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Agenda

- Role of the School Committee
- Review of Open Meeting Law
- Questions



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Role of the School Committee

Role of the School Committee: What Do School Committees Do?

“The school committee in each city and town and each regional school district shall have the power to select and terminate the superintendent, shall review and approve budgets for public education in the district, and shall establish educational goals and policies for the schools in the district consistent with the requirements of law and statewide goals and standards established by the board of education.”

M.G.L. c. 71, Section 37.

Role of School Committee: DESE Guidance Highlights

- According to DESE, the school committee is seen as a publicly elected or appointed equivalent of a board of directors of a corporation. The school committee has oversight of and responsibility for the school system, sets the direction in which the system must go, and establishes criteria to determine if its goals and policies are met.

Role of Superintendent: What do Superintendents Do?

- A superintendent “shall manage the system in a fashion consistent with state law and the policy of determinations of that school committee.”

M.G.L. c. 71, Section 59.

Role of Superintendent: DESE Guidance Highlights

- The superintendent serves as the school committee's chief executive officer and educational advisor. The superintendent is educational leader for the school system, and provides administrative leadership for all school staff in operational matters and in proposing and implementing policy changes.
- The day-to-day operation is the responsibility of the superintendent, together with school principals and other administrative staff members.

Role of Principals

- Principals are the educational administrators and managers of their schools, and shall supervise the operation and management of their schools and school property, subject to the supervision and direction of the superintendent. Each principal works with a school council to define educational goals for the school, identify the educational needs of the students, and formulate a school improvement plan, consistent with state and local educational goals and policy. **M.G.L. c. 71, §§ 59B & C.**

Educational Goals and Policy: When is it Policy?

- The line between educational policy (the school committee responsibility) and administrative operations (the superintendent's responsibility) is sometimes clear. Examples:
 - School Choice Law – SC Responsibility, **M.G.L. c. 76, Section 12B.**
 - Setting length of school day and school year – SC Responsibility, **603 CMR 27.00.**
 - School lunch prices – SC Responsibility, **M.G.L. c. 71, Section 72.**

Educational Goals and Policy: When is it Policy?

- Examples con't:
 - Transfer of property – SC Responsibility, **M.G.L. c. 40, Section 3.**
 - New courses – SC Responsibility (2/3 vote), **M.G.L. 71, Section 13.**
 - Change in school books – SC Responsibility (2/3 vote), **M.G.L. c. 71, Section 50.**
 - To adopt a name and corporate seal – SC Responsibility, **M.G.L. c. 71, Section 16.**

Educational Goals and Policy: When is it Policy?

- Other times the determination is a bit more difficult to navigate:
Examples:
 - Setting detailed rules of student conduct specific to each school – delegated to superintendent, principal and school councils, See **M.G.L. c. 71, Sections 37H and 59C.**
 - Broad, system-wide curriculum or school restructuring issues – SC Responsibility after seeking advice and recommendation of superintendent
 - Detailed curriculum decisions (such as when subjects are taught) – superintendent/principal responsibility
 - Standards for high school graduation and for promotion of students – SC Responsibility

Educational Goals and Policy: Tips for Determining When its Policy?

- **WHAT** to do is school committee.
- **HOW** it is done is administration
- DESE recommends that when the line between policy and operations is not clear, the matter is best resolved locally, through open communication and collaboration between the school committee and the superintendent.
- “School Committees are most effective in advancing education reform when they focus on strategic direction of the school system, on educational policy and outcomes rather than on managerial responsibilities”

Educational Goals and Policy: Where Can Policy Be Found?

- The district policy manual
- Strategic plans
- District goals
- Student handbook
- The Budget

The Role of the School Committee: The Budget

- The school committee reviews and approves budgets for public education in the district. **M.G.L. c. 71, Section 37.**
- MASC guidance provides that no question with regard to money is off limits from the school committee.
- The school committee must hold a public hearing on the proposed annual budget. **M.G.L. c. 71, Section 38N.**

The Role of the School Committee: The Budget

- The school committee has authority to determine expenditures within the total appropriation voted by the city or town. The city or town appropriating body is authorized to make non-binding monetary recommendations to increase or decrease certain items allocating such appropriations, but it may not limit the school committee's authority to determine expenditures within the total appropriation. **M.G.L. c. 71, § 34**

The Role of the School Committee: The Budget

- The school committee may accept grants and gifts for educational purposes from federal, state, county and municipal governments or agencies thereof, charitable foundations and private corporations and disburse the same for such purposes. **M.G.L. c. 71, Section 37A**
- Regional School District budget process is outlined in **M.G.L. c. 71, Section 16B**

The Role of School Committee: Staffing

- The school committee is responsible for hiring the following personnel to the following positions:
 - Superintendent – **M.G.L. c. 71, Section 37**
 - Assistant/Associate Superintendent (based on recommendations of the superintendent – approval of recommended candidate cannot be unreasonably withheld) – **M.G.L. c. 71, Section 59**
 - School Business Administrator – **M.G.L. c. 71, Section 41**

The Role of School Committee: Staffing

- Positions the school committee hires con't:
 - Special education director – **M.G.L. c. 71B, Section 3A.**
 - Nurses and school physicians – **M.G.L. c. 71, Section 53.**
 - Supervisors of attendance – **M.G.L. c. 76, Section 19.**
 - Legal counsel – **M.G.L. c. 71, Sections 37E and 37F.**

The Role of School Committee: Staffing

- Administrators, principals, staff not assigned to a particular school, are appointed by the Superintendent. **M.G.L. c. 71, Section 59B.**
- Teachers, athletic coaches, and other staff are hired by principal subject to the approval of superintendent. **M.G.L. c. 71, Section 59B.**

The Role of School Committee: Levels of Compensation and Hiring Practices

- The school committee establishes levels of compensation for school principals and other administrators and personnel not assigned to particular schools. **M.G.L. c. 71, Section 59B.**
- School committees may establish additional qualifications for hire beyond the required certifications. **M.G.L. c. 71, Section 38G.**
- School committees may also establish personnel policies, so long as they are consistent with law and do not infringe on the superintendent's and principals' management responsibility with respect to hiring

The Role of School Committee: Collective Bargaining

- The school committee acts as the employer of school employee for collective bargaining purposes. **M.G.L. c. 150E, Section 1.**
- The school committee designates a negotiator or negotiating team
- The superintendent serves as a resource during collective bargaining and assures adherence to collective bargaining agreements

The Role of School Committee: Discipline and Discharge

- The school committee can discipline and terminate the superintendent. **M.G.L. c. 71, Section 59**
- The superintendent can discipline or dismiss any employee of the school district. M.G.L. c. 71, Section 42. Only a superintendent can dismiss a principal. **M.G.L. c. 71, Section 41.**
- The principal may dismiss or demote any teacher or other person assigned full-time to his/her school, subject to the approval of the superintendent. **M.G.L. c. 71, Section 42.**



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The Open Meeting Law

The Open Meeting Law: General Rule

“Except as provided in Section 21, all meetings of a public body shall be open to the public.”

M.G.L. c. 30A, Section 20(a).

Purpose of Open Meeting law

- Recognizes the necessary balance between government accountability and government efficiency
- Ensures transparency by public bodies by requiring:
 - Notice
 - Open deliberations
 - Public access
- Allows governments to efficiently and effectively manage its operations by
 - Providing for certain deliberations to take place in executive session
 - Maintaining confidentiality of certain records of executive session

Open Meeting Law Basics

- Notice must be posted for meetings
- Meetings must be open to the public unless the public body enters into executive session
- Minutes must be kept for open and executive sessions
- Public body member certification
- Complaint process

What is a “Public Body”?

- Public Body: A multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose.
- Subcommittee: “any multiple-member body created to advise or make recommendations to a public body.”

What is a “Meeting”?

- Meeting: A **deliberation** by a public body with respect to any matter within the body’s jurisdiction
- Excludes:
 - On site inspection provided no deliberation
 - Attendance by a quorum at an event or conference provided no deliberation
 - Attendance by a quorum at meeting of another public body provided not deliberation
 - Meeting of quasi-judicial boards for sole purpose of making a decision in adjudicatory proceeding
 - Town meeting

What is a “Deliberation”?

- Deliberation: An oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction
- Excludes:
 - Distribution of meeting agenda
 - Distribution of scheduling information
 - Distribution of other procedural information; or
 - Distribution of reports or documents that may be discussed at an upcoming meeting
 - **Provided no member of public body expresses opinion**

What is a “Deliberation”?

- To be a deliberation, the communication must involve a quorum of the public body (usually a simple majority of the members of the public body)
 - Thus, a communication among less than a quorum of the members of a public body will not be a deliberation, unless....
- **Serial Communications** – Members of a public body cannot participate in a series of communications with less than a quorum which when added together result in participation by a quorum on a matter of public business within the jurisdiction of the public body

What Matters are Within Jurisdiction of the Public Body

- As a general rule, any matter of public business on which a quorum of the public body may make a decision or recommendation is considered a matter within the jurisdiction of the public body
- Discussions regarding procedural or administrative matters may also relate to public business within a body's jurisdiction. Examples include:
 - Discussions involving the organization and leadership of the public body
 - Discussions regarding committee assignments
 - Discussions regarding rules or bylaws

Meeting Notices

- Except in an emergency, a public body must post notice of meetings at least 48 hours in advance, excluding Saturdays, Sundays, and legal holidays
- Emergency is a sudden, generally unexpected occurrence or set of circumstances demanding immediate action
- In an emergency, a public body must post notice as soon as reasonably possible prior to a meeting

Meeting Notices: What Needs to be Included

- Meeting notices must be posted in legible, easily understandable format and contain:
 - Date of meeting
 - Time of meeting
 - Place of meeting
 - List of topics chair reasonably anticipates will be discussed at meeting
 - The list of topics (i.e., agenda) “shall have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.” **940 CMR 29.03(1)(b)**
 - Date and time notice was posted

Meeting Notices: Local Public Bodies

- Local public body must file notice with municipal clerk
- Notice must be posted in a manner conspicuously visible to the public, including persons with disabilities, at all hours in, on, or near the municipal building where the clerk's office is located
- Posting options:
 - Municipal website
 - Cable television / alternate municipal building open 24 hours
 - Newspaper / alternate municipal building open 24 hours
 - Monitor / electronic display where may be viewed 24 hours
 - Audio recording available 24 hours

Meeting Notices: County, District and Regional Public Bodies

- Regional or district public bodies must post notices in each city or town within the region or district in the same manner prescribed for local public bodies, or may post to website
- Regional school districts may post a meeting notice on the regional or district public body's website.
- The regional school district committee must file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district
- A copy of the notice must be filed and kept by the chair of the public body or the chair's designee.

Public Participation

- Public is permitted to attend open session of meeting.
- An individual may not address the public body without permission of the chair or otherwise disrupt meeting.
- Public may make an audio or video recording of an open session upon notification to chair and subject to reasonable requirements.
- Chair must inform other attendees of any such recording at beginning of meeting.
- If a person continues to disrupt a meeting after a clear warning from the chair, the chair may order the person to leave the meeting. If the person does not leave, the chair may authorize a constable or other officer to remove the person.

Remote Participation

- The Attorney General's regulations authorize remote participation by members of public bodies.
- The practice must first be adopted by the appropriate adopting authority.
- This authorization can be revoked at any time.
- The adopting authority can enact restrictions (e.g., limiting number of times a member can remotely participate).

Remote Participation

- General requirements:
 - A quorum of the public body is present at the meeting location.
 - The remote participant and the attending members are clearly audible to each other.
 - The remote participant may vote.
 - Must be a permissible reason to remotely participate (personal illness; personal disability; emergency; military service; or geographic distance).

Remote Participation

- Remote participant must provide advance request to chair, the remote participation must be announced at the start of the meeting, and the remote participation must be recorded in the meeting minutes.
- Votes are taken by roll call.
- During executive session, remote participant must be alone at the remote location – no one else can be present or able to listen at the remote location, unless approved by simple majority vote.
- The public body can further restrict requirements for remote participation.
- If a violation, the Attorney General can temporarily or permanently prohibit remote participation for the public body.

Executive Session

- The OML sets forth 10 lawful purposes for which a public body may meet in executive session.
- At least one of these purposes must apply to enter executive session. If more than one apply, list them all.
- A public body cannot discuss matters that were not identified in the vote to enter executive session.

Executive Session Procedures – M.G.L. c. 30A, Section 21(b)

- First, there must be a lawfully convened open session, with proper notice
- Roll call vote to enter executive session. Majority vote is required. Vote each member must be entered into minutes.
- Before the executive session, “the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called
 - Keep in mind, Purpose # 3(collective bargaining / litigation), 6 (real property), 8 (preliminary screening committee), and 10 (energy trade secrets) **require specific declarations.**

Executive Session Procedures – M.G.L. c. 30A, Section 21(b)

- Chair shall publicly announce whether the meeting will reconvene in open session at the conclusion of the executive session
- Accurate records of the executive session shall be kept
- All votes taken must be recorded by roll call

Executive Session Purpose # 1

- To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual.
- Purpose #1 has safeguards:
 - The individual to be discussed shall be notified in writing at least 48 hours prior to the proposed executive session, unless waived through written agreement of the parties.
 - The session shall be open if the individual so requests.

Executive Session Purpose # 1

- If there is an executive session for Purpose #1, the individual has the following rights:
 - (i) to be present during deliberations involving the individual;
 - (ii) to have counsel or other representative of his own choosing present for the purpose of advising the individual, rather than actively participating;
 - (iii) to speak on his own behalf; and
 - (iv) to have an independent record of the executive session created through audio recording or transcription at his/her own expense.

Executive Session Purpose # 1

- There is no requirement to identify the person on the posted agenda for the executive session.
- Performance evaluations cannot be conducted under Purpose #1.

Executive Session Purpose # 2

- To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel.
- The posted agenda should identify the nonunion personnel, unless there is a reason not to do so.
- Lexington School Committee (OML 2012-66): non-union personnel contracts cannot be approved in executive session. The contract terms can be reached in executive session, but must be publicly ratified in open session.

Executive Session Purpose # 2

- In contrast, a public body may approve final terms and execute a collective bargaining agreement in executive session, but should promptly disclose the agreement in open session following its execution.
- This purpose includes not only bargaining sessions, but also includes grievance hearings that are required by a collective bargaining agreement.

Executive Session Purpose # 3

- To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares.
- The posted agenda should include the identity of the union or the litigation, unless there is a reason not to do so.
- Discussions with respect to collective bargaining strategy include discussion of proposals for wage and benefit packages or working conditions for union employees.
- Discussions relating to potential litigation are not covered by this exemption, unless litigation is clearly and imminently threatened.

Executive Session Purpose # 4

- To discuss the deployment of security personnel or devices, or strategies with respect thereto

Executive Session Purpose # 5

- To investigate charges of criminal misconduct or to consider the filing of criminal complaints

Executive Session Purpose # 6

- To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body.
- Generally, a public body must identify the specific piece of property it plans to discuss before entering executive session.

Executive Session Purpose # 7

- To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements.
- Must cite the specific law.
- The Public Records Law has been recognized in certain instances as a Purpose #7 law.

Executive Session Purpose # 8

- To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening.
 - This purpose permits hiring subcommittee of a public body or a preliminary screening committee to conduct initial screening process
 - This purpose does not apply to any stage in the hiring process after the screening committee or subcommittee votes to recommend candidates to its parent body.

Executive Session Purpose # 8

- If the public body opts to convene a preliminary screening committee, the committee must contain less than a quorum of the members of the parent public body.
- The committee may also contain members who are not members of the parent public body.

Executive Session Purpose # 9 and #10

- Purpose # 9 – confer with mediator on litigation or decision
- Purpose # 10 – To discuss trade secrets in the course of activities conducted by a public body as an energy supplier

Meeting Minutes: M.G.L. c. 30A, Section 22

- Minutes must contain:
 - Date, time, and place of the meeting;
 - List of the members present or absent;
 - Summary of discussions on each subject;
 - List of documents and other exhibits “used” at the meeting; and
 - Decisions made and actions taken at each meeting, including a record of all votes

Meeting Minutes: M.G.L. c. 30A, Section 22

- Minutes shall be kept of both Open and Executive Sessions.
 - The minutes should be kept separate.
- There must be some level of detail in the minutes – although the minutes need not be a verbatim copy of all discussions.
- No requirement that minority viewpoints be included, but these are encouraged to be included.

Meeting Minutes: M.G.L. c. 30A, Section 22

- All executive session votes shall be recorded by roll call and entered into the minutes.
- No open session vote can occur by secret ballot.
- Minutes of open sessions shall be created and approved in a timely manner.
- Minutes of an open session—**ONLY IF THEY EXIST and WHETHER IN APPROVED OR DRAFT FORMS**—shall be made available upon request by any person within 10 days. M.G.L. c. 30A, § 22(c).

Meeting Minutes: M.G.L. c. 30A, Section 22

- Documents and other exhibits (e.g., photographs, recordings, maps) used by the public body at an open or executive session are part of the official record of the session.
- How much content to include in the minutes?
 - Cambridge City Council (OML 2013-76): summary of discussion or explanation of how decision reached. Standard: the public would understand what occurred at the meeting.

Meeting Minutes: M.G.L. c. 30A, Section 22

- Open Session and Disclosure
 - The minutes of any open session and the notes, recordings or other materials used to prepare open session minutes, and all documents and exhibits used at the session **ARE PUBLIC RECORDS and ARE NOT EXEMPT FROM DISCLOSURE.**
 - The Public Records Law exemptions do not apply. Only 2 narrow exemptions to disclosure open session materials.

Meeting Minutes: M.G.L. c. 30A, Section 22

- Open Session and Disclosure
 - The only documents from open session that may be withheld from disclosure are:
 - Materials used in a performance evaluation of an individual bearing on his/her professional competence, if they are not created by the members of the public body for the purposes of the evaluation (e.g., employees reviewing supervisor); and
 - Materials used in deliberations about employment or appointment of individuals, including applications and supporting materials.
 - Applicant resumes are not exempt from disclosure.

Meeting Minutes: M.G.L. c. 30A, Section 22

- Executive Session and Disclosure
 - Executive session minutes, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the executive session may be withheld from disclosure to the public in their entirety **only so long as publication may defeat the lawful purposes of the executive session.**
 - At reasonable intervals, the public body, or its chair or designee, **shall review the minutes of executive sessions to determine if their continued non-disclosure is warranted.** This determination shall be announced at the next meeting and shall be included in the minutes of that meeting. M.G.L. c. 30A, § 22(g)(1).

Meeting Minutes: M.G.L. c. 30A, Section 22

- Executive Session and Disclosure
 - If a person requests a copy or inspection of the minutes of an executive session, the public body shall respond within 10 days and shall release any non-exempt minutes. M.G.L. c. 30A, § 22(g)(2).
 - If a request is made and the public body has not conducted its periodic review, it shall perform the review and release the non-exempt minutes no later than the public body's next meeting or 30 days, whichever occurs first.

Meeting Minutes: M.G.L. c. 30A, Section 22

- Executive Session and Disclosure
 - No fee can be charged for a public body's determination whether minutes can be released.
 - If the purpose for the valid executive session no longer exists, the minutes, preparatory materials, and documents and exhibits used at the executive session shall be disclosed unless a basis for withholding exists under the Public Records Law (i.e., attorney-client privilege or a statutory exemption).

Open Meeting Law Complaints

- Members of the public may initiate a complaint with the Division of Open Government of the Attorney General for an administrative investigation/determination provided the complainant first notifies the public body within thirty (30) days of the suspected violation and gives an opportunity to the public body to cure it. **M.G.L. c. 30A, § 23; 940 CMR 29.05.**
- Any complaint must be filed with the public body within thirty (30) days of the date of the alleged violation or thirty (30) days of when the alleged violation could have reasonably been discovered. **M.G.L. c. 30A, § 23(a).**

Open Meeting Law Complaints

- The public body must, within fourteen (14) business days of receipt of a complaint, send a copy of the complaint to the Attorney General and notify the Attorney General of any remedial action taken. The public body also must notify the complainant that it has forwarded the complaint to the Attorney General and provide a description of any remedial action taken.
- If the complainant is unsatisfied with the public body's response, he/she may file the complaint with the Attorney General, provided that at least thirty (30) days have passed since the complaint was filed with the public body.

Open Meeting Law Complaints

- Upon receipt of a complaint by any person, the Attorney General shall determine, in a timely manner, whether there has been a violation of the Open Meeting Law.
- Potential Steps by the Attorney General
 - Determine that there was no violation after investigation;
 - Determine that there was a violation without hearing via informal action or formal order; or
 - Determine that there was a violation after hearing.

Open Meeting Law Complaints: Remedies – M.G.L. c. 30A, Section 23

- The Attorney General has the power to:
 - Compel immediate and future compliance;
 - Compel attendance at a training session;
 - Nullify in whole or part any action taken at the meeting;
 - Impose a civil penalty upon the public body of up to \$1,000 for each intentional violation;
 - Reinstate an employee without loss of compensation, seniority, tenure or other benefits;
 - Compel that minutes or other records be made public; and
 - Prescribe other appropriate action.

Open Meeting Law Complaints: Remedies – M.G.L. c. 30A, Section 23

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 - Reinstate an employee without loss of compensation, seniority, tenure or other benefits;
 - Compel that minutes or other records be made public; and
 - Prescribe other appropriate action.

Certification

- Within 2 weeks of being qualified for office, all members of a public body shall certify receiving a copy of the Open Meeting Law, the Open Meeting Law regulations, and a copy of the educational materials prepared by the Attorney General explaining the Open Meeting Law and its application.
- This certification must be retained by the appointing authority, executive director, or other appropriate administrator, subject to applicable retention periods, as an official record.

Questions?





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