

PUBLIC AND EXECUTIVE SESSIONS

The board of education shall officially transact all business at a legal meeting of the board in accordance with New Jersey law.

All meetings of the board of education shall be open to the public with the exception of meetings to discuss:

- A. Any matter which by express provision of state or federal law or rule of court shall be rendered confidential;
- B. Any matter in which the release of information would impair a right to receive federal funds;
- C. Any material the disclosure of which constitutes an unwarranted invasion of individual privacy, unless the individual (or all the individuals) concerned shall request in writing that the same be disclosed publicly. This includes information contained in pupil records, and any reports or recommendations concerning a specific individual (see policy 1120);
- D. Any collective bargaining agreement or the terms and conditions which are proposed for inclusion in any collective bargaining agreement, including the actual negotiating sessions with representatives of employee groups;
- E. Any matter involving the purchase, lease or acquisition of real property (land or buildings) with public funds, where it could adversely affect the public interest if discussion of such matters were disclosed;
- F. The tactics and techniques used in protecting the safety and property of the public provided that their disclosure could impair such protection;
- G. Any investigations of violations or possible violations of law;
- H. Any pending or anticipated litigation or contract negotiations other than collective bargaining, and any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his/her ethical duties as a lawyer;
- I. Any matter involving employment, appointment, termination, terms and conditions of employment, evaluation, promotion or disciplining of any prospective or current public employee or officer unless all the individual employees whose rights could be adversely affected request in writing that the matter be discussed at a public meeting;
- J. Any deliberations occurring after a public hearing that may result in the imposition of a specified civil penalty or loss of license to an individual.

Such sessions shall be closed to the public and press, and shall be declared so by a formal motion at a public meeting. Minutes taken at such meetings shall remain confidential only so long as their publication would defeat the purpose of the executive session. That such a meeting will be or was held shall be recorded in the minutes of the preceding or subsequent regular meeting. Board members and other persons attending the session shall not disclose the topic or details of discussion at executive session.

PUBLIC AND EXECUTIVE SESSIONS (continued)

The board may invite staff members or others to attend executive sessions at its discretion.

When public employees make statements pursuant to their official duties: in the classroom, at board meetings, and at other meetings related to educational issues affecting the district, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline (Garcetti v. Ceballos).

No official action shall be taken at executive sessions, except such as may be sanctioned by law. To take final action on any other matter discussed, the board shall convene or reconvene in open session.

Public Participation

Meetings of the board are open to the public and all members of the community should feel free to attend. A time for public discussion of agenda items shall be included in the order of business at an appropriate time.

Brief comments on any matter of interest to the district should be reserved for the time provided in the order of business.

Provision may be made for the introduction by a member of the public of business not on the agenda when the matter is of such urgency or wide interest that delaying consideration of it to the next meeting would not be in the public interest.

Grievances or complaints that have not previously been considered through administrative channels shall not be acted upon by the board.

NOTE: IF THE BOARD WISHES TO INCLUDE A SECTION IN THIS BYLAW ON EMAIL COMMUNICATION AMONG ITS MEMBERS, IT MAY DO SO HERE.

Electronic Communication Among Board Members

The board of education believes that electronic communication among its members and the administration is an efficient and convenient way to exchange information, but must not be misused to deliberate issues that are appropriately discussed only in a public meeting. Therefore, board members and administrators shall exercise caution when communicating between and among themselves via electronic messaging services including but not limited to email, internet web forums and internet chat rooms. They should understand at all times that these communications may be considered school district records that are subject to public disclosure.

Electronic messaging communication shall conform to the same standards of judgment, propriety and ethics as other forms of board-related communication (committee meetings, telephone calls, etc.). Board members shall adhere to the following guidelines when communicating electronically:

- A. Board members shall not use email or any other electronic messaging service as a substitute for deliberations at board meetings. The Open Public Meetings Act defines a "meeting" as any gathering, whether corporeal or by means of communication equipment, attended by or open to all of the members of a public body, held with the intent to discuss or act as a unit upon the specific public business of that body.
- B. Board members shall be aware that email and email attachments received or prepared for use in board business may be considered public records that may be inspected by any person upon request, unless otherwise made confidential by law.

PUBLIC AND EXECUTIVE SESSIONS (continued)

- C. Board members shall avoid reference to confidential information about employees, students or others in email communications because of the risk of improper disclosure. Board members shall adhere to the district "acceptable use" policy in all email communications and shall refrain from sending inappropriate, profane, harassing or abusive emails. (See file code 6142.10 Technology).

NOTE: IF BOARD MEMBERS ARE NETWORKED TO THE DISTRICT SYSTEM, THE FOLLOWING MAY BE APPROPRIATE:

- D. Board members shall not reveal their passwords to others in the network or to anyone outside of it, except to the system administrator. If any board member has reason to believe a password has been lost or stolen, or that email is being accessed by someone without authorization, he/she shall notify the Superintendent immediately.

NOTE: IF THE BOARD SURVEYS ITS MEMBERS THROUGH ELECTRONIC MEANS, THE FOLLOWING LANGUAGE IS RECOMMENDED:

Electronic "Surveying" Communications

The board of education believes that "paperless board meetings" are a type of electronic communication among its members and the administration that is an efficient and convenient way to exchange information, but must not be misused to deliberate issues that are appropriately discussed only in a public meeting. Therefore, board members and administrators shall exercise caution when communicating between and among themselves via electronic messaging services including but not limited to surveying, email, internet web forums and internet chat rooms.

The surveying features of paperless board meetings shall be used consistent with the New Jersey Open Public Meetings Act by restricting its use in the following ways:

- A. The board shall maintain and provide access to all electronic communications pursuant to the New Jersey Open Public Records Act.
- B. Surveying is a type of electronic messaging communication, and shall conform to the same standards of judgment, propriety and ethics as other forms of board-related communications (committee meetings, telephone calls, etc.).
- C. Board members shall not use surveys, email or any other electronic messaging service as a substitute for deliberations at board meetings. The Open Public Meetings Act defines a "meeting" as any gathering, whether corporeal or by means of communication equipment, attended by or open to all of the members of a public body, held with the intent to discuss or act as a unit upon the specific public business of that body.
- D. Surveying will not be used for topics referring to confidential information about employees, students or others in email communications because of the risk or improper disclosure.
- E. The district will avoid the appearance of conducting board discussion or actions, in which opinions are exchanged among a quorum of board members through repeated survey questions and answers, outside an open public meeting.
- F. The board shall annually review its electronic communication policy and practices with the board attorney.

Date Reviewed: 10/6/04; 04/18/2012

Date Adopted: 11/17/99; 11/17/04; 05/09/2012

PUBLIC AND EXECUTIVE SESSIONS (continued)

Legal References: Use legal reference sheet.

Cross References: List your appropriate policies. See legal reference sheet for possibilities.

Key Words

Board of Education Meetings, Public and Executive Sessions, Executive Sessions

Legal References

PUBLIC AND EXECUTIVE SESSIONS

QSAC Monitored:

Section 3: Governance

Other Reasons:

It is a good idea to have policy language addressing the "privileged" topics covered by the Sunshine Law.

Recommendation:

A bylaw listing the circumstances under which the law permits closing the meeting to the public and guidelines for public participation at board meetings. The board should allow itself sufficient latitude in regulating public discussion so that the needs of the community to express itself and the need of the board to conduct its business expeditiously are balanced.

If email is an accepted means of communication among board members and the administration, including guidelines on its use in this bylaw would be appropriate. Inadvertent violation of the Open Public Meetings Act is a common misuse of email communication among board members

- Legal References:**
- N.J.S.A. 2C:33-8 Disrupting meetings and processions
 - N.J.S.A. 10:4-6 et seq. Open Public Meetings Act
 - See particularly:
 - N.J.S.A. 10:4-12(a)
 - N.J.S.A. 18A:10-6 Board meetings public; frequency; hours of commencement; adjournment, etc., for lack of quorum
 - N.J.S.A. 18A:11-1 General mandatory powers and duties
 - N.J.S.A. 18A:12-21 et seq. School Ethics Act
 - N.J.S.A. 18A:54-20 Powers of board (county vocational schools)
 - N.J.S.A. 47:1A-1 et seq. Public Records; Examination and Copies (Open Public Records Act)
 - N.J.A.C. 6A:32-12.1 Reporting requirements

Rice v. Union City Board of Education, 143 N.J. Super 64 (1978)

5 U.S.C. Section 552 as amended by Public Law No. 104-231,110 Stat. 3048 Freedom of Information Act

Garcetti v. Ceballos 2006 U.S. Lexis 4341(May 2006)

Possible

- Cross References:**
- *1120 Board of education meetings
 - *3570 District records and reports
 - *6142.10 Technology
 - *9121 Election and duties of president
 - *9271 Code of ethics
 - *9323/9324 Agenda preparation/advance delivery of meeting material
 - *9326 Minutes

*Indicates policy is included in the Critical Policy Reference Manual.