

**OPERATIONS BRIEF 2012 -1****NEW PROVISION TO THE OPEN MEETINGS LAW***(Public Officers Law, Art. 7, Section 103, Subdivision e)***EFFECTIVE FEBRUARY 3, 2012**

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Governor Cuomo recently signed into law a new provision of the Open Meetings Law (OML) that also applies to charter schools (as does, of course, much of the OML). The provision, adding subdivision e to Section 103 of the Public Officers Law (which is the division of state statute in which the OML is codified), requires two things:

1. First, any document as well as any proposed resolution or policy of the school that is *scheduled* to be a subject of discussion of the school's board, or a committee thereof, should be made available if someone requests it either before the meeting or at the meeting during which such records will be discussed "to the extent practicable as determined" by the charter school. Importantly, only those documents, resolutions or policies that are subject to the Freedom of Information Law (FOIL), are covered. In keeping with that, schools are allowed to charge the same fees for making paper copies available (either before or at the meeting) as permitted in fulfilling any FOIL request.
2. Second, if the charter school maintains a regularly and routinely updated website and utilizes a high-speed internet connection, such records that are scheduled to be discussed should be posted on the website prior to the meeting "to the extent practicable as determined" by the charter school. In fulfilling this new requirement, a charter school *may, but is not required to* expend additional resources.

It is notable that the legislature leaves it to the charter school (as it does to all public bodies subject to the OML) to determine if providing the records at issue beforehand and/or putting them on the school's website beforehand is "practicable." This gives schools and other public bodies a certain amount of leeway. For instance, if you are approving your charter renewal application of 1,000 pages, it may well not be practicable to have paper copies available at the meeting (or readily available beforehand). Still, the clear intent of this provision is to allow the public to more meaningfully follow what is happening at a public meeting of the school's board by having in front of them the same key documents that are before the board members—and it may well cut down on FOIL requests seeking board materials.

Some other points to note:

- If the materials/records at issue are confidential in nature (such as a personnel matter), then those documents are not subject to being disclosed because such documents are also not subject to FOIL (and would presumably be discussed in executive session). More broadly, this new provision doesn't alter what is FOILable; it just adds a new requirement that the subset of FOILable documents that are resolutions or policies under discussion should be made available if possible before or at the meeting and on the school's website.
- By requiring only records that are scheduled to the topic of discussion at a particular meeting, the new provision in no way stops a school from discussing or voting on issues that were not part of the meeting agenda and that come up shortly before or during the meeting. Of course, any resolution or policy that is discussed (and the records pertaining to which are FOILable) are subject to FOIL after the meeting. And good practice (though not the law) would generally suggest that such records then be added to the school's website after the meeting if the school maintains a website.

As always, when it comes to a particular issue or interpretation concerning the OML or FOIL, it is always good to review them with your counsel and/or the Committee on Open Government.