

LIBERTY ELEMENTARY SCHOOL DISTRICT No. 25

**GOVERNING BOARD MEETING
Board Study Session**

**MONDAY
February 11, 2019
8:30 P.M.**

**JERRY ROVEY DISTRICT FACILITY
19871 West Fremont Road
Buckeye, AZ 85326**



**LIBERTY SCHOOL DISTRICT No. 25
GOVERNING BOARD AGENDA FOR WORK STUDY SESSION**

TIME: February 11, 2019 – 8:30 PM

PLACE: Jerry Rovey District Facility, 19871 West Fremont Road, Buckeye, AZ 85326

Pursuant to the Americans with Disabilities Act (ADA) the Governing Board endeavors to ensure the accessibility of its meetings to all persons with disabilities. If you need an accommodation for a meeting, please contact the District Office at (623) 474-6600 or districtoffice@liberty.k12.az.us at least 48 hours prior to the meeting. A copy of the complete agenda with names and details, including available support documents may be obtained during regular business hours at the Jerry Rovey District Facility Superintendent's Office at 19871 West Fremont Road, Buckeye, AZ 85326.

The Governing Board reserves the right to move into Executive Session for legal advice with its attorneys for any item listed on the Agenda, in person or by telephone, pursuant to A.R.S. 38-431.03.0.3. Members of the governing Board will attend the meeting in person or by telephone conference call, pursuant to Governing Board Policy BE.

I. OPENING MEETING

1. Call to Order
2. Pledge of Allegiance

II. WORK/STUDY SESSION

1. Open Meeting Law Training by Mr. Robert Haws, Gust Rosenfeld PLC

III. ADJOURNMENT

Motion _____ Second _____ Vote _____

The Basics of Arizona's "Open Meeting" Law--A.R.S. §§ 38-431 to 38-431.09

I. PURPOSE

Arizona's Open Meeting Law was enacted in 1962 and has been amended several times. The State Legislature declared that "[i]t is the public policy of this state that proceedings in meetings of governing bodies...exist to aid in the conduct of the people's business. It is the intent...that ... official deliberations and proceedings be conducted openly." This subjects government decision-making to public access and public scrutiny, thereby contributing to an informed citizenry and protecting public officials from allegations of improper private dealings or decision making.

A. "Historically, this state has always favored open government and an informed citizenry." Arizona Newspapers Ass'n. v. Superior Court, 649 P.2d 1174, 1178 (1985).

B. The Open Meeting Law was passed "to open the conduct of the business of government to the scrutiny of the public and to ban decision making in secret." Karol v. Board of Educ. Trustees, 593 P.2d 649, 651 (1979).

II. APPLICATION

Any time a quorum, or majority, of the board gathers in person or through technological device (i.e. conference call, email, text) to discuss, propose or take legal action, including deliberation by a quorum with respect to such action, the law must be complied with.

A. This is a concern at both informal gatherings and formal meetings. Work or study sessions are also meetings.

B. Serial discussions in person, via the telephone, email, text, etc. are improper when used to discuss, deliberate, propose or take legal action concerning a matter that may foreseeably come before the public body for action. Atty. Gen. Op. I05-004.

1. Staff may distribute information via email but board member cannot discuss it outside of the meeting.

2. Does not matter whether email address, phone, etc. is official or personal.

C. Open Meeting Law also applies to meetings of advisory, special subcommittee and task force groups created by the Board.

D. The Arizona Legislature amended the Open Meeting law in 2018 to address electronic communications that constitute a meeting. The following electronic communications are expressly considered "meetings."

1. One way electronic communication by one member to a quorum of members that proposes legal action is a meeting.

2. Exchange of electronic communications among a quorum of the members of a public body that involved discussion, deliberation or the taking of legal action by the public body concerning a matter likely to come before the public body for action.

III. PREPARING FOR A MEETING

A. Notice - With few exceptions, no meeting may be held without posting public notice in designated places (usually both physical and electronic locations, as specified by the District) at least twenty-four hours in advance. The notice shall include an agenda of the specific matters to be discussed or decided at the meeting. Failure to properly Notice a meeting is an Open Meeting Law violation. The District should maintain the records for its Notices and location, date and time of posting.

B. Agenda - The written agenda controls what can be discussed, considered or acted upon. The agenda must list the specific matters to be discussed, considered or decided at the meeting.

1. Agenda order may be changed unless a time certain is stated.
2. Agenda items can be tabled without discussion.

C. Minutes - The board must provide for the taking of written minutes or a recording of all meetings. The minutes or recording shall include the date, time, and place of the meeting; a list of the members present/absent; a general description of the matters considered; an accurate description of all legal matters proposed, discussed, or taken, the name of the members who propose each motion; the names of persons who make statements or present material to the public body and the related legal action; an accounting of each board member's vote on motions; and the names of persons who addressed the board. The minutes or recording must be made available for public inspection within three working days after the meeting.

IV. CONDUCTING A MEETING

A. The Public's Rights - All persons desiring to attend shall be admitted to listen to the proceedings. Any person in attendance may record the proceedings by audio or videotape provided that there is no active interference with the conduct of the meeting. The public only has a right to participate if the board's policy allows it.

B. The Board's Conduct - The board may only discuss, consider, or take action on matters that were listed on the agenda. If a matter not on the agenda is brought up, the Board should any defer discussion and decision on the matter until a later meeting that properly lists the item on the agenda.

C. Open Call to the Public - If the board allows members of the public to address it on matters within its jurisdiction whether or not the topic is on the agenda, all comments are subject to reasonable time, place, and manner restrictions. At the close of the open call to the public, board members may respond to criticism, ask for review of the matter, or request that a

topic be put on a future agenda. However, no discussion or legal action may be undertaken by the board unless the matter has been properly noticed for discussion and legal action.

D. Superintendent's Report - The superintendent can present a brief summary of current events without listing in the agenda the specific matters to be summarized if the summary is listed on the agenda. No legal action can be taken on a matter in the Superintendent's Report unless the specific matter is properly noticed for legal action.

V. **EXECUTIVE SESSIONS** (a gathering of a quorum of the board for a statutorily prescribed reason(s) from which the general public is excluded).

A. Authorization - An executive session is only authorized when the discussion involves: (1) a particular employee, (2) records exempt by law from public inspection, (3) consultation with attorney for legal advice, (4) discuss with Board counsel and instruct board counsel on certain legal matters, (5) negotiations with employee organizations, (6) international/interstate negotiations, and (7) negotiations for the purchase, sale, or lease of real property. The board must agree by a public majority vote of the members constituting a quorum to convene an executive session.

B. Who attends? Only people whose presence is reasonably necessary to carry out the executive session responsibilities should attend.

C. Confidentiality – The Board should be reminded of the confidential nature of the session at the beginning.

D. Notice - The notice shall state which of the specific statutory provisions that authorize the executive session and include a general description of the matter(s) to be considered so as not to defeat the purpose of the executive session. Note: If a personnel item involving an employee will be discussed, he/she must receive prior written notice of that fact.

E. Agenda - The executive session portion of the agenda must provide more than just a recital of the authorizing statutory section, but need not contain information that would defeat the purpose of the executive session or compromise legitimate private interests. Reminder: Stay on topic while in executive session.

F. Minutes - The minutes of and discussions made at executive sessions shall be kept confidential from the general public, and those present shall be instructed as to this confidentiality requirement. Executive session minutes must accurately describe the Board's instructions to its attorney and other professionals. Keep this in mind as you vote to approve minutes from prior meetings.

G. Legal Action - No legal action may be taken until after the board reconvenes in an open meeting for a final vote. However, the board may instruct its agent as to litigation and settlement discussions, negotiations with employee organizations, and negotiations regarding real property.

1. Legal action means "a collective decision, commitment or promise" made by the board. A.R.S. § 38-431(3).

2. No straw polls or preliminary votes can be taken in executive session.

VI. EMERGENCY MEETINGS

A. Notice - In case of an actual emergency, a meeting may be held, including an executive session, with such notice as is appropriate under the circumstances (i.e. as much notice as is possible even if it does not comply with the usual twenty-four hour requirement).

B. Minutes - The reasons necessitating the emergency meeting must be publicly announced and included in the minutes. Within twenty-four hours, the board must post a notice declaring that an emergency meeting was held and setting forth the specific matter discussed or decided.

VII. FAILURE TO COMPLY WITH THE OPEN MEETING LAW

A. Legal Action - All legal action transacted by the board during a meeting held in violation of this law is null and void. The legal action, however, may be ratified at a public meeting within thirty days of the discovery of the violation, provided the board makes available to the public a notice and detailed written description of the action at least seventy-two hours in advance of the meeting.

B. Investigations and Enforcement - On receipt of a signed, written complaint alleging a violation, the attorney general or county attorney is authorized to conduct an investigation. Any affected person, the attorney general or the county attorney may commence a suit in the superior court to require compliance with the law. If the court agrees, it may impose a civil penalty of up to \$500 per violation for a second offense and not exceeding two thousand five hundred dollars for third or subsequent offenses against each person who knowingly violated the Open Meeting Law, order payment of plaintiff's reasonable attorney fees, or even remove the member from office. The public body may not pay the penalty.

VIII. PUBLIC POLICY

"Any person or entity charged with [interpreting the Open Meeting Law] shall construe any provision . . . in favor of open and public meetings." A.R.S. § 38-431.09.