

THE OPEN MEETINGS LAWS – CURRENT AND NEW –

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AGENDA

- 1. School Board Open Meetings**
- 2. Notice of meeting & Proposed Agenda, Final Agenda**
- 3. Executive Session**
- 4. Teleconferences**
- 5. Recording meetings**
- 6. Meeting minutes**
- 7. Committee recommendations**
- 8. Consequences for violating open meetings laws**
- 9. Annual review of open meetings laws**

1. SCHOOL BOARD MEETINGS

SDCL 1-25-1

Official meetings are open to the public ...

SDCL 1-25-12(1). “Official Meeting” defined:

- **any meeting of a majority of Board members**
- **at which official business or public policy of the School District/Board**
- **is discussed or decided by the Board,**

SDCL 1-25-12(1). **"Official meeting"** – meeting by majority of the board when official business or public policy is discussed or decided.

**** whether in person or by means of teleconference or electronic means, including electronic mail, instant messaging, social media, text message, or virtual meeting platform,**

**** the term does not include communications solely to schedule a meeting or confirm attendance availability for a future meeting.**

SDCL 1-25-1. It is not an official meeting IF

- **....Board members provide information or attend the official meeting of another public body for which the notice requirements of § 1-25-1.1 has been met.**
 - **PRACTICAL TIP – DON'T RELY ON ANOTHER ENTITY TO POST THE AGENDA – DO YOUR OWN !!**
- **....Board members attend a press conference called by a representative of the school district.**

**SDCL 1-25-1. Event hosted by a
nongovernmental entity**

If a quorum of the school board is invited to an event hosted by a nongovernmental entity and school district public policy may be discussed, but the school board does not control the agenda, the school board may post a public notice of a quorum, in lieu of an agenda. The notice of a quorum shall meet the posting requirements of § 1-25-1.1 and shall contain, at a minimum, the date, time, and location of the event."

**SDCL 1-25-1. Official meetings
are open to the public ...**

**...UNLESS A SPECIFIC LAW IS CITED by the
school board to close the official meeting
to the public.**

***[More on citing a specific law for executive
session purposes during the upcoming
discussion on executive session.]***

SDCL 1-25-1. Public Comment Time

- The Board must reserve at every official meeting a period for public comment,
 - limited at the Board's discretion as to the time allowed for each topic and the total time allowed for public comment,
 - but not limited so as to result in no public comment.
- *Exception to public comment requirement:*
 - Public comment is not required at meetings held only for purposes of having an executive session (i.e., student expulsion hearings, employee grievance hearings, contract nonrenewal/termination hearings.)
- **PRACTICAL TIP – the Hearing must be the only item on the agenda when the agenda is approved at the beginning of the board meeting. DO NOT ADD ANYTHING TO IT !!!**

When should the “public comment” time be on the agenda?

Options:

Before agenda approval?

After agenda approval?

At end of meeting?

SCHOOL BOARD POLICY ON PUBLIC COMMENT AT BOARD MEETINGS

Does your District policy address:

- when public comment period is on the agenda?**
- prior notification/sign up (name and topic) requirement?**
- notification of policy (on copies of the agenda available at the board meeting, on a District website link, etc.)?**

SCHOOL BOARD POLICY ON PUBLIC COMMENT AT BOARD MEETINGS

– length of time for public comments ?

- Individual speaker time limit, time extensions?**
- Topic time limit, time extensions?**
- Total public comment time limit, time extensions?**

SDCL 1-27-1.16 Material relating to open meeting agenda item to be available.

[Public Records and Files -- SDCL Ch. 1-27]

- For every official meeting, printed material relating to an agenda item, prepared/distributed by or at the direction of the Board or any employee, and distributed before the meeting to Board members, shall be posted on the school's website or made available in the business office at least 24 hours before the meeting, or at the time the material is distributed to the Board, whichever is later.**
- If the material is not posted to the district's website, it must be available in the meeting room available to people when the Board is considering the material.**

OPEN MEETINGS PRACTICAL TIP

KEEP IN MIND SDCL 22-18-35(3)

“Any person who intentionally causes serious public inconvenience, annoyance, or alarm to any other person, or creates a risk thereof by disturbing any lawful assembly or meeting of persons without lawful authority, is guilty of disorderly conduct, a Class 2 misdemeanor.

**2. NOTICE OF MEETING
&
PROPOSED AGENDA,

FINAL AGENDA**

SDCL 1-25-1.1

The Board must provide public notice of meeting, with proposed agenda,

- that is visible, readable, and accessible,**
- for at least an entire, continuous 24 hours immediately preceding every official meeting.**
- The notice must include the date, time, and specific location of the meeting.**

SDCL 1-25-1.1

- The notice of meeting and proposed agenda must be posted at the principal office of District

AND

- must be posted on the District's website.

SDCL 1-25-1.7
EFFECTIVE JULY 1, 2026

- The proposed agenda must list all items to be considered by the school board during the board meeting.
- The proposed agenda items must be described in sufficient detail to reasonably inform the public of any official business or public policy intended to be considered at the meeting.

SDCL 1-25-1.1

“For any special or rescheduled meeting, the information in the notice shall be delivered in person, by mail, by email, or by telephone, to members of the local news media who have requested notice.”

The Board must “also comply with the public notice provisions of this section for a regular meeting to the extent that circumstances permit.”

**WHAT SHOULD THE BOARD DO IF IT IS
DISCOVERED BEFORE THE MEETING THAT
THE NOTICE OF MEETING AND AGENDA
WERE NOT POSTED AT THE SCHOOL
AND/OR ON THE SCHOOL'S WEBSITE??**

PRACTICAL TIP

RESCHEDULE THE MEETING. HOLD IT AS SOON AS POSSIBLE, MAKING SURE THE 24 HOUR NOTICE REQUIREMENT IS MET, AND POST THE MEETING NOTICE PROPERLY. ALSO LET THE PUBLIC KNOW AS SOON AS POSSIBLE THAT THE MEETING IS BEING RESCHEDULED.

OMC and AGENDA SPECIFICITY

- ***08-04 Butte County:*** “In particular, it should be noted that an agenda item stating that interviews would be conducted affords the public with sufficient information to conclude that a hiring decision may be conducted at the meeting....The failure to include the hiring decision as a specific agenda item is not a violation of SDCL 1-25-1.”
- ***20-03 Yankton County:*** “It would be unreasonable, with no further statutory guidance, to require public bodies to list on their agendas every conceivable action that may be taken on a certain subject.”

PRACTICAL TIPS
ON YOUR AGENDA, DO NOT USE THESE
PHRASES:

- “old business” and/or “new business”
unless the specific business to be discussed is also identified
- “executive session (*if needed*) ”
- “Board Discussion”
- AND -- DO NOT identify an item as being a “discussion item” or “action item”

**Proposed Agenda
as compared to
Final Agenda!!!**

SD Attorney General Open Meetings Brochure

“Typically, the public body adopts the final agenda upon convening the meeting. At the time the final agenda is adopted, the governing body may add or delete agenda items and may also change the order of business.” In 2012, the South Dakota Supreme Court affirmed a South Dakota Circuit Court decision that a proposed agenda may be amended when the board takes action to formally adopt the meeting agenda.

PRACTICAL TIPS

- **There is nothing in state law that prohibits the Board from taking action on an items which had been added to the agenda.**
- **If the item had been added to the meeting agenda at the time of agenda approval, the Board may want to consider deferring action on the item if the item issue is controversial, unless immediate emergency action is needed.**

Proposed Agenda -- Final Agenda:

PRACTICAL TIPS

- **DO NOT** use the right to amend the agenda at the time of agenda approval to circumvent the intent behind the requirement to post the proposed agenda.
- The more sensitive/controversial a topic is, the more caution which should be used before adding it to the agenda when the agenda is approved, and even more caution should be used, if added to the agenda, on taking action on the topic.

SD Attorney General Open Meetings Brochure

“New items cannot be added after the agenda has been adopted by the governing body.” [Emphasis added]

3. Executive Session

- **SDCL 1-25-1 = “Official meetings are open to the public unless a specific law is cited by the state or the political subdivision to close the official meeting to the public.”**
- **SDCL 1-25-2 (amended by SB 47, effective July 1, 2026) = “A motion to enter executive session must state the applicable subdivision in this section, *or any other applicable law, pursuant to which the executive session is to be held*. The motion and vote to enter executive session must be reported in the minutes of the proceedings.”**

SDCL 1-25-2 “An executive session or closed meeting may be held only for the purposes of: ...”

SDCL 1-25-2 Executive Session

(1) Discussing the qualifications, competence, performance, character or fitness of any public

- Officer, employee or prospective public officer or employee;**
- Individual specific;**
- current or potential employee; current Board member or potential appointee to Board;**
- Expressly excludes independent contractor - cannot go into executive session for interviewing, choosing or discussing performance of an independent contractor.**

SDCL 1-25-2(1) Executive Session

- **SDCL 1-25-2(1) does not allow for discussion of an employee's compensation in executive session. *Pennington County (2024-07)***
- **Executive session cannot be used to discuss reorganizing city departments. *City of Lead (04-01)***
- **It was permissible for the school board to go into executive session to discuss the qualifications and competency of school district personnel during staff reduction discussions. *Hot Springs School Board (18-02)***

SDCL 1-25-2 Executive Session

(2) Discussing the expulsion, suspension, discipline, assignment of or the educational program of a student, or the eligibility of a student to participate in interscholastic activities provided by the SDHSAA;

- must be individual student specific;**
- not to be used to discuss policy, such as a bullying, discipline, Title IX sexual harassment policies, etc.**

SDCL 1-25-2 Executive Session

(3) Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters;

- Direct school attorney involvement is required, through presence in executive session, in person or by phone/zoom, etc., or from/through attorney written communications, or Superintendent/Board member meeting/conference notes.**

SDCL 1-25-2(3) Executive Session

“Discussion of contracts is not, by itself, a proper basis for executive session.....

“Such an exception would be, as the cliché goes, a hole in the law that you could drive a truck through. Or perhaps a school bus.”

OMC SD Science & Technology Authority (2.20.07)

SDCL 1-25-2(3) Executive Session
PRACTICAL TIPS –

- ***Executive Session cannot be for the purpose of discussing whether or not the Board should enter into a contract.***
- ***There must be direct attorney involvement, in person, by phone, or review of attorney written communication, AND***
- ***the attorney involvement is related to the legal rights and responsibilities of the parties with respect to the contract.***

SDCL 1-25-2 Executive Session

- **“The commission in *Melrose* also held that attorney-client privilege is a permissible use of the executive session....”**
- **The phrase “legal issues” encompasses SDCL 1-25-2(3) and SDCL 19-13-3* (the Lawyer-Client privilege). [**19-13-3 is now SDCL 19-19-502*]**

OMC Decision: City of Mitchell (08-01)

****Consider citing SDCL 19-19-502 in addition to SDCL 1-25-2(3) to go into executive session to discuss “legal issues” and talk with/review communications from the school attorney.**

SDCL 1-25-2 Executive Session

(4) Preparing for contract negotiations or negotiating with employees or employee representatives;

---- “The Commission finds, however, that this exception [SDCL 1-25-2(4)] applies only to employee relations and not to other general contractual matters.” (Emphasis added). OMC

Decision: SD Science & Technology Authority (2.20.07)

PRACTICAL TIP – USE SDCL 1-25-2(4) WHEN ADDRESSING ADMINISTRATOR SALARIES.

SDCL 1-25-2 Executive Session

(5) Discussing marketing or pricing strategies by a board or commission of a business owned by the [school district], when public discussion may be harmful to the competitive position of the business;

– Applicability to schools ??

- Contracted bus service ?**
- Contracted food service ?**

PRACTICAL TIPS – [1] Consider using SDCL 5-18A-7(5); [2] Discuss with your school attorney.

SDCL 1-25-2 Executive Session
Competitive Sealed Proposals (RFPs)

SDCL 5-18A-7(5) “.., a discussion may be conducted with any responsible offeror who submitted a proposal determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements....A revision may be permitted after a submission and prior to an award for the purpose of obtaining the best and final offer. In conducting any discussion, there may be no disclosure of any information derived from any proposal submitted by a competing offeror.

SDCL 1-25-2 Executive Session

(6) Discussing information pertaining to the protection of public or private property (a-g);

(7) Discussing any emergency or disaster response plans or protocols;

(8) Discussing the location of Ammunition or weapons. (a-c)

SDCL 1-25-2 Executive Session

- An executive session may be held only upon a majority vote of the board members present and voting at an otherwise open official meeting. In the absence of a unanimous vote, any vote to enter executive session must be taken by roll call.
- A motion to enter executive session must state the applicable subdivision of SDCL 1-25-2, or any other applicable law, pursuant to which the executive session is to be held.
- The motion and vote to enter executive session must be reported in the minutes of the proceedings.

~~EXECUTIVE~~ SESSION MOTIONS

- “so move” – NO
- “motion to go into executive session” -- NO
- “motion to go into executive session for personnel/student matter/consult with legal counsel” -- NO
- “motion to go into executive session pursuant to SDCL 1-25-2” -- NO
- “motion to go into executive session pursuant to SDCL 1-25-2(1)” and “motion to go into executive session pursuant to SDCL 1-25-2(1) personnel - YES

SDCL 1-25-2 Executive Session

- **Discussion during executive session is restricted to the purpose specified in the motion to enter executive session.**

*****OMC reprimanded a School Board after the Board, while in executive session for personnel, strayed onto another topic which was not a permissible executive session topic.**

Executive Session - SDCL 1-25-2

- Any official action concerning the matters considered pursuant to this section must be taken at an open official meeting. [DO NOT vote to come out of executive session]**

*****OMC reprimanded SF Ethics Board for making a decision in executive session. (*OMC 10-03*)**

*****OMC reprimanded City of Sioux Falls after it passed a motion in open session concerning a personnel matter that had been discussed in executive session because the motion did not fully disclose the subject matter of the action being taken. (*OMC 12-01*)**

4. RULES AND PRACTICAL TIPS RELATED TO CONDUCTING MEETINGS VIA TELECONFERENCE

"Teleconference," an exchange of information by any audio, video, or electronic medium, including the internet.

- Any official meeting, including a board hearing, may be conducted by teleconference.**
- A board member is deemed present if the member answers present call when determining a quorum.**
- Each vote at a teleconference meeting may be by voice vote; if any member votes no, the vote shall proceed to a roll call vote.**

SDCL 1-25-1.5; SDCL 1-25-12(5)

Teleconferences (SDCL 1-25-1.6). Public participation in teleconference meeting.

- At a teleconference meeting when a majority of the Board is physically present at the meeting, there must at least one place where the public may listen to and participate in the teleconference meeting.**
- If there is less than a majority of Board members physically present at the meeting location, arrangements shall be provided for the public to listen to the meeting via telephone or internet.**
- The requirement to provide at least one place for the public to listen to the teleconference does not apply to executive sessions.**

Teleconferences

PRACTICAL TIPS related to
conducting an open meeting
teleconference meeting, going into
executive session, and then
returning to the open meeting.

**IF MAJORITY OF BOARD MEMBERS ARE
ON-SITE, AND ONE+ MEMBER(S) CALL IN
FOR THE EXECUTIVE SESSION:**

- Before making the motion to go into executive session, Board President/Chair informs the public the absent member(s) will be joining the meeting for purposes of the executive session, then call the absent board member(s);
- Motion, second and vote to go into executive session, and public leaves the meeting room.
- President/Chair declares out of executive session; public back in; absent member stays on the line until meeting reconvenes in open session, then disconnects.

IF MAJORITY OF BOARD MEMBERS ARE OFF-SITE:

- At beginning of meeting, inform the public as to the procedure to be followed for executive session and reconvening in open session.
- Use 2 conference call-in numbers & ID's; 1 for open meeting, 1 for executive session; post open session call-in # and ID in notice of meeting and proposed agenda.
- In open meeting, motion for executive session; members call 2nd conference call number; conduct executive session; declare out; recess; call 1st conference number to re-enter and reconvene open meeting with public present.

5. RECORDING MEETINGS

SDCL 1-25-11: Recording an open official meeting by the public or press

- **Any person may record (through audio or video technology) an official meeting which is open to the public, as long as the recording**
- **..... is reasonable, obvious, and not disruptive.**
- ***OMC 2025-04 Green Valley Sanitary District*: violated open meetings laws by asking a member of public to stop recording (done reasonably, obviously, and not disruptive).**

PRACTICAL TIP - HAVE A POLICY

RECOMMENDATION - consider a policy based on SD Supreme Court recording rules.

- must inform the board president or supt. before the meeting;**
- inform people who are present of the meeting being recording;**
- equipment/artificial light which may be used;**
- prohibit obstructing vision and distracting;**
- right to prohibit/terminate recording if rules are violated.**

WHAT ABOUT RECORDING OR TAKING NOTES IN EXECUTIVE SESSION ??

- **Authorized by law ??**
- **Prohibited by law ??**
- **Confidentiality Issues ??**
 - **Although the U.S. Constitution does not explicitly provide for the rights of Americans to privacy and personal autonomy rights, the U.S. Supreme Court has interpreted the Constitution protect those rights.**
 - **SDCL 20-9-6. Right to protection from insult, or injury to personal relations.**
 - **SDCL 20-9-32. Civil cause of action for malicious intimidation or harassment.**

6. BOARD MINUTES

SD ATTORNEY GENERAL OPINION 74-11

- **“A school board speaks through its records and such records constitute prima facie evidence of its actions. In general, the minutes of a school board need not be formal or technical in nature. The minutes should show what actions were taken by the board and should show that the board acted within the requirements of the statutes.”**
- **“... it is my opinion that the above paragraph sets forth the minimum information that must be shown in school boards' minutes in order that such minutes will constitute an adequate official record of the school board.”**

SDCL 1-27-1.17 DRAFT MINUTES

The unapproved, draft minutes of every official Board meeting shall be available for inspection by any person within 10 business days after the meeting. This section does not apply if an audio or video recording of the meeting is available to the public on the District's website within 5 business days after the meeting.

7. COMMITTEE RECOMMENDATIONS

SDCL 1-27-1.18 Recommendations, findings, and reports of appointed working groups.

[Public Records and Files -- SDCL Ch. 1-27]

Any final recommendations, findings, or reports that result from a meeting of a committee, subcommittee, task force, or other working group appointed by the governing body, shall be reported in open meeting to the governing body which appointed the committee, subcommittee, task force, or other working group. The governing body shall delay taking any official action on the recommendations, findings, or reports until the next meeting of the governing body.

8. CONSEQUENCES FOR VIOLATING OPEN MEETINGS LAWS

CONSEQUENCES FOR VIOLATING OPEN MEETINGS LAWS

- **Class 2 Misdemeanor (maximum 30 days in jail or \$500 fine, or both)**
 - **SDCL 1-25-1 [Open Meetings]**
 - **SDCL 1-25-1.1 [Notice of Meeting and Proposed Agenda]**
 - **SDCL 1-25-1.7 [Agenda Detail Requirement]**
 - **SDCL 1-25-2 [Executive Session]**
- **Public Reprimand by Open Meetings Commission**
- **Court declaring Board's action void**

**9. ANNUAL REVIEW
OF
OPEN MEETINGS LAWS**

SDCL 1-25-13 Annual review of open meeting laws--Acknowledgment.

- **The School Board must annually review the following during an official Board meeting:**
 - (1) The explanation of the open meeting laws published by the attorney general; and**
 - (2) Any other material pertaining to the open meeting laws provided by the AG.**
- **The School Board meeting minutes must include an acknowledgement that the review was completed.**
- **[** *How do you define the term “review” ??*]**

WHO AT THE DISTRICT LEVEL IS RESPONSIBLE FOR THE BOARD'S COMPLIANCE WITH THE OPEN MEETING LAWS ??

- **ULTIMATELY, PRIMARILY, THE SCHOOL BOARD AND EVERY INDIVIDUAL BOARD MEMBER;**
- **SECONDARILY, THE SUPERINTENDENT AND THE BUSINESS MANAGER;**

OMC 2024-09 City of Lead City Commission

- “The public body is responsible for training their staff concerning the state open meetings laws, and responsible for establishing procedures that comply with the open meetings laws.”**
- “Public bodies should ensure that their staff do not attempt to engage a quorum of the public body in a discussion of official business or public policy outside of an official meeting.”**

CLOSING COMMENT

OMC HAS HELD MULTIPLE TIMES

THERE IS NO “GOOD FAITH” OR

“INADVERTENT ERROR” EXCEPTION

TO THE OPEN MEETING LAW.

QUESTIONS ??

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ATTACHMENTS

RELEVANT

OMC DECISIONS

OPEN MEETINGS

1. WHEN A MAJORITY OF BOARD MEMBERS, WHEN NOT IN AN OFFICIAL MEETING, ARE AT THE SAME LOCATION, DISCUSSING SCHOOL BUSINESS OR MAKING A DECISION ON A SCHOOL MATTER.

Kingsbury Cty. [OMC 08-02]; Minnehaha Cty. [OMC 07-04]

2. WHEN A MAJORITY OF BOARD MEMBERS DISCUSS A SPECIFIC SCHOOL BUSINESS TOPIC AMONG THEMSELVES, AT DIFFERENT TIMES, AND THEN, WITHOUT THERE BEING AN OFFICIAL BOARD MEETING, THERE IS A MAJORITY DECISION WHICH RESULTS IN SOME TYPE OF SCHOOL DISTRICT ACTION.

Deadwood City Commission [OMC 15-03]

3. WHEN A BOARD MEMBER (OR SOMEONE WHO IS NOT A BOARD MEMBER) EMAILS A MAJORITY, OR ALL, OF THE BOARD MEMBERS ON A SCHOOL MATTER (OR POSTS SOMETHING ON SOCIAL MEDIA) AND A MAJORITY OF BOARD MEMBERS RESPOND (VIA EMAIL, IN PERSON, OR ON SOCIAL MEDIA, ETC.).

Examples:

- Canton City Commission [OMC 17-04]**
- Lead City Commission [OMC 2024-09]**

Event hosted by a *nongovernmental* entity

- **“SDCL 1-25-1 authorizes the use of the notice of quorum when ‘public policy may be discussed.’ (Emphasis original). The statute does not require certainty that substantive discussions of public policy will occur.”**
- **SDCL “imposes an implied responsibility” on the public body to determine if a majority of its members have been invited to the event and will attend the event.**

SDCL 1-25-1.1 OMC Decisions-Violations of Notice/Agenda Requirements

- Minnehaha County – majority of Commission met without notice of meeting/agenda;**
- Kingsburg County – majority of Commission met without notice of meeting/agenda;**
- Canton City Commission - individual Commissioners emailed the City Manager authorizing the expenditure of public funds;**
- Potter County Commission – Commission members discussed County business immediately after meeting was adjourned.**
- Bennett County Commission - Commission took action at a meeting on something not on the meeting agenda.**
- OMC has multiple times reprimanded political subdivisions for failing to post their meeting notice and agenda on their website.**

AGENDA SPECIFICITY

*****BEFORE SDCL 1-25-1.7 ENACTED**

MARTIN CITY COUNCIL [OMC 2024-01]

- “An agenda must be sufficient to generally advise the public of the time and place of an official meeting of a political subdivision, and advise the public of the nature of the items to be addressed at the meeting.”
- “The Commission has previously concluded that the agenda ‘must include a bare identification of the matters to be discussed by the public body.’” (Emphasis added).

Executive Session Motions - OMC

- OMC reprimanded Groton City Council after the Council went into executive session without a motion, second and vote. (16-01)**
- OMC reprimanded the Bennett County Commission for failing to have a second to the motion to go into executive session before going into executive session. (2024-02)**
- OMC reprimanded the Sturgis City Council after the motion to go into executive session failed to state the purpose (authorizing law) for the executive session. (2024-08)**