

# Vermont's Open Meeting Law and Contract Negotiations

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## 1. What is the current law in Vermont regarding the use of executive session for matters relating to labor negotiations?

The statute, (1 VSA 313(a)(1)), was changed in 2013 and reads as follows:

“A public body may not hold an executive session except to consider one or more of the following:

- a. after making a **specific finding that premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage:**
  - i. contracts;
  - ii. labor relations agreements with employees;
  - iii. arbitration or mediation;
  - iv. grievances, other than tax grievances;
  - v. pending or probable civil litigation or a prosecution, to which the public body is or may be a party;
  - vi. confidential attorney-client communications made for the purpose of providing professional legal services to the body;”
- b. (Note: 1 VSA 313 goes on to list 9 topics that boards may discuss in executive session that do not require the board to make a specific finding, but they are not relevant here.

## 2. What must a school board do under this statute if it wishes to negotiate with the union bargaining agent in executive session?

At the beginning of the meeting where negotiations will take place, the board or committee of the board must pass by majority vote of those members present a motion to enter executive session for the purpose of discussing negotiations with the union. The motion and the vote must be recorded in the minutes of that meeting. Minutes of the executive session need not be taken.

## 3. Is the school board required to go into executive session every time it plans to discuss contract negotiations or actually negotiate with the union?

No. For example, a board may not be able to “make a specific finding that premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage.” If it does not, negotiations must remain in open session. There also may be times when the board determines that it is in the public’s interest for the board to conduct negotiations or discussion about negotiations in open session. It is important to note that the board alone has the sole authority and responsibility to determine whether or not to enter executive session.

## 4. What if the full board or the board’s negotiations committee wish to discuss negotiations related matters among its members in private?

The same procedure mentioned above applies. At the beginning of the meeting where such discussions will take place, the board must pass by majority vote of those members present a motion to enter executive session for that specific purpose.

## 5. How should such a motion read?

An example of the motion might read as follows: “I move that the board (or board negotiations committee) go into executive session to discuss matters relating to contract negotiations (or for the purpose of contract negotiations with the union), *the premature disclosure of which to the general public would put the board at a substantial disadvantage*” Followed by “Is there a second? Discussion? All in favor? All opposed?” etc.

**6. What must happen at the conclusion of the executive session?**

While in executive session, the board or board committee must pass a simple motion to leave executive session. If a formal action is to be taken by the board or committee, excluding moves related to ongoing and confidential negotiations positions, the board or committee must vote in open session. A final contract ratification vote by the board must be done in open session.

**7. Can the school board or negotiations committee invite guests like a consultant, a mediator or the union bargaining team into the executive session?**

Yes, it can.

**8. If the board is in executive session and negotiating with the union, must the board vote to caucus in order discuss its position away from the union representatives?**

No. Unless restricted by previously agreed upon ground rules, once the board negotiations committee is in executive session, it need only inform the union that it wishes to caucus. It need not vote to caucus.

**9. Can the school board conduct negotiations with the union in public session rather than in executive session.**

Yes. According to the statute, the board or board committee alone determines when to enter into executive session.

**10. If the board decides to negotiate in public session, is the board required to caucus in public session.**

No. But it should move to enter (and leave) executive session as outlined earlier in this document.

**11. Can the board disclose its bargaining proposals to the public? Can it disclose the union's proposals to the public even if the union objects? What about ongoing communication with the public.**

Yes, if the board finds that such a public disclosure will not place the board at a substantial disadvantage. The answers to these questions are not as simple, however, because they relate as much to the ground rules that are agreed upon by the parties as they do to the open meeting statute.