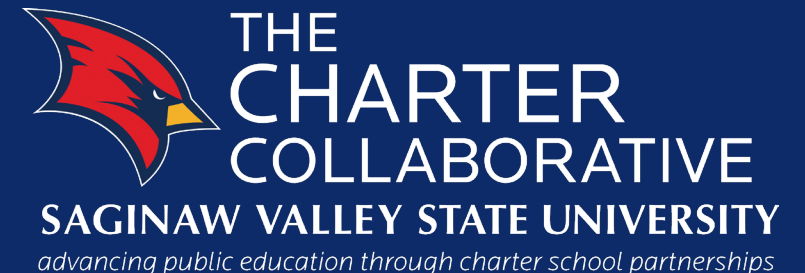




Board of Directors Professional Development **Open Meetings Act**



BOARD MEETINGS – OPEN MEETINGS ACT

- ALL meetings are open to public
- ALL decisions are made in public
- ALL deliberations are made in public
- MUST allow public to address the board
- Committees that have a quorum of board members must meet in public and comply with the 18-hour notice requirement
- Committees charged with making decisions must meet in public and comply with the 18-hour notice regardless of number of members

Example: A two-member personnel committee has been given the responsibility to interview candidates for principal/director and select a final 3 list for the full school board. That selection process involves making decisions and is an open meeting subject to the Open Meetings Act.

- Emergency meetings do not require a notice (Be sure it is a true emergency)

BOARD MEETINGS AND BOARD ACTIONS

- SVSU recommends that a board meeting be cancelled if the meeting is delayed more than 30 minutes after the posted start time.
 - ✓ A long delay is unfair to public and staff who have taken time to attend.
 - ✓ Any discussions among board members regarding school business with less than a quorum could be interpreted by some as an Open Meetings Act violation.
- In order to have a school board that can have meetings and can legally count votes on agenda items and other board actions the board must have the following:
 - ✓ Have a majority of board seats filled by members who have taken the oath of office (i.e., 3 of 5 total seats filled or 4 of 7 total seats filled)
 - ✓ A quorum attending meetings with a minimum number of members based on a majority of seats. Again (i.e., 3 of 5 total seats filled or 4 of 7 total seats filled).
 - ✓ A majority vote is also based on number of seats. For a 5-person board, an action is legal with a minimum of 3 yes or no votes. For a 7-person board, 4 yes or no votes.

BOARD MEETINGS AND BOARD ACTIONS

Example 1:

All 5 seats on a board are filled. But one sitting board member is absent. Two board members who are at the meeting have not taken their oath of office (one member is new and the other is starting her second term). In this instance, there are only 2 members to start a meeting, which is not a quorum. The meeting cannot be started until one of the new term members have taken their oath.

Example 2:

There are 4 filled seats on a 5-member board. Only 3 members are present so there is a quorum to have the meeting. Some agenda items have a vote of 2 yes votes and 1 no vote. Since a voting majority is 3 votes of the 5 seats, the votes of 2 to 1 would not be considered approved. The board president or administration could decide to put the items on a future board meeting agenda when all 4 members are present in hopes that that at least 3 members would vote yes.

BOARD MEETINGS AND BOARD ACTIONS

- Stated differently - To take a legal action such as approving an agenda item, there must be a majority of votes based on the number of seats and **NOT** the number of members present at the meeting and **NOT** based on the number of seats filled.
 - ✓ The only exception is if members have to abstain for valid reasons, there can be less than a majority of seats to approve. Extreme example: There are 7-seats and all board members are present. There is a vote to hire a contractor who is related to 6 of the board members. Those 6 board members should abstain due to the relationship, and the remaining board member could approve the measure.
- All meetings must have a quorum in-person. The only exception is for military service. Board members can participate in a meeting virtually, but they cannot vote and cannot count toward a quorum to hold a meeting or for board actions.

BOARD MEETINGS – MINUTES

- Minutes from prior meetings are to be approved at the next regular scheduled board meeting
EXAMPLE: Two weeks after the regular June meeting, the Board calls a special meeting to approve the budget. If the minutes for the regular June meeting are done, the board could approve at the special meeting or wait until the regularly scheduled July meeting.
- Minutes MUST reflect the deliberations and decisions of the board.
 - If there is discussion or information, some indication of what was said should occur in the minutes
 - The same is true if there are public comments
 - Do not need great detail but a reader should get the gist of what happened
 - Yes and No or Ayes and Nays can be used
 - A board member abstaining must publicly state reason
 - Vote should reflect what happened:
 - ✓ **Approved unanimously**
 - ✓ **Ayes – Smith, Jones, Dobbs, Jenkins Nays- Jackson, Watts Abstain- Chandler because of**
 - ✓ **Smith–Yes, Jones-Yes, Dobbs-Yes, Jenkins-Yes, Jackson-No, Watts-No, Chandler Abstain because of**

CASE DISCUSSION

You have a 7-member school board. There are 3 members not present as 2 are out-of-town and 1 is ill. The remaining 4 board members hold the meeting and for the most part, there is no disagreement on items. On a few items, there is some disagreement, and the board votes are 3 to 1 to approve. The board president has indicated that since the vote is approved by a majority of board members present.

Is the board president correct and are the items legally approved?

BOARD MEETINGS – MEETING NOTICES

Special board meeting notices to the public and board should contain the following elements:

- The school board/board of directors of XYZ Academy has called a special meeting
- The date of the meeting
- The time of the meeting
- The location and address of the meeting
- The purpose of the meeting
- Appropriate board officer should sign and date the notice

BOARD MEETINGS – MEETING NOTICES

There should also be a message similar to the following to cover potential ADA issues:

Any person with a disability who needs accommodations for participation in this meeting should contact the Academy at (phone number) in advance of the meeting to request assistance. Official minutes of the school board meetings are stored and available for inspection at the Academy or are available on the Academy website at (www.....)

Board notices for all regular, special, and re-scheduled meetings must be posted at least 18 hours before the meeting start time. All board meeting calendars and notices MUST be posted in school locations where people can see them even if school is closed such as an outside door. In addition, notices should be easily accessible on school websites—this does NOT substitute for posting at the school site.

BOARD MEETINGS – OPEN MEETINGS ACT: CLOSED SESSIONS

- It is critical for all board members to understand The Open Meetings Act with respect to what is allowed and what is not. Board members can be held criminally liable for violating the Act not to mention the public perception fallout that can occur.
- The Act can be found at the following internet address: [mcl-act-267-of-1976.pdf \(mi.gov\)](#)
- It is human nature to not want to publicly discuss matters that might be embarrassing or place a board member or staff member in a difficult position-politically or otherwise. However, there are specific reasons and specific language that must be adhered to for closed sessions.

BOARD MEETINGS – OPEN MEETINGS ACT: CLOSED SESSIONS

- Under MCL 267 of 1976, Section 8 of 15.268, there are 11 specific reasons:
 - (a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent.
 - (b) To consider the dismissal, suspension, or disciplining of a student if the public body is part of the school district, intermediate school district, or institution of higher education that the student is attending, and if the student or the student's parent or guardian requests a closed hearing.
 - (c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.
 - (d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.

BOARD MEETINGS – OPEN MEETINGS ACT: CLOSED SESSIONS

- Under MCL 267 of 1976, Section 8 of 15.268, there are 11 specific reasons:
 - (e) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.
 - (f) To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for employment or appointment to a public office must be held in an open meeting pursuant to this act.
 - (g) Partisan caucuses of members of the state legislature.
 - (h) To consider material exempt from discussion or disclosure by state or federal statute.

BOARD MEETINGS – OPEN MEETINGS ACT: CLOSED SESSIONS

- Under MCL 267 of 1976, Section 8 of 15.268, there are 11 specific reasons:
 - (i) For a compliance conference conducted under section 16231 of the public health code, 1978 PA 368, MCL 333.16231, before a complaint is issued.
 - (j) In the process of searching for and selecting a president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, to review the specific contents of an application, to conduct an interview with a candidate, or to discuss the specific qualifications of a candidate.
 - (k) For a school board to consider security planning to address existing threats or prevent potential threats to the safety of the students and staff.

CASE DISCUSSION

The school board has been notified by the school leader that she has accepted a position elsewhere. The board has authorized the position be posted.

During the application period, ten individuals have applied. The school board decides to interview four of the candidates. Two of the candidates asked for their interviews to be held in closed session due to a concern about their current employer finding out they are looking for another position.

The board also wishes to go into closed session to discuss ideas about the school leader compensation package.

Should the board go into closed session or both or either reason? If so which one(s) and why?

BOARD MEETINGS – OPEN MEETINGS ACT: CLOSED SESSIONS

- The Open Meetings Act requires a 2/3 roll-call vote in the affirmative to go into closed session.
- Deliberations and decisions made in open session
- Separate minutes required for closed session that are NOT made available to the public.
- The motion to go into closed session MUST include the reason under the law for the closed session. The minutes MUST also reflect the reason.
- EXAMPLE: To go into closed session to consider a discipline of an employee the closed session item on the agenda should read: **CLOSED SESSION- Under MCL 267, Section 8 (a) of 15.268, the board requests to go into closed session for discussion of a personnel matter.**

The board member making the motion should say the above AND indicate that the board will return to open session for possible action or to adjourn or to continue the meeting.. etc.

2/3 of members must vote yes by roll call vote; 5 of 7 or 4 of 5.

- Board members are not permitted to discuss in open session or other settings what was discussed in closed session.

CASE DISCUSSION

You have a 5-member school board. The board has an agenda item to go into closed session for the purpose of discussing a letter from an angry parent that has a number of concerns about some teachers and the curriculum at the school.. The board president asks for unanimous approval to go into closed session to discuss the letter. With the vote, the ayes were 3 and the nays were 2. The board went into closed session and discussed the matter.

Are there any concerns with how this was handled?

BOARD MEETINGS – OTHER ITEMS TO NOTE

- For Either Open or Closed Session Minutes, student names for disciplinary matters should not be listed to comply with FERPA. Use Student A, B, etc. This should be done regardless of whether the student/parent requests closed session or not.
- Staff disciplinary issues discussed in closed session should not include the name of the individual in the public agenda or included in minutes.
- Attorney-Client privilege exists with closed sessions including any correspondence.
- The only time closed session minutes or either items can be released to specific parties or the public would be under court order.

CASE DISCUSSION

Three board members have asked you to join them at a restaurant for a drink after a board meeting. The board has 7 members. At the meeting, the board members discussed hiring a contractor to do some work at the academy. There are several contractors that want the work but one of the board members personally knows one of the contractors and knows the quality of the work is very good. Administration is accepting bids for the work the week before the next board meeting. At the restaurant, you listen as the other members agree to hire the contractor being discussed unless the bid is way out of line. They are asking you if you would be willing to support such a motion.

What do you think?

Questions

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