

Executive Session Tips for Board Members

Nicole L. Mace
Vermont School Boards Association
May 2015

According to 1 V.S.A. §313, a board may only go into executive session upon a motion and vote to do so. The motion must state the “nature of the business of the executive session,” be supported by a majority of the board, and be recorded in the minutes. Boards may not enter executive session without first meeting in open session and then voting to enter executive session.

Because a vote is required to enter executive session, we do not recommend that executive session be a standing item on every agenda. If the board knows it plans to discuss a topic that falls under one of the allowable reasons to enter closed session, then on the agenda for that meeting the board should indicate the nature of that specific topic and an intent to vote to enter executive session.

Boards may only enter executive session to discuss a limited number of topics. One category requires the public body to make a specific finding that “premature general public knowledge would clearly place the...public body or person involved at a substantial disadvantage.” The topics that require this specific finding to be made are:

- contracts;
- **labor relations agreements with employees;**
- arbitration or mediation;
- grievances, other than tax grievances;
- pending or probable civil litigation or a prosecution, to which the public body is or may be a party;
- confidential attorney-client communications made for the purpose of providing professional legal services to the body

For example, just because a board intends to discuss a contract with a bus company does not mean they can automatically vote to enter executive session. Rather, first they need to determine that discussing the contract in open meeting would place the board or company involved at a substantial disadvantage.

Other permissible reasons to enter executive session are:

- The negotiating or securing of real estate purchase or lease options
- The employment or evaluation of a public officer or an employee – provided, however, that the public body shall make a final decision to hire or appoint a public officer or employee in an open meeting and shall explain the reasons for its final decision during the open meeting

- A disciplinary action against a public officer or employee, except if such an individual seeks a public hearing after formal charges are brought
- A clear and imminent peril to the public safety
- Discussion or consideration of records or documents that are not public documents under the access to public records act, provided that when the board discusses the exempted record it may not also discuss the general subject to which the record or document pertains
- The academic records or suspension or discipline of students
- Municipal or school security or emergency response measures, the disclosure of which could jeopardize public safety

Because the statute requires that the motion to enter executive session state the "nature of the business to be discussed", we recommend boards give reasons that are more specific than "legal issues" or "personnel matters". This is consistent with the interpretation of the Secretary of State.

Rather, we recommend the board make a motion to enter executive session that cites one of the statutorily permissible reasons. Here are some examples:

- "I move to enter executive session for the purpose of discussing the evaluation of an employee."
- "I move to enter executive session for the purpose of discussing an employee's contract, because doing so in public session will clearly place that employee at a substantial disadvantage."
- "I move to enter executive session for the purpose of discussing the suspension of a student."

While in executive session, a board may only discuss the subject matter referenced in the motion to enter the session. Attendance in executive session is limited to members of the board, and in its discretion "its staff, clerical assistants and legal counsel, and persons who are subjects of the discussion or whose information is needed." 1 V.S.A. §313(b). Minutes are not required to be taken, and we do not recommend that they be taken.

A board cannot take any action in executive session, except actions related to the securing of real estate options. Ultimate action on all other items must be taken by motion and vote in open session. The motion for that vote should provide enough information (subject to confidentiality considerations) to allow members of the public to understand the nature and substance of the action taken.