and recorded by the public body. The requirements of 5 ILCS 120/2.06, as well as OMA requirements pertaining to Board agendas, are included in Board policy 2:220, *School Board Meeting Procedure*.

Exhibit 2:220-E3, *Closed Meeting Minutes*, provides a sample template for keeping closed meeting minutes that incorporates the requirements of 5 ILCS 120/2.06 of OMA. It also includes an area to designate if the Board has determined, pursuant to 5 ILCS 120/2.06(d), that the closed meeting minutes no longer need confidential treatment.

Exhibit 2:220-E4, *Open Meeting Minutes*, contains a protocol for open meeting minutes that incorporates the requirements of Section 2.06 of OMA. It also provides a sample template for keeping open meeting minutes.

Exhibit 2:220-E5, *Semi-Annual Review of Closed Meeting Minutes*, contains a process for implementing the semi-annual review of closed meeting minutes, and exhibit 2:220-E6, *Log of Closed Meeting Minutes*, is designed to facilitate this semi-annual review
(every six months, or as soon after as is practicable, taking into account the nature and meeting schedule of the Board). 5 ILCS 120/2.06(d).

Exhibit 2:220-E9, *Requirements for No Physical Presence of Quorum and Participation by Audio or Video During Disaster Declaration*, contains a process for compliance with 5 ILCS 120/7(e) when a board is meeting without a physical quorum present at the meeting location during a disaster declaration related to public health concerns.

Local Records Act

The Local Records Act (LRA) provides that public records, including "any book, paper, map, photograph, digitized electronic material, or other official documentary material, regardless of physical form or characteristics, made, produced, executed or received by any agency or officer pursuant to law or in connections with the transaction of public business and preserved or appropriate for preservation by such agency or officer" must be preserved unless the State Local Records Commission has given permission to destroy those records. 50 ILCS 205/3 and 7. Board records, including agendas, meeting packets and meeting minutes, fall into this definition.

Public bodies located in Cook County must work with the Local Records Commission of Cook County to determine how long they must retain public records. Public bodies located outside of Cook County must work with the Downstate Local Records Commission to determine how long they must retain public records.

Board policy 2:250, *Access to District Public Records*, contains a subhead entitled **Preserving Public Records** which provides as follows:

> 1. Public records, including email messages, shall be preserved and cataloged if: (1) they are evidence of the District's organization, function, policies, procedures, or activities, (2) they contain informational data appropriate for preservation, (3) their retention is required by State or federal law, or (4) they are subject to a retention request by the Board Attorney (e.g., a litigation hold), District auditor, or other individual authorized by the School Board or State or federal law to make such a request. Unless its retention is required as described in items numbered 3 or 4 above, a public record, as defined by the Illinois Local Records Act, may be destroyed when authorized by the Local Records Commission.

See the sample policy, 2:220, *School Board Meeting Procedure*, for all relevant footnotes. Also see administrative procedure 2:250-AP2, *Protocols for Record Preservation and Development of Retention Schedules*, for recommendations regarding school district records retention protocols and links to web-based record management resources.

Open Meeting Minutes

Are we required to approve them?	**Must they be semi-annually reviewed?**	**May we release them to the public?**	**May we destroy them?**
Yes, within 30 days or at the next subsequent meeting, whichever is later. *A public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later*. 5 ILCS 120/2.06(b).	No. Unlike the closed meeting requirement, OMA does not contain semi-annual review requirements for open meeting minutes.	Yes, must release within 10 days after minutes are approved. *The minutes of meetings open to the public shall be available for public inspection within 10 days after the approval of such minutes by the public body. [A] public body that has a website that the full-time staff of the public body maintains shall post the minutes of a regular meeting of its governing body open to the public on the public body's website within 10 days after the approval of the minutes by the public body. [A]ny minutes of meetings open to the public posted on the public body's website shall remain posted on the website for at least 60 days after their initial posting.* 5 ILCS 120/2.06(b).	No. There is no OMA provision permitting the destruction of open meeting minutes, and **they must be preserved unless the State Local Records Commission has given permission to destroy them.** If a public body would like to destroy open meeting minutes, then it must comply with the LRA and work with its Local Records Commission. It is highly unlikely, however, that the Local Records Commission would approve of their destruction.

Open Meeting Verbatim Recordings

Are we required to approve them?	**Must they be semi-annually reviewed?**	**May we release them to the public?**	**May we destroy them?**
No. OMA does not require public bodies to approve verbatim recordings of open meetings.	No. Unlike the closed meeting requirement, OMA does not require public bodies to keep verbatim recordings of open meetings, unless the public body is meeting without the physical presence of a quorum during a disaster declaration related to public health concerns. 5 ILCS 120/7(e). OMA does not contain semi-annual review requirements for open meeting verbatim recordings.	Yes. Unlike the closed meeting requirement, OMA does not require public bodies to keep verbatim recordings of open meetings, unless the public body is meeting without the physical presence of a quorum during a disaster declaration related to public health concerns. 5 ILCS 120/7(e). If a public body makes verbatim recordings of open meetings, then such recordings are subject to public disclosure pursuant to the Freedom of Information Act. 5 ILCS 140/.	Open meeting verbatim recordings made of meetings held without the physical presence of a quorum of a public body during a disaster declaration related to public health concerns may be destroyed after 18 months if the prerequisites are met. (See **Closed Meeting Verbatim Recordings** subhead, below). *[P]ublic bodies holding open meetings under this subsection (e) must also keep a verbatim record of all their meetings in the form of an audio or video recording. Verbatim records made under this paragraph (9) shall be made available to the public under, and are otherwise subject to, the provisions of Section 2.06*. 5 ILCS 120/7(e)(9). In all other cases, if a public body would like to destroy open meeting verbatim recordings, then it must comply with the LRA and work with its Local Records Commission.

Closed Meeting Minutes

Are we required to approve them?	**Must they be semi-annually reviewed?**	**May we release them to the public?**	**May we destroy them?**
Yes. OMA does not directly state public bodies are required to approve closed	Yes. *Each public body shall periodically meet to review all existing*	Yes, if prerequisites are met. *Minutes of meetings closed to the public shall*	No. There is no OMA provision permitting the destruction of closed

Are we required to approve them?	Must they be semi-annually reviewed?	May we release them to the public?	May we destroy them?
meeting minutes, nor does it set a time frame for such approval. However, OMA Section 2.06(d) requires public bodies to meet at least semi-annually to "review minutes of all closed meetings." 5 ILCS 120/2.06(d). Moreover, OMA Section 2.06(c) specifically allows the destruction of closed meeting verbatim recordings only if certain conditions are met, one of which is that "the public body approves minutes of the closed meeting that meet the written minutes requirements of subsection (a) of this Section." 5 ILCS 120/2.06(c)(2). Both of these tasks would be difficult to achieve if closed meeting minutes were not first approved. One practice is to approve closed meeting minutes within the same time frame that open meeting minutes are approved – within 30 days of the meeting or at the next subsequent meeting, whichever is later.	*minutes of all prior closed meetings (this includes records from all time that the board has been in existence). Meetings to review minutes shall occur every 6 months, or as soon thereafter as is practicable, taking into account the nature and meeting schedule of the public body. At such meetings a determination shall be made, and reported in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection*. 5 ILCS 120/2.06(d).	*be available only after the public body determines that it is no longer necessary to protect the public interest or the privacy of an individual by keeping them confidential.* 5 ILCS 120/2.06(f).	meeting minutes, and **they must be preserved unless the State Local Records Commission has given permission to destroy them.** In addition: *No minutes of meetings closed to the public shall be removed from the public body's main office or official storage location, except by vote of the public body or by court order.* 5 ILCS 120/2.06(f). If a public body would like to destroy closed meeting minutes, then it must comply with the LRA and work with its Local Records Commission. It is highly unlikely, however, that the Local Records Commission would approve of their destruction.

<u>Closed Meeting Verbatim Recordings</u>

Are we required to approve them?	Must they be semi-annually reviewed?	May we release them to the public?	May we destroy them?
No. OMA does not require approval of closed meeting verbatim recordings.	No. OMA does not require semi-annual review of closed meeting verbatim recordings.	Possibly but unlikely. *Unless the public body has made a determination that the verbatim recording no longer requires confidential treatment or otherwise*	Yes, after 18 months if prerequisites are met. *The verbatim record may be destroyed without notification to or the approval of a records commission or the State*

Are we required to approve them?	Must they be semi-annually reviewed?	May we release them to the public?	May we destroy them?
		consents to disclosure, the verbatim record of a meeting closed to the public shall not be open for public inspection or subject to discovery in any administrative or judicial proceeding other than one brought to enforce this Act. 5 ILCS 120/2.06(e). But see Kodish v. Oakbrook Terrace Fire Protection Dist. (235 F.R.D. 447 (N.D.Ill. 2006), where a federal district court ordered that closed meeting verbatim recordings be disclosed to the Plaintiff in discovery because his primary claim was brought under federal law.	*Archivist under the Local Records Act or the State Records Act no less than 18 months after the completion of the meeting recorded but only after: 1.) the public body approves the destruction of a particular recording; and 2.) the public body approves minutes of the closed meeting that meet the written minutes requirements of subsection (a) of this Section.* 5 ILCS 120/2.06(c). In addition: *No verbatim recordings shall be recorded or removed from the public body's main office or official storage location, except by vote of the public body or by court order.* 5 ILCS 120/2.06(e).

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