

Open Meetings and Open Records Act Requirements for School Boards

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Objectives

- An overview of Georgia Open Meetings and Georgia Open Records Act requirements for LEAs
- Understanding of the benefits of transparency.

Transparency

Charter schools complement traditional public schools. To remain responsive to the needs of students and the community, charter schools must not only adhere to the minimum and legally-required standards for open governance, they must dedicate themselves to transparency.

What is a meeting?

- A “meeting” is the
 - (i) Gathering of a quorum of the members of the governing body of committee members of a governing body
 - (i) at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon.

What is NOT a meeting?

■ A “meeting” is not:

- (i) Inspecting a facility or property of the school;
- (ii) Multijurisdictional trainings;
- (iii) Meeting with legislative or executive branch officials at state or federal offices;
- (iv) Traveling to a meeting;
- (v) Social, ceremonial, civic, or religious events.

Exceptions do not apply if the purpose is to evade conducting a meeting to discuss or act upon official business.

Accessible to the Public

- Meetings must be open to the public. Additionally, all votes must be taken in public.
 - Considerations for meetings conducted by teleconference.
- Members of the public must be allowed to make video and/or audio recordings of the meeting.

What notice is required for a meeting?

- **Regular Meetings**: Adopt a regular schedule. Provide notice of the meeting physically posted in a conspicuous place at the meeting site and on the school's website.
- **Called Meetings**: Notice to the legal organ at least 24 hours in advance of the meeting as well as any media outlet that has requested advance notice of called meeting. Provide notice of the meeting physically posted in a conspicuous place at the meeting site and on the school's website.
- **Emergency Meetings**: Notice to the legal organ as soon as reasonable under the circumstances as well as any media outlet that requested advance notice of called meetings. Minutes must reflect the notice and reason for holding the meeting.

A Note on Emergency Meetings:

- Your Emergency Meeting probably is not an emergency.
- “Emergency Conditions” is defined elsewhere in the statute as “involving public safety or the preservation of property or public services.”

A Note on Notice:

- Notices for meetings must meet the technical requirements of the law AND be sufficient to reasonably apprise a concerned party of the upcoming meeting.
- The notice must not be misleading.

Meeting Agendas

- An agenda should include “all matters expected to come before the agency or committee at [the] meeting.”
- Must be available upon request and must be posted at the meeting site as far in advance of the meeting as reasonably possible:
 - Not required to be available more than two weeks prior to the meeting but must be posted, at a minimum, some time during the two-week period immediately prior to the meeting.
- Agendas can be modified at a meeting when it is necessary to do so. Items may not have been known in advance and deliberately omitted.

Can I Hold Meetings via Conference Call?

- State charter schools with statewide attendance zones CAN hold meetings via teleconference.
- If you do NOT have a statewide attendance zone: individual board members may participate via teleconference ONLY if: a) his or her health precludes the ability to be present; or b) he or she is out of the jurisdiction. This may only be used twice per board member per calendar year absent a doctor's note.

Can I Hold Meetings via Conference Call?

- What if you do not have a statewide attendance zone but there are emergency circumstances present?
- The Open Meetings Act provides some flexibility in “emergency circumstances” which must be determined by the school.
 - The Open Meetings Act permits governing bodies to conduct meetings by teleconference in emergency circumstances (i.e., circumstances necessitated by emergency conditions involving public safety or the preservation of property or public services, agencies or committees), “so long as the [required notice] is provided and means are afforded for the public to have simultaneous access to the teleconference meeting.”
 - If the school determines that emergency circumstances exist, then the board is permitted to meet by teleconference.

Meeting Minutes

- Meeting minutes must include:
 - The names of members present;
 - A description of each motion or other proposal made;
 - The names of those making and seconding a motion or proposal; and
 - A record of all votes.
- Minutes must be released after approval; and
- A summary of the meeting must be available within two business days.

What proceedings are excluded? When is Executive Session Authorized?

- Mediation;
- Discussing acquisitions, dispositions, or leasing of property;
- Discussing or deliberating upon appointment, employment, compensation, hiring, discipline or evaluation of personnel;
- Student discipline hearings;
- Legal discussions – attorney must be present – threat of litigation must be pending or potential.

When is Executive Session NOT Authorized?

- Budget Discussions
- Intra-governing board member disputes
- Policy Discussions
- Employee Discipline Hearings

What does Executive Session Look Like?

- State each reason to go into executive session;
- Have a majority vote of those present to close;
- Minutes must reflect the result of the vote;
- Take minutes of executive session (but do not publish);
- Execute an affidavit stating what was discussed;
- Incorporate affidavit into the minutes (best practice).

How do we vote from Executive Session?

- All votes on official actions must occur in public.
- Preliminary votes on real estate matters can occur in executive session, but the vote must be held again in public.
- Votes must make the specific action of the board clear and transparent.
- It is not consistent with the Open Meetings Act to “adopt the recommendations made in executive session.”
- Specifically – votes on personnel need to provide sufficient detail to clearly allow the public to determine what action was taken with regard to an individual.

Public Comment

- Public comment opportunities are not required by law.
- However, public comment opportunities are a best practice and are necessary for an open, transparent, and well-governed charter school.
- Public comment opportunities cannot be restricted based on content.

Tips for Public Comment

- Set a time restriction;
- Set the tone for decorum – describe what type of comments will be constructive and how other concerns may be expressed;
- Limit the board's response;
- Always remember that it is your meeting.

Open Meetings Compliance Tips

- Have a policy and procedures for ensuring the technical requirements are met.
- Make duties clear – designate someone to ensure notice is provided, meetings are recorded, affidavits are executed, etc.
- Keep your records and know where they are kept.

O.C.G.A. § 20-2-167.1

- State charter schools must hold at least two public meetings to discuss and allow input on its annual budget prior to its adoption.
- Should be the entire board (not a committee).
- Cannot be held within the same week.
- Must be advertised in the legal organ.
- Summary of the budget must be posted on the website. Detailed budget must available upon request.

FAQs

- Can I conduct business via email?
- Is an email “blast” sufficient notice of a called meeting?
- Are there a required number of board meetings that must occur each year?
- Does my agenda and meeting minutes have to reflect a “public comment” opportunity for the purpose of O.C.G.A. § 20-2-167.1 (annual budget input)?
- Can other people be present during Executive Session?

What is a document subject to Open Records?

- A public record of a state charter school is any tangible or intangible document created, received, or maintained by the school or any entity on behalf of the school.
- A public record of a state charter school remains a public record of the state charter school even if it is transferred to another party for storage or maintenance.
- All public records, except for those specifically exempt from disclosure by law or court order, must be available for public review and copying.
- Common Exemptions:
 - Education records containing personally identifiable student information.
 - Records concerning public employees that reveal the public employee's home address, home telephone number, day and month of birth, social security number, insurance...
- Personnel Records largely are NOT exempt.

■ O.C.G.A. § 50-18-70 et. seq.

What is a document subject to Open Records?

- Unless expressly exempt by law:
- All documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency or by a private person or entity in the performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use.

What Does My School Need to do When We Receive an Open Records Request?

- Respond within 3 business days. Provide the records within that timeframe if possible.
- If records cannot be provided within three days, provide an estimate as to when they will be available, the costs associated with the request, and whether any information will be withheld.
- If information or records will be withheld, the response must state the express statutory authority for exempting the record.

Does the Form of the Request Matter?

- An open records request may be oral or in writing.
- Any request for a school's documents (other than a request for a student's educational records) must be treated as an open records request.
- However, only requests made in writing are subject to civil and criminal penalties.
- An agency may designate a specific person to whom requests must be made by notifying the legal organ and placing that information on the website.
- If the agency designates an individual, the 3-day timeline begins after that person receives the request in writing.

Does the Reason for the Request Matter?

- If a school has documents that are responsive to an open records request, the reason the individual makes the request is irrelevant.

Can a Student's Educational Records be Requested?

- State law expressly exempts personally-identifiable student information in educational records from disclosure under the open records act.
- Certain individuals may request student records pursuant to the Family Educational Rights and Privacy Act (FERPA).
- If documents requested pursuant to the open records act can be redacted to exclude personally-identifiable student information, such documents must be provided.

Can We Charge Fees for Producing Records?

- For each page of physical copies produced, you may charge \$.10.
- You may charge the hourly rate of the LOWEST paid capable employee for searching and producing responsive records (not including the first 15 minutes).
- You ***MAY NOT*** charge attorney's fees for them to search, produce, or respond to open records requests.

What are Some Common Records that are Exempt?

- Personally identifiable information in educational records.
- Secure test materials.
- Personal contact information for staff.
- Health insurance and financial information (not salaries) for staff.
- TKES/LKES evaluations.

What are Some Common Records that are NOT Exempt?

- Records involving students not related to education – e.g. security video maintained by a law enforcement unit.
- Designated Directory Information under FERPA.
- Employee discipline actions.
- Employee salaries.
- Employee evaluations that are not TKES/LKES.

SCSC Rule 691-2-.03 – Transparency of Records

- Governing Board membership;
- Governing Board meeting calendar;
- Meeting agendas for upcoming Governing Board meetings;
- Meeting minutes for past Governing Board meetings unless the Georgia Open Meetings Act limits their publication;
- Procedure for contacting the school's Governing Board;
- Procedure for contacting the school's most senior school administrator;
- Any admissions application utilized by the school;
- Notification of enrollment and admission procedures required by SCSC Rule 691-2-.05, including the date, time, and location of any upcoming enrollment lottery;
- Annual operating budget or summary thereof as required by O.C.G.A. § 20-2-167.1; and
- The charter school's Charter Contract.

Final Thoughts

- Read the [SCSC's Legal Obligations Guidance document!](#)
- Questions? Email me: sarah.beck@scsc.georgia.gov