

Legal Update

February/March 2020

Training Requirements

Ohio charter school board members must complete training on sunshine laws each school/fiscal year.

The Ohio Attorney General live trainings can be found at:

www.ohioattorneygeneral.gov/Legal/Sunshine-Laws/Sunshine-Law-Training

The Auditor of State's trainings can be found at:

www.ohioauditor.gov/open/trainings.html

The AG's 3 ½ hour online training can be found at:

<https://sunshinelaw.ohioattorneygeneral.gov/>

Your sponsor may also have web-based training modules to assist you in fulfilling your requirement.

While the law does not require a minimum amount of time for the annual sunshine law training, your sponsor contract may require a specific number of hours of on-going board training each year.

Amy Goodson Co., LLC can also provide your board training at your convenience.



Sunshine Law Edition

Open Meetings
Public Records

Public Records

A public record is:

- a record that is kept by a public office;
- with information stored on a fixed medium;
- created or received by or coming under the jurisdiction of a public office; and
- documents the functions, policies, procedures, operations or other activities of a public office.

Charter school boards in Ohio are considered public offices. Therefore, all charter school boards must comply with the obligations regarding public records.

A public office must:

- provide a right to inspect a public record or provide copies of the public record;
- within a reasonable time;
- to any requestor (even an anonymous one). Requestors do not need to indicate the purpose of their request.

Public offices may charge for the actual cost of copying; however, they may not charge for the employee time or legal expense incurred in complying with the request.

Certain laws prohibit the release of specified records. If the public office does not identify the record as falling under any exemption, the public office must provide the requested record.

If a federal or state law prohibits the release of a certain record, the public office may not release the record in response to a records request. Records prohibited from disclosure under state and federal laws are mandatory exemptions.

The most common record exempt from release for charter schools are student records. Student records are covered under the Family Education Rights Privacy Act of 1974 (FERPA). Student identifiable records may not be released without the written consent of students or their parents unless permitted to be released under FERPA and by school policy.

Emails may be considered a public record and if so, must be released pursuant to a public records request. Whether or not an email is a public record is controlled by the content of the email rather than the format or the personal nature of the email account. If the content is such that it would be considered public record if printed on paper, then the email is a public record even if sent to a user's personal email account or from an employer's server, etc.

While there are no criminal penalties for violations of the Public Records Act, civil remedies may be enforced. The public office may be ordered to pay \$100 per day for each day the request is not fulfilled to a maximum of \$1,000. More detrimentally, the public office may also be ordered to pay court costs and attorney fees, which could be quite costly.

If you receive a request for a record related to your school, promptly contact legal counsel.



Open Meetings Act

The Open Meetings Act (OMA) requires public bodies to conduct all public business in open meetings where the public may attend and observe. OMA applies to any meeting of a public body.

A meeting is any prearranged gathering of a majority of members of a public body conducting or discussing public business.

A public body is any decision-making body of state, county, township, city, school district or political subdivision. Charter school boards are considered public bodies in Ohio. Each public body must give appropriate notice of the meeting and take and maintain minutes of each meeting.

Members of the public body are required to be present in person in order to be counted for quorum purposes and to vote. While members may call in to a meeting, it may be advisable to simply listen to the discussions, rather than engage in deliberation.

E-mail: The full board or a majority of the Board emailing about school/board business is a violation of the Open Meetings Act. The Ohio Supreme Court held that the act prohibits any private prearranged discussion of public business by a majority of the members of a public body regardless if the discussion takes place in person or over electronic communications (e-mail, social media, texts, etc.)

Additionally, be careful of discussions involving only two members that are then shared with a third member which may then be a majority of the board. This becomes a round robin type communication which has been determined to be a meeting and thus subject to notice and openness requirements.

Are there any times board members can be together without violating the OMA?

The act does not prohibit members of the public body from attending a training together or social occasions. As long as the members are not discussing board business, the members are not participating in a meeting.

A Meeting by Any Other Name is Still a Meeting!

Committee meetings, work sessions, and board retreats are subject to the Open Meetings Act. Any pre-arranged gathering of a majority of the public body during which the members will be discussing any type of board/public business is a "meeting".

Even if a committee is made up of less than a majority of the full board, a meeting of the committee may be subject to the Act. The Act's definition of "public body" may include the committees or subcommittees of a public body, even if these committees do not make the final decisions of the public body.

To maintain compliance with the Act, boards must be sure to post notice, hold the meeting in a place accessible to the public, and take minutes of each committee meeting, work session or retreat.

Entities such as booster clubs, PTAs and PTOs that are not created by nor report to the board are generally not covered by the Act.

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The information contained herein does not constitute legal advice nor does it create an attorney-client relationship.

For more information about the contents of this publication or for legal services contact:

www.amygoodsonlaw.com

Q & A

Q: What are our board's obligations regarding allowing the public the right to participate during board meetings?

A: Ohio's Open Meetings Act does not provide the public the right to participate in public meetings. The Act simply provides the right to be notified of meetings and be present.

Most public offices have a participation policy that governs the public participation in the meeting.

The public office may adopt reasonable rules regarding the time, place, and manner of public comments. Many policies limit the time allowed for public comment.

Even if your board does permit public comment, board members are not obligated to engage in any discussion or respond to public comments during the meeting. In fact, in many cases it is ill-advised to engage in such discussions during the meeting. Members should familiarize themselves with the board policy and seek counsel.