

# Open Records and Open Meetings for School Boards



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# Disclaimer

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This presentation is not intended as legal advice.

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The information and commentary provided in this presentation and any comments or materials provided are for educational purposes only and should not be considered legal advice.

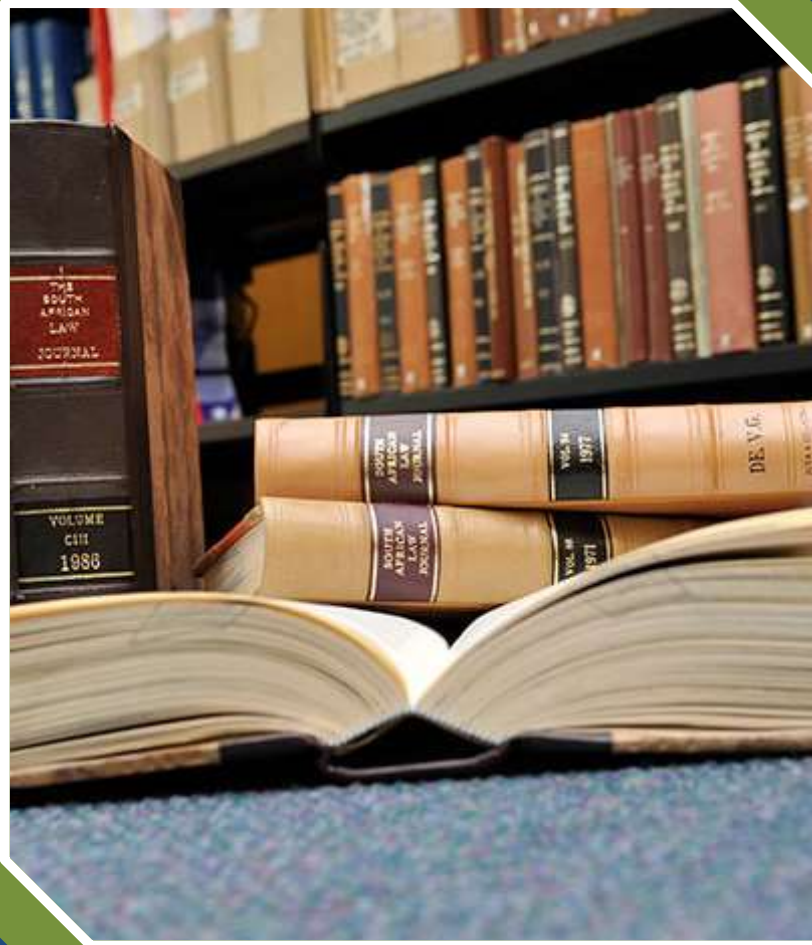
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Please consult with your school board's attorney for legal counsel as needed.

# Presentation Goals

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- Identify key definitions applicable to open record and open meeting laws.
- Explain the proper protocol for responding to open record requests.
- Describe how to properly post notice of regular and special meetings.
- Explain the reasons for, and how to properly enter, an executive session.
- Review the ND Attorney General's opinion process and potential penalties for open record and open meeting violations.



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# Open Records & Open Meetings

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## Primary Sources

- ND Constitution Article 11
- N.D.C.C. Chapter 44-04

## Secondary Sources

- North Dakota Attorney General Opinions
- North Dakota Supreme Courts Cases



# Open Records

# Open Records Basics

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What is subject to open record laws?

- All **records**
- In the possession of a **public entity**
- Regarding **public business**

# Open Records Basics

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What is a Record?

- **Recorded information** of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced . . .

# Open Records Basics

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What is Public Business?

- **All matters** that relate or may foreseeably relate in any way to . . . The performance of the public entity's governmental functions, including any matter over which the public entity has **supervision**, control, jurisdiction, or **advisory power**; or...the public entity's **use of public funds**.



# Open Records Basics

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There must be a law that specifically says the record is protected.

- The law will typically say the record is:
  - “*not subject to Article XI of the North Dakota Constitution,*”
  - “*not an open record,*”
  - “**exempt,**” or
  - “**confidential.**”

# Open Records Basics

## Exempt

- May be released.
- Public entity has discretion – needs entity action.
- May be called a “closed” record.
- Not against the law to release an exempt record.

## Confidential

- Cannot be released.
- Public entity has no discretion.
- Can only be released pursuant to a statute.
- Class C felony to knowingly release confidential records.

## Exempt

- Public employee personal information, including:
  - *Month/Day of Birth;*
  - *Home Address;*
  - *Personal Phone Numbers;*
  - *Photograph;*
  - *DMV and Employee ID Numbers;*
  - *Payroll Deduction Information;*
  - *Dependent/emergency contact information;*
  - *Any credit, debit, or electronic fund transfer card number;*
  - *Any account number at a bank or other financial institution; and*
  - *Type of leave taken, and leave applied for but not yet taken.*
- Internal investigation complaints – for no more than 75 days from the date of the Complaint

## Confidential

- Social Security Numbers;
- Computer Passwords; and
- Employee use of Employee Assistance Programs; and
- CHRI Checks performed by BCI.

# Examples of Records that are generally open

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- Personnel file, including:
  - *Job performance*
  - *Evaluations*
- Business-related e-mails
- Records on personal devices, including:
  - *Cell phones (e-mail, messages, photos)*
  - *Computers (e-mail, documents, etc.)*
- Contracts with a public entity, including:
  - *Prices*
  - *Costs*

# More Record Examples

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- Trade secret, proprietary, commercial, and financial information is confidential – “if it is of a privileged nature.” N.D.C.C § 44-04-18.4(1).
- Economic development records and information may be exempt. N.D.C.C § 44-04-18.4(5).
- Bids received by a public entity in response to an invitation for bids by the public entity are exempt until all of the bids have been received and opened by the public entity. N.D.C.C § 44-04-18.4(6)(a).
- Proposals received by a public entity in response to a request for proposals are exempt records until a notice of intent to award is issued. N.D.C.C § 44-04-18.4(6)(b).
- Records included with any bid or proposal naming and generally describing the entity submitting the proposal are open. N.D.C.C § 44-04-18.4(6)(c).

# 2021 Open Record Legislative Changes

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- Medical records, or a record containing medical information, in possession of a public entity are exempt. (N.D.C.C. § 44-04-18.32)
- Applications (N.D.C.C. § 44-04-18.27)
  - *Applications and any records related to the applications which contain information that could reasonably be used to identify an applicant are exempt. Finalists' information remains open.*
- Active litigation records (N.D.C.C. § 44-04-19.1(12))
  - *Records obtained, compiled, or prepared by a public entity or the attorney representing a public entity for the purpose of litigation, unless the records already have been filed publicly or the litigation is completed, are exempt.*

# Responding to Record Requests

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- Every person has the right to inspect or make a request for a public record.
- Generally, entity cannot make a requester fill out a form.
  - *Although you cannot require the initial request in writing either, you can request written (reasonable) clarification.*
  - *Exception – if you need to verify identity to release an otherwise confidential or exempt record.*
- Requester DOES NOT have to give their name or reason for the request.
  - *Exception – to verify identity for confidential or exempt records.*
- You only have to provide one copy of the record, once.

# Responding to Record Requests

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- You must provide RECORDS – not opinions or explanations.
  - *A request for information is not a request for records.*
- Requests should reasonably identify the record.
  - *Can clarify; do not intimidate.*
  - *Can suggest.*
- You only have to provide records you have in your possession.
  - *However, cannot contract with third party to “hold” your records and then claim not in your “possession.”*



# Responding to Record Requests

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- You do not have to create new records or put in a new format.
  - *Exceptions:*
    - If requester asks for a paper copy and you only have electronic copy, you must provide paper copy, but can charge in accordance with N.D.C.C. § 44-04-18(2).
    - Text messages – you are not required to provide access to the device.
- You must give a legal reason for any denial of records.
  - *Including if records do not exist.*
- Review and redact for confidential information.
- Communicate with requester – give estimate of time, costs, etc.

# Responding to Record Requests

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- If records available on the internet, **may refer the requestor to the website.**
- However, if requestor does not have internet access or a computer, will need to provide a paper copy of the record.

# Reasonable Time

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Several factors used to determine appropriate length of any delay, including:

- Need to consult with attorney if reasonable doubt exists on whether the record is open;
- Excising confidential information;
- Bulk of request and volume of documents reviewed;
- Accessibility of documents; and
- Office staff and availability, workload, balancing of other responsibilities.

If there will be a delay – communicate that to the requester.

# Basics of Charging

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- May charge up to 25¢ per copy of a size no more than 8x14.
- May charge actual cost of postage, maps, color photos.
- Locating records – first hour free, thereafter \$25/hour.
- Redacting confidential information – first hour free, thereafter \$25/hour.
- May require payment before locating, redacting, making, or mailing the copy.
- 5 or more requests from same requestor w/in 7 days, may treat as one request when computing time to locate/excise records.
- Access is (usually) free!

TO:

FROM:

Re: Your request for records

DATE

You requested records<sup>1</sup>:

- Pursuant to N.D.C.C. § 44-04-18(4), [available] records responsive to your request are online at:  
\_\_\_\_\_
  - Attached are [the records you requested] [additional records responsive to your request].
  - Some information is redacted because it is exempt and/or confidential pursuant to Marsy's Law and/or N.D.C.C. §§ \_\_\_\_\_
  - To the extent [requested] [other records] may/do exist, release is prohibited by the provisions of Marsy's law and/or the records are/would be confidential or exempt in entirety, under N.D.C.C. §§ \_\_\_\_\_
  - The records you requested cannot be provided because no such records exist OR the requested records are not records of this agency.
  - The estimated cost for the requested records is calculated as follows:
 

Actual cost of technology resources	\$ _____
_____ pages @ 25¢ per page	\$ _____
_____ other copies @ \$ _____ each	\$ _____
_____ hours for locating records @ \$25/hr (after the 1 <sup>st</sup> hour)	\$ _____
_____ hours for redacting records @ \$25/hr (after the 1 <sup>st</sup> hour)	\$ _____
<b>TOTAL:</b>	<b>\$ _____</b>
- Estimated costs are payable *in advance*. We do not waive estimated costs. *After* we receive a *cashier's* check/money order for the estimated costs, payable to "\_\_\_\_\_" we will begin work on your request. We estimate it will take approximately \_\_\_\_\_ days to complete your request.
- If we do not receive [payment] [clarification] from you within ten (10) days from today's date, we will consider your request withdrawn.
  - Your request did not reasonably identify specific records. We cannot comply with your request without clarification. Please call me at (701) \_\_\_\_\_.

[Template for Public Entity Use When Responding to an Open Records Request](#)



# Open Meetings

# Open Meetings Basics

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What is a Meeting?

- A **quorum** of
- A **governing body**
- Of a **public entity**
- Discussing **public business**

# Open Meetings Basics

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What is a Quorum?

- **One-half or more of the members** of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity.



# Reminder

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## **A Meeting can happen...**

- By conference call;
- On very short notice;
- Over video conference; or
- At a restaurant

**Anywhere** a quorum is present.

# Open Meeting Exceptions

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- Chance or social gatherings where no public business is considered or discussed.
- Emergency operations during a disaster or emergency declared under section 37-17.1-10 or an equivalent ordinance if a quorum of the members of the governing body are present but are not discussing public business as the full governing body or as a task force or working group.
- Attendance at meetings of national, regional, or state associations.
- Training seminars where no public business is discussed.

# Committees

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Definition of Meetings includes Committees.

- Committee: **Two or more people** acting collectively pursuant to authority delegated to that group by the governing body.
  - *Includes delegation of any public business, including information gathering.*
  - *Applies even if the public business being discussed was not delegated, and **no decision-making authority was granted**, to the committee by the governing body, so long as it relates to the business of the public entity.*

Key questions:

- Did the governing body delegate any sort of authority?
- Is the committee doing something the governing body could do itself?

# Reminder

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It does not matter...

- If the committee does not have final authority;
- If the committee is just “brainstorming” or “fact-finding;”
- If the committee is only intended to recommend something to the governing body;
- If the subject being discussed is not a subject within the authority delegated to the committee.

...a quorum of a committee is still a meeting.

# Two Kinds of Meetings

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## Regular Meetings

- Set by filing yearly schedule.
  - *Must still create agenda for each meeting.*
- May discuss items not on the agenda at the meeting.
- Agenda should contain all topics known at the time the agenda is drafted, but may contain some boilerplate or catch-all items (i.e. “Committee Reports”).

## Special Meetings

- Can **only discuss the items on the published agenda.**
- Agenda must be specific (no “catch-all” entries such as “old business”).

# 2021 Open Meetings Legislative Change

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## Access to Public Meetings

- If a meeting is held in-person, the meeting room must be accessible to, and the size of the room must accommodate, the number of persons reasonably expected to attend the meeting.
- If the meeting is held by electronic means, the electronic capacity must accommodate the number of persons reasonably expected to attend the meeting remotely.

# Notice Requirements

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What must the Notice say?

- Time, date, and location of the meeting;
- Topics to be discussed;
- Notice of any executive session.
- 2021 Legislative Change: If a meeting is held electronically, no longer have to make a speakerphone or monitor available in a physical location. Now, **the information necessary to join the meeting must be in the notice.**

The public should be able to read the notice and understand what the governing body is planning to discuss. Do not be vague.

# Quiz - Every Notice Must Include

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4 Things:

1. Date of the Meeting
2. Time of the Meeting
3. Topics to be considered
4. Location of the meeting (including an electronic address and any other information necessary to join the meeting if held by electronic means)



# Providing Notice

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When should the Notice be provided?

- Notice should be posted “**at the same time as such governing body’s members are notified.**”
  - *Remember: When governing body receives the agenda, the public should see the agenda.*

*If it’s a special meeting, and the members know the date of the meeting, but no agenda has been prepared?*

- Post notice of date at the same time members know of the date.
- Once agenda is prepared, it should also be posted at the required locations.

# Providing Notice

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Where must the Notice go?

- Posted at the main office and
- Location of the meeting on the day of the meeting;
- Appropriate central location: County Auditor OR posted on public entity's website;
- Given to anyone who has requested it.

Special meetings – notification must be given to official newspaper. (*Committee meetings are probably special meetings*)

- Remember: **This does not mean it needs to be published.**

# Quiz - Every Notice Must Be...

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1. Posted at the main office.
2. Posted at the location of the meeting on the day of the meeting.
3. Posted on your website OR sent to the County Auditor.
4. Provided to anyone who has asked for notice.

Bonus: for special meetings

...**sent** to the official newspaper

# Meeting Minutes

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Minutes must contain:

- Names of members attending;
- Date and time meeting was called to order and adjourned;
- List of topics discussed;
- Description of each motion made and whether it was seconded (and by whom);
- Results of every vote taken; and
- The vote of each member on every roll call vote (required for all *nonprocedural* votes).

# Common Meeting Violations

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Using emails or other communication methods where a quorum is involved to discuss public business.

- Permissible
  - *To provide information for members to review before a meeting;*
  - *To set a meeting date.*
- Violations
  - *Hitting “**reply all**” to a permissible communication to hold a discussion or provide an opinion.*
  - *A member sharing thoughts, ideas, or opinions to a quorum of a public entity or a committee, even if no one responds.*
  - *Track changes?*

# Common Meeting Violations

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- Straw polling (no matter who does the polling)
  - *Calling members prior to the meeting and polling their votes*
- Serial meetings
  - *A series of smaller gatherings, where public business is discussed, which collectively constitute a quorum*



# Executive Session

N.D.C.C. § 44-04-19.2



# Executive Sessions

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Must be specifically authorized by law

- Most common reasons:
  - *Discussing exempt/confidential records,*
  - *Attorney consultation; and*
  - *Negotiation strategy.*
- Most common violation:
  - *Closing meeting to discuss personnel matters!*
    - *Contractual terms and negotiation strategy may be discussed in executive session, but personnel issues cannot.*



# Executive Session Basics

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## Attorney consultation – 2 Ways

1. Advice regarding and in anticipation of reasonably predictable or pending litigation or adversarial administrative proceedings **OR**
  2. To receive attorney's advice and guidance on the legal risks, strengths, and weaknesses of an action of a public entity, which, if held in public, **would have an adverse fiscal effect.**
- Remember: Just because attorney is sitting in does not automatically make it an attorney consultation!

# *Schmitz v. State Board of Chiropractic Examiners (2022 ND 52)*

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## Facts:

- Dr. Schmitz, a licensed chiropractor, alleged the Board held discussions beyond the scope of attorney consultation during an executive session.

## Holding:

- By a vote of 3-2, the Supreme Court ordered the case back to District Court for release of an additional approximately 18 minutes of the executive session recording.

# Schmitz

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Following examples found impermissible and ordered to be disclosed:

- An unidentified speaker summarized their thoughts on how the closed session would be conducted and noted that the board members may have questions for the attorney and asked the attorney whether that is an acceptable way to proceed. The majority disclosed that question but protected the board attorney's response.
- A board member's summary and comments on the ALJ's proposed summary judgment order, followed a few seconds later by a question to the board's attorney.
- A response from the executive director to the board member's question for information, indicated she did not have the information, and then asked the board's attorney.
- Board discussion which included a summary of factual information related to the reason for the consultation by a board member.

# Reminder

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“**All** other discussions beyond the attorney's advice and guidance must be made in the open, unless otherwise provided by law.”

# Executive Session Basics

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## Negotiation strategy

- Must relate to strategy or provide instructions to an attorney or other negotiator,
- Regarding a pending claim, litigation, adversarial administrative proceedings, or contracts,
- Which is currently being negotiated or for which negotiation is reasonably likely to occur in the immediate future,
- **AND** must have adverse fiscal effect if the discussion would be held in public.

# Common School Board Executive Sessions

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- Board meetings concerning the nonrenewal, dismissal for cause, or suspension of a teacher, principal, superintendent, or director may be closed to the public.
  - *See generally, N.D.C.C. chapters 15.1-14 and 15.1-15*
- Student Records
  - *N.D.C.C. 15-10-17(7) protects student records at state higher education institutions, but there is not a similar statute for records of elementary and secondary school students.*
  - *Instead, look to FERPA which protects “education records” which include student discipline records and teacher journals, but does not include directory information.*

# How to Hold an Executive Session

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- Convene in open meeting;
- Announce in open meeting the topics to be discussed and legal authority;
  - *Note: **To discuss confidential information – no motion necessary.** To discuss exempt/closed information - motion to enter executive session.*
- Record the session (**keep for 6 months**);
- Note time of executive session and who attended in minutes;
- Only discuss topics in announcement;
- (usually) Final action in open meeting.



# 2022 Case Studies





# Minot Public School District No. 1

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## Issue

- Whether a committee is a governing body and subject to notice requirements in open meetings law.

## Facts

- The MPS Superintendent created a “Reintegration Committee” to address Covid-related precautions for MPS.
- Committee members included:
  - *Employees from the local health district,*
  - *Minot AFB,*
  - *Educators from all academic levels,*
  - *MPS parents.*

# Minot Public School District No. 1

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## Facts, continued

- No MPS School Board Members were on the Committee or attended any committee meetings.
- The Committee met 10 times over a one-year period.
- Notices and agendas were not always provided to the public.

# Minot Public School District No. 1

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## Law and Analysis

- All public meetings must be open to the public.
- A meeting occurs when a quorum of a governing body discussed public business.
- Governing bodies include any people, acting collectively pursuant to authority delegated to the group by the governing body.
- Superintendent Cabinets are not subject to open meetings law because:
  - *They are not created by school board rule*
  - *They were not delegated any authority by the school board.*

# Minot Public School District No. 1

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## Conclusion

- The Reintegration Committee did not meet the definition of a governing body.
- MPS did not have to provide notice of the Reintegration Committee meetings.

# Lewis and Clark Public School Board

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## Issue

- Whether the School Board provided proper notice of a special meeting.

## Facts

- The Board held a special meeting.
- Opinion Requester alleged the Board failed to provide notice to the county auditor or its official newspaper.

# Lewis and Clark Public School Board

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## Law

Notice must be provided for all public meetings.

- Notice must be:
  - *Posted at the main office;*
  - *Filed with the county auditor or posted on the website.*
- Special meeting notices must be sent to the newspaper.
- Opinions issued by the AG's office are required by law to be based on the facts given by the public entity.

# Lewis and Clark Public School Board

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## Analysis

- At 11:30 a.m. the Board president decided to call a special meeting for later the same day.
- The school superintendent posted a special meeting notice on the website around 11:46 a.m.
- Around noon, notice was posted by the school's front office, the main entrance, and outside the conference room door.
- At 12:19 p.m. the meeting notice was e-mailed to the managing editor of the Minot Daily News. (Per their previous request)

# Lewis and Clark Public School Board

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## Conclusion

- No violation - The Lewis & Clark Public School Board properly noticed its special meeting.



# Lewis and Clark Public School Board

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## Issue

- Whether the School Board provided proper notice of special meetings.

## Facts

- A member of the public requested notice of “all future board meetings.”
- The Superintendent and School Board President both responded informing her of their regular meeting schedule and where to find special meeting notices on their website.
- The Board held a special meeting without notifying the requester.

# Lewis and Clark Public School Board

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## Law & Analysis

- Notice must be provided for all public meetings to anyone who has requested it.
- Here, the Board thought their duty was to provide notice and schedule of regular meetings to anyone requesting it.

## Conclusion

- Violation - The Board failed to provide personal notice to the requester of its special meeting.
- No remedy needed.

# Hettinger Public School

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## Issue

- Whether the School Board improperly noticed an executive session, failed to properly describe the general subject matter and legal authority before entering the executive session, and held an unauthorized executive session.

# Hettinger Public School

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## Facts

- At a regular meeting the Board received a letter from its committee recommending the Agriculture Education Program teaching position become full-time.
- The Board passed a motion to go into executive session under the authority of N.D.C.C. 44-04-19.1(9) to “discuss negotiating strategy.”
- The meeting notice/agenda listed an executive session for “negotiations of contracts.”
- The executive session lasted approximately 41 minutes.
- When the Board returned to the open meeting, they passed a motion to keep the position part-time.
- The Board denied the request for the executive session recording.

# Hettinger Public School

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## Issue

- Whether the meeting notice properly described the general subject matter of the executive session.
- Whether the announcement before proceeding into executive session gave the public sufficient notice of the general subject matter of, and the legal authority for holding the executive session.
- Whether the executive session was authorized by law and limited to the topics and legal authority announced during the open portion of the meeting.

# Hettinger Public School

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## Issue 1

- All meetings are open to the public.
- Public notice must be given before public meetings.
- Notices must include: date, time, location of the meeting, topics to be considered, and “the general subject matter of any executive session expected to be held.”
- The general subject matter must be “sufficient to provide information about the topic or purpose of the executive session” to the public.
- “Executive Session to Discuss Negotiations per NDCC 44-04-19.2” and “Motion to go into Executive Session under NDCC 44-04-19.1” are too vague.

# Hettinger Public School

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## Issue 1, continued

- Notice: Executive session for “negotiations of contracts.”
- Violation.

# Hettinger Public School

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## Issue 2

- Governing bodies may hold executive sessions.
- Before entering, the governing body must **announce** during the open portion of the meeting both the topics to be considered and the legal authority for holding the executive session.
- It is not required to reveal any closed or confidential information but “must provide sufficient information about the topic and purpose of the executive session to keep the public apprised of the legally sufficient reason for holding the executive session.”



# Hettinger Public School

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## Issue 2, continued

- Announcements that merely reference “negotiations” or “conclusions of negotiations” are insufficient because they fail to identify the particular contract(s) being considered.
- Here, the Board only announced “negotiation strategy.”
- For “negotiation strategy” to be sufficient, the Board needed to announce the particular contract or issue they were discussing the strategy or providing instructions for.

# Hettinger Public School

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## Issue 3

- Governing bodies may hold executive sessions to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator regarding “pending or reasonably predictable litigation if allowing the other party to the negotiation, members of the public, to listen to the discussion would result in increased costs to the entity.
- Topics discussed in executive session **are limited** to those for which an executive session is authorized by law and that have been previously announced during the open part of the meeting.

# Hettinger Public School

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## 3 Elements of Negotiation Strategy

- The public entity must discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator.
- There must be litigation, adversarial administrative proceedings, or contracts which are currently being negotiated or for which negotiation is reasonably likely to occur in the immediate future.
- A meeting may be closed under this subsection only if keeping the meeting open would have an adverse fiscal effect on the public entity's bargaining or litigating position.

# Hettinger Public School

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## Issue 3, cont.

- The Board argued that the executive session was authorized by law to “discuss upcoming negotiating strategy with teachers” because one teacher’s resignation and the Hettinger Agriculture Education Advisory Board’s letter asking the Board to hire the teacher for a full-time Agriculture class, would affect its negotiating position.
- However, the recording revealed that the executive session concerned a teacher who had recently resigned, and the Hettinger Agriculture Education Advisory Board Committee’s request that the Board make the teacher one for a full-time class. No actual negotiation discussion took place. In fact, about fourteen minutes into the executive session the Board realized that it did not know who they were negotiating with and determined that they should find out.
- At the time the executive session was held, it had already been publicly acknowledged that the Board would discuss going from a half-time to full-time Agriculture teaching position because it was listed on the meeting agenda. The decision to keep the current teaching positions was voted on in the open part of the meeting.

# Hettinger Public School

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## Issue 3, cont.

- Lastly, the Board discussed far-ranging topics during the session that did not relate in anyway to negotiations that would cause an adverse fiscal effect on the Board's bargaining position.
- Violation - Absent clear negotiation discussion, this discussion should have happened in an open meeting, if at all. The executive session was not authorized because the Board failed to meet the three requirements to close the meeting for negotiation, the discussion during executive session was not limited to the announced topic, and collective agreements were reached during the executive session.

# Hettinger Public School

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## Conclusions

- The meeting notice did not sufficiently describe the general subject matter to be discussed during an executive session.
- The announcement before entering the executive session was insufficient because it failed to convey a specific topic that would put the public on notice of what would be discussed during the executive session.
- The Board violated open meeting laws when it talked about topics outside the announced topics and failed to meet the legal authority for an executive session.

# Hettinger Public School

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## Remedies

- The Board had to:
  - *Revise the meeting notice to include a description of the executive session that provides the general subject matter of the executive session.*
  - *Post the notice at the school district office for one week.*
  - *Amend its meeting minutes to reflect the discussions that occurred during the executive session.*
  - *Provide the updated notice and minutes and either the recording or, at the requester's option, a transcript, of the executive session to the opinion requester and anyone else requesting it, at no cost.*



# Violations





# Violations Basics

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- Any interested person may request an attorney general's opinion to review: 1) a written denial of a request for records or 2) a denial of access to a meeting.
  - *Request must be made within 30 days of alleged records violation.  
Meetings without notice must be within 90 days of alleged violation.*
- If the attorney general issues a written opinion concluding that a violation has occurred, the public entity has seven days to correct any other violation.
- If the public entity fails to take the required action within the seven-day period and the person requesting the opinion prevails in a civil action the person must be awarded costs, disbursements, and reasonable attorney's fees in the action and on appeal.
- Attorney General can mandate training for violations of law.

# Violations – Civil Penalties

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- Violations may be subject of civil action.
- Action must be commenced within 60 days of the date the person knew or should have known of the violation **or** 30 days from issuance of AG opinion – **whichever is later.**
- Court may award \$1,000 or actual damages for intentional or knowing violations – **whichever is greater.**

# Violations – Criminal Penalties

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- Attorney General can refer a public servant to the state's attorney for multiple violations.
- A public servant who knowingly violates the law is guilty of a class A misdemeanor.

# References & Resources

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- North Dakota Constitution [Article XI General Provisions](#)
- North Dakota Century Code Chapter [44-04](#)
- Attorney General's website: [www.attorneygeneral.nd.gov](http://www.attorneygeneral.nd.gov)
  - *Open Records & Meetings Laws*
    - Manuals & Guides
      - [Open Records Guide](#) (“One pager”)
      - [Template for Responding to an Open Records Request](#)
      - [Open Meetings Guide](#) (“One pager”)
      - [Sample Form for Closing Executive Sessions](#)
      - [Sample Meeting Notice](#)
      - [Notice Checklist](#)

Questions?

