

# Sounding Board

*A publication of Osprey Wilds Environmental Learning Center Charter School Division*

---



## ***Open Meeting Law Scenarios***

July 2025

As public officials, board members are accountable for conducting school business in a transparent, accessible, and lawful manner. Minnesota's Open Meeting Law (OML), MN Stat. 13D, exists to ensure the public has the opportunity to observe and participate in the decision-making processes of government bodies, including charter school boards.

The scenarios included in this training are drawn from common situations that arise in charter school governance, from discussing personnel matters to reviewing contracts and holding retreats. Each scenario is followed by an explanation rooted in statute and best practices to help you understand not just what the law says, but how it applies in real life. While this training does not replace legal counsel, it offers clear, practical guidance to help board members fulfill their responsibilities with integrity and confidence.

*This paper is not intended to be legal advice. Please check with the school's legal counsel and / or the full text of statute for additional information.*

---

### **Scenario 1:**

At the end of last school year, the school leader did not renew the contract for one teacher. Some of the board members would like to know more about why the teacher was let go. The school leader says it would not be appropriate to discuss the details in a public format out of respect for the teacher and privacy concerns. A board member suggested a closed session to discuss it because MN Stat. 13D.05 Subd. 3 states, "...the public body may close a meeting to evaluate the performance of an individual who is subject to its authority."

The board chair believes the board cannot close a meeting to discuss it, but another member disagrees because every employee of the school is subject to its authority. (The school's established evaluation process states that it is the duty of the director to evaluate, discipline, or terminate any employee.)

Who is right?

*Answer:*

The board chair is correct. This is not a statutory reason to close the board meeting, in addition to the fact that, per policy, a teacher's evaluation is not the purview of the board. The statute reads, "...the public body may close a meeting to evaluate the performance of an individual who is subject to its authority." However, in this scenario, the board is not evaluating the teacher's performance; they are seeking information about why the school leader did not renew the teacher's contract.

Per the school's established policies, it is the school leader's role to evaluate employees (and the board's role to evaluate the school leader). In addition, the teacher's evaluation and all performance data is part of their employee file, which generally should be kept confidential.

The only reason this might rise up to the board is if the teacher follows the school's grievance policy and files a complaint with the board about the school leader or the evaluation process. But even then, the results of the evaluation might not be shared with the full board.

**Bottom line:** The board cannot close the meeting to discuss the teacher's situation because (1) it is not the board's role to evaluate that employee, and (2) the topic does not meet the statutory criteria for a closed session under Minn. Stat. 13D.05, Subd. 3.

---

## **Scenario 2:**

A charter school director resigned about a month into the school year, and the board needed to find a replacement. The school leader's resignation came after the September board meeting, and before the October board meeting the Executive Committee (which consisted of board officers but does not constitute a quorum) met and decided to promote the assistant principal to the role of school leader.

The board chair presented this proposal to the full board at the October meeting, and asked for a vote to approve the new hire. The board decided to close the meeting to review the proposed school leader's contract, including salary, and then voted to hire the new school leader before reopening the meeting. Neither the new school leader's contract nor the minutes of the Executive Committee meeting were included in the October board packet.

How many Open Meeting Law violations can you find in this scenario?

*Answer:*

There are at least four Open Meeting Law violations in this scenario.

**1. The Executive Committee met in closed session.** School board committee meetings are governed by MN Open Meeting Law (per MN Stat. 13D.01 Subd. 1(c) and Section 6.2 of the charter contract), which means committee meetings should follow the same requirements for posting and documentation as a regular meeting. In addition, all meetings (both committees and meetings of the full board) are open to the public unless closed due to one of the reasons outlined in MN Stat. 13D.05. Committee meetings should be posted on the website and minutes from those meetings are included in the board packet.

**2. The board closed the meeting without statutory authority.** The details of the school leader's contract are not a reason the board must or may close a meeting under MN 13D. Boards cannot close a public charter school board meeting just because a topic is difficult or very sensitive, including school leader employment agreements, salary, test results, financial challenges or any other topic that board members feel might embarrass them or the school. If the topic does not fall into one of the categories specifically identified in MN Stat. 13D, it must be discussed in a public session.

**3. The board voted in closed session on a topic not authorized by OML.** In Minnesota, public bodies can only vote in closed session under very specific circumstances permitted by the Open Meeting Law. Generally, all decisions must be made in open session.

4. **The board packet was incomplete.** MN Stat. 13D.01 Subd. 6 requires the board to provide, "...at least one copy of any printed materials relating to the agenda items of the meeting prepared or distributed by or at the direction of the governing body or its employees." This would include the new school leader's contract and the minutes of the Executive Committee meeting.

**Bottom line:** All meetings of board committees must be open and posted, employment contracts must be discussed in public, meeting materials must be shared with the public, and all votes must occur in open session. Transparency is not optional—it's the law.

---

### Scenario 3:

A charter school board intends to evaluate the school leader at the May meeting. When the meeting is called to order, a board member realizes this agenda item has been left off. The board chair calls for a motion to amend the agenda to include a closed session, "...to evaluate the performance of an individual who is subject to its authority," per MN Stat. 13D.05 Subd. 3.

Is this an Open Meeting Law violation?

*Answer:*

Except for in unusual circumstances, closed board meetings should be planned for in advance of the closed meeting. Per MN Stat. 13D.04 Subd. 5, "The notice requirements of this section apply to closed meetings."

If a situation develops after a board meeting agenda has been distributed and there is little time for advanced planning for a closed meeting, the board chair should determine whether:

- The situation can be considered at the board's next regular meeting;
- The board should schedule an additional meeting (with proper notice) to consider the situation; or
- If the matter is of such urgency that it must be added to the current meeting's agenda.

In the first instance, the board chair can simply add the closed meeting to the next meeting's agenda. In the second instance, the board chair can propose an additional meeting to fellow board members during the current meeting and, with the board's approval, a separate meeting can be scheduled and properly noticed. In the third instance, it is simply a matter of a board member making a motion to add the closed meeting to the agenda at the time the meeting agenda is being approved for the current meeting, again with the proper MN Stat. 13D reference that is appropriate for the topic.

Generally, school leader evaluation is not an urgent enough matter to warrant closing the meeting without proper notice.

In addition, MN Stat. 13D.05 Subd. 3 requires that the board identify the person it is evaluating prior to closing the meeting and give them an opportunity to request that the meeting be open. Nobody should be taken by surprise!

**Bottom line:** Closed sessions must be properly planned and publicly noticed in advance, just like open meetings. Unless a matter is truly urgent, the board should not close a meeting on the spot without prior notice. Evaluating the school leader is typically not urgent enough to justify this. Additionally, the board must identify the individual being evaluated and give them the option to have the discussion in an open meeting.

---

#### **Scenario 4:**

A charter school is involved in a lawsuit with a previous vendor. The board wants to close the meeting to discuss strategy with its legal team for upcoming negotiations.

Is the board allowed to close the meeting for this reason and, if so, what do they need to do before, during, and after the meeting to comply with statute?

*Answer:*

The school can close the meeting due to attorney-client privilege but it must be noticed appropriately on the agenda. The agenda should cite the specific statutory authority that allows the board to close the meeting (i.e., MN Stat. 13D.05 Subd. 3(b)). In addition, and per the guidance received from the Data Practices Office at the MN Department of Administration, "Attorney-client privilege" should not be used as a blanket reason to close a meeting and there are very few instances in which attorney-client privilege alone is sufficient to close a meeting. The school should add "to discuss issues around active litigation" to the agenda so it is clear that this actually meets the threshold of Open Meeting Law. (For more information on this topic, see p. 4 Sounding Board Issue 3, Part 3: "[Suggested Procedures and Language for Closing Charter School Board Meetings](#).")

All closed meetings must be electronically recorded, except those closed as permitted by the attorney-client privilege.

Although not required in instances of attorney-client privilege, an effective practice to support transparency is to have school boards summarize any conclusions arrived at during the meeting after all closed meetings consistent with data practices acts. Arriving at conclusions in a closed meeting does not replace the board voting on those conclusions, either in the closed meeting or during open session, if allowed by MN Open Meeting Law and the MN Government Data Practices Act.

**Bottom line:** Charter school boards may close a meeting under attorney-client privilege, but only when it meets the narrow legal standard. "Attorney-client privilege" cannot be used as a catch-all reason to close a meeting.

---

#### **Scenario 5:**

It is audit season, and the school's auditors have notified the school's business manager that the school is not able to carry a deficit balance in Fund 4 (the preschool program). The board needs to approve a transfer from Fund 1 (General Education Aid) into Fund 4 (Community Education) to zero out the deficit from last fiscal year.

The auditors have requested the board vote by email so they can continue to move forward in the audit process and not be held up by this item. The business manager sends an email to the school board, requesting approval to transfer funds from Fund 1 into Fund 4.

Can the board take care of this item in an email vote?

*Answer:*

No, the board absolutely cannot vote via email. It is a violation of MN Stat. 13D.015, "Meetings by Telephone or Electronic Means." This section applies only to "a state agency, board, commission, or department, and a statewide public pension plan..." and not charter school boards. What it means is that charter school boards may not have meetings via other electronic means, such as email. This includes votes.

If it cannot wait until your next regularly scheduled board meeting, you will need to call a special meeting and give at least 72 hours' notice per MN Stat. 13D.04 Subd. 2(b) ("This notice shall be posted and mailed or delivered at least three days before the date of the meeting.")

For more information on this topic, see Sounding Board Issue 35: ["Ensuring Transparent and Effective Communication Outside of Board Meetings."](#)

**Bottom line:** Charter school boards MAY NOT hold votes, discussions, meetings, etc. via email.

---

### Scenario 6:

The board has several members participating in a board meeting remotely. Because they are trying to multi-task during the meeting (e.g., at home with a sick child, driving in the car, etc.), their cameras are off for most of the meeting and turned on only when the member is going to vote.

Is this allowable under MN Open Meeting Law?

*Answer:*

No, per MN Stat. 13D.02 Subd. 1(a)(1), all board members have to be able to see **and** hear each other, all discussion, and any presentations or public input, regardless of where they are located. This means that members cannot call in by telephone. They must participate via "interactive technology" such as Zoom, Google Meet, Teams, etc. and be present for the entire meeting (not just for votes).

This also means that that board cannot just have a laptop set up in the corner of the meeting room. You must have a setup whereby a person or persons participating remotely can see all members of the board and any presenters or members of the public who speak.

At the start of any board meeting with remote participants, an effective practices is to take a moment to actively confirm that all members attending via interactive technology can both see and hear the full meeting. Do not just ask—pause and give them space to respond. Too often, participants, especially new board members, cannot hear everything or see everyone but hesitate to interrupt. A quick check-in ensures everyone is fully included and able to engage in the discussion.

For more information on this topic, see the [MN Open Meeting Law and Virtual Attendance Checklist](#). The checklist includes a list of requirements that a school board must meet in order to have any members of the board attend and participate in board meetings virtually (see MN Stat. 13D.02). **ALL** requirements on this list must be met in order for a member to participate remotely. If the board does not meet all requirements on the list, the school is in violation of Open Meeting Law.

**Bottom line:** All board members have to be able to see and hear each other, all discussion, and any presentations or public input, regardless of where they are located. They cannot participate by telephone (or the audio-only function of an interactive platform).

---

### Scenario 7:

The school is planning to hold a day-long board retreat on a Saturday in January. They plan to work on the strategic plan, hear a presentation from the school's auditor, and discuss the school's enrollment and marketing strategy, but are not going to make any financial decisions, approve policies, or hold any votes.

Is this meeting open to the public?

*Answer:*

As the board plans for its retreat, it must still post this session in accordance with Open Meeting Law. If any board members meet for informational purposes, even if no decisions are being made, the meeting must still comply with the Open Meeting Law. This means it must be open to the public and properly noticed. Whether or not the board plans to vote at that meeting is irrelevant as to whether or not it should be posted. This includes workshops, board retreats, and strategic planning sessions. All should all be properly noticed and open to the public.

**Bottom line:** Any time a quorum of board members is present for the purpose of conducting board business, the session must be open to the public—even if there are no action items on the agenda.

---

## **Conclusion**

Understanding and complying with Minnesota's Open Meeting Law is a foundational responsibility for all charter school board members. As public officials, board members must ensure that decisions are made openly, notices are properly posted, records are maintained, and that the public has meaningful access to meetings. Whether evaluating the school leader, voting on contracts, or holding a planning retreat, board actions must be consistent with the law's intent to promote transparency and accountability.

By reviewing these real-world scenarios, applying statutory guidance, and creating a system or reflective practice to ensure compliance with MN Open Meeting Law, charter school board members and school leaders are better prepared to identify and avoid common pitfalls, uphold their fiduciary duties, and model good governance. When in doubt, seek clarity, reference the statute, and err on the side of openness. Your commitment to following Open Meeting Law strengthens public trust and ensures your board operates with the transparency that Minnesota law, and your school community, expects and deserves.