

Mid-Semester Reminder: Open Meeting Law Refresher

The Massachusetts Open Meeting Law¹ aims to ensure transparency in any deliberations on which public policy is based. The Open Meeting Law requires, with certain exceptions, that meetings of public bodies be open to the public. Boards of trustees for Massachusetts charter schools are state public bodies subject to the Open Meeting Law. A public body's subcommittees and task forces may also be subject to the Open Meeting Law. As such, charter school boards and their subcommittees must be mindful of the requirements of the Open Meeting Law.

Some highlights of the Open Meeting Law include:

Scope. The Open Meeting Law applies to

- communications among a quorum of members of a public body;
- when the public body is discussing and deciding upon matters within its jurisdiction;
- whether the public body communicates in person, remotely, in print, or by email; and
- whether or not the communications are simultaneous or sequential.

As a result, a quorum of members of a public body may not discuss or decide public matters within its jurisdiction without first providing notice to the public, and may never conduct discussions or make decisions by written consent, by electronic mail, or by serial phone calls.

Notice. A public body must provide the public with notice of its meeting 48 hours in advance, excluding Saturdays, Sundays, and legal holidays. Meeting notices must

- be posted in a legible, easily understandable format;
- contain the date, time, and location of the meeting, including instructions for accessing the meeting if public access is by remote means; and
- list all topics that the chair reasonably anticipates will be discussed at the meeting.

Posting requirements vary by type of public body, but for charter school boards and other state public bodies, the following applies:

- notice should be posted on the website of the public body or its parent agency;

¹ Mass. Gen. Laws ch. 30A, §§ 18-25.

- the chair of the state public body, e.g., the chair of a charter school's board of trustees, should share the website location where notices will be posted with the Attorney General at openmeeting@mass.gov;
- if that website should change, the chair should update the Attorney General and provide the new website where notices will be posted; and
- a copy of *each* meeting notice should be sent to the Secretary of State's Regulations Division at regs@sec.state.ma.us.

Remote Participation. A public body may conduct its meetings remotely.

- Pursuant to the Open Meeting Law regulations, a member of a public body may participate remotely in a meeting of the public body, but only if physical attendance would be unreasonably difficult for said member. However, due to a suspension of certain Open Meeting Law requirements during COVID, until March 31, 2025, remote participation is *not* limited only to circumstances in which physical attendance would be unreasonably difficult, and any or all members of a public body may participate remotely in a meeting of the public body.
- Acceptable means of remote participation include telephone, audio or video conferencing, or any other technology that enables all persons attending the meeting to be clearly audible to one another; text messaging, email, and other communication methods without audio are not acceptable methods of remote participation.
- All votes taken during a meeting in which any member participates remotely must be by roll call vote.

Public Participation. Members of the public are permitted to attend meetings of public bodies, including remotely, but are excluded from executive sessions.

- If a meeting is held in person at a location that is physically open and accessible to the public with a quorum of the public body physically present in person, the public body is not required to permit members of the public to access the meeting remotely, even if some members of the public body participate remotely.
- During a meeting, a member of the public may not address the public body without the permission of the chair.
- Any member of the public may make an audio or visual recording of an open session of a public meeting; however, they must first notify the chair prior to the recording and comply with any reasonable requirements regarding audio or visual equipment established by the chair. The chair is required to inform the other attendees of the meeting of any such recording, ideally at the beginning of the meeting but otherwise when the chair is notified of the recording.

Executive Session. A public body may meet in executive (closed) session only [for ten enumerated purposes](#), some of which involve specific procedural requirements. Close review of the requirements prior to holding a meeting in executive session is always recommended.

Minutes. Public bodies must create and maintain accurate minutes of all meetings, including executive sessions.

- The minutes of public body meetings must contain (i) the date, time and place of the meeting; (ii) the members present or absent, including the names of any member who participated remotely; (iii) a summary of the discussions on each subject; (iv) a list of documents and other exhibits used at the meeting; and (v) the decisions made and the actions taken at each meeting, including a record of all votes.
- For open sessions, minutes should be created and approved within the next three (3) public body meetings or 30 days from the date of the meeting, whichever is later, though the Attorney General encourages minutes to be approved at a public body's next meeting whenever possible. Further, the Open Meeting Law requires that existing minutes be made available to the public within ten calendar days of their request, whether or not the minutes have been approved.
- A public body is not required to disclose the minutes, notes, or other materials used in an executive session until such disclosure would no longer defeat the purposes of the executive session, at which point those records should be disclosed, absent an exception. Public bodies are required to review their executive session minutes periodically for this purpose.

Attorney General Guidance and Certification. Within two (2) weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the Attorney General, the receipt of a copy of the Open Meeting Law, its corresponding regulations, and related educational materials prepared by the Attorney General, each available [here](#).

Penalties. Failure to comply with the requirements of the Open Meeting Law may result in the Attorney General's Office imposing a fine or taking other enforcement action against a non-compliant public body.

Please reach out to K&B attorneys Elka Sachs (esachs@kb-law.com), Bettina Toner (btoner@kb-law.com), or Eric Jordan (ejordan@kb-law.com) with any questions or requests you may have regarding the Open Meeting Law or any other matter affecting your charter school.

The Krokidas & Bluestein LLP **Education Practice** provides a full array of advice and guidance to charter schools and other educational entities on a wide range of legal matters, including student discipline, special education, employment, governance, tax, regulatory and compliance matters, real estate, financing, and litigation. education and student affairs matters.