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Charter Schools

Preparing for a Governing Council Meeting: The Pitfalls, the Public and Private Conversations

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Champion Charter School Excellence

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New Mexico Open Meetings Act

- Purpose: It is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.
- The formation of public policy or the conduct of business by vote shall not be conducted in closed meetings. All meetings of any public body except the legislature and the courts shall be public meetings, and all persons desiring shall be permitted to attend and listen to the deliberations and proceedings.

New Mexico Open Meetings Act

- When does it apply?

- All meetings of a quorum of members of any board.
- For the purpose of
 - » formulating public policy,
 - » development of personnel policy, rules, regulations or ordinances,
 - » discussing public business
 - » taking any action within the authority of the board



Example

- The Head Administrator of a local Charter School, Model Charter School, needs the immediate approval of the governing council before executing a contract and calls the council members individually by phone to obtain approval of the contract.

Example

- Governing Council member 1 and Governing Council member 2 are two members of a five member governing council for (MCS), they have a telephone conversation during which they decide that the Governing Council should fire the MCS Head Administrator. Governing Council member 1 writes a letter to the Administrator terminating her employment and gives it to Governing Council member 2 who signs it and then gives the letter to Governing Council member 3 who also signs it. Does the Open Meetings Act apply to this situation?

Example

- Governing Council member 1 and Governing Council member 2 work for the same business. They also serve on the Governing Council of MCS. Are they allowed to meet outside of properly noticed meetings?

Example

- The MCS Head Administrator attends a breakfast of fellow head administrators to discuss issues related to charter schools about which they are all concerned.



New Mexico Open Meetings Act

- What does the Open Meetings Act require when planning to conduct a Governing Council Meeting?
 - Notice: Any meetings at which the discussion or adoption of any proposed resolution or formal action occurs at which a majority of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public.
 - Affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body. The Attorney General's Interpretive Guidance has language for an OMA resolution.
 - In most circumstances, attorney general will consider reasonable: ten days advance notice for regular meetings, three days prior notice for special meetings, and twenty four hours advance notice for emergency meetings.

New Mexico Open Meetings Act

- What does the Open Meetings Act require when planning to conduct a Governing Council Meeting?
 - Agenda: An agenda containing list of specific items of business to be discussed or transacted at the public meeting; or Information on how the public may obtain such an agenda
 - » Agenda must be posted at least 72 hours before the meeting. Unless you meet more than once a week, in which case you need to post a draft 72 hours before and a final within 36 hours; or
 - » Unless there is an emergency (unforeseen circumstances that if not addressed immediately will likely result in injury or damage to persons or property or substantial financial loss)
 - » Body may discuss items that are not on the agenda but cannot take action. Actions items that are not listed on the agenda for a meeting must be addressed at a subsequent special or regular meeting.

Example

MODEL CHARTER SCHOOL
Governing Council Notice of Meeting
February 31, 2017 – 7:00AM

Agenda

I. Old Business

II. New Business

- Vending machines on campus
- Personnel matter

Under item 1, the Governing Council is planning to discuss and act on three contracts. Under item 2(a), the Council is planning to discuss and vote on allowing vending machines on campus. Under 2(b), the Governing Council is planning to dismisses the Head Administrator, reorganize the remaining staff positions, and interview audience members interested in the job.



Example

- With only one hour notice, the MCS Head Administrator calls an “emergency meeting” of the MCS Governing Council to discuss the purchase of a building. The owner of the building has indicated that unless the Governing Council decides to purchase the building in 24 hours, he will offer it to someone else. MCS has no particular need for the building but the Head Administrator thinks it is a good deal.

New Mexico Open Meetings Act

- What happens if a public body violates the act?
 - Action taken in violation of the act is invalid.
 - Individuals can file suit in district court to enforce the provisions of the act and are entitled to costs and attorney's fees if they prevail.
 - Criminal fines.

New Mexico Inspection of Public Records Act

- Purpose of the Inspection of Public Records Act: It is declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees [and providing] persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees



IPRA – Notice

- IPRA requires that the custodian post a notice of IPRA rights which describes:
 - The right to inspect public records,
 - Contact information for the records custodian,
 - Procedures for requesting inspection and copies of records, and
 - Reasonable fees for copying records.



Inspection of Public Records Act

- Who can request a public record under the IPRA? Anybody.
- What is a public record? All documents, papers, letters, books, maps, tapes, photographs, recordings, and other materials, regardless of the physical form or characteristic that are used, created, maintained or held by or on behalf of any public body and relate to public business, whether or not it is required to be created or maintained by law.



Example

- Example: In preparing for an upcoming Governing Council meeting, are Governing Council Member for MCS sends an email to a head administrator on his school email account. The GC Member promises to support various initiatives by the Head Administrator at the School but asks that the Head Administrator keep the email confidential. Is the email a public record?

Example

- A member of the MCS Governing Council keeps a journal during Governing Council Meetings of candid thoughts about the school, impressions of other Council members, and strange events that have happened at MCS. Is the journal a public record?



Inspection of Public Records Act

- What is not a public record (8 Exceptions)
 - Records pertaining to physical or mental examinations of persons confined to any institution
 - Letters of reference concerning employment, licensing or permits.
 - Letters or memorandums which are matters of opinions in personnel files, or student cumulative folders
 - Law Enforcement Records
 - Confidential Materials Act
 - Public Hospital Records
 - Protected Personal Identifier Information
 - Attorney client privilege information
 - Tactical response plans (active shooter plans)
 - As otherwise provided by law (FERPA)

Example

- The Head Administrator at MCS reprimands an employee for inappropriate behavior at the MCS holiday party. A newspaper requests a copy. Public record?
- The employee responds to the reprimand by email and claims that the reprimand is in retaliation for reporting the Head Administrator's conduct at the prior year's Holiday Party. The Head Administrator then writes an email to the Governing Council's Attorney asking for advice about how to respond.
- The attorney for the Governing Council summarizes a series of recent news clippings for discussion at a Governing Council Meeting in an open portion of a governing council. The local news station request a copy of the summary.
- The Governing Council receives complaints from the public about a controversial Head Administrator. A blogger requests copies of all complaints. Are the complaints a public record?

Inspection of Public Records Act

- How can a person request a public record?
 - Submit an oral or written request
 - Procedures in the IPRA only apply to a written request or a request by fax or email.



Inspection of Public Records Act

- Who responds to IPRA requests?
 - A custodian: “any person responsible for the maintenance, care, or keeping of a public body’s public records, regardless of whether the records are in that person’s actual physical custody and control.



Inspection of Public Records Act

- How does the public entity need to respond to the request?
 - Within 3 days of receipt of written request of records by the custodian, the custodian needs to:
 - » Respond with the records; or
 - » Respond and state that they will need additional time to respond and state when the records will be forthcoming
 - » If the request is burdensome, send a letter stating that and notifying the requester that you will require additional time.
 - » Deny the request in writing and describe the records sought, the names of the people responsible for the denial, and the reason for the denial.

Inspection of Public Records Act

- What happens if the custodian does not respond?
 - If the custodian does not send a response to the person making the request within 15 days or send a letter stating that the request is burdensome, the request is deemed denied and the person who made the request can file suit. If they prevail, then may be entitled to costs, attorney's fees, and in some cases damages.



OMA & IPRA

Conclusion

&

Questions



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