



Open Meetings Act Masterclass 2022

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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?
 - Video conferences/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 or actions 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

Virtual Meetings

- NMAG Advisory during COVID Emergency
 - Allows virtual meetings
 - At start, announce names of remote members
 - Members must identify selves when speaking or voting
 - Public should have access via live stream, other technology, or call-in number to listen
 - Pause meeting if audio/video problems
 - All votes must be by roll call
 - A recording of the meeting should be kept
 - Virtual meetings recommended during health emergencies
- Be careful with chat functions!

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 – live stream or virtual access may be good to continue

Issue Spotting

- Agenda items: Contracts?
- Agenda posting:
 - Location: Central Office?
 - Timing: 6 pm Friday posting for 5 pm Monday meeting?
- Quorums:
 - Graduation? Coffee shop? Email?
 - Communications from Superintendent? Constituents?
- Executive Session: Discuss the budget? Union negotiations?
- Emergency meetings: Forgotten contract? Safety risk?

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

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/publications.aspx>

Questions/Discussion

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- Executive sessions
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- Emergency meetings, meeting minutes, and public comments
- Penalties

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