



NIM
CCS
New Mexico
Coalition for
Charter Schools

**Conducting a Governing Council Meeting,
Robert's Rules, Rowdy Member of the
Public, Real Evaluations of Your Director**
Jason Burnette, Esq. Ethan Watson, Esq.
German Burnette & Associates.



Champion Charter School Excellence

2016 Annual Conference



Open Meetings Act

- Minutes.
 - Minutes must include:
 - » Date, time, place
 - » Members in attendance and those absent
 - » Substance of the proposals considered
 - » Record of any decisions and votes taken
 - Additional Notes
 - » Minutes are open to public inspection
 - » Need to be prepared within 10 working days after the meeting
 - » Approved, amended, or disapproved at the next meeting where a quorum is present.
 - » Not official until approved.

Example

- MCS Governing Council has a meeting to hire a new Head Administrator. They decide to hire the administrator but their decision and the vote on that decision are not reflected in the minutes which are ratified at the next meeting. Has MCS actually hired a new director?
- MCS Governing Council has a meeting to purchase a piece of controversial, allegedly haunted real estate downtown. During a properly noticed meeting, they hold a secret ballot on the purchase. Does this action comply with the Open Meetings Act?

Open Meetings Act

- How should you manage a meeting?
 - Pick a procedure, any procedure
 - Roberts Rules, etc.
 - Adherence to a procedure will ensure your minutes are clear.
 - Chair / President play an important role as umpire.



Open Meetings Act

- Open Meetings Act v. Internal Procedures
 - OMA always trumps Robert's Rules or internal meeting procedures
 - If you violate internal procedures your actions will *not* necessarily be void as a matter of law, if you violate the OMA they will most likely be void as a matter of law.



Open Meetings Act

- Advice from a Committee v. Delegating Governing Council authority to a Committee.
 - Asking a subcommittee or advisory committee of your Board or Council to do further work or obtain information on a subject can trigger obligations under the OMA.
 - The general distinction about when the OMA does and does not apply is whether or not the information the committee provides is advice to the Governing Council or if the subcommittee is exercising the Governing Council's authority



Example

The Head Administrator of MCS asks some parents to form a group and make recommendations to the Governing Council about extracurricular activities. The group's recommendations are not binding on the Governing Council. Does the parent group need to comply with the Open Meetings Act?



Example

- The Model Charter School Governing Council forms a subcommittee to find, interview, and select finalists for head administrator position. The subcommittee is composed of parents, community members, and one Governing Council Member. The recommendation is binding on the Governing Council unless the Governing Council receives reliable information from an independent source affecting the finalist's qualifications. Does this subcommittee need to comply with the open meetings act?

Open Meetings Act

- Exceptions to requirement that issues be decided at an open meeting
 - There are ten (10) but only seven (7) are relevant to your work.
 - Limited personnel matters
 - Deliberations by a public body in connection with an administrative adjudicatory proceeding.
 - Discussion of personally identifiable student information.
 - Meetings for the discussion of bargaining strategy
 - Portions of the meeting at which a decision concerning purchases in excess of 2500.00 that can be made only from one source *and* discussion of sealed proposals pursuant to the procurement code.
 - Meetings pertaining to ACP or threatened or pending litigation in which the public body is or may become a participant.
 - Discussion of purchase or disposal of property

Open Meetings Act

- How do you deal with issues you need to discuss that are subject to one of these exceptions?
 - You still need to give notice.
 - By motion in an open meeting, with a majority vote.
 - » Motion must have reasonable specificity regarding subject matter and basis for closing meeting.
 - Majority vote shall be in the open meeting.
 - Vote must be recorded.



First Amendment

Rowdy Members of the Public:

Free Speech and Governing Council Meeting



First Amendment

- First Amendment to the U.S. Constitution: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; **or abridging the freedom of speech**, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.



First Amendment

The Courts focus on three questions to determine whether a First Amendment violation has occurred.

- Is the speech in question protected speech?
- What kind of forum is it occurring in (i.e. what kind of forum is a Governing Council meeting)?
- Does the rationale for limiting the speech satisfy the First Amendment standard applicable to the forum at issue.

Sumnum v. Callaghan, 130 F.3d 906 (10th Cir. 1997).

First Amendment

- Is the Speech protected?
 - General rule-YES!!!
 - “Except for certain narrow categories deemed unworthy of full First Amendment protection—such as obscenity, ‘fighting words’ and libel—all speech is protected by the first Amendment.”
Eichenlaub v. Twp. Of Indiana, 385 F.3d 274, 282-83 (3rd Cir. 2004).

First Amendment

- Forum?
 - Per the Legislature, public meetings are open so that members of the public can “attend and listen.” NMSA 1978, Section 10-15-1.
 - Courts have found that school board meetings, at least the public portions are considered “limited public fora for the receipt of information about the Board’s business.” ADD Macquigg cite, p. 7.
 - Public Fora: Public Forum/Square.
 - “Limited Public Fora/Forum”-focus on your school’s business.
 - However, the Legislature has not designated public meetings for unlimited public for speech and debate by all, and opening a forum for the receipt of information does not mean that the forum is open to all First Amendment activities.
 - That being said, if a Governing Council allows for public debate or otherwise for speech by members of the public relating to the administration of the school, that does constitute a limited public fora.

First Amendment

- What Standard to use for the rationale for limiting speech?
 - The Governing Council may impose limitations on speech at meetings if the limitations are:
 - Viewpoint neutral; and
 - Reasonable in light of the forum's purpose
 - Reasonable cannot just be merely subjective.



First Amendment

- Other considerations
 - “Dislike” is not an illegal motive but dislike due to speech is.
 - Personnel matters generally are not fair game for open discussion.



Example

- A parent of a former student comes to every Council meeting and requests to speak during the public comment section. The comments are generally critical of the management of the school from a philosophical sense. This parent has the same or similar issues to discuss at every meeting. During the presentations other individuals in attendance typically roll their eyes and clearly do not take this person's concerns seriously. The Council wants to limit their speaking time or otherwise not let them speak due to the relatively pointless and redundant nature of the comments.

Example

- Former teacher shows up at a Governing Council meeting, and makes critical comments about each member of the Council during her presentation. She then begins making critical comments about an administrator's job performance. The Council cuts her off and does not let her speak further.



Example

- Former teacher from the above example is sent a letter from the Council revoking her privilege of speaking at the meetings?



Example

- Parent speaks during a meeting, complaining about their child's teacher's job performance. Specifically, they express concerns that the teacher is not being effective due to what appears to be depression, and wants the Council to take action.



Evaluating Head Administrator or Director Performance

- Choosing evaluation criteria:
 - School Specific and Administrator Specific
 - Work with your administrator on developing criteria
 - Consider your contract with your Authorizing Entity
 - » “The School Governing Board may ask its administrator to oversee the implementation of this contract on behalf of the school.”
 - » Authorizer contracts have organization, academic, and financial performance frameworks.



Evaluating Head Administrator or Director Performance

- Applying the evaluation criteria
 - Constant conversation
 - Document
 - Cycle
 - » Assess
 - » Plan
 - » Review
 - » Reflection
 - » Evaluation



Evaluating Head Administrator or Director Performance

Don't Just Check Boxes!



Contact Information

German Burnette and Associates

Jason Burnette, Esq.

jason@germanassociates.com

Ethan Watson, Esq.

ethan@germanassociates.com

