



# Open Meetings Act Masterclass 2021

Presented to NMSBA Leadership Retreat  
July 9, 2021

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# Overview

- OMA Refresher
  - Public policy for open meetings
  - When does OMA apply/not apply?
  - Executive sessions
  - Meeting notices and agendas
  - Emergency meetings, meeting minutes, and public comments
- Issue Spotting
- Questions/Comments



# Public Policy for OMA

- New Mexico Open Meetings Act, NMSA 1978, Sections 10-15-1 through 10-15-4
- Section 10-15-1(A)
  - Government is dependent on an informed electorate
  - All persons are entitled to the greatest possible information regarding the affairs of government and official acts of those officers and employees who represent them

# Public Policy for OMA

- The formulation of public policy or the conduct of business by vote shall not be conducted in closed meetings
- All persons desiring shall be permitted to attend and listen to the deliberations and proceedings



# OMA Applies to:

- Section 10-15-1(B)
  - All meetings of a quorum of members ... held for the purpose of formulating public policy
- What about the following?
  - Zoom meetings?
  - Email/text communications?
  - Breakfast meetings?
  - Social gatherings?
  - Phone calls between 2 members?
  - Rolling quorums?



# Executive Sessions

- Section 10-15-1(H), permitted for:
  - (2) **Limited personnel matters of any individual public employee**
  - (4) **Identifiable student information**
  - (5) **Collective bargaining** strategy and negotiations
  - (6) Reviewing **competitive sealed proposals and negotiations** under the Procurement Code, for proposals over \$2,500
  - (7) **Attorney-client privileged** discussions of pending or threatened litigation
  - (8) Discussions of the acquisition or disposal of **real property or water rights**





# Executive Session Requirements

- Public notice required, stating specific provision of law and reasonable specificity of the subject to be discussed
- Generally, no action can be taken in executive session
- Roll call vote to go into executive session
- Motion to return to open session requires a statement that only those topics listed were discussed in executive session, voice vote ok

# Meeting Notices and Agendas

- Any meetings ... and any closed meetings, .. shall be held only after reasonable notice to the public.
- **NOTICE AND AGENDA MUST BE POSTED AT LEAST 72 HOURS BEFORE MEETING**
  - Must be posted on the website
  - NMSBA Policy Service: At central office AND all school sites
    - Must be available to the public (posted in publicly viewable places)
  - Includes sending to broadcast stations and newspapers of general circulation that have requested notice



# Meeting Notices and Agendas

- Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted



# Who creates the Agenda?

- Typically determined by Board Policy
- Superintendent and Board President lead the process
- Board member addition of items varies
  - One Board member?
  - Two Board members?
  - Consensus from a previous meeting?



# Emergency Meetings

- Bottom Line: Highly unlikely and very difficult to prove
- Section 10-15-1(C)
  - “Emergency” is for unforeseen matters that, if not addressed immediately ... will likely result in injury or damage to persons or property or substantial financial loss to the district
  - Within 10 days, the meeting must be reported to the Attorney General explaining the need
  - Attorney General may rule meeting invalid

# Meeting Minutes

- Section 10-15-1(G) the Board shall keep written minutes of all its meetings with:
  - Date, time, and place of meeting
  - Members in attendance and absent
  - Substance of the proposals considered
  - A record of any decisions made and votes taken to show how each member voted
- Draft minutes shall be prepared within 10 working days of meeting
- Minutes shall be approved at the next meeting where a quorum is present



# Public Comment Considerations

- Typically governed by Board Policy
- Rules of thumb:
  - Put a time limit that applies to all speakers
    - No sharing of time
  - Topics should relate to school district business
  - Should not discuss individual employees or students
  - Use a “ground rules” script and a timer

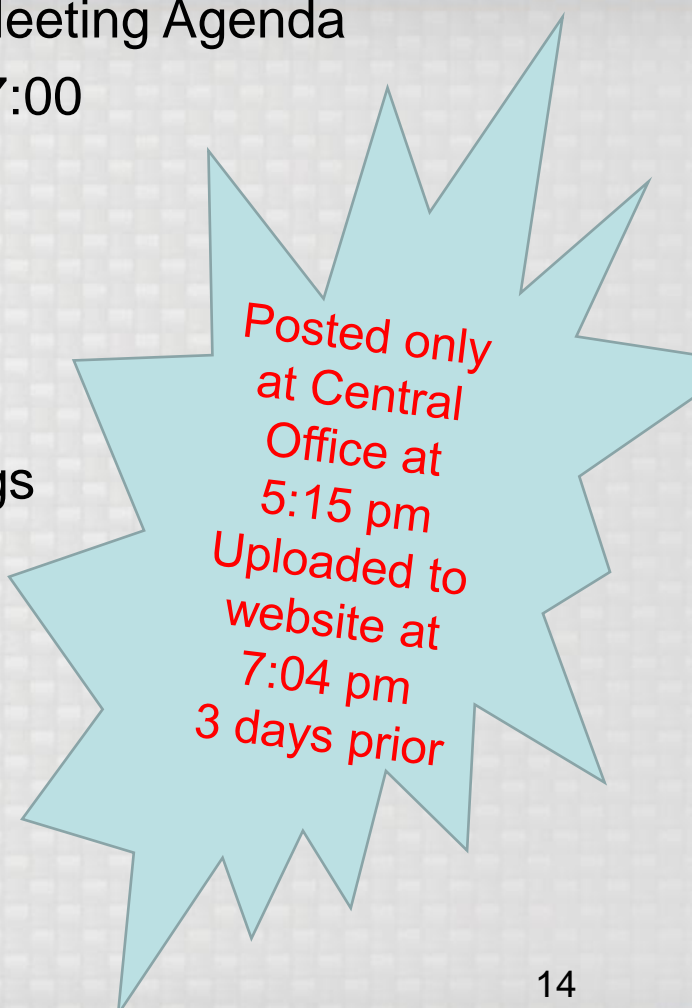
# Issue Spotting - Sample Agenda

## I.M. Perfect School District Regular Meeting Agenda

Location: Anytown, USA

Time 7:00

- I. Call to Order
- II. Pledge of Allegiance
- III. Adoption of Agenda
- IV. Approval of minutes for previous 2 meetings
- V. Reports
- VI. Contracts
- VII. Board Discussion/New Business
- VIII. Executive session:
  - I. Limited Personnel Matters
  - II. Pending and threatened litigation
- IX. Adjourn



Posted only  
at Central  
Office at  
5:15 pm  
Uploaded to  
website at  
7:04 pm  
3 days prior

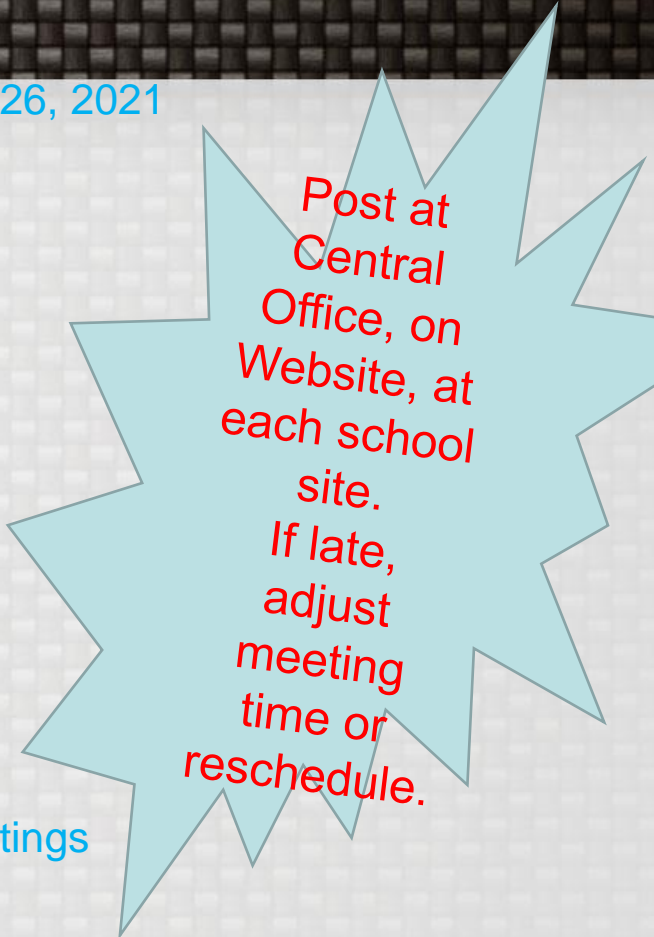


# Issue Spotting - Sample Agenda

Location: Time 7:00 p.m. Monday, July 26, 2021

Central Office Board Room, 123 Maple St., Anytown, USA

- I. Call to Order
- II. Pledge of Allegiance
- III. Adoption of Agenda
- IV. Approval of minutes since last regular meeting
- V. Reports
  - I. New bus route report
  - II. Finance report on proposed reduction in force
- VI. Contracts
  - I. Food service contract with KFC
  - II. Distance learning contract with Grover
- ~~VII. Board Discussion/New Business~~ Topics for future meetings
- VIII. Executive session:
  - I. Limited Personnel Matters – Superintendent Evaluation
  - II. Pending and threatened litigation – Mama Bear v. IMPSD, CV No. 2021-001
- IX. Adjourn



Post at  
Central  
Office, on  
Website, at  
each school  
site.  
If late,  
adjust  
meeting  
time or  
reschedule.

# Issue Spotting - Emails

From: Board Member “the Count”

To: Board Members Ernie, Bert, Oscar, and Elmo

Subject: Agenda item - distance learning contract with Grover

Dear Board Members,

I have many problems with this Contract and I encourage you to vote against it:

One (ah-ah-ah): I do not believe in distance learning

Two (ah-ah-ah): Grover is blue, I don't like blue.



# Issue Spotting - Emails

From: Superintendent Mr. Hooper  
To: Board Members the Count, Ernie, Bert, Oscar, and Elmo  
Subject: Weekly Update

Dear Board Members,  
These are this week's activities:

1. HS parking lot paving and striping
2. MS science fair
3. ES parent teacher conferences

## REPLY ALL

From Member Ernie  
To: Superintendent Mr. Hooper, the Count, Bert, Oscar, and Elmo  
Subject: Re Weekly Update

1. I don't like the paving contractor, I'm instructing the Super to cancel the contract and ask Big Bird to do it
2. The science fair should be cancelled because they didn't let me enter my rubber duckie
3. That parent Mr. Snuffleupagus should be banned from the ES campus

# Covered Issues

- Vague agenda items
- Executive session placeholders
- Compliance with minutes requirements
- Properly posted meeting notices
- Rolling quorums

## **ATTORNEY GENERAL INQUIRIES**

- Costly – monetarily and public opinion



# Other Meeting Considerations

## Post COVID –

- Board member telephonic/remote attendance
  - When difficult or impossible for the member to attend in person (unusual, not regular)
  - Remote member must be able to be identified and heard by the other members and public
- Public attendance/participation – video or Zoom may be good to continue

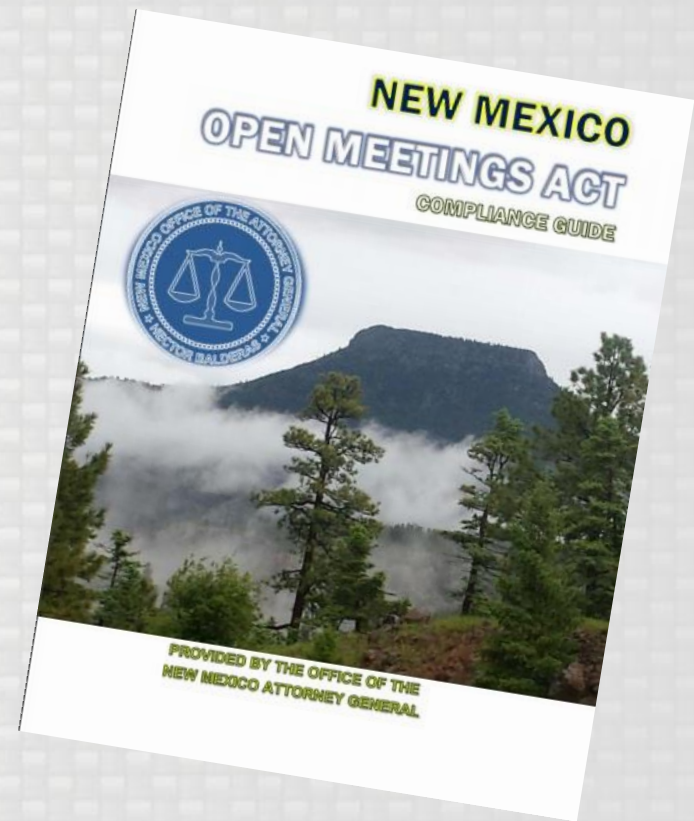
# Penalties/Consequences

- Sections 10-15-3 and 10-15-4
  - No Board action is valid unless taken at a valid meeting
    - If OMA was violated, the action is invalid
  - OMA is enforced by the Attorney General, District Attorney, or private individual
    - Successful Plaintiff may receive costs and reasonable attorneys' fees
    - Frivolous claimants may have to pay reasonable attorneys' fees
    - Possible criminal misdemeanor penalties/fines



# Resources

- New Mexico Statutes Annotated, Sections 10-15-1 through 10-15-4
- New Mexico Open Meetings Act Compliance Guide, Issued by the NM Attorney General's Office



<https://www.nmag.gov/oma-and-ipra-nm-sunshine-laws.aspx>

# Questions/Discussion

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- When does OMA apply/not apply?
- Executive sessions
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- Emergency meetings, meeting minutes, and public comments
- Penalties

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