

CHAPTER 3

MEETINGS AND MINUTES

A school board or AEA board is a state agency as well as a local agency. Its members are elected by the voters of the local school district, or by the boards of the local school district in the case of an AEA, but it operates within a sphere of legal duties, authorizations and limitations which are prescribed by the state legislature.

The stewardship of funds, the keeping of accurate and complete records and the provision for required publications are all obligations of the local board in complying with the law and providing information to the public.

School Board Meetings

Definitions

A “*meeting*” means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body’s policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of chapter 21 (21.2(2)).

“*Open session*” means a meeting to which all members of the public have access (21.2(3)).

A “*governmental body*” means a board of a political subdivision or tax-supported district in this state, or a multimembered body formally and directly created by the board, or an advisory board, advisory commission, advisory committee, task force, or other body created by executive order of the board (or created by an entity organized under chapter 28E) to develop and make recommendations on public policy issues (21.2(1)).

A “*quorum*” means a majority of the members of the board of the AEA (273.8(5)).

Meetings

Meetings shall be preceded by public notice and shall be held in open session unless closed sessions are expressly permitted by law. Except as provided in section 21.5, all actions and discussions at meetings, whether formal or informal, shall be conducted and executed in open session (21.3).

Public Notice

Except as provided in subsection 3, a governmental body shall give notice of the time, date, and place of each meeting including a reconvened meeting of the governmental body, and the tentative agenda of the meeting, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held (21.4(1)).

Notice shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall be held at a place reasonably accessible to the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. Special access to the meeting may be granted to persons with disabilities (21.4(2)“a”).

When it is necessary to hold a meeting on less than twenty-four hours’ notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes (21.4(2)“b”).

An agenda which has been posted more than twenty-four hours prior to a scheduled meeting may be amended to include additional matters only if good cause exists requiring expeditious discussion or action on such matters. In the absence of factors making twenty-four hours notice impossible or impractical, an existing agenda may not be amended

within twenty-four hours of a meeting and such matters must be scheduled for future meetings so that the public may receive the prescribed notification (**OAG #79-7-11**).

If another section of the Code requires a manner of giving specific notice of a meeting, hearing, or an intent to take action by a governmental body, compliance with that section shall constitute compliance with the notice requirements of section 21.4 (**21.4(4)**).

A formally constituted subunit of a parent governmental body may conduct a meeting without notice during a lawful meeting of the parent governmental body, a recess in that meeting of up to four hours, or immediately following that meeting, if the meeting of the subunit is publicly announced in open session at the parent meeting and the subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body (**21.4(3)"b"**).

Closed Session

A governmental body may hold a closed session only by affirmative public vote of either two-thirds [2/3] of the members of the body or all of the members present at the meeting. A governmental body may hold a closed session only to the extent a closed session is necessary for any of the following reasons:

- a. To review or discuss records which are required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for that governmental body's possession or continued receipt of federal funds.
- b. To discuss application for letters patent.
- c. To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.
- d. To discuss the contents of a licensing examination or whether to initiate licensee disciplinary investigations or proceedings if the governmental body is a licensing or examining board.
- e. To discuss whether to conduct a hearing or hearings to suspend or expel a student, unless an open session is requested by the student or a parent or guardian of the student if the student is a minor.
- f. To discuss the decision to be rendered in a contested case conducted according to the provisions of Chapter 17A.
- g. To avoid disclosure of specific law enforcement matters, such as current or proposed investigations, inspection or auditing techniques or schedules, which if disclosed would enable law violators to avoid detection.
- h. To avoid disclosure of specified law enforcement matters, such as allowable tolerances or criteria for the selection, prosecution or settlement of cases, which if disclosed would facilitate disregard of requirements imposed by law.
- i. To evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.
- j. To discuss the purchase or sale of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property or reduce the price the governmental body would receive for that property. The minutes and the audio recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed.
- k. To discuss information contained in records in the custody of a governmental body that are confidential records pursuant to section 22.7, subsection 50 (**21.5(1)**).

The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption shall be announced publicly at the open session and entered in the minutes. A governmental body shall not discuss any business during a closed session which does not directly relate to the specific reason announced as justification for the closed session (**21.5(2)**).

Final action by any governmental body on any matter shall be taken in an open session unless some other provision of the Code expressly permits such actions to be taken in closed session (**21.5(3)**).

A governmental body shall keep detailed minutes of all discussion, persons present, and action occurring at a closed session, and shall also audio record all of the closed session. The detailed minutes and audio recording of a closed session shall be sealed and shall not be public records open to public inspection. However, upon order of the court in an action to enforce Chapter 21, the detailed minutes and audio recording shall be unsealed and examined by the court in camera. The court shall then determine what part, if any, of the minutes should be disclosed to the party seeking enforcement of Chapter 21 for use in that enforcement proceeding. In determining whether any portion of the minutes or recording shall be disclosed to such a party for this purpose, the court shall weigh the prejudicial effects to the public

interest of the disclosure of any portion of the minutes or recording in question, against its probative value as evidence in an enforcement proceeding. After such a determination, the court may permit inspection and use of all or portions of the detailed minutes and audio recording by the party seeking enforcement of chapter 21 **(21.5(4))**.

A governmental body shall keep the detailed minutes and audio recording of any closed session for a period of at least one year from the date of that meeting, except as otherwise required by law **(21.5(4))**.

Nothing in section 21.5 requires a governmental body to hold a closed session to discuss or act upon any matter **(21.5(5))**.

Ignorance of the legal requirements of chapter 21 shall be no defense to an enforcement proceeding brought under section 21.6. A governmental body which is in doubt about the legality of closing a particular meeting is authorized to bring suit at the expense of that governmental body in the district court of the county of the governmental body's principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body **(21.6(4))**. The authority which appoints members of governmental bodies shall provide the members with information about open meeting laws and examination of public records. The appropriate commissioner of elections shall provide that information to members of elected governmental bodies **(21.10)**.

Retreats by a governmental body are subject to all requirements of Iowa Code chapter 21 [open meetings] if there is a gathering of a majority of the members where there is deliberation or action upon policy matters within the agency's jurisdiction. If retreats do constitute "meetings" under Iowa Code section 21.2(1), proper notice must be given to the public under section 21.4 and a closed session may only be held to the extent expressly permitted by law **(OAG #93-7-5(L))**.

Advisory bodies created by school boards and county boards of supervisors to develop and make recommendations on public policy issues are included within the expanded definition of governmental bodies subject to the Open Meetings Law **(OAG #93-11-5)**.

A school board member, absent during a closed session of the board, may subsequently obtain and review the minutes and tape recording of the closed session **(OAG #01-11-1(L))**.

Rules of Conduct

The public may use cameras or recording devices at any open session. Nothing in Chapter 21 shall prevent a governmental body from making and enforcing reasonable rules for the conduct of its meetings to assure those meetings are orderly and free from interference or interruption by spectators **(21.7)**.

A person who, having no right or authority to do so, makes or alters any public document, or any instrument which purports to be a public document, or who possesses a seal or any counterfeit seal of the state or of any of its subdivisions [school corporation], or of any officer, employee or agency of the state or of any of its subdivisions [school corporations], commits a class "D" felony **(718.5)**.

Any person who willfully disturbs any deliberative body or agency of the state, or subdivision thereof [school corporation], with the purpose of disrupting the functioning of the body by tumultuous behavior, or coercing by force or the threat of force any official conduct or proceeding, commits a serious misdemeanor **(718.3)**.

An insurrection is three or more persons acting in concert and using physical violence against persons or property, with the purpose of interfering with, disrupting, or destroying the government of the state or any subdivision thereof [school corporation], or to prevent any officer or body from performing its lawful function. Participation in insurrection is a class "C" felony **(718.1)**.

Any person who willfully prevents or attempts to prevent any public officer or employee from performing the officer's or employee's duty commits a simple misdemeanor **(718.4)**.

Any person who falsely claims to be or assumes to act as an elected or appointed officer, or person authorized to act on behalf of the state or any subdivision thereof [school corporation], having no authority to do so, commits an aggravated misdemeanor **(718.2)**.

Electronic Meetings

A governmental body may conduct a meeting by electronic means only in circumstances where such a meeting in person is impossible or impractical and only if the governmental body complies with all the following:

- a. The governmental body provides public access to the conversation of the meeting to the extent reasonably possible.
- b. The governmental body complies with public notice of the meeting. For the purpose of this paragraph, the place of the meeting is the place from which the communication originates or where public access is provided to the conversation.
- c. Minutes are kept of the meeting. The minutes shall include a statement explaining why a meeting in person was impossible or impractical **(21.8(1))**.

A meeting conducted in compliance with the electronic meeting section of the law shall not be considered in violation of the open meeting law **(21.8(2))**.

A meeting by electronic means may be conducted without complying with public access if conducted in accordance with all the requirements for a closed session **(21.8(3))**.

Violations of Open Meetings and Open Records Laws

The remedies provided by section 21.6 against state [and local] governmental bodies shall be in addition to those provided by section 17A.19. Any aggrieved person, taxpayer to, or citizen of, the state of Iowa, or the attorney general or county attorney, may seek judicial enforcement of the requirements of chapter 21. Suits to enforce this chapter shall be brought in the district court for the county in which the governmental body has its principal place of business **(21.6(1))**.

Once a party seeking judicial enforcement of this chapter demonstrates to the court that the body in question is subject to the requirements of this chapter and has held a closed session, the burden of going forward shall be on the body and its members to demonstrate compliance with the requirements of chapter 21 **(21.6(2))**.

Upon a finding by a preponderance of the evidence that a governmental body has violated any provision of this chapter [open meeting laws], a court:

- a. Shall assess each member of the governmental body who participated in its violation damages in the amount of not more than five hundred dollars [\$500] nor less than one hundred dollars [\$100]. However, if a member of a governmental body knowingly participated in such a violation, damages shall be in the amount of not more than two thousand five hundred dollars [\$2,500] and not less than one thousand dollars [\$1,000]. These damages shall be paid by the court imposing it to the state of Iowa, if the body in question is a state governmental body, or to the local government involved if the body in question is a local governmental body. A member of a governmental body found to have violated this chapter shall not be assessed such damages if that member proves that the member did any of the following:
 - (1) Voted against the closed session.
 - (2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with all the requirements of this chapter.
 - (3) Reasonably relied upon a decision of a court, a formal opinion of the Iowa public information board, the attorney general, or the attorney for the governmental body, given in writing, or as memorialized in the minutes of the meeting at which a formal oral opinion was given, or an advisory opinion of the Iowa public information board, the attorney general, or the attorney for the governmental body, given in writing.
- b. Shall order the payment of all costs and reasonable attorney fees in the trial and appellate courts to any party successfully establishing a violation of this chapter. The costs and fees shall be paid by those members of the governmental body who are assessed damages under paragraph "a". If no such members exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful party from the budget of the offending governmental body or its parent.
- c. Shall void any action taken in violation of this chapter, if the suit for enforcement of this chapter is brought within six [6] months of the violation and the court finds under the facts of the particular case that the public interest in the enforcement of the policy of this chapter outweighs the public interest in sustaining the validity of the action taken in the closed session. This paragraph shall not apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.
- d. Shall issue an order removing a member of a governmental body from office if that member has engaged in a prior violation of this chapter for which damages were assessed against the member during the member's term.
- e. May issue a mandatory injunction punishable by civil contempt ordering the members of the offending governmental body to refrain for one [1] year from any future violations of this chapter **(21.6(3))**.

Ignorance of the legal requirements of this chapter shall be no defense to an enforcement proceeding brought under this section. A governmental body which is in doubt about the legality of closing a particular meeting is authorized to bring suit at the expense of that governmental body in the district court of the county of the governmental body's principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body **(21.6(4))**.

The rights and remedies provided by this section 22.10 are in addition to any rights and remedies provided by section 17A.19. Any aggrieved person, any taxpayer to or citizen of the state of Iowa, or the attorney general or any county attorney, may seek judicial enforcement of the requirements of this chapter in an action brought against the lawful custodian and any other persons who would be appropriate defendants under the circumstances. Suits to enforce this chapter shall be brought in the district court for the county in which the lawful custodian has its principal place of business **(22.10(1))**.

Once a party seeking judicial enforcement of this chapter [open records] demonstrates to the court that the defendant is subject to the requirements of this chapter, that the records in question are government records, and that the defendant refused to make those government records available for examination and copying by the plaintiff, the burden of going forward shall be on the defendant to demonstrate compliance with the requirements of this chapter **(22.10(2))**.

Upon a finding by a preponderance of the evidence that a lawful custodian has violated any provision of chapter 22 (open records), a court:

- a. Shall issue an injunction punishable by civil contempt ordering the offending lawful custodian and other appropriate persons to comply with the requirements of this chapter in the case before it and, if appropriate, may order the lawful custodian and other appropriate persons to refrain for one [1] year from any future violations of this chapter.
- b. Shall assess the persons who participated in its violation damages in the amount of not more than five hundred dollars [\$500] nor less than one hundred dollars [\$100]. However, if a person knowingly participated in such a violation, damages shall be in the amount of not more than two thousand five hundred dollars [\$2,500] and not less than one thousand dollars [\$1,000]. These damages shall be paid by the court imposing them to the state of Iowa if the body in question is a state government body, or to the local government involved if the body in question is a local government body. A person found to have violated this chapter shall not be assessed such damages if that person proves that the person did any of the following:
 - (1) Voted against the action violating this chapter, refused to participate in the action violating this chapter, or engaged in reasonable efforts under the circumstances to resist or prevent the action in violation of this chapter.
 - (2) Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with the requirements of this chapter.
 - (3) Reasonably relied upon a decision of a court, a formal opinion of the Iowa public information board, the attorney general, or the attorney for the government body, given in writing, or as memorialized in the minutes of the meeting at which a formal oral opinion was given, or an advisory opinion of the Iowa public information board, the attorney general, or the attorney for the government body, given in writing.
- c. Shall order the payment of all costs and reasonable attorney fees, including appellate attorney fees, to any plaintiff successfully establishing a violation of this chapter in the action brought under this section. The costs and fees shall be paid by the particular persons who were assessed damages under paragraph "b" of this subsection. If no such persons exist because they have a lawful defense under that paragraph to the imposition of such damages, the costs and fees shall be paid to the successful plaintiff from the budget of the offending government body or its parent.
- d. Shall issue an order removing a person from office if that person has engaged in a prior violation of this chapter for which damages were assessed against the person during the person's term **(22.10(3))**.

Ignorance of the legal requirements of this chapter is not a defense to an enforcement proceeding brought under this section. A lawful custodian or its designee in doubt about the legality of allowing the examination or copying or refusing to allow the examination or copying of a government record is authorized to bring suit at the expense of that government body in the district court of the county of the lawful custodian's principal place of business, or to seek an opinion of the attorney general or the attorney for the lawful custodian, to ascertain the legality of any such action **(22.10(4))**.

According to the Iowa Attorney General in the, if a second violation occurs while the injunction is in place, the official could be held in civil contempt. This can mean additional damages, or even time in jail (**AG Sunshine Advisory, June 2005**). The punishment for contempt, where not otherwise specifically provided, shall be:

1. In the supreme court or the court of appeals, by a fine not exceeding one thousand dollars [\$1000] or by imprisonment in a county jail not exceeding six [6] months, or by both such fine and imprisonment.

2. Before district judges, district associate judges, and associate juvenile judges by a fine not exceeding five hundred dollars [\$500] or imprisonment in a county jail not exceeding six [6] months or by both such fine and imprisonment.
3. Before judicial magistrates, by a fine not exceeding one hundred dollars [\$100] or imprisonment in a county jail not exceeding thirty [30] days **(665.4)**.

Except as expressly provided otherwise by another statute referring to this chapter 17A by name, the judicial review provisions of this chapter shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action. However, nothing in this chapter shall abridge or deny to any person or party who is aggrieved or adversely affected by any agency action the right to seek relief from such action in the courts **(17A.19)**.

Employment Conditions Meetings

A meeting of a governmental body to discuss strategy in matters relating to employment conditions of employees of the governmental body who are not covered by a collective bargaining agreement under chapter 20 is exempt from chapter 21. "Employment conditions" mean areas included in the scope of negotiations listed in section 20.9 **(21.9)**.

Negotiating sessions, strategy meetings of public employers, mediation, and the deliberative process of arbitrators shall be exempt from the provisions of chapter 21 [open meetings]. However, the employee organization shall present its initial bargaining position to the public employer at the first bargaining session. The public employer shall present its initial bargaining position to the employee organization at the second bargaining session, which shall be held no later than two [2] weeks following the first bargaining session. Both sessions shall be open to the public and subject to the provisions of chapter 21. Parties who by agreement are utilizing a cooperative alternative bargaining process may exchange their respective initial interest statements in lieu of initial bargaining positions at these open sessions. Hearings conducted by arbitrators shall be open to the public **(20.17(3))**.

The terms of a proposed collective bargaining agreement shall be made available to the public by the public employer and reasonable notice shall be given to the public employees by the employee organization prior to a ratification election. The collective bargaining agreement shall become effective only if ratified by a majority of those voting by secret ballot **(20.17(4))**.

Minutes of Meetings

Each board shall adopt by written policy a system for maintaining accurate records. The system shall provide for recording and maintaining the minutes of all board meetings, coding all receipts and expenditures, and recording and filing all reports required by the Iowa Code or requested by the director of the department of education. Financial records of school districts shall be maintained in a manner as to be easily audited according to accepted accounting procedures **(IAC, 281-12.3(1))**. The results of the annual audit of all school district funds conducted by the state auditor or a private auditing firm shall be made part of the official records of the board as described in Iowa Code section 11.6 **(IAC, 281-12.3(8))**.

Each governmental body shall keep minutes of all its meetings showing the date, time and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection **(21.3)**.

In a school corporation, the secretary shall keep a complete record of all proceedings of the meetings of the board and of all regular or special elections in the corporation in separate books **(291.6(2))**.

The proceedings of each regular, adjourned, or special meeting of the board, including the schedule of bills allowed, shall be published after the adjournment of the meeting, and the publication of the schedule of the bills allowed shall include a list of claims allowed, including salary claims for services performed. The schedule of bills allowed may be published on a once monthly basis in lieu of publication with the proceedings of each meeting of the board. The list of claims allowed shall include the name of the person or firm making the claim, the purpose of the claim, and the amount of the claim. If the purpose for the claims is the same, two or more claims made by the same vendor, supplier, or claimant, may be consolidated if the number of claims consolidated and the total consolidated claim amount are listed in the statement. However, the board shall provide at its office upon request an unconsolidated list of all claims allowed. Salaries paid to individuals regularly employed by the district shall only be published annually and the publication shall include the total amount of the annual salary of each employee. The secretary shall furnish a copy of the proceedings to be published within two weeks following the adjournment of the meeting **(279.35)**. All bills and

salaries for which payments are issued prior to audit and allowance by the board must be passed upon by the board of directors at the next meeting and be entered in the regular minutes of the secretary (**279.30**).

Iowa law does not prescribe a fixed order of business which must be followed in a school board meeting. Where a board has not already adopted a regular order of business, the following is suggested:

1. Call to order by president or vice-president.
2. Determine that a quorum is present.
3. Reading and approval of minutes of previous meeting.
4. Reading and disposal of bills.
5. Reports of officers and standing committees.
6. Reports of special committees, petitions and communications and disposal of same.
7. Unfinished business.
8. New business.
9. Informational program.
10. Adjournment.

In the minutes for any meeting the following is recommended:

1. Date, time, and place of meeting [required].
2. Kind of meeting-regular, special, adjourned, organizational or annual.
3. By whom called.
4. Who presided.
5. Who served as secretary.
6. Names of members present [required].
7. Record of each motion properly presented, whether adopted or not, with names of persons making and seconding the motion [required]. Motions withdrawn or declared out of order need not be recorded.
8. Record of the number of votes cast for and against each motion. If the vote is unanimous, so stating is sufficient. If the vote is not unanimous or if any member abstained or was recused, the record must contain sufficient information to indicate the vote of each member [required].
9. Summary of important items considered and discussed by the board irrespective of formal action taken.
10. All reports of committees, petitions and communications received and the action taken on each. (Such reports, petitions, etc., should be placed on file and referred to in the minutes for identification.)
11. Identification of all bills audited by the board and a record showing whether such bills were allowed or disallowed.
12. Signature of secretary or acting secretary.
13. Record of approval of minutes by the board and the date of minutes approved.
14. Signature of president and secretary on all approved minutes.
15. File approved minutes in loose-leaf notebook and store in fireproof file or vault.

Motion versus Resolution

Generally a motion proposes that the board take certain action on a matter. It is a statement of direction rather than policy. Motions are made to handle routine business and to conduct meetings.

Resolutions are used for official decisions of the board that take legal effect when they are passed and are more likely to establish policy.

A motion of substance made by a member of the board should be included in the minutes even though it dies for lack of a second (**OAG #75-11-25**).

Conflict of Interest

City council members should exercise great caution whenever a measure involving their employers come before the council for discussion or vote; disclose on the record the facts and general circumstances of their employment or a spouse's employment before the council discusses or otherwise considers any such measure; and consult with the council's attorney before participating in any matter involving a financial benefit unique to the employer. Council members who wish to exercise caution in resolving conflict of interest should abstain from participating in the decision-making process or voting on any resulting award of financial assistance to the employer in order to avoid an appearance of impropriety (**OAG #98-5-3**).

Section 279.7A applies to directors of a school corporation who may only have an ownership interest in a corporation contracting with the school corporation. It also applies to placement of a newspaper advertisement in return for

consideration such as a fee or charge. And it also applies to the placement of such advertisements on an as-needed basis (**OAG #97-7-8**).