



# OPEN MEETING LAW “OML”

Minn Stat. § 13D



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# REQUIREMENTS UNDER THE OML

# What is the OML?

- The open meeting law is a statute that applies to public bodies
  - Including Charter School Boards (*see also* Minn. Stat. 124E.03, Subd. 5a)
- The OML requires public bodies to conduct business publicly or at an open meeting
  - Meetings can be closed under limited circumstances, which will be discussed later
- An “Open Meeting” is a meeting in which:
  - Proper notice of the meeting was given
  - The public may attend the meeting
  - Relevant materials from the meeting are made available to the public

# Voting & Materials

- Record of votes taken at open meetings in a journal that is available to the public
- Copies of the agenda and any written materials prepared by the school district must be available to the public
  - Do not need to make the following materials available:
    - Nonpublic data as defined by the Minnesota Data Practices Act
    - Materials relating to agenda items of a closed meeting

# Notice Requirements

Notice requirements are dependent on the type of meeting:

- Regular Meetings
    - Routine or scheduled meetings
    - District must keep a schedule of regular meetings on file at its primary office
  - Special Meetings
    - Not a routine meeting, but planned far enough in advance to be scheduled
    - District must post written notice of date, time, place and purpose on the district bulletin board
    - 3 days prior :
      - Mail or deliver notice to individuals who has filed a written request for notice of special meetings,
- OR**
- Publish notice in the official newspaper in the district

# Notice Requirements

- Emergency Meetings

- Special meetings called because of circumstances that require immediate consideration
- Good faith effort to notify all news mediums that have filed a request for notice of special meetings by telephone or other means
  - Notification must include the subject of the meeting

- Recessed Meetings

- If any type of meeting has been recessed or continued, the meeting can be taken up without further notice if the time and place of meeting was established during the meeting that was recessed or continued

- Closed Meetings

- Same notice requirements as open meetings,

**AND**

- Before the meeting, the board must make a statement on the record that provides
  - Grounds permitting the meeting to be closed
  - Description of subject to be discussed



# WHAT IS A “MEETING”?

workshop meetings, committee meetings, social gatherings, & electronic communication



# Does the OML apply to ... :

- Workshop or informational meetings where the board receives information about matters that may come before it?
  - Yes! It applies to all gatherings of a governing body, regardless of whether action is taken or contemplated? See *St. Cloud Newspapers, Inc. v. Dist. 742 Schools*, 332 N.W. 2d 1 (Minn. 1983).
- Privately facilitated meeting to “improve trust, relationships, communications, and collaborative problem solving among board members”?
  - No! The OML does not apply in this situation as long as the Board does not “discuss, decide, or receive information as a group relating to the ‘official business’ of the governing body.” See *Advisory Opinion 16-006*.
- Committee Meetings?
  - Yes! The OML applies to committee meetings when the group is capable of exercising decision-making powers of the school board.
    - A court will presume that a committee has the capacity to act on behalf of the board where members of the group comprise a quorum of the board. See *Sovereign v. Dunn*, 498 N.W. 2d 62.
    - Even if the members of the group comprise less than a quorum, the OML may apply where there has been a delegation of power to the group from the board. *Id.*

# Does the OML apply to ... :

- Advisory groups tasked with gathering information and providing advice to the board?
  - No! The OML does not likely apply to a group or committee that has no ability to make decisions for the board. See *Advisory Opinion 07-025*.
- Social gatherings?
  - Maybe! If a quorum of the board is at a social gathering and discusses school board business, the OML applies. If a quorum of the board is present but does not discuss official business, the OML does not apply.
  - Board members should be careful not to discuss district business at social or chance gatherings.
- Emails between the board?
  - Maybe! If a quorum of the board discuss, decide or receive information relating to the official business of the school board, the OML applies. See *Moberg*, 336 N.W. 2d at 518.
- Posts on social media?
  - Probably not! As long as the board member's use of social media is limited to exchanges with all members of the general public.



# SERIAL COMMUNICATION

phone, letter, e-mail or conversation of less than a quorum

# Does the OML apply to serial communication by less than a quorum?

- Maybe!
- Communication by less than a quorum with the intent to avoid public discussion, forge a majority in advance of a public meeting, or otherwise circumvent the OML may violate the OML.
- One-way email communication is likely permissible, as long as no discussion or decision making ensues. See *Advisory Opinion 09-020*. However, this type of communication would be “printed material” which must be made available to the public under the OML.



# CLOSED MEETINGS

All closed meeting, except those closed due to attorney-client privilege, must be electronically recorded. The recording must be preserved for at least three years after the meeting.

# When meetings **MUST** be closed:

Discussion of:

- Identity of alleged victims or reports of:
  - Criminal sexual conduct
  - Domestic violence
  - Maltreatment of minors or vulnerable adults
- Active criminal investigations
- Educational data, public health data, public medical data, welfare, or mental health data that are not public under the MN Data Practices Act
- Individual's medical records governed by the MN Health Records Act
- Preliminary consideration of allegations or charges against an individual subject to the school board's authority
  - Meeting **MUST** be opened at the request of the individual subject of the discussion

# When meetings *MUST* be closed:

- If the school board has declined to renew the coaching contract of a head varsity coach, it must notify the coach within 14 days of that decision. If the coach requests the reasons for non-renewal, the board must provide the reasons within 10 days of the request. If requested by the coach, the board must provide the coach with a reasonable opportunity to respond at the board meeting. The coach can elect to have an open or closed meeting, unless the meeting is closed to discuss nonpublic data, in which case it must be closed.
- Dismissal hearings can be open or closed at the teacher's discretion.
- Expulsion hearings must be closed unless the student or parent requests an open hearing.

# When meetings *MAY* be closed:

- To consider a strategy for labor negotiations
- To evaluate the performance of an individual subject to the board's authority
- If expressly authorized by statute
- If permitted by attorney-client privilege
- To discuss certain property transactions and appraisal data
- To receive security briefings and reports and to discuss issues related to security, if disclosure would pose a danger to public safety
- Closed meetings except those closed pursuant to the attorney/client privilege must be recorded with recordings retained in accordance with the OML.



# Discussion of Not-Public Data When the OML Does Not Allow a Meeting to be Closed

- Minn. Stat 13D.05
- *“Data that are not public data may be discussed at a meeting subject to this chapter without liability or penalty, if the disclosure relates to a matter within the scope of the public body's authority and is reasonably necessary to conduct the business or agenda item before the public body.”*
- Overview of statute:
  - When circumstances do not allow meeting closure; discussion of not private data can still occur without liability or penalty;
  - Underlying data, such as investigation report or other non-public document maintains its classification



# VIOLETATIONS OF THE OML

- INTENT required: Only intentional violations are subject to penalty
  - Good faith is a valid defense
- Individual liability – up to \$300 per single violation
  - The Board cannot pay on behalf of the individual
  - After 3 violations, the board member could be removed from office
- Costs and attorneys' fees – a court may award costs and attorneys fees up to \$13,000 against a board member who intentionally violated the OML