

- b. Although special meetings are ordinarily held to consider a single item of business, other items of business may be included on the agenda for that meeting by consent of the board members present.

B. To hold a school board meeting, there must be:

1. A quorum of the board
 - a. A quorum is a simple majority (more than half) of the total number of board members. A quorum is required for the board to conduct any business. A majority of the entire board, not just of those present, is required for the board to take any official action.
2. Public notice of time and place of the meeting
 - a. Under the Open Meetings Law (see below), public notice stating the time and place of any board meeting must be given to the news media and conspicuously posted in one or more designated public locations at least 72 hours before the meeting, if it has been scheduled at least one week before it occurs.
 - b. If the meeting is scheduled less than one week in advance, public notice of the time and place must be given to the news media “to the extent practicable” and posted conspicuously a reasonable time before the meeting.
 - c. In addition, school board members must receive at least 24 hours notice of any board meeting. A board majority may not dispense with notice of a board meeting to other board members, but individual board members may waive this 24-hour notice requirement in case of an emergency.

C. Open Meetings Law: As school boards are public bodies, the Open Meetings Law (Pub. Off. Law §103) requires school board meetings that involve “school district business” be open to the public.

1. “School district business” includes not only binding votes of the board, but also any activity that is preliminary to such a vote or involves consideration of a matter that could be the subject of board action. See N.Y. Pub. Off. L. §102.

2. All board meetings are covered by the Open Meetings Law except:

- a. A “judicial or quasi-judicial proceeding”; or
 - Ex: A meeting where the school board solely reviews the transcripts and evidence presented at a student disciplinary meeting when the student’s parents appeal the suspension
- b. “Any matter made confidential by federal or state law.”

- Ex: A meeting involving solely the discussion of student records

D. Education Law §1708 details the requirements for regular school board meetings.

1. A school board must meet at least once per quarter;
2. A school board must appoint one or more committees to visit every school and department under its supervision at least yearly;
3. Every Board meeting shall be open to the public, unless it is an executive session.

E. Executive Session: An executive session is a portion of the school board meeting that is not open to the public. It can take place only upon a majority vote of the total membership of the board taken at an open meeting.

1. Executive sessions are permitted only for a limited number of specific purposes:
 - a. Matters that will imperil the public safety if disclosed;
 - b. Any matter that may disclose the identity of a law enforcement agent or informer;
 - c. Information relating to current or future investigation or prosecution of a criminal offense that would imperil effective law enforcement if disclosed;
 - d. Discussions involving proposed, pending, or current litigation;
 - e. Collective negotiations pursuant to Art. 14 of the New York Civil Service Law;
 - f. 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;
 - g. The preparation, grading, or administration of exams;
 - h. The proposed acquisition, sale, or lease of real property or the proposed acquisition, sale or exchange of securities, but only when publicity would substantially affect the value of these things.
2. With certain limited exceptions, no official action can be taken on issues discussed in executive session without first returning to open session.

- a. One exception includes voting on charges against a tenured teacher. See N.Y. Educ. L. §3020-a.

3. Note: No public body, including a school board, may vote to appropriate money during an executive session. See N.Y. Pub. Off. L. §105[1].

F. Communications Between Board Members—E-mail: Board members often rely on e-mail as a convenient method of communicating. However, there are possible legal ramifications of which board members should be aware.

1. E-mails between school board members, under certain circumstances, can be considered “communications between school district officials”. Such e-mails potentially implicate both the New York State Open Meetings Law and the Freedom of Information Law (FOIL).

- a. Open Meetings Law:

- There is authority that e-mail communications between board members can violate the Open Meetings Law. The Open Meetings Law is implicated when a “meeting” is convened to “conduct business” with a quorum of board members. Thus, if e-mails are exchanged contemporaneously between and among a quorum of board members, and result in, or are directed towards, a collective decision to take action, the Open Meetings Law may be violated.
- E-mails between board members will not always constitute a “meeting” subject to the Open Meetings Law. Board members may exchange individual, group or even chain e-mails without implicating the Open Meetings Law, if less than a quorum participates in the “exchange.” Likewise, the Open Meetings Law does not apply unless public agency business is discussed, and thus e-mails not involving school district matters would not be subject to this Law.
- In sum, when board members communicate about district business through an exchange or series of e-mails, there is presumably no statutory notice of the communication, and the public is unable to observe the discussion as it occurs. Thus, board members should be extremely cautious in using e-mail communications, being particularly vigilant to avoid transforming a quick exchange into a “meeting” subject to the Open Meetings Law.

- b. Freedom of Information Law (FOIL): The Freedom of Information Law extends to the public the right to examine all public records, with certain enumerated exceptions. The term “records” is broadly defined, and includes computer technology in formats other than paper, and thus, e-mails.

- FOIL requires disclosure of intra-agency materials containing final agency policy or determinations, statistical or factual tabulations or data (including personal observations of events or sites), instructions to staff affecting the public, and external audits. “Intra-agency materials” refers to communications generated by and directed to officials or employees within a particular public agency.
- However, intra-agency materials may be withheld under FOIL to the extent that they consist of “opinion, advice, recommendation and the like.” Finally, with respect to documents that contain information subject to FOIL and information exempt from disclosure under FOIL, agencies are permitted to withhold, or redact, those portions of the documents that are exempt from disclosure under the Law.
- Accordingly, certain e-mails between board members may, in whole or in part, be subject to FOIL. This is significant because FOIL requires disclosure of the communication even if the e-mail has never been printed on paper, and exists only in a computer file.
- Further, it should be noted that FOIL may require disclosure of “records,” regardless of where they are stored. Thus, e-mails between board members *even from personal e-mail addresses* or stored only on personal computers may be accessible under FOIL.

IV. BOARD POLICIES

A. Code of Ethics: The General Municipal Law requires all school boards to adopt a code of ethics for the guidance of its officers and employees that sets forth the standards of conduct reasonably expected of them. See N.Y. Gen. Mun. L. §806.

1. By law, school district codes of ethics must “provide standards for officers and employees with respect to disclosure of interest in legislation before the local governing body, holding of investments in conflict with official duties, future employment and such other standards relating to the conduct of officers and employees as may be deemed advisable.”

2. Prohibited Actions by School Board Members:

- a. Soliciting or accepting any gift worth more than \$75 under circumstances where it reasonably could be inferred that the gift was intended to influence or reward official action. School districts can set this figure lower than \$75 in their own codes of ethics.