

## Open Meetings Law and Charter Schools

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All charter schools are subject to the Open Meetings Law (“OML”), which was created on a presumption of access that the public deserves the right to know in advance about meetings of public bodies and then to observe the meetings and deliberations. For charter schools, this means ensuring that all board of trustee meetings are open to the public, with limited exceptions, and providing access to decisions made at these meetings.

OML applies explicitly to charter schools under the Charter Schools Act of 1998 (the “Act”) and it is critically important that charter schools abide by these rules. Education Law §2854(1)(e). Indeed, requiring this transparency for charter schools is consistent with charter school’s status as “independent and autonomous public schools.”

This guide provides an overview of OML and the steps charter schools should take to be in compliance along with some frequently asked questions and answers. The text of the law can be accessed on the website of the Committee on Open Government (the entity charged with overseeing implementation of the OML) as well as advisory opinions interpreting OML at <http://www.dos.ny.gov/coog/otext/o4823.html>. Throughout this guide, OML law is referenced as OML § ## and advisory opinions are referenced as OML-AO-####.

### Overview of Key Requirements

1. Publicize when/where meetings of the board of trustees of a charter school (and its committees and subcommittees) will take place;
2. Provide information about what will be discussed before the meetings take place;
3. Hold meetings in public accessible space; and
4. Make available a record of the decisions made at each meeting.

#### **1. Publicly announce meetings:**

- Meetings should be scheduled at least a week in advance and notice must be given no fewer than 72 hours prior to such meeting.
- Notice must provide date, time and location of meeting.
- Notice must be given to the news media;
- Notice must be conspicuously posted in one or more designated public locations; and
- Notice is required to be conspicuously posted on the school’s website (if it maintains one and is practicable and able to do so).
- If a meeting is scheduled less than a week in advance, notice must be given “to the extent practicable” at a “reasonable time prior” to the meeting. OML §104
- If board meetings are held in the same place and at the same time on a consistent basis, it is acceptable to post a yearly schedule at the beginning of the year without having to provide

notice again every time an individual meeting time approaches. However, if the schedule changes, a new notification should be provided.

**2. Provide material prior to meetings or at meetings:**

- Schools should provide “to the extent practicable” any proposed resolution or policy of the school that is scheduled to be a subject of discussion at the board meeting. This means that if schools have a website, these materials should be posted on website prior to the meeting.
- Only those documents, resolutions or policies that are subject to the Freedom of Information Law (FOIL) must be made available.
- 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.

**3. Holding meetings in an accessible space:**

- Meetings must be held in an accessible place, meaning that if not in public facilities, the owner/operator of the private office or residence must be willing to invite in members of the public.
- Schools must make all reasonable efforts to ensure that meetings are held in a space where the members of the general public who wish to attend can adequately be accommodated.
- Schools must also make reasonable efforts to permit persons with disabilities to have barrier-free access to their meetings at existing facilities.

**4. Meeting minutes:**

- Schools must make a record of summary or all motions, proposals, resolutions, actions taken, and the votes of the members of the board.
- These minutes must be made available upon request within two weeks of the meeting.

**FREQUENTLY ASKED QUESTIONS**

**WHO IS COVERED**

**1. To whom or to what does the OML apply in a charter school?**

It applies only to the “public body” of the charter school, that is, its *board of trustees*. The OML defines a public body as an entity consisting of two or more members that carries out some sort of governmental function and conducts public business as a body. The OML does not apply to a school’s leadership team and its meetings and deliberations.

**2. Are a board’s committees and subcommittees also covered by the OML?**

Yes. A committee or subcommittee made up entirely of board members falls within the definition of “public body” under the OML and has the same responsibility to comply as the board itself. This is true even if the committee has no authority to take action on its own. Nor does it matter whether a committee is a standing committee or simply ad hoc. Any committee that has a majority of the full board as part of its membership would also trigger the OML because any meeting of the committee would also be a meeting of a quorum of the board. A committee or working group that

contains no board members, on the other hand, would not be considered a public body under the law and thus would not be subject to its requirements.

**3. Are informal working groups or advisory committees that contain no or only a few board members along with a majority of staff members or members of the public subject to OML?**

There is no bright line to such mixed committees. For a committee or working group that has only a few board members along with any number of members of the public or other non-board members, the issue appears to turn on whether the board members make up a “core membership” of the committee. OML-AO-4158. If the focus of the committee is on the board members, it is likely that the group would be considered a board committee and thus be subject to OML requirements. If the focus is on the non-members, however, the group is more likely to not be considered a public body under the law. If there is a committee or working group that falls into this grey area schools should seek guidance from the Committee on Open Government and/or discuss with counsel.

**4. When do OML requirements begin for new charter schools?**

The OML applies as soon as a school’s charter has been approved. As such, the first meeting of the board should be noticed and open to the public.

**MEETINGS, EXECUTIVE SESSIONS AND EXCEPTIONS**

**5. Does the OML apply to all business of the school?**

No. The OML only applies to “meetings” of the school’s board of trustees and its committees and subcommittees. As such, the leadership team of a school is not subject to the OML. Neither are discussions between and among the leadership team and board members so long as there is not a quorum of the board or a committee at such a discussion. *However, it is critical to remember equally that a “meeting” is the only way in which the board may discuss and act. In other words, and unlike a not-for-profit board, resolutions cannot be passed by circulating a unanimous consent form or other ways of getting trustees to record their votes in writing.*

**6. What is considered a “meeting” under the OML?**

A “meeting” is defined as “the official convening of a public body (here the board of trustees and its committees) for the purpose of conducting public business”; this further requires that a quorum of that public body must be present in order for public business to be conducted. OML §102. A meeting can happen even if there is no intent to take action at that particular gathering. It does not matter what the gathering is called, but it must be for the purpose of conducting business collectively as a body. Thus, an event that a majority of the board happens to attend as private citizens would not be subject to OML requirements.

**7. What constitutes a quorum?**

A quorum is defined as a majority of the total membership of the board, regardless of whether there are vacancies or absences. For instance, five will always be the quorum for a nine-person board even if there are only seven or eight active members at a particular time. General Construction Law §41. This means that a board that does not have at least a quorum of members, cannot meet as a board and cannot take action as a board. These same quorum requirements apply to committees and subcommittees.

**8. Why are quorum requirements important?**

A board of trustees cannot take a vote without a quorum being present and no action of the board of trustees is valid without such quorum.

**9. Are Board retreats “meetings” that are covered by the OML?**

A board retreat that does not have the purpose of conducting business, such as one for the board members to get to know each other, would not be covered by OML. A retreat to discuss long-term policies and goals, on the other hand, would be considered a meeting to conduct public business despite the fact that it may be called a retreat rather than a meeting. Boards should be very careful, then, in managing the purposes of their retreats; any discussion of public business as a group would most likely fall under the OML, and for retreats held at a remote location or in other unusual circumstances it would be very difficult to satisfy the relevant OML requirements. It is important to monitor discussions to ensure that non-OML retreats don't end up bringing up topics like staff performance that would trigger OML requirements.

**10. What about a training to learn about the OML?**

While a majority of the total membership might attend such a training, if the members do not discuss school business, it would not be deemed a meeting.

**11. Is a social event hosted for the members of the board a meeting? What about something like a fundraiser for the school at which the board members discuss the school with potential donors?**

It is not the purpose of either of these events for the board to be meeting and conducting charter school business collectively, so they would typically not be considered meetings under the OML. However, it is important to keep in mind that if a quorum of the board members end up sitting at a table together and discussing official business like the budget, the issue would be much closer, and it would be best to postpone that discussion until a board meeting can be called and properly carried out in compliance with the OML.

**12. Are all parts of a meeting open to a public?**

No. The board or a committee may go into “executive session” during which the public may be excluded. All board meetings, except executive sessions, must be open to the public.

**13. What is an executive session?**

Under the OML, an executive session is a portion of a meeting from which the general public can be excluded. OML § 105. Under the law there are eight categories that justify moving into an executive session and they are as follows:

- a) matters which will imperil the public safety if disclosed;
- b) any matter which may disclose the identity of a law enforcement agent or informer;
- c) information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
- d) discussions regarding proposed, pending, or current litigation;
- e) collective negotiations pursuant to article fourteen of the civil services law;
- f) the medical, financial, credit, or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
- g) the preparation, grading, or administration of a corporation; or

h) the proposed acquisition, sale, or lease of real property or proposed acquisition of securities or sale or exchange of securities held by such a public body, but only when publicity would substantially affect the value thereof.

**14. What must a board do to enter into executive session?**

Executive session can only be entered into after the board meeting has officially started with the public. Then someone on the board must make a motion in public to enter into executive session. This motion to move into executive session must indicate that one of these eight categories is the issue to be discussed, and the best practice is to base the language of the motion on the relevant category’s language. The motion must be carried by a majority of the whole board, i.e., if the total board is nine members but there are two vacancies and only five members present, the vote would have to unanimous (five is a majority of nine).

**15. Who can attend an executive session?**

Board members are the only people who have the right to attend the executive session, but the board can also authorize any non-board member to attend the executive session if it is necessary for the topic to be discussed. Opening the executive session to certain non-board members does not stop the board from closing it to others.

**16. Can the board and its committees vote during an executive session?**

Yes, except they cannot vote to appropriate public monies. OML-AO-3474. However, if the Board takes an action during an executive session, minutes reflective of the action, the date and the vote must generally be recorded in minutes. OML § 106(2). Minutes of executive sessions do not need to include information that may be withheld under FOIL.

**17. What happens if while in executive session, the board begins to discuss other topics that do not meet the executive session criteria?**

Boards can only discuss topics that meet executive session criteria and as soon as other topics are raised, the Board must move back into open meeting or cease discussion of the topic.

**18. If all the topics to be discussed or voted on are to be covered during an executive session, does the board need to notice the meeting (like all other meetings—see below)?**

Yes. It is important to remember that an executive session is just that—a “session” or part of a larger, public meeting. An executive session cannot happen without noticing the meeting at which the session is scheduled to take place. It doesn’t matter if all the board does at the part of the meeting that is public is to gavel in and then move to executive session pursuant to a majority vote of the board (and after the executive session is ended, gavel the meeting to an end). All executive sessions are part of the public meeting and trigger all the OML notice requirements.

**19. If a board allows for public comment and a member of the public raises something that is appropriately handled in executive session, e.g., a complaint about a specific employee, how should this be handled?**

If the board wants to take up the matter and the matter actually requires an executive session, the board can make a motion to move into executive session. The proper construction of a motion for an executive session to discuss personnel issues pursuant to § 105(f) is, “I move to enter into an executive session to discuss the employment history of a particular person.” OML-AO-4067. The person whose employment history is being discussed need not be identified in the motion. *Id.* A

board can invite anyone into executive session and in so doing, does not make the session open to all.

**20. Are there any times that the board or its committees can come together and deal with school business but it is not a “meeting” and does not need to be public?**

Yes, the OML specifically exempts the board of trustees from having to meet publicly in certain situations. The two that are most likely to come up in the charter school context is when the board is acting in a quasi-judicial capacity, i.e., hearing a student discipline issue that is before the board, such as a hearing on whether to expel a student for misbehavior. Other instances might be where discussions involve student records which are made confidential by federal law (though these discussions could also be held in executive session, which is generally much more likely to happen). In both these instances, because there is no public meeting, no notification need be given and, of course, the public has no right to attend. Similarly, board members could take part via telephone and even vote despite not being present for OML purposes.

**PARTICIPATION**

**21. Under what conditions, if any, can a board member participate remotely in board meetings as a voting member?**

The OML requires that board members be present when the board is convened; alternately the OML allows them to participate by video-conference technology (including Skype). If a member is present through video-conferencing, both sides must be able to see each other and the remote location must be subject to the same notice procedures and access requirements as the main meeting site. The reasons that video-conference is allowed is that all voting members of the board and their surroundings need to be visible to the members of the public who wish to observe the deliberative process. Board members *cannot* teleconference in and take part of a board meeting whether it is for the purpose of achieving a quorum or to act as a voting member.

**22. Are proxy votes allowed?**

No. A board member must be present or participating through video-conference to be present and to cast a vote. Another member cannot vote on behalf of a member who is not present. Equally, a board member cannot act by signing a resolution beforehand or otherwise orally or in writing agreeing to something (sometimes known as getting unanimous consent). All action must take place at the meeting by the directors themselves casting their votes publicly (or in executive session when applicable).

**23. Can a board member who is not present participate in the discussion of an issue at a board meeting, e.g., when she is on the phone?**

Yes. There is no requirement in the OML that board members be present in order to discuss school business when the board is meeting. However, as above, such board member cannot vote or be counted as present for purposes of reaching a quorum. However, it is perfectly legitimate for a board to query such board member as to her opinion and how she would vote if present. Equally a board member could submit a letter stating her views that the board could discuss and read aloud if it chooses to.



**24. Is it a violation of the OML for board members to discuss school business (whether over the phone or in person) if there is not a quorum and therefore no public meeting? If not a violation, is it unethical?**

No. It is certainly not a violation of the OML or other law—and in our opinion neither is it generally wrong. It is routine for a board chair to poll members of a board individually or in small groups before a public vote in order to understand where board members stand and determine whether a particular item should be brought to a vote as well as to shape the item prior to the public meeting. We recommend that boards think thoughtfully about balancing the need for board members to informally discuss items and allowing the public to understand what the board is doing but the reasoning and thought behind its actions.

**NOTIFICATION, MEETING MATERIALS DISCLOSURE,  
AND TAKING OF MNUTES**

**25. How do schools notify the news media and must every single newspaper, TV station, etc. be notified?**

No. Reasonableness the standard for notice and most schools meet this requirement by maintaining an email list of the major TV and newspaper outlets as well as local community papers in their area. This makes notification a few seconds of work. Some schools also include on-line sites such as Gotham Schools, and Inside Schools.

**26. What happens if board members will be participating by video-conference? Does the notice have to specify this?**

Yes, it does. The notice should specify each location from which board members will be participating and should indicate that the public can attend the meeting at that location. If a location changes after the regular notice has come out, the school should post and send to the media a new notice providing the new information on the added or changed location to the extent practicable.

**27. Are the board of trustees and its committees required to provide the public with copies of resolutions and other documents it will be discussing?**

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.

In addition, 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. The Committee on Open Government has created a lengthy Q&A on this topic, which is available at <http://www.dos.state.ny.us/coog/QA-2-12.html>

**28. How does a board of trustees determine what is “practicable” under the statute with respect to providing the public with copies of resolutions?**

Schools should use their best judgment when determining what is practicable in terms of providing the records at issue. 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.

**29. Are schools allowed to discuss items that are not listed on an agenda posted prior to the meeting?**

Yes. Boards are able to discuss or vote 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.

**30. What are the requirements for taking minutes at an open meeting?**

Minutes for an open meeting must consist of a record or summary of all the motions, proposals, resolutions, actions taken, and the votes of the members of the board. They can, of course, contain more detail than that, but they are not required to under the OML. There is no specification of who must take these minutes, so the board may designate whatever minute-taker is most convenient. These minutes must then be prepared and made available upon request within two weeks. It is important to note that nothing in the OML requires the board to approve the minutes prior to them being made available to the public; a board can still choose to approve the minutes at the following board meeting, but they must still be made available within the 2-week time frame. If it so chooses, a board can have the minutes stamped with something like “unapproved” or “draft” when they are requested prior to their board approval.

**31. What are the requirements for taking and promulgating minutes for an executive session?**

Minutes of executive session need only record the actions taken by formal vote and shall consist of a record or summary of the final determination of such action and the date and vote thereon. This raises obvious questions of how one provides a summary of an action that is private in nature in minutes that are to be made public. The answer is that the board is not required to make public any portion of the minutes from executive session where the minutes themselves would not be subject to disclosure under FOIL, which provides its own series of exemptions for matters dealing with student privacy as well as personal matters. For instance, a vote to take disciplinary action against a student (if such vote were made at a meeting) would need to be recorded as such in the board’s minutes; such however there would be no requirement to make that portion of the minutes public or otherwise disclose them to the general public. Of course, your authorizer could require their production pursuant to their general powers to inspect your files.



**32. Are boards required to record or transmit their meetings through electronic means?**

No. There is no such requirement that meetings be recorded or transmitted, other than the requirement that minutes be taken. Of course, the board of trustees may choose to record their meetings to ensure the accuracy of the minutes or for any other reason. The board may also choose to allow a call-in for media and others, though again, there is no requirement that they do so.

**33. Are boards required to post minutes of meetings on their website?**

No. Minutes of open meetings need not be posted, but must be taken, and need to be made available to the public in accordance with the freedom of information law. OML §106(1). Minutes of an executive session need to be prepared *only when action is taken* during the executive session. OML §106(2); *see also* OML-AO-4028.

**34. How are minutes to be made available to the public?**

For minutes from an open meeting to be “available” they must be “made accessible to public for inspection and copying within 2 weeks of meeting to which minutes pertain.” OML §106(3). Minutes from an executive session meeting must be made available within 1 week of the executive session. *Id.*

## PUBLIC ACCESS/RIGHT TO RECORD/NO RIGHT TO SPEAK

**35. What is required to give the public access to the meeting space?**

A meeting must take place in a space that is publicly accessible. In addition, the school is required to make all reasonable efforts to ensure that meetings are held in a space where the members of the general public who wish to attend can adequately be accommodated. The key here is reasonableness. If for some reason, hundreds of people want to attend a school’s board meeting, and the school only has access to a small auditorium in its school building that would accommodate many fewer, then it would likely be viewed as unreasonable for the board to have to move the meeting and/or pay for a larger space. On the other hand, if the board deliberately chooses a small conference room when a larger space is readily available in the building it is meeting in, the board would not have made reasonable efforts.

**36. Must meetings take place at the school?**

It depends. The OML does not specify where meetings take place and certainly does not require meetings of charter school boards at the charter school. However, among the amendments to the Charter Schools Act in 2009, is a requirement that clearly applies to charter schools which received their charter after May 24, 2010. This provision requires the charter school to specify in its application for charter approval a “procedure for conducting and publicizing monthly board of trustee meetings *at each charter school.*” Education Law §2851(2)(c) (emphasis supplied). As such, those procedures bind the charter school once it is operating. It is our view that this law does not apply to charter schools which received their charter prior to May 2010 (though some believe that it may apply to charter schools that are subsequently renewed). Of course to the extent this rule applies, it is important to note that a meeting takes place wherever there is at least one board member participating by video-conference; as such, not all board members are required to be at the school at every meeting. That said, it is a wise board that ensures that it has contact with the school community, that gives parents ample access and that does not create an impression through its

actions that it is divorced from the day-to-day reality in which students, parents, teachers and the leadership team live.

**37. Do meeting locations have to be in a public facility or just accessible to the public? Could a member of the board or all members hold a meeting in a private home?**

No, meetings do not need to be in public facilities—just in facilities that are accessible to the general public. As such meetings can take place in private offices or even residences. However, the owner/operator must be willing to invite in members of the public. Thus, for instance, a meeting that takes place in a midtown office building would be fine so long as arrangements have been made with security to ensure that members of the public are admitted to the facility. While it would be reasonable to require an individual to show security to enter (obviously this happens in most public buildings), it would not be reasonable to require people to pre-register (though one could ask people to do so to expedite their way through security). If someone shows up, they would need to be admitted. A board will need to ensure that it acts in a way consistent with its public nature and mission.

**38. Are there requirements around translation of meetings or making them accessible to persons with disabilities that schools must comply with? What are some effective practices even when there may be no relevant requirements?**

Public bodies must make or cause to be made “reasonable efforts” to permit persons with disabilities to have barrier-free access to their meetings at existing facilities. While this may mean that there are cases where an inaccessible location is still the most reasonable place to hold a board meeting, the best practice would be to find a location that allows access easily. There are also accessibility requirements that must be met when constructing new facilities, but those are found under other sections of the law. There is no requirement under OML that boards must provide translation services for their public meetings. Boards should, however, as part of their community engagement, make reasonable efforts to make meetings accessible to non-English speakers. Moreover, in certain instances, not providing a translation could well run the school afoul of federal civil rights laws’ protection against discrimination based on country of origin.

**39. Can a board member or a member of the public record a meeting?**

Yes. Members of the public have the right to record, broadcast or otherwise electronically transmit the public meeting. In general, the use of recording/broadcasting devices by members of the public can only be prohibited or limited if the presence of the recording device is disruptive or obtrusive to the deliberative process; the fact that the board may find it distasteful is not enough to support removing it from the meeting. Typically small voice or video recorders would be permissible as would larger cameras and lighting equipment (again if it is not disruptive). A school’s board of trustees may promulgate reasonable restrictions on the recording and broadcast of meetings. Such restrictions must be consistent with those created by the Committee on Open Government, which has promulgated a set of model rules available [here](#).

**40. Does the public have the right to speak at any open meeting?**

No. The OML deals with the public’s ability to know about, attend, listen, and observe open meetings; it does not create a right for members of the public to speak and contribute. If your board does choose to allow public comment, it should adopt reasonable rules that apply evenly and fairly to all members of the public. Case law has also held that if the door is open to positive

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comments, negative comments from the public must be allowed in the same manner. An example of language that might be included in an agenda to outline proper public participation is as follows: “While we encourage public participation and provide a designated time for public comment, individuals are limited to two minutes total of public comment each, unless the Board asks for additional feedback. Total time for public participation is limited to 30 minutes and places are allotted on a first come, first served basis. All trustees and members of the public must abide by [insert name] charter school norms concerning professionalism and civility in their comments, which can be found in our handbook.”

## **ENFORCEMENT/COMMON VIOLATIONS**

### **41. How is the OML enforced?**

In two ways: through court actions brought by private individuals and, specifically in the case of charter schools, by the charter school’s authorizer. The OML permits anyone to bring an action against a board that he or she believes is in violation of the OML in state court, using what is known as an Article 78 proceeding. If the court finds that a deliberate violation occurred, it can award the winning party attorneys’ fees and, in some egregious cases, court costs as well. A court may also invalidate the action taken if the court finds it was not done pursuant to the OML, though it is not required to do so. Actions taken to approve bonds and the like (even when having been done in violation of the OML) cannot be invalidated. Finally, the court may order the school to undergo training that would be provided by the COOG.

Perhaps even more consequentially, your charter school authorizer (together with the Board of Regents) has explicit responsibility to see that your school is in compliance with applicable laws, including the OML. Thus, a school that is in repeated and egregious violations of its charter, could be placed on probation, have its charter revoked or be denied renewal. It is unlikely that small and infrequent violations would result in such actions. As always good faith and reasonableness are important touchstones.

### **42. What should a board member do if his board is violating the OML?**

The first step should be to make sure the board members are educated about the OML and the duties it places upon them as a board; in many cases the problem is merely that not all board members are familiar enough with the law to ensure it is being followed. As above, there are a number of potential consequences if violations continue or are to such a degree that someone outside the school complains.

### **43. What are the most common violations you see of the OML and what advice would you give entities on avoiding common issues?**

Situation 1: A board goes into an executive session to discuss topic X, but during the course of the session discussion drifts over to include topic Y.

Answer: In this case, it is up to the members of the board to pay attention to the focus of the discussion and to end the executive session when topic X has been fully discussed. It would be improper to discuss topic Y in that executive session if it were not included in the relevant motion.

Situation 2: A board uses the threat of potential litigation to go into executive session when such a move is not warranted.

Answer: Boards can go into executive session to discuss “proposed, pending, or current litigation,” and the courts have ruled that the intent of that provision is to enable a board to discuss its litigation strategy in private, so as to avoid disclosing that strategy to its adversary. However, the mere threat of potential litigation is not enough to justify closing the public out of a discussion, and so boards must avoid voting for an executive session when it is not warranted. The motion for the board to go into executive session under this litigation provision must be specific; it cannot merely regurgitate the section of the law listing “proposed, pending, or current litigation” as acceptable grounds, but rather it must identify the specific litigation in question.

Situation 3: A board observes the OML but does not believe that ad hoc committees of the board need to do so.

### **FURTHER QUESTIONS**

#### **44. What do I do if I don’t know what to do in a particular situation?**

If you are facing an immediate question (such as during a meeting), it is wise to consult with the school’s counsel, who should be able to guide you to the correct action. Even if counsel turns out to be incorrect, asking counsel insulates the school, providing the board with a good faith basis for the action it has taken (thereby better insulating the board from an adverse court decision or authorizer action). If you have more time, you can also seek a formal advisory opinion from the [COOG](#) or research the question through their searchable database of previously issued opinions, which are available [here](#). You can also more informally pose questions to the staff at COOG. You should be aware that the purpose of the COOG (and its philosophy) is to give maximum reach to the OML and the FOIL. As such they tend to be both liberal and broad in their interpretation of the law though their opinions are given great weight by the courts and are almost always well-reasoned and thoughtful.