

## **205 OPEN MEETINGS AND CLOSED MEETINGS**

### **I. PURPOSE**

A. The Board of Education embraces the philosophy of openness in the conduct of its business, in the belief that openness produces better programs, more efficiency in administration of programs, and an organization more responsive to public interest and less susceptible to private interest. The Board of Education shall conduct its business under a presumption of openness. At the same time, the Board of Education recognizes and respects the privacy rights of individuals as provided by law. The Board of Education also recognizes that there are certain exceptions to the Minnesota Open Meeting Law as recognized in statute where it has been determined that, in limited circumstances, the public interest is best served by closing a meeting of the Board of Education.

B. The purpose of this policy is to provide guidelines to assure the rights of the public to be present at Board of Education meetings, while also protecting the individual's rights to privacy under law, and to close meetings when the public interest so requires as recognized by law.

### **II. GENERAL STATEMENT OF POLICY**

A. Except as otherwise expressly provided by statute, all meetings of the Board of Education, including executive sessions, shall be open to the public.

B. Meetings shall be closed only when expressly authorized by law.

### **III. DEFINITION**

"Meeting" means a gathering or electronic communication of at least a quorum or more members of the Board of Education, or quorum of a committee or subcommittee of Board of Education members, at which members discuss, decide, or receive information as a group on issues relating to the official business of the Board of Education. The term does not include a chance or social gathering or the use of social media by members of a public body so long as the social media use is limited to exchanges with all members of the general public. For purposes of the Open Meeting Law, social media does not include e-mail.

### **IV. PROCEDURES**

#### **A. Meetings**

##### **1. Regular Meetings**

A schedule of the regular meetings of the Board of Education shall be kept on file at its primary offices. If the Board of Education decides to hold a regular meeting at a time or place different from the time or place stated in its schedule, it shall give the same notice of the meeting as for a special meeting.

##### **2. Special Meetings**

a. For a special meeting, the Board of Education shall post written notice of the date, time, place, and purpose of the meeting on the principal bulletin board of the school district or on the door of the Board of Education's usual meeting room if there is no principal bulletin board. The Board of Education's actions at the special meeting are limited to those topics included in the notice.

b. The notice shall also be mailed or otherwise delivered to each person who has filed a written

request for notice of special meetings.

c. This notice shall be posted and mailed or delivered at least three days before the date of the meeting. As an alternative to mailing or otherwise delivering notice to persons who have filed a written request, the Board of Education may publish the notice once, at least three days before the meeting, in the official newspaper of the school district or, if none, in a qualified newspaper of general circulation within the area of the school district.

d. A person filing a request for notice of special meetings may limit the request to particular subjects, in which case the Board of Education is required to send notice to that person only concerning those particular subjects.

e. The Board of Education will establish an expiration date on requests for notice of special meetings and require refiling once each year. Not more than 60 days before the expiration date of request for notice, the Board of Education shall send notice of the refiling requirement to each person who filed during the preceding year.

### 3. Emergency Meetings

a. An emergency meeting is a special meeting called because of circumstances that, in the judgment of the Board of Education, require immediate consideration.

b. If matters not directly related to the emergency are discussed or acted upon, the minutes of the meeting shall include a specific description of those matters.

c. The Board of Education shall make good faith efforts to provide notice of the emergency meeting to each news medium that has filed a written request for notice if the request includes the news medium's telephone number.

d. Notice of the emergency meeting shall be given by telephone or any other method used to notify the members of the Board of Education.

e. Notice shall be provided to each news medium which has filed a written request for notice as soon as reasonably practicable after notice has been given to the Board of Education members.

f. Notice shall include the subject of the meeting.

g. Posted or published notice of an emergency meeting shall not be required.

h. The notice requirements for an emergency meeting as set forth in this policy shall supersede any other statutory notice requirement for a special meeting that is an emergency meeting.

### 4. Recessed or Continued Meetings

If a meeting is a recessed or continued session of a previous meeting, and the time and place of the meeting was established during the previous meeting and recorded in the minutes of that meeting, then no further published or mailed notice is necessary.

### 5. Closed Meetings

The notice requirements of the Minnesota Open Meeting Law apply to closed meetings.

### 6. Actual Notice

If a person receives actual notice of a meeting of the Board of Education at least 24 hours before the

meeting, all notice requirements are satisfied with respect to that person, regardless of the method of receipt of notice.

#### 7. Health Pandemic or Declared Emergency

In the event of a health pandemic or an emergency declared under Minn. Stat. Ch. 12, a meeting may be conducted by telephone or other electronic means in compliance with Minn. Stat. § 13D.021.

#### B. Votes

The votes of Board of Education members shall be recorded in a journal kept for that purpose, and the journal shall be available to the public during all normal business hours at the administrative offices of the school district.

#### C. Written Materials

1. In any open meeting, a copy of any printed materials, including electronic communications, relating to the agenda items prepared or distributed by the Board of Education or its employees and distributed to or available to all Board of Education members shall be available in the meeting room for inspection by the public while the Board of Education considers their subject matter.

2. This provision does not apply to materials not classified by law as public, or to materials relating to the agenda items of a closed meeting.

#### D. Data

1. Meetings may not be closed merely because the data to be discussed are not public data.

2. Data that are not public data may be discussed at an open meeting if the disclosure relates to a matter within the scope of the Board of Education's authority and is reasonably necessary to conduct the business or agenda item before the Board of Education.

3. Data discussed at an open meeting retain the data's original classification; however, a record of the meeting, regardless of form, shall be public.

#### E. Closed Meetings

##### 1. Labor Negotiations Strategy

a. The Board of Education may, by a majority vote in a public meeting, decide to hold a closed meeting to consider strategy for labor negotiations, including negotiation strategies or developments or discussion and review of labor negotiation proposals.

b. The time and place of the closed meeting shall be announced at the public meeting. A written roll of Board of Education members and all other persons present at the closed meeting shall be made available to the public after the closed meeting. The proceedings shall be tape recorded, and the tape recording shall be preserved for two years after the contract discussed at the meeting is signed. The recording shall be made available to the public after all labor contracts are signed by the Board of Education for the current budget period.

##### 2. Sessions Closed by Bureau of Mediation Services

All negotiations, mediation sessions, and hearings between the Board of Education and its employees or their respective representatives are public meetings. These meetings may be closed only by the Commissioner of the Bureau of Mediation Services (BMS). The use of recording devices, stenographic records, or other recording methods is prohibited in mediation meetings closed by the BMS.

##### 3. Preliminary Consideration of Charges

The Board of Education shall close one or more meetings for preliminary consideration of allegations or charges against an individual subject to its authority. If the Board of Education members conclude that discipline of any nature may be warranted as a result of those specific charges or allegations, further meetings or hearings relating to those specific charges or allegations held after that conclusion is reached must be open. A meeting must also be open at the request of the individual who is the subject of the meeting. A closed meeting must be electronically recorded at the expense of the school district, and the recording must be preserved for at least three years after the date of the meeting. The recording is not available to the public.

#### 4. Performance Evaluations

The Board of Education may close a meeting to evaluate the performance of an individual who is subject to its authority. The Board of Education shall identify the individual to be evaluated prior to closing a meeting. At its next open meeting, the Board of Education shall summarize its conclusions regarding the evaluation. A meeting must be open at the request of the individual who is the subject of the meeting. A closed meeting must be electronically recorded at the expense of the school district, and the recording must be preserved for at least three years after the date of the meeting. The recording is not available to the public.

#### 5. Attorney-Client Meeting

A meeting may be closed if permitted by the attorney-client privilege. Attorney-client privilege applies when litigation is imminent or threatened, or when the Board of Education needs advice above the level of general legal advice, i.e., regarding specific acts and their legal consequences. A meeting may be closed to seek legal advice concerning litigation strategy, but the mere threat that litigation might be a consequence of deciding a matter one way or another does not, by itself, justify closing the meeting. The motion to close the meeting must specifically describe the matter to be discussed at the closed meeting, subject to relevant privacy and confidentiality considerations under state and federal law. The law does not require that such a meeting be recorded.

#### 6. Dismissal Hearing

- a. A hearing on the dismissal of a licensed teacher shall be public or private at the teacher's discretion. A hearing regarding placement of teachers on unrequested leave of absence shall be public.
- b. A hearing on dismissal of a student pursuant to the Pupil Fair Dismissal Act shall be closed unless the pupil, parent or guardian requests an open hearing.
- c. To the extent a teacher or student dismissal hearing is held before the Board of Education and is closed, the closed meeting must be electronically recorded at the expense of the school district, and the recording must be preserved for at least three years after the date of the meeting. The recording is not available to the public.

#### 7. Coaches; Opportunity to Respond

- a. If the Board of Education has declined to renew the coaching contract of a licensed or nonlicensed head varsity coach, it must notify the coach within 14 days of that decision. Administrative procedures will be developed to ensure head coaches are provided timely notice of the recommendation to non-renew a coaching contract. Such recommendations will follow established performance evaluation procedures for head coaches.
- b. If the coach requests the reasons for the nonrenewal, the Board of Education must give the coach the reasons in writing within 10 days of receiving the request.
- c. On the request of the coach, the Board of Education must provide the coach with a reasonable opportunity to respond to the reasons at a Board of Education meeting.

d. The meeting may be open or closed at the election of the coach unless the meeting is closed as required by Minn. Stat. § 13D.05, Subd. 2, to discuss educational or certain other nonpublic data.

e. A closed meeting must be electronically recorded at the expense of the school district, and the recording must be preserved for at least three years after the date of the meeting. The recording is not available to the public.

#### 8. Meetings to Discuss Certain Not Public Data

Any portion of a meeting must be closed if the following types of data are discussed:

a. data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults;

b. active investigative data collected or created by a law enforcement agency;

c. educational data, health data, medical data, welfare data, or mental health data that are not public data; or

d. an individual's personal medical records.

e. A closed meeting must be electronically recorded at the expense of the school district, and the recording must be preserved for at least three years after the date of the meeting. The recording is not available to the public.

#### 9. Purchase and Sale of Property

a. The Board of Education may close a meeting:

(1) to determine the asking price for real or personal property to be sold by the school district;

(2) to review confidential or nonpublic appraisal data; and

(3) to develop or consider offers or counteroffers for the purchase or sale of real or personal property.

b. Before closing the meeting, the Board of Education must identify on the record the particular real or personal property that is the subject of the closed meeting.

c. The closed meeting must be tape recorded at the expense of the school district. The tape must be preserved for eight years after the date of the meeting and be made available to the public after all real or personal property discussed at the meeting has been purchased or sold or the Board of Education has abandoned the purchase or sale. The real or personal property that is the subject of the closed meeting must be specifically identified on the tape. A list of Board of Education members and all other persons present at the closed meeting must be made available to the public after the closed meeting.

d. An agreement reached that is based on an offer considered at a closed meeting is contingent on its approval by the Board of Education at an open meeting. The actual purchase or sale must be approved at an open meeting and the purchase price or sale price is public data.

#### 10. Security Matters

a. The Board of Education may close a meeting to receive security briefings and reports, to discuss issues related to security systems, to discuss emergency response procedures, and to

discuss security deficiencies in or recommendations regarding public services, infrastructure, and facilities, if disclosure of the information discussed would pose a danger to public safety or compromise security procedures or responses.

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

c. Before closing a meeting, the Board of Education must refer to the facilities, systems, procedures, services, or infrastructures to be considered during the closed meeting.

d. The closed meeting must be tape recorded at the expense of the school district and the recording must be preserved for at least four years.

#### 11. Other Meetings

Other meetings shall be closed as provided by law, except as provided above. A closed meeting must be electronically recorded at the expense of the school district, and the recording must be preserved for at least three years after the date of the meeting. The recording is not available to the public.

#### F. Procedures for Closing a Meeting

The Board of Education shall provide notice of a closed meeting just as for an open meeting. A Board of Education meeting may be closed only after a majority vote at a public meeting. Before closing a meeting, the Board of Education shall state on the record the specific authority permitting the meeting to be closed and shall describe the subject to be discussed.

#### **Legal References:** Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)

Minn. Stat. Ch. 13D (Open Meeting Law)

Minn. Stat. § 121A.47, Subd. 5 (Student Dismissal Hearing)

Minn. Stat. § 122A.33, Subd. 3 (Coaches; Opportunity to Respond)

Minn. Stat. § 122A.40, Subd. 14 (Teacher Discharge Hearing)

Minn. Stat. § 179A.14, Subd. 3 (Labor Negotiations)

Minn. Rules Part 5510.2810 (Bureau of Mediation Services)

*Brown v. Cannon Falls Township*, 723 N.W.2d 31 (Minn. App. 2006)

*Brainerd Daily Dispatch v. Dehen*, 693 N.W.2d 435 (Minn. App. 2005)

*The Free Press v. County of Blue Earth*, 677 N.W.2d 471 (Minn. App. 2004)

*Prior Lake American v. Mader*, 642 N.W.2d 729 (Minn. 2002)

*Star Tribune v. Board of Education, Special School District No. 1*, 507 N.W.2d 869 (Minn. App. 1993)

*Minnesota Daily v. University of Minnesota*, 432 N.W.2d 189 (Minn. App. 1988)

*Moberg v. Independent School District No. 281*, 336 N.W.2d 510 (Minn. 1983)

*Sovereign v. Dunn*, 498 N.W.2d 62 (Minn. App. 1993), *rev. denied.* (Minn. 1993)

Dept. of Admin. Advisory Op. No. 12-004 (March 8, 2012)

Dept. of Admin. Advisory Op. No. 11-004 (April 18, 2011)

Dept. of Admin. Advisory Op. No. 10-020 (September 23, 2010)

Dept. of Admin. Advisory Op. No. 09-020 (September 8, 2009)

Dept. of Admin. Advisory Op. No. 08-015 (July 9, 2008)

Dept. of Admin. Advisory Op. No. 06-027 (September 28, 2006)

Dept. of Admin. Advisory Op. No. 04-004 (February 3, 2004)