

# Minnesota's Open Meeting Law

Minnesota School Boards Association  
Leadership Conference Skills Session 2014

Cathy Miller, Director  
Legal and Policy Services

# Purpose

## Prohibit secret meetings

- Allow interested public to be fully informed
- Allow public input
- Public must be given an opportunity to observe
  - Board discussions and actions
  - Detect improper influences

# Limits

- Public does not need to be given an opportunity to interact with the board
- Board may still control the meeting
- Board may set the:
  - Time
  - Place and
  - Manner  
of public input



# Consequences for Violations

- Personal liability (\$ for intentional violations only)
- \$300 fine / violation
- No limit on total dollar amount
- No coverage by E & O insurance policy
- **Plus** costs and attorney's fees if:
  - Prior written opinion by the Dept. of Administration  
and
  - Subsequent action by public body not in conformity with the applicable opinion (New 2008)
- Forfeiture of office
- Members of the press know this law well

# Quorum

- A quorum is a majority of the members excluding ex officio member(s)
- A majority is half the members plus one or half rounded up
- For most school boards, a quorum is four
- Most school boards are six- or seven-member boards

# Three Types of Board Meetings

- Regular Meetings
- Special Meetings
- Emergency Meetings

# Regular Meetings

- Scheduled
- Schedule kept on file at the School District Office
- No need to post or provide additional notice
- Unless
  - Change date, time, or location of the meeting
  - Then notice must be provided

# Special Meetings

- Must post notice of date, time, place, and purpose on the School District's principal bulletin board **AND**
- Mail or deliver notice to those who have requested it at least **three days** before meeting **or** publish notice in official newspaper at least **three days** before meeting
- May be called by: the chair, the clerk, or any **three** board members (Minn. Stat. §123B.09, Subd. 6)



# Emergency Meetings

- True emergency
- Judgment of the board
- Requires immediate consideration
- Good faith effort to give notice to media that have requested notice
- Notice is to be by the same manner as notice is given to board members

# Recessed or Continued Meetings

- **If** the recess or continuation happens in an open meeting
- **And** the time and place was established during that open meeting
- **And** recorded in the minutes of that meeting
- **Then** no additional published or mailed notice is required

# Committees

- Committees **are** covered by the OML (even if the committee is comprised of fewer members than a quorum of the board)
- Notification and voting procedures for committees are the **same** as for board meetings

# Materials

- One copy of all printed materials relating to the agenda must be available to the public at the meeting
- **Not** one copy for each person
- Do **not** include private or confidential data under the Minnesota Government Data Practices Act
- All written information related to the agenda and sent to the board before the meeting or distributed during the meeting should be provided (unless private or confidential data)

# Not Covered by the OML

- A meeting of fewer than a quorum is not covered by the OML (unless committee)
- Social gatherings where no board business is discussed are not covered by the OML
- BE AWARE OF APPEARANCES

# Meetings Conducted from Multiple Sites

## Interactive Technology (New July 2011)

### Formerly Interactive Television Only

- All members can see and hear each other
- At least one member is present at the regular meeting location
- Each location is accessible to the public
- Three days' notice is required when interactive technology will be used

# Multiple Sites (continued)

- Telephone or other Electronic Means (New 2007)

Only when the Governor or his/her designee declares a health pandemic or an emergency under M.S. Ch. 12 (national security, natural disaster, hazardous materials incident)

- Board chair, legal counsel, or superintendent then decides to utilize telephone or electronic means
- All members must be able to hear each other
- Notice provided (regular meeting location, members may participate by telephone or other electronic means, and electronic monitoring may be possible)
- If feasible, at least one member of the board or the superintendent or legal counsel is present at the regular meeting location

# Closed Meetings

School board meetings may only be closed for a legitimate reason

- A legitimate reason is one found in the law
- Check if uncertain
- The board's discomfort about discussing a matter in public is **not** enough





# Closed Meetings (continued)

Before closing a meeting, the board must “state on the record”:

Specific grounds (statute) permitting a closed meeting

AND

Describe the subject to be discussed

# Closed Meetings (continued)

Meeting **must be closed**:

- Data that would identify victim or reporter of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults
- Active investigation information of a law enforcement agency
- Educational data

# Closed Meetings (continued)

## Meeting **must be closed**:

- Health, medical, welfare, or mental health data
- Medical records of an individual covered by Minn. Stat. § 144.335
- Preliminary consideration of charges or allegations (one or more meetings)

# Closed Meetings (continued)

Meeting **must be closed:**

- Pupil expulsion or exclusion hearing
  - Must be open at the request of the subject pupil or parents
- Teacher termination hearing
  - Must be open at the request of the subject teacher

# Closed Meetings (continued)

**May** close for labor negotiation strategy with a certified bargaining unit **IF**

- Majority decision at a public meeting **AND**
- Time and place announced at public meeting **AND**
- Written roll of all attending **AND**

# Labor Negotiation Strategy (continued)

- Closed Meeting is recorded
  - Recording must be retained for **two years**
  - Recording is available to public after all labor contracts for that budget period are signed
  - Possible court may review recording and use in court if dispute arises before the two years have passed

# Public Employment Labor Relations Act (PELRA)

- Negotiations themselves **are** public meetings
- Also public: mediation sessions and hearings between public employers and public employees in a certified bargaining unit
- **Unless** otherwise provided by the Commissioner of the Bureau of Mediation Services (BMS)
- Minn. Stat. §179A.14, Subd. 3

# Closed Meetings (continued)

Meeting **may be closed** for a performance evaluation

- Name employee before closing
- Summarize the specific, salient points of the evaluation at the next board meeting
  - A “detailed summary” is required
  - Must be more than “strengths were noted and areas of improvement were identified”
- Must be open at the request of the person being evaluated



# Closed Meetings (continued)

## Meeting **may be closed**:

- Attorney-client privilege
- Cases have narrowed exception to a litigation strategy meeting with attorney if a threatened or pending lawsuit exists

# Closed Meetings (continued)

Meeting **may be closed** for Purchase or Sale of Property by the School District (Real or Personal)

- To determine asking or offering price
  - Selling or Buying
  - To review confidential or nonpublic appraisals

# Purchase / Sale of Property (continued)

- Before closing, board must identify on record “particular real or personal property that is the subject of the closed meeting”
- Must record closed meeting
  - Keep recording for **eight years**
  - Recording available to public after purchase or sale or abandon plan
  - Property must be specifically identified on recording
- List of persons present must be available to public after the closed meeting

# Purchase / Sale of Property (continued)

- “The actual purchase or sale must be approved at an open meeting after the notice period required by statute or the governing body’s internal procedures, and the purchase price or sale price is public data.”

Minn. Stat. §13D.05, Subd. 3(c)

(New 2004)

# Security Matters

Meeting **may be closed** to:

- Receive security briefings and reports or
- Discuss security system issues
- Emergency response procedures
- Security deficiencies or
- Security recommendations

**IF** security would be compromised or information would pose danger to public safety

# Security Matters (continued)

- Before closing, board must identify on record facilities, systems, procedures, services, or infrastructures considered at closed meeting
- Must record closed meeting and keep recording for **four years**

# Security Matters (continued)

- “Financial issues related to security matters must be discussed and all related financial decisions must be made at an open meeting.”

Minn. Stat. §13D.05, Subd. 3(d)

(New 2004)

# Closed Meetings—Recordings

- “All closed meetings, except those closed as permitted by the attorney-client privilege, must be electronically recorded at the expense of the public body. Unless otherwise provided by law, the recordings must be preserved for at least **three years** after the date of the meeting.”  
(emphasis added)
- Minn. Stat. 13D.05, Subd. 1(d)
- (New 2008)



# Recordings of Closed Meetings — Retention Periods

- Attorney/Client Privilege  
(Litigation Strategy) Not Recorded
- Labor Negotiations Strategy **2** Years
- Security Matters **4** Years
- Purchase/Sale of Property **8** Years
- All others **3** Years

# Not Public Data & Open Meetings

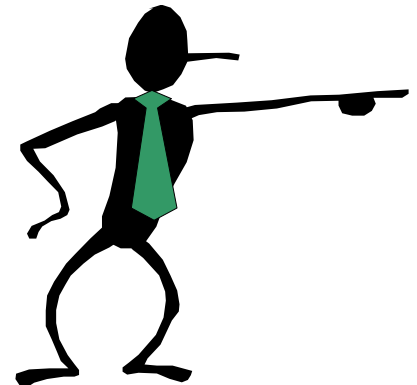
- Except as provided by the OML, meetings may not be closed to discuss data that are not public data.
- No liability or penalty for data disclosure if related “to a matter within the scope of the public body’s authority and is reasonably **necessary** to conduct the business” of the board.  
M.S. § 13D.05, Subd. 1(b)
- Data retain original classification, but record of meeting is public.

# Electronic Mail (Email)

- Danger of Serial Meeting = OML implications
  - Discussion of school business **(not OK)**
  - BUT**
  - Scheduling (OK) or
  - Distribute information (OK)
- Correspondence between an elected official and a private individual is private data unless:
  - The private individual makes it public
  - The elected official makes it public
  - **Minn. Stat. §13.601, Subd. 2**

# Email (continued)

- Information emailed to board members in preparation for a meeting should be made available to the public at the meeting because of the materials requirement in the Open Meeting Law. Private or confidential data must be redacted.
- Board members should never send an email about school district business unless they are willing to have the whole world see it.
- Email is forever !



# Email Suggestions

- Use a separate email address for school board correspondence
- See if the school district can archive board members' emails
- Develop a policy
- Consider adding email to the school district's records retention schedule with a short retention term

**Key questions:** What are the contents of the district's emails? What does the district use email for?

## **Sample Policy**

### **School Board Use of Electronic Mail**

Use of electronic mail (email) by school board members should conform to the same standards of judgment, propriety, and ethics as other forms of school board related communication. Board members shall comply with the following guidelines when using email in the conduct of board responsibilities:

- The school board shall not use email as a substitute for deliberations at board meetings or for other communications or business properly confined to board meetings.
- Board members should be aware that email and email attachments received or prepared for use in board business or containing information relating to board business are likely to be regarded as public records which may be inspected by any person upon request, unless otherwise made confidential by law.
- Board members should avoid reference to confidential information about employees, students, or other matters in email communications because of the risk of improper disclosure. Board members should comply with the same standards as school employees with regard to confidential information.

Source: National School Boards Association, National Education Policy Network

# Resources

- Minnesota Statutes, Chapter 13D
- MSBA Service Manual  
Chapter 13, Law Bulletin C
- MSBA/MASA Model Policy 205
- Your MSBA Staff



# Thank You!

- MSBA appreciates your attendance and attention.
- The contents of this presentation are provided for informational use only and are not to be construed as legal advice. If you need legal advice, consult your school district's attorney.
- The information provided is current as of the date presented. New legislation, rules, cases, and opinions may change the law.