

***CONVENING MEETINGS  
WHICH ARE  
OPEN TO THE PUBLIC:  
A HANDBOOK FOR  
SCHOOL BOARD  
MEMBERS***

This booklet is provided to the  
Utah School Boards Association  
and its members as a service from  
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## I. INTRODUCTION

In 1977, the Utah Legislature passed the “Open and Public Meetings Act,” which requires virtually all meetings held by “public bodies” to be open to the public. During subsequent years, the Legislature has periodically made changes to this law, including during its 2014 session. Local boards of education are public bodies for purposes of this statute and are subject to these requirements. The Open and Public Meetings Act statutes, located in Title 54, Chapter 4, of the Utah Code, detail when and how a school board must convene an open meeting and when the school board is allowed to hold a closed meeting. Because any action taken by a school board in violation of these requirements could eventually be declared void by a court of law, and in certain circumstances could subject individual board members to liability, compliance with these provisions is extremely important. To prevent needless litigation and to maintain the integrity of board decisions, school board members are encouraged to learn and follow the requirements of the Open and Public Meetings Act. Under that law, the board president has the responsibility under the open meetings law to ensure that board members receive annual training on the open meetings provisions. This handbook will assist the president and members of local school boards by providing a basic outline of Utah’s open meeting requirements.

Citations to the Utah Code will be made in parentheses throughout the text. For example, “(§ 52-4-201(1))” indicates that the applicable provision can be found in Utah Code, Title 52, Chapter 4, Section 201, Subsection 1. The relevant statutes can be found in [Appendix A](#). The terms “open meeting provisions” and “open meetings law” will be used in this handbook to refer to all the statutory provisions concerning open and closed meetings (§§ 52-4-101 to 52-4-305, inclusive).

The provisions of the Open and Public Meetings Act are subject to change. Specific questions should be asked of the board’s legal counsel. Good luck in your important task.

Very truly yours,

Brinton R. Burbidge  
Burbidge & White, L.L.C.

## II. DEFINITIONS

Several important terms are defined in the open meeting provisions. These definitions must be examined carefully by school board members. A word may have one meaning when used in a statute and quite another meaning when used in everyday conversation. The most important definitions in the open meeting requirements are outlined below.

### A. “Meeting”

1. *What Constitutes a Meeting* (§ 52-4-103(6)(a)). A group of board members is considered in a meeting if:

- a. The board has been convened; and
- b. A quorum is present; and
- c. They have assembled in person or are communicating by telephone or other electronic equipment; and
- d. They have assembled to discuss, receive public comment about, or act upon matters over which the board has jurisdiction or advisory power.

2. *What Does Not Constitute a Meeting* (§ 52-4-103(6)(b)). The following gatherings are specifically excluded from the statute’s definition of a “meeting”:

- a. *A Chance Gathering.* A coincidental gathering of school board members is not a “meeting” for purposes of the statute. For example, if all the members of a school board happened to bump into each other at the grocery store, this gathering would not be considered a “meeting.” On the other hand, a chance gathering cannot be used to circumvent the requirements of the open meeting provisions. If, for example, the members of the school board do meet by coincidence at the grocery store, the members may not use this chance gathering to discuss board matters and thereby evade notice and open meeting requirements.
- b. *A Social Gathering.* The open meetings law states that “a social gathering” is not a “meeting” for purposes of the law. However, the open meetings law does not offer any additional explanation of what constitutes “a social gathering.” The open meetings law states that a social meeting may not be used to circumvent the open meetings law. (§ 52-4-208) If board members find themselves together at a social function (for example,

a public performance or sporting event), they should not discuss board matters.

- c. *No Public Funds Are Appropriated and the Meeting is for Administrative or Operational Purposes* (§ 52-4-103(6)(c)). Because school boards have both legislative and executive responsibilities, a gathering of a board is not considered a “meeting” if:
- i. The school board does not appropriate (*i.e.*, spend or make arrangements to spend) any public funds; and
  - ii. The board has gathered to discuss administrative or operational matters that:
    - Do not require any formal action by the board; or
    - Would not come before the board for discussion or action.

For example, if a school board schedules a work session to discuss administrative matters, and if no public funds are appropriated during the gathering, the work session would not constitute a “meeting.” However, do not designate such an event a “workshop” or “executive session” because the statute specifically states that a “meeting” includes a workshop or executive session if the other requirements are met. (§ 52-4-103(6)(a)).

## **B. “Convened” (§ 52-4-103(3))**

For purposes of the open meeting statute, a meeting is “convened” when:

1. The school board is called together; and
2. The person calling the meeting is authorized to do so; and
3. The meeting is called for the specific purpose of discussing or acting upon matters over which the board has jurisdiction.

## **C. “Public Body”**

1. *What Constitutes a Public Body* (§ 52-4-103(9)(a)). As defined in the statute, a “public body” is any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

- a. Is created by the Utah Constitution, statute, rule, ordinance, or resolution; and
- b. Consists of two or more persons; and
- c. Spends, disburses, or is at least partially supported by tax revenue; and
- d. Has the authority to make decisions regarding the public's business.

A local school board or board of education clearly falls within the definition of a “public body.”

2. *What Does Not Constitute a Public Body* (§ 52-4-103(9)(b)). The following groups are not considered “public bodies” for purposes of the open meeting provisions:

- a. Political parties, political groups, or political caucuses;
- b. Conference committees, rules committees, or sifting committees of the Utah Legislature.
- c. School community councils. (Note, however, that the school community council statute establishes specific open meeting requirements for community councils.)

#### **D. “Quorum” (§ 52-4-103(11))**

To constitute a “quorum,” a simple majority of the members of the school board must be present (§ 52-4-103(11)(a)). For example, if a board consists of five members, three must be present to constitute a quorum. If seven members make up the school board, four must be present to constitute a quorum.

If, for some reason, a school board consists of an even number of people, **more** than half of the board must be present to constitute a quorum. Exactly half of the membership is not a simple majority. For example, suppose a school board usually has five members, but one member has recently resigned and the vacancy has not yet been filled. Two of the four remaining members will **not** constitute a quorum. Instead, three of the four members are required for a quorum to be present.

The definition of “quorum” does not include a meeting of two elected officials by themselves when no action is taken on a subject over which these officials have jurisdiction or advisory power. (§ 52-4-103(11)(b)).

### III. CONVENING A MEETING WHICH IS OPEN TO THE PUBLIC

#### A. “Public Meeting” Does Not Require Public Participation

The purpose of the open meetings provisions is to ensure that public bodies “take their actions openly” and “conduct their deliberations openly” (§ 52-4-102(2)), with the knowledge of the public. This law is **not** a mandate that members of the public be permitted to participate or provide comment in all public meetings. It is important to note that a school board meeting, while open to the public, is not a public meeting in the sense that every person attending has a right to speak or to interrupt the proceedings. Utah law defines a “public hearing” as “a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.” (§ 10-9a-103(40)). Part of a “public meeting” may be set aside for a “public hearing,” where those attending the meeting are given an opportunity to comment or voice opinions. In a school board meeting, however, the presiding officer, acting on behalf of the board, decides who will speak at the meeting. The importance of orderly school board meetings is emphasized by the following provision of the open meeting requirements: “This chapter [Chapter 4 of Title 52 of the Utah Code] does not prohibit the removal of any person from a meeting, if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised.” (§ 52-4-301). While the school board usually may decide whether or not to hold a “public hearing,” an open forum to learn the community’s opinions on certain issues, the board **must** hold a public hearing affording members of the public a reasonable opportunity to comment on a proposed school closure or boundary change, regarding a proposed district budget, and regarding proposed tax increase or bond ballot measures. In other “public hearings,” the decision of who is allowed to speak at a meeting is solely within the discretion of the presiding officer as directed by the board.

#### B. Public Notice

An important part of making meetings open to the public is informing the members of the public that such a meeting will be held and that particular matters will be addressed at that meeting. Therefore, school boards should be careful to comply with the following public notice requirements contained in the open meetings law. (Note that other laws, such as laws relating to adoption of school district budgets and school closures or boundary changes, may impose additional public notice requirements beyond what the open meeting provisions require.)

##### 1. *Requirements for All Non-Emergency Meetings* (§ 52-4-202(1), (3)).

The school board must give at least 24 hours notice of the agenda, date, time, and place of each of its non-emergency meetings. A school board has given “public notice” when the following requirements are met:



- a. A written notice is posted at the main office of the school board or at the building where the meeting will be held; and
- b. Written notice is posted on the Utah Public Notice Website; and
- c. Notice is given to a local media correspondent or to a newspaper of general circulation which publishes in the area over which the public body has jurisdiction.

The open meetings statute also encourages school boards to provide notice by additional electronic means. Also, school boards may choose to follow a practice of giving notice to any media agency which periodically requests such notice. While such notices are not required by the open meetings law, they can be useful in building good relations with the public and members of the media.

2. *Meeting Limited to Agenda Items (§ 52-4-202(6)).*

The agenda provided with the public notice must be reasonably specific about the topics to be considered during the meeting, and each topic to be considered must be listed under an agenda item on the meeting agenda. (§ 52-4-202(6)(a)). Care must be taken to conduct meetings with reference to the agenda which was given as part of the meeting notice. Unless the meeting is an emergency meeting (*see III.B.4* below), the board may not take final action on any topic which is not listed in the agenda and included in the advance public notice of the meeting. (§ 52-4-202(6)(c)). At the discretion of the presiding officer, if during the meeting a topic is raised by a member of the public which is not listed on the agenda, the board may discuss the topic, but may not take any final action on the topic. (§ 52-4-202(6)(b)).

3. *Requirements for Regular Meetings Scheduled in Advance (§ 52-4-202(2)).*

If a school board prepares, in advance, its yearly schedule of regular meetings, the board must give public notice of this schedule at least once each year, presumably before the date of the first meeting. This notice must include the date, time, and place of the regular meetings. Note that the agenda for a particular meeting need not be given until 24 hours before a meeting convenes (*see B.1.* above).

4. *Requirements for Emergency Meetings (§ 52-4-202(5)).*

Occasionally, unforeseen circumstances make it necessary for a school board to hold a special meeting to consider matters of an emergency or urgent nature. In these circumstances, the 24-hour notice requirement (*see B.1.* above) may be disregarded and the board may give “the best notice practicable” of the time and place of the meeting and the topics to be considered. (§ 52-4-202(5)(a)(ii)). Before a school board can hold an emergency meeting, there must be an

attempt to notify all of the board members, and a majority of the board must vote in favor of holding the emergency meeting.

### **C. Notice to Local Government Officials (§ 53A-3-409(3)(a))**

Certain local government officials may attend and participate in board discussions at school board meetings. These officials include the mayor (or designee of the mayor) of any municipality that is partly or entirely within the boundaries of the school district and for a county with unincorporated area within the boundaries of the school district, the county commission chair, county executive, or county manager (or designee of that official). (§ 53A-3-409(3)(a)). In addition to notice to the public, school boards are required to give notice of their meetings to these officials. (§ 53A-3-409(3)(b)). This notice may be provided by mail, email, or some other means that the official has agreed to. (§ 53A-3-409(3)(c)). This meeting notice requirement is not part of the open meetings statute, but rather is specifically applicable to school districts.

### **D. Meeting Location (§ 52-4-201(2)(b))**

The location of board meetings is determined by the board and must be included in the notices of the meetings. The board is generally free to hold its meetings wherever it determines is advisable. However, the open meetings law restricts this discretion in the context of workshops or executive sessions of the board where a quorum is present. When such meetings are held *on the same day* as a regularly scheduled board meeting, they usually must be held at the same location as the regularly scheduled meeting. There are four exceptions to this “same location” rule.

1. Where the board has a regular location for its meetings (such as an officially designated board room or district offices), but the regularly scheduled meeting is on that day being held elsewhere, the workshop or executive session may still be held at the regular meeting location.
2. If the regularly scheduled meeting is a site visit or traveling tour, the workshop or executive session may be held at a different location than the regularly scheduled meeting.
3. If the workshop or executive session is an electronic meeting, it may be held at a different location than the regularly scheduled meeting.
4. If it is not practicable to hold the workshop or executive session at the regular meeting location because of an emergency or extraordinary circumstances, it may be held at a different location than the regularly scheduled meeting.

## **E. Electronic Meetings (§ 52-4-207)**

Boards of education may conduct a meeting by electronic means only if the board has previously adopted a resolution, rule, or ordinance governing electronic meetings. (§ 52-4-207(2)(a)). Within the framework of a few basic requirements, the open meetings law gives school boards substantial latitude in determining what an electronic meetings resolution, rule, or ordinance requires. The regular open meetings notice requirements and quorum requirements must be met for an electronic meeting. Written notice of the electronic meeting must also be posted at an “anchor location” of the electronic meeting. (§ 52-4-207(3)(a)). (At least one such “anchor location” must be where the board usually meets when the meeting is not an electronic meeting. (§ 52-4-207(3)(c)).) For an electronic meeting, the open meetings law also requires that board members be given at least 24 hours’ advance notice that the meeting will be held electronically and how board members will be connected to the meeting, so that they may participate in the meeting and be counted as present. (§ 52-4-207(3)(b)). The “anchor location” must provide space and facilities to permit members of the public to attend and monitor the meeting (except portions of the meeting which are properly closed). (§ 52-4-207(3)(d)). In addition, if the meeting is one in which public comment is accepted, space and facilities must be provided at the “anchor location” so that members of the public can participate. (§ 52-4-207(3)(e)). (Note that charter school governing bodies have additional electronic meeting options and requirements not available to school boards.)

## **F. Record-Keeping Requirements (§ 52-4-203)**

Written minutes and a recording must be taken of all open school board meetings, with one exception. Only written minutes must be kept for site visits or traveling tours of the board where no vote or action is taken by the board. (§ 52-4-203(1), (7)). (A recording can be an audio recording or an audio and video recording.) The written minutes of open meetings must include the following:

1. The date, time, and place of the meeting; and
2. The names of all members present and absent; and
3. The substance of all matters proposed, discussed, or decided, which may include a summary of comments by board members; and
4. A record, by individual member, of all votes taken; and
5. The name of each person who is not a Board member who was recognized by the presiding Board member and upon recognition presented testimony or comments to the Board and a brief summary of the public testimony or comments; and

6. Any other information that is a record of the meeting proceedings that any member requests be entered in the minutes.

The recording of the meeting must be a complete and unedited recording of all open portions of the meeting from the commencement of the meeting through the adjournment of the meeting, and must be properly labeled and identified with the date, time, and place of the meeting. (§ 52-4-203(3)). The audio recording of a board meeting for public comment on a proposed tax increase or bond measure must be in digital form. (§ 59-1-1605(4).)

### **G. Approval of and Availability of Open Meeting Record (§ 52-4-203(4))**

The written minutes of open meetings are public records. (§ 52-4-203(4)(b)). The board must have procedures for approving its written meeting minutes, and once that occurs, those minutes become the official record of the meeting. (§ 52-4-203(4)(h), (i)). Approved board minutes must be made available to the public within three business days after approval. (§ 52-4-203(4)(g)(ii)). Before formal approval, minutes are “pending minutes.” (§ 52-4-203(4)(a)(iii)). Pending minutes are public records (§ 52-4-203(4)(b)) and must be made available to the public within a reasonable time after the meeting. Pending minutes must be marked as “awaiting formal approval” or “unapproved” or with some other notice that they are subject to change until approved. (§ 52-4-203(4)(c)).

The recording of an open board meeting is a public record and must be available to the public for listening within three business days after the end of the meeting. (§ 52-4-203(4)(g)(iii)). (The digital audio recording of a meeting for comment on a proposed tax increase or bond measure must be available within three calendar days. (§ 59-1-1605(4).)) In addition to the official recording of the meeting, any person in attendance may make his or her own recording of an open meeting as long as the recording does not interfere with the conduct of the meeting. (§ 52-4-203(5)).

### **H. Violation of Open Meetings Requirements May Invalidate Board Action (§ 52-4-302)**

Besides the need to make the public aware of the activities of their elected board, there is a legal reason to be sure that proper notice of meetings of the board of education is given: If the open meetings notice requirements are not met for a particular board meeting, then any final action taken by a school board in that meeting may be voided by a court of competent jurisdiction. (§ 52-4-302(1)(a)). Suits to void most final actions can be filed within 90 days of the board action. (§ 52-4-302(2)). (Suits to void final action on bonds, notes, or other evidences of indebtedness can be filed within 30 days after the board action.) To ensure that board actions are final and not subject to being invalidated, and to prevent lawsuits to invalidate board action for violating open meetings requirements, school boards should be careful to comply with the

public notice, meeting closure, closed meeting record-keeping, and other requirements of the open meetings law.

## IV. HOLDING A CLOSED MEETING

Although no school board meeting is required by statute to be closed to the public (§ 52-4-204(5)), school boards may choose to hold closed meetings if the following voting, purpose, and record-keeping requirements are met:

### A. Voting and Public Announcement Requirements (§ 52-4-204(1))

To hold a closed meeting, the school board must satisfy the following voting requirements:

1. A quorum (*see* II.D. above) must be present at the open meeting where the vote is taken; and
2. Two-thirds of the members of the school board who are present must vote in favor of holding a closed meeting; and
3. The vote must be taken in an open meeting for which the proper public notice has been given; and
4. The following information must be publicly announced and entered on the records of the open meeting where the closed meeting is approved:
  - a. the reason or reasons for holding the closed meeting;
  - b. the location where the closed meeting will be held;
  - c. the vote, by name, of each member of the board either for or against the motion to hold the closed meeting.

### B. Permissible Purposes (§§ 52-4-204 and 52-4-205)

A school board may hold a closed meeting only for one or more of the following purposes:

1. Discussion of the character, professional competence, or physical or mental health of an individual;

2. Strategy sessions to discuss collective bargaining;
3. Strategy sessions to discuss pending or reasonably imminent litigation;
4. Strategy sessions to discuss the *purchase, exchange, or lease* of real property (including water rights or shares) when public discussion of the transaction would disclose the value of the property or prevent the school board from completing the transaction on the best possible terms;
5. Strategy sessions to discuss the *sale* of real property (including water rights or shares) when:
  - a. Public discussion of the transaction would disclose the value of the property or prevent the board from completing the transaction on the best possible terms; and
  - b. The board has previously given notice that the property would be offered for sale; and
  - c. The terms of the sale are publicly disclosed before the board approves the sale;
6. The following procurement functions:
  - a. Board deliberations (not including information gathering activities) when the board is acting as either:
    - i. an evaluation committee during the process of evaluating responses to a procurement solicitation, or
    - ii. a protest officer during the process of making a decision on a procurement protest;
  - b. Consideration of trade secret information, if that is necessary for the board to properly conduct a procurement; or
  - c. Discussion of information provided to the board during a procurement process if, at the time the board meets, the information may not be disclosed to the public or to a procurement participant and the board needs to review or discuss the information to properly fulfill its role and responsibilities relating to procurement;

7. Discussion regarding deployment of security personnel, devices, or systems; or
8. Investigative proceedings regarding allegations of criminal conduct. (It is unclear under what circumstances this would apply to a school board, and consultation with the board's legal counsel would be advisable before relying on this purpose.)

NOTE:

The Utah Supreme Court has given some guidance about what constitutes “litigation” with regard to the “litigation strategy” purpose for holding a closed meeting. The court has stated that because the expressed purpose of the Act is “openness,” the exceptions should be “strictly construed.” *Kearns-Tribune Corp. v. Salt Lake County Comm’n*, 2001 UT 55, ¶ 15, 28 P.3d 686. In general, for this closed meeting purpose to apply, “the closed portion of the meeting (1) must [be] a strategy session, (2) the strategy session must [be] with respect to litigation, and (3) the litigation must [be] pending or reasonably imminent.” *Id.* Obviously, proceedings in court constitute “litigation.” In addition, proceedings before certain commissions may also constitute “litigation.” The court declared that when boards are seeking to “devise plans or means to achieve an end” in the context of pending proceedings before a “quasi-judicial body” such as a boundary commission or tax commission, the meeting may be closed for purposes of “litigation strategy.” Proceedings before commissions constitute “litigation” where, as with the boundary commission, it is legislatively mandated to apply the law to the facts, where its decisions are subject to judicial review and where its proceedings are conducted pursuant to rules of procedure and otherwise “bear all of the necessary accouterments of litigation.” *Id.* at ¶¶ 27-29.

The listed exceptions to the open meetings requirements do not apply when a public body is considering filling a midterm vacancy or temporary absence on the body. The Act prohibits closed meeting discussions about such actions, or about the character, professional competence, or physical or mental health of anyone whose name has been submitted for consideration to fill the vacancy or absence. (§ 52-4-205(3)(b), (c)). The Act further prohibits a public body from interviewing an applicant to fill the vacancy or absence in a closed meeting. Consequently, when a school board has any discussion about filling a vacancy or temporary absence on the board or interviews or discusses the suitability of any person for that purpose, that must take place in an open meeting.

### C. Record-Keeping Requirements of a Closed Meeting (§ 52-4-206)

1. *General Rules* (§ 52-4-206). Except as noted below (*see* paragraph 2.a.), a recording must be kept of all closed meetings. Detailed written minutes may also be kept. The recording, and any written minutes which are kept, must include:

- a. The date, time, and place of the meeting; and

- b. The names of all Board members present and absent; and
- c. The names of all others present except where such disclosure would infringe on the confidence necessary to fulfill the original purpose of closing the meeting.

When a closed meeting is recorded, the recording must be a complete and unedited recording of all portions of the closed meeting.

2. *Method of Keeping Record Dependent Upon Purpose of Closed Meeting (§ 52-4-206).*

- a. No recording or other minutes need to be kept if a closed meeting is held to discuss the character, professional competence, or physical or mental health of an individual or to discuss the deployment of security personnel, devices, or systems. However, the person presiding at the meeting must sign a sworn statement affirming that this was the sole purpose of the closed meeting. A sample statement to satisfy this requirement is attached as [Appendix C](#).
- b. If the closed meeting is held for any purpose other than to discuss the character, professional competence, or physical or mental health of an individual or to discuss the deployment of security personnel, devices, or systems, the school board must record the closed meeting, and may also keep detailed written minutes that disclose the content of the closed meeting.

3. *Scheduling and Notice of Closed Meetings.*

The open meeting statute does not specifically require a closed meeting to be either distinct from or included in an open meeting. However, several factors make it preferable to hold closed meetings in conjunction with open meetings.

First, holding one meeting instead of two makes scheduling and record keeping more convenient. Also, it may be beneficial to hold a closed meeting while the reasons for voting for such a meeting are fresh in the minds of the board members.

Second, a school board is required to give notice of the agenda, time, and place of *each* of its meetings, including a closed meeting. (§ 52-4-202(1)). If the closed meeting is held during or at the end of an open meeting, a single notice will suffice. The agenda for the open meeting which is included in the notice of the meeting should list as an agenda item the topic of the permissible closed-meeting purpose or purposes to be addressed during the closed portion of the



meeting. Note that the board will still have to meet the closed-meeting voting and public-announcement requirements during the open meeting before actually holding the closed meeting. (See IV.A. above.) If, on the other hand, a closed meeting is held at a different time, the board must arrange for additional notice (including an agenda) at least 24 hours before the separate closed meeting is held.

NOTE:

In the case of *Ward v. Richfield City*, 798 P.2d 757 (Utah 1990), the Utah Supreme Court held that a city council need not notify anyone if it resumes the open public meeting after holding a closed session. Therefore, a board may, without violating the open meetings law, return to an open session after concluding a closed meeting without giving additional notice that the meeting is reconvening.

Also note that in *Kearns-Tribune Corp. v. Salt Lake County Comm'n*, 2001 UT 55, 28 P.3d 686, the court implicitly ratified this approach. In that case, the county voted unanimously to close the meeting, and asked the public, including the press, to leave. The closed portion of the meeting was held, and then the meeting was reopened to the public and then adjourned. (*Id.* at ¶¶ 3-4.) The Court's opinion did not contain any suggestion that this procedure was improper.

## V. PENALTIES FOR VIOLATIONS OF THE OPEN MEETINGS LAW

Apart from the fact that failure to comply with the open meetings law may result in invalidating board action, violation of the open meetings laws can in some instances result in penalties for individual board members. However, there will be little risk of such penalties if individual board members understand the open meetings requirements set out in this handbook and in good faith attempt to comply with those requirements.

### A. **Penalty for Knowing or Intentional Violation of Closed Meetings Requirements (§ 52-4-305)**

A board member who knowingly or intentionally violates any of the closed meeting requirements of the open meetings law, or who knowingly or intentionally abets (assists or encourages) or advises a violation of the closed meeting requirements can be found guilty of a class B misdemeanor.

## **B. Penalty for Improper Disclosure of Closed Meeting Records (§ 63G-2-801(1)(a))**

The recording and minutes of a closed meeting are protected records under the Utah Government Records Access and Management Act (“GRAMA”), located in Title 63G, Chapter 2, of the Utah Code. As a result, a board member who intentionally discloses records of a closed meeting with the knowledge that such disclosure is prohibited can be found guilty of a class B misdemeanor. (§ 63G-2-801(1)(a).) Notwithstanding, they may be disclosed pursuant to a court order.

## **C. Legal Claim of Violation of Open Meetings Law (§ 52-4-303)**

In addition to an action to invalidate board action (*see* III.H. above), a person who has been denied any right under the open meetings law can file suit to compel a school board to comply with the open meetings law or to determine the applicability of the open meetings law to particular discussions or decisions of the board. (§ 52-4-303(3)). If the action is successful, the suing party can also make the district pay the suing party’s attorney’s fees and court costs. (§ 52-4-303(4)).

In any action to challenge the legality of a closed meeting, the court will examine the recording or written minutes privately and decide the legality of the closed meeting. (§ 52-4-304(1)). If the court finds that the board complied with the closed meeting requirements, the case will be dismissed. (§ 52-4-304(2)(a)). If, however, the court finds that the board violated the closed meetings requirements, the court shall disclose the minutes and recording of the illegally closed meeting. (§ 52-4-304(2)(b)).

## **VI. SUMMARY**

To properly convene open meetings, school boards must familiarize themselves with and follow the definitions, notice requirements, and record-keeping provisions contained in the statute. To hold closed meetings, school boards must follow the notice, voting, permissible purpose, and record-keeping requirements outlined in the statute. By complying with the open meeting provisions, a school board can prevent needless litigation, help ensure the validity of the board’s actions and decisions, and avoid individual liability.

## **VII. APPENDICES**

### **Appendix A: Utah's Open and Public Meetings Statute (2014)**

#### **52-4-101. Title.**

This chapter is known as the "Open and Public Meetings Act."

#### **52-4-102. Declaration of public policy.**

(1) The Legislature finds and declares that the state, its agencies and political subdivisions, exist to aid in the conduct of the people's business.

(2) It is the intent of the Legislature that the state, its agencies, and its political subdivisions:

- (a) take their actions openly; and
- (b) conduct their deliberations openly.

#### **52-4-103. Definitions.**

As used in this chapter:

(1) "Anchor location" means the physical location from which:

- (a) an electronic meeting originates; or
- (b) the participants are connected.

(2) "Capitol hill complex" means the grounds and buildings within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard in Salt Lake City.

(3) "Convening" means the calling together of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction or advisory power.

(4) "Electronic meeting" means a public meeting convened or conducted by means of a conference using electronic communications.

(5) "Electronic message" means a communication transmitted electronically, including:

- (a) electronic mail;
  - (b) instant messaging;
  - (c) electronic chat;
  - (d) text messaging as defined in Section 76-4-401; or
  - (e) any other method that conveys a message or facilitates communication electronically.
- (6) (a) “Meeting” means the convening of a public body or a specified body, with a quorum present, including a workshop or an executive session whether in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body or specific body has jurisdiction or advisory power.
- (b) “Meeting” does not mean:
- (i) a chance gathering or social gathering; or
  - (ii) a convening of the State Tax Commission to consider a confidential tax matter in accordance with Section 59-1-405.
- (c) “Meeting” does not mean the convening of a public body that has both legislative and executive responsibilities if:
- (i) no public funds are appropriated for expenditure during the time the public body is convened; and
  - (ii) the public body is convened solely for the discussion or implementation of administrative or operational matters:
    - (A) for which no formal action by the public body is required; or
    - (B) that would not come before the public body for discussion or action.
- (7) “Monitor” means to hear or observe, live, by audio or video equipment, all of the public statements of each member of the public body who is participating in a meeting.
- (8) “Participate” means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication.

- (9) (a) “Public body” means any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:
- (i) is created by the Utah Constitution, statute, rule, ordinance, or resolution;
  - (ii) consists of two or more persons;
  - (iii) expends, disburses, or is supported in whole or in part by tax revenue; and
  - (iv) is vested with the authority to make decisions regarding the public’s business.
- (b) “Public body” does not include a:
- (i) political party, political group, or political caucus;
  - (ii) conference committee, rules committee, or sifting committee of the Legislature; or
  - (iii) school community council established under Section 53A-1a-108.
- (10) “Public statement” means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.
- (11) (a) “Quorum” means a simple majority of the membership of a public body, unless otherwise defined by applicable law.
- (b) “Quorum” does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power.
- (12) “Recording” means an audio, or an audio and video, record of the proceedings of a meeting that can be used to review the proceedings of the meeting.
- (13) “Specified body” means an administrative, advisory, executive, or legislative body that:
- (a) is not a public body;
  - (b) consists of three or more members; and
  - (c) includes at least one member who is:
    - (i) a legislator; and

(ii) officially appointed to the body by the President of the Senate, Speaker of the House of Representatives, or governor.

(14) “Transmit” means to send, convey, or communicate an electronic message by electronic means.

**52-4-104. Training.**

The presiding officer of the public body shall ensure that the members of the public body are provided with annual training on the requirements of this chapter.

**52-4-201. Meetings open to the public – Exceptions.**

(1) A meeting is open to the public unless closed under Sections [52-4-204](#), [52-4-205](#), and [52-4-206](#).

(2) (a) A meeting that is open to the public includes a workshop or an executive session of a public body in which a quorum is present, unless closed in accordance with this chapter.

(b) A workshop or an executive session of a public body in which a quorum is present that is held on the same day as a regularly scheduled public meeting of the public body may only be held at the location where the public body is holding the regularly scheduled public meeting unless:

(i) the workshop or executive session is held at the location where the public body holds its regularly scheduled public meetings but, for that day, the regularly scheduled public meeting is being held at different location;

(ii) any of the meetings held on the same day is a site visit or a traveling tour and, in accordance with this chapter, public notice is given;

(iii) the workshop or executive session is an electronic meeting conducted according to the requirements of Section [52-4-207](#); or

(iv) it is not practicable to conduct the workshop or executive session at the regular location of the public body’s open meetings due to an emergency or extraordinary circumstances.

**52-4-202. Public notice of meetings – Emergency meetings.**

(1) (a) (i) A public body shall give not less than 24 hours’ public notice of each meeting.

(ii) A specified body shall give not less than 24 hours' public notice of each meeting that the specified body holds on the capitol hill complex.

(b) The public notice required under Subsection (1)(a) shall include the meeting:

(i) agenda;

(ii) date;

(iii) time; and

(iv) place.

(2) (a) In addition to the requirements under Subsection (1), a public body which holds regular meetings that are scheduled in advance over the course of a year shall give public notice at least once each year of its annual meeting schedule as provided in this section.

(b) The public notice under Subsection (2)(a) shall specify the date, time, and place of the scheduled meetings.

(3) (a) A public body or specified body satisfies the requirement for public notice by:

(i) posting written notice

(A) at the principal office of the public body or specified body, or if no principal office exists, at the building where the meeting is to be held; and

(B) beginning April 1, 2008 and except as provided in Subsection (3)(b), on the Utah Public Notice Website created under Section 63F-1-701; and

(ii) providing notice to:

(A) at least one newspaper of general circulation within the geographic jurisdiction of the public body; or

(B) a local media correspondent.

(b) A public body of a municipality under Title 10, Utah Municipal Code, a special district under Title 17A, Special Districts, or a local district under Title 17B, Chapter 2, Local Districts, is encouraged, but not required, to post written notice on the Utah Public Notice Website, if the municipality or district has a current annual budget of less than \$1 million.

- (c) A public body or specified body is in compliance with the provisions of Subsection (3)(a)(ii) by providing notice to a newspaper or local media correspondent under the provisions of Subsection 63F-1-701(4)(d).
- (4) A public body and a specified body are encouraged to develop and use additional electronic means to provide notice of their meetings under Subsection (3).
- (5) (a) The notice requirement of Subsection (1) may be disregarded if:
  - (i) because of unforeseen circumstances it is necessary for a public body or specified body to hold an emergency meeting to consider matters of an emergency or urgent nature; and
  - (ii) the public body or specified body gives the best notice practicable of:
    - (A) the time and place of the emergency meeting; and
    - (B) the topics to be considered at the emergency meeting.
- (b) An emergency meeting of a public body may not be held unless:
  - (i) an attempt has been made to notify all of the members of the public body; and
  - (ii) a majority of the members of the public body approve the meeting.
- (6) (a) A public notice that is required to include an agenda under Subsection (1) shall provide reasonable specificity to notify the public as to the topics to be considered at the meeting. Each topic shall be listed under an agenda item on the meeting agenda.
- (b) Subject to the provisions of Subsection (6)(c), and at the discretion of the presiding member of the public body, a topic raised by the public may be discussed during an open meeting, even if the topic raised by the public was not included in the agenda or advance public notice for the meeting.
- (c) Except as provided in Subsection (5) relating to emergency meetings, a public body may not take final action on a topic in an open meeting unless the topic is:
  - (i) listed under an agenda item as required by Subsection (6)(a); and
  - (ii) included with the advance public notice required by this section.



**52-4-203. Minutes of open meetings – Public records – Recording of meetings.**

(1) Except as provided under Subsection (7), written minutes and a recording shall be kept of all open meetings.

(2) Written minutes of an open meeting shall include:

- (a) the date, time, and place of the meeting;
- (b) the names of members present and absent;
- (c) the substance of all matters proposed, discussed, or decided by the public body which may include a summary of comments made by members of the public body;
- (d) a record, by individual member, of each vote taken by the public body;
- (e) the name of each person who:
  - (i) is not a member of the public body; and
  - (ii) after being recognized by the presiding member of the public body, provided testimony or comments to the public body;
- (f) the substance, in brief, of the testimony or comments provided by the public under Subsection 2(e); and
- (g) any other information that is a record of the proceedings of the meeting that any member requests be entered in the minutes or recording.

(3) A recording of an open meeting shall

- (a) be a complete and unedited record of all open portions of the meeting from the commencement of the meeting through adjournment of the meeting; and
- (b) be properly labeled or identified with the date, time, and place of the meeting.

(4) (a) As used in this Subsection (4):

- (i) “Approved minutes” means written minutes:
  - (A) of an open meeting; and

(B) that have been approved by the public body that held the open meeting.

(ii) “Electronic information” means information presented or provided in an electronic format.

(iii) “Pending minutes” means written minutes:

(A) of an open meeting; and

(B) that have been prepared in draft form and are subject to change before being approved by the public body that held the open meeting.

(iv) “Specified local public body” means a legislative body of a county, city, or town.

(v) “State public body” means a public body that is an administrative, advisory, executive, or legislative body of the state.

(vi) “Website” means the Utah Public Notice Website created under Section 63F-1-701.

(b) Pending minutes, approved minutes, and a recording of a public meeting are public records under Title 63G, Chapter 2, Government Records Access and Management Act.

(c) Pending minutes shall contain a clear indication that the public body has not yet approved the minutes or that the minutes are subject to change until the public body approves them.

(d) A state public body and a specified local public body shall require an individual who, at an open meeting of the public body, publicly presents or provides electronic information, relating to an item on the public body’s meeting agenda, to provide the public body, at the time of the meeting, an electronic or hard copy of the electronic information for inclusion in the public record.

(e) A state public body shall:

(i) make pending minutes available to the public within 30 days after holding the open meeting that is the subject of the pending minutes;

(ii) within three business days after approving written minutes of an open meeting, post to the website and make available to the public at the public body’s primary

office a copy of the approved minutes and any public materials distributed at the meeting; and

(iii) within three business days after holding an open meeting, post on the website an audio recording of the open meeting, or a link to the recording.

(f) (i) A specified local public body shall:

(A) make pending minutes available to the public within 30 days after holding the open meeting that is the subject of the pending minutes;

(B) subject to Subsection (4)(f)(ii), within three business days after approving written minutes of an open meeting, post to the website and make available to the public at the public body's primary office a copy of the approved minutes and any public materials distributed at the meeting; and

(C) within three business days after holding an open meeting, make an audio recording of the open meeting available to the public for listening.

(ii) A specified local public body of a city of the fifth class or town is encouraged to comply with Subsection (4)(f)(i)(B) but is not required to comply until January 1, 2015.

(g) A public body that is not a state public body or a specified local public body shall:

(i) make pending minutes available to the public within a reasonable time after holding the open meeting that is the subject of the pending minutes;

(ii) within three business days after approving written minutes, make the approved minutes available to the public; and

(iii) within three business days after holding an open meeting, make an audio recording of the open meeting available to the public for listening.

(h) A public body shall establish and implement procedures for the public body's approval of the written minutes of each meeting.

(i) Written minutes are the official record of action taken at the meeting.

(5) All or any part of an open meeting may be independently recorded by any person in attendance if the recording does not interfere with the conduct of the meeting.

(6) The written minutes or recording of an open meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.

(7) Notwithstanding Subsection (1), a recording is not required to be kept of:

(a) an open meeting that is a site visit or a traveling tour, if no vote or action is taken by the public body; or

(b) an open meeting of an independent special district as defined under Title 17A, Special Districts, or a local district under Title 17B, Chapter 2, Local Districts, if the district's annual budgeted expenditures for all funds, excluding capital expenditures and debt service, are \$50,000 or less.

**52-4-204. Closed meeting held upon vote of members – Business – Reasons for meeting recorded.**

(1) A closed meeting may be held if:

(a) (i) a quorum is present;

(ii) the meeting is an open meeting for which notice has been given under Section [52-4-202](#); and

(iii) (A) two-thirds of the members of the public body present at the open meeting vote to approve closing the meeting;

(B) for a meeting that is required to be closed under Section [52-4-205](#), if a majority of the members of the public body present at an open meeting vote to approve closing the meeting; or

(C) for an ethics committee of the Legislature that is conducting an open meeting for the purpose of reviewing an ethics complaint, a majority of the members present vote to approve closing the meeting for the purpose of seeking or obtaining legal advice on legal, evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the complaint; or

(D) for the Political Subdivisions Ethics Review Commission established in Section 11-49-201 that is conducting an open meeting for the purpose of reviewing an ethics complaint in accordance with Section 11-49-701, a

majority of the members present vote to approve closing the meeting for the purpose of seeking or obtaining legal advice on legal, evidentiary, or

- (b)
  - (i) for the Independent Legislative Ethics Commission, the closed meeting is convened for the purpose of conducting business relating to the receipt or review of an ethics complaint, provided that public notice of the closed meeting is given under Section [52-4-202](#), with the agenda for the meeting stating that the meeting will be closed for the purpose of “conducting business relating to the receipt or review of ethics complaints”;
  - (ii) for the Political Subdivisions Ethics Review Commission established in Section 11-49-201, the closed meeting is convened for the purpose of conducting business relating to the preliminary review of an ethics complaint in accordance with Section 11-49-602, provided that public notice of the closed meeting is given under Section [52-4-202](#), with the agenda for the meeting stating that the meeting will be closed for the purpose of “conducting business relating to the review of ethics complaints”; or
  - (iii) for the Independent Executive Branch Ethics Commission created in Section 63A-13-202, the closed meeting is convened for the purpose of conducting business relating to an ethics complaint, provided that public notice of the closed meeting is given under Section [52-4-202](#), with the agenda for the meeting stating that the meeting will be closed for the purpose of “conducting business relating to an ethics complaint.”

(2) A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Section [52-4-205](#).

(3) An ordinance, resolution, rule, regulation, contract, or appointment may not be approved at a closed meeting.

(4) The following information shall be publicly announced and entered on the minutes of the open meeting at which the closed meeting was approved:

- (a) the reason or reasons for holding the closed meeting;
- (b) the location where the closed meeting will be held; and
- (c) the vote by name, of each member of the public body, either for or against the motion to hold the closed meeting.

(5) Except as provided in Subsection [52-4-205\(2\)](#), nothing in this chapter shall be construed to

require any meeting to be closed to the public.

**52-4-205. Purposes of closed meetings.**

(1) A closed meeting described under Section [52-4-204](#) may only be held for:

- (a) except as provided in Subsection (3), discussion of the character, professional competence, or physical or mental health of an individual;
- (b) strategy sessions to discuss collective bargaining;
- (c) strategy sessions to discuss pending or reasonably imminent litigation;
- (d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, if public discussion of the transaction would:
  - (i) disclose the appraisal or estimated value of the property under consideration; or
  - (ii) prevent the public body from completing the transaction on the best possible terms;
- (e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares, if:
  - (i) public discussion of the transaction would:
    - (A) disclose the appraisal or estimated value of the property under consideration; or
    - (B) prevent the public body from completing the transaction on the best possible terms;
  - (ii) the public body previously gave public notice that the property would be offered for sale; and
  - (iii) the terms of the sale are publicly disclosed before the public body approves the sale;
- (f) discussion regarding deployment of security personnel, devices, or systems;

- (g) investigative proceedings regarding allegations of criminal misconduct;
- (h) as relates to the Independent Legislative Ethics Commission, conducting business relating to the receipt or review of ethics complaints;
- (i) as relates to an ethics committee of the Legislature, a purpose permitted under Subsection [52-4-204\(1\)\(a\)\(iii\)\(B\)](#);
- (j) as relates to the Independent Executive Branch Ethics Commission created in Section 63A-13-202, conducting business relating to an ethics complaint;
- (k) as relates to a county legislative body, discussing commercial information as defined in Section 59-1-404;
- (l) as relates to the Utah Higher Education Assistance Authority and its appointed board of directors, discussing fiduciary or commercial information as defined in Section 53B-12-102;
- (m) deliberations, not including any information gathering activities, of a public body acting in the capacity of:
  - (i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code, during the process of evaluating responses to a solicitation, as defined in Section 63G-6a-103;
  - (ii) a protest officer, defined in Section 63G-6a-103, during the process of making a decision on a protest under Title 63G, Chapter 6a, Part 16, Controversies and Protests; or
  - (iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17, Procurement Appeals Board;
- (n) the purpose of considering information that is designated as a trade secret, as defined in Section 13-24-2, if the public body's consideration of the information is necessary in order to properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;
- (o) the purpose of discussing information provided to the public body during the procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of the meeting:

(i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be disclosed to a member of the public or to a participant in the procurement process; and

(ii) the public body needs to review or discuss the information in order to properly fulfill its role and responsibilities in the procurement process; or

(p) a purpose for which a meeting is required to be closed under Subsection (2).

(2) The following meetings shall be closed:

(a) a meeting of the Health and Human Services Interim Committee to review a fatality review report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4);

(b) a meeting of the Child Welfare Legislative Oversight Panel to:

(i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4); or

(ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5); and

(c) a meeting of a conservation district as defined in Section 17D-3-102 for the purpose of advising the Natural Resource Conservation Service of the United States Department of Agriculture on a farm improvement project if the discussed information is protected information under federal law.

(3) In a closed meeting, a public body may not:

(a) interview a person applying to fill an elected position;

(b) discuss filling a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Temporary Absence in Elected Office; or

(c) discuss the character, professional competence, or physical or mental health of the person whose name was submitted for consideration to fill a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Temporary Absence in Elected Office.



**52-4-206. Record of closed meetings.**

(1) Except as provided under Subsection (6), if a public body closes a meeting under Subsection [52-4-205\(1\)](#), the public body:

(a) shall make a recording of the closed portion of the meeting; and

(b) may keep detailed written minutes that disclose the content of the closed portion of the meeting.

(2) A recording of a closed meeting shall be complete and unedited from the commencement of the closed meeting through adjournment of the closed meeting.

(3) The recording and any minutes of a closed meeting shall include:

(a) the date, time, and place of the meeting;

(b) the names of members present and absent; and

(c) the names of all others present except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting.

(4) Minutes or recordings of a closed meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.

(5) Both a recording and written minutes of closed meetings are protected records under Title 63, Chapter 2, Government Records Access and Management Act, except that the records may be disclosed under a court order only as provided under Section [52-4-304](#).

(6) If a public body closes a meeting exclusively for the purposes described under Subsection [52-4-205\(1\)\(a\)](#), [\(1\)\(f\)](#), or [\(2\)](#):

(a) the person presiding shall sign a sworn statement affirming that the sole purpose for closing the meeting was to discuss the purposes described under Subsection [52-4-205\(1\)\(a\)](#), [\(1\)\(f\)](#), or [\(2\)](#); and

(b) the provisions of Subsection (1) of this section do not apply.

**52-4-207. Electronic meetings – Authorization – Requirements.**

(1) Except as otherwise provided for a charter school in Section [52-4-209](#), a public body may

convene and conduct an electronic meeting in accordance with this section.

(2) (a) A public body may not hold an electronic meeting unless the public body has adopted a resolution, rule, or ordinance governing the use of electronic meetings.

(b) The resolution, rule, or ordinance may:

(i) prohibit or limit electronic meetings based on budget, public policy, or logistical considerations;

(ii) require a quorum of the public body to:

(A) be present at a single anchor location for the meeting; and

(B) vote to approve establishment of an electronic meeting in order to include other members of the public body through an electronic connection;

(iii) require a request for an electronic meeting to be made by a member of a public body up to three days prior to the meeting to allow for arrangements to be made for the electronic meeting;

(iv) restrict the number of separate connections for members of the public body that are allowed for an electronic meeting based on available equipment capability; or

(v) establish other procedures, limitations, or conditions governing electronic meetings not in conflict with this section.

(3) A public body that convenes or conducts an electronic meeting shall:

(a) give public notice of the meeting:

(i) in accordance with Section [52-4-202](#); and

(ii) post written notice at the anchor location;

(b) in addition to giving public notice required by Subsection (3)(a), provide:

(i) notice of the electronic meeting to the members of the public body at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present; and

- (ii) a description of how the members will be connected to the electronic meeting;
  - (c) establish one or more anchor locations for the public meeting, at least one of which is in the building and political subdivision where the public body would normally meet if they were not holding an electronic meeting;
  - (d) provide space and facilities at the anchor location so that interested persons and the public may attend and monitor the open portions of the meeting; and
  - (e) if comments from the public will be accepted during the electronic meeting, provide space and facilities at the anchor location so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.
- (4) Compliance with the provisions of this section by a public body constitutes full and complete compliance by the public body with the corresponding provisions of Sections [52-4-201](#) and [52-4-202](#).

**52-4-208. Chance or social meetings.**

- (1) This chapter does not apply to any chance meeting or a social meeting.
- (2) A chance meeting or social meeting may not be used to circumvent the provisions of this chapter.

**52-4-209. Electronic meetings for charter school board.**

- (1) As used in this section, “charter school” means a school created under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act.
- (1) Notwithstanding the definitions provided in Section [52-4-103](#) for this chapter, as used in this section:

- (a) “Anchor location” means a physical location where:
  - (i) the charter school board would normally meet if the charter school board were not holding an electronic meeting; and
  - (ii) space, a facility, and technology are provided to the public to monitor and, if public comment is allowed, to participate in an electronic meeting during regular business hours.

(b) “Charter school board” means the governing board of a school created under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act.

(c) “Meeting” means the convening of a charter school board:

(i) with a quorum who:

(A) monitors a website at least once during the electronic meeting; and

(B) casts a vote on a website, if a vote is taken; and

(ii) for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the charter school board has jurisdiction or advisory power.

(d) “Monitor” means to:

(i) read all the content added to a website by the public or a charter school board member; and

(ii) view a vote cast by a charter school board member on a website.

(e) “Participate” means to add content to a website.

(2) (a) A charter school board may convene and conduct an electronic meeting in accordance with Section [52-4-207](#).

(b) A charter school board may convene and conduct an electronic meeting in accordance with this section that is in writing on a website if:

(i) the chair verifies that a quorum monitors the website;

(ii) the content of the website is available to the public;

(iii) the chair controls the times in which a charter school board member or the public participates; and

(iv) the chair requires a person to identify himself or herself if the person:

(A) participates; or

(B) casts a vote as a charter school board member.

(3) A charter school that conducts an electronic meeting under this section shall:

(a) give public notice of the electronic meeting:

(i) in accordance with Section 52-4-202; and

(ii) by posting written notice at the anchor location as required under Section 52-4-207;

(b) in addition to giving public notice required by Subsection (3)(a), provide:

(i) notice of the electronic meeting to the members of the charter school board at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present;

(ii) a description of how the members and the public may be connected to the electronic meeting;

(iii) a start and end time for the meeting, which shall be no longer than 5 days; and

(iv) a start and end time for when a vote will be taken in an electronic meeting, which shall be no longer than four hours; and

(c) provide an anchor location.

(4) The chair shall:

(a) not allow anyone to participate from the time the notice described in Subsection (3)(b)(iv) is given until the end time for when a vote will be taken; and

(b) allow a charter school board member to change a vote until the end time for when a vote will be taken.

(5) During the time in which a vote may be taken, a charter school board member may not communicate in any way with any person regarding an issue over which the charter school board has jurisdiction.

(6) A charter school conducting an electronic meeting under this section may not close a meeting as otherwise allowed under this part.

(7) (a) Written minutes shall be kept of an electronic meeting conducted as required in Section 52-4-203.

- (b)
    - (i) Notwithstanding Section [52-4-203](#), a recording is not required of an electronic meeting described in Subsection (2)(b).
    - (ii) All of the content of the website shall be kept for an electronic meeting conducted under this section.
  - (c) Written minutes are the official record of action taken at an electronic meeting as required in Section [52-4-203](#).
- (8) (a) A charter school board shall ensure that the website used to conduct an electronic meeting:
  - (i) is secure; and
  - (ii) provides with reasonably certainty the identity of a charter school board member who logs on, adds content, or casts a vote on the website.
- (b) A person is guilty of a class B misdemeanor if the person falsely identifies himself or herself as required by Subsection (2)(b)(iv).
- (9) Compliance with the provisions of this section by a charter school constitutes full and complete compliance by the public body with the corresponding provisions of Sections [52-4-201](#) and [52-4-202](#).

**52-4-210. Electronic message transmissions.**

Nothing in this chapter shall be construed to restrict a member of a public body from transmitting an electronic message to other members of the public body at a time when the public body is not convened in an open meeting.

**52-4-301. Disruption of meetings.**

This chapter does not prohibit the removal of any person from a meeting, if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised.

**52-4-302. Suit to void final action – Limitation – Exceptions.**

- (1) (a) Any final action taken in violation of Section [52-4-201](#), [52-4-202](#), or [52-4-207](#) is voidable by a court of competent jurisdiction.
- (b) A court may not void a final action taken by a public body for failure to comply with the posting written notice requirements under Subsection [52-4-202\(3\)\(a\)\(i\)\(B\)](#) if:

(i) the public body otherwise complies with the provisions of Section [52-4-202](#);  
and

(ii) the failure was a result of unforeseen Internet hosting or communication technology failure.

(2) Except as provided under Subsection (3), a suit to void final action shall be commenced within 90 days after the date of the action.

(3) A suit to void final action concerning the issuance of bonds, notes, or other evidences of indebtedness shall be commenced within 30 days after the date of the action.

**52-4-303. Enforcement of chapter – Suit to compel compliance.**

(1) The attorney general and county attorneys of the state shall enforce this chapter.

(2) The attorney general shall, on at least a yearly basis, provide notice to all public bodies that are subject to this chapter of any material changes to the requirements for the conduct of meetings under this chapter.

(3) A person denied any right under this chapter may commence suit in a court of competent jurisdiction to:

(a) compel compliance with or enjoin violations of this chapter; or

(b) determine the chapter's applicability to discussions or decisions of a public body.

(4) The court may award reasonable attorney fees and court costs to a successful plaintiff.

**52-4-304. Action challenging closed meeting.**

(1) Notwithstanding the procedure established under Subsection 63-2-202(7), in any action brought under the authority of this chapter to challenge the legality of a closed meeting held by a public body, the court shall:

(a) review the recording or written minutes of the closed meeting in camera; and

(b) decide the legality of the closed meeting.

(2) (a) If the judge determines that the public body did not violate Section [52-4-204](#), [52-4-205](#), or [52-4-206](#) regarding closed meetings, the judge shall dismiss the case without

disclosing or revealing any information from the recording or minutes of the closed meeting.

(b) If the judge determines that the public body violated Section [52-4-204](#), [52-4-205](#), or [52-4-206](#) regarding closed meetings, the judge shall publicly disclose or reveal from the recording or minutes of the closed meeting all information about the portion of the meeting that was illegally closed.

**52-4-305. Criminal penalty for closed meeting violation.**

In addition to any other penalty under this chapter, a member of a public body who knowingly or intentionally violates or who knowingly or intentionally abets or advises a violation of any of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.



## Appendix B: Sample Notice Documents

*(Italicized words should be replaced with individualized information. This notice should be posted at the principal office of the school board or at the place where the meeting will be held and posted on the Utah Public Notice Website; in addition, a copy of this notice should be given to a local newspaper or media correspondent.)*

### 1. Notice of Annual Schedule of Regular Board Meetings

#### PUBLIC NOTICE

Pursuant to Utah Code [§ 52-4-202\(2\)](#), the Board of Education of the *Appleton* School District hereby gives public notice that the following school board meetings will be convened in 2015:

<u>Date</u>	<u>Time</u>	<u>Location</u>
2/10/15	7:00 p.m.	<i>Jefferson High School 3511 Elm Street Johnson City, UT</i>
6/15/15	6:30 p.m.	<i>Appleton School District Offices 311 Green Street Happy City, UT</i>

(Signature) \_\_\_\_\_

*Linda Harris*

Board of Education of the *Appleton* School District

2. *Notice to Be Given at Least 24 Hours Before a Meeting*

**PUBLIC NOTICE**

Pursuant to Utah Code [§ 52-4-202\(1\)](#), the Board of Education of the *Appleton* School District hereby gives notice that a school board meeting will be convened as outlined below:

Date: *6/15/15*

Time: *6:30 p.m.*

Location: *Appleton School District Offices  
311 Green Street  
Happy City, UT*

- Agenda:
1. *Report on Program to Prevent Drug Abuse*
  2. *Proposal for Middle School Boundary Changes*
  3. *Discussion of Transportation Concerns*
  4. *Adjourn to Closed Meeting For Discussion of Personnel matters*

                    (Signature)                      
*Bob Smith*  
Board of Education of the *Appleton* School District

## **Appendix C: Sample Statements by Person Presiding at a Closed Meeting**

*(Italicized words should be replaced with individualized information. Such a statement is only needed if the purpose of the closed meeting is to discuss the character, professional competence, or physical or mental health of an individual or the deployment of security personnel, devices, or systems.)*

1. *Statement for a Meeting Discussing the Character, Professional Competence, or Physical or Mental Health of an Individual*

### **STATEMENT AFFIRMING THE PURPOSE OF A CLOSED MEETING**

I, *Linda Harris*, certify that I am the member of the Board of Education of the *Appleton* School District who presided at the closed meeting of the board held on *February 10, 2015*. I hereby affirm, pursuant to Utah Code § 52-4-206(6), that the sole purpose of holding this closed meeting was to discuss the character, professional competence, or physical or mental health of an individual.

I certify under criminal penalty of the State of Utah that the foregoing is true and correct.

Executed on \_\_\_\_\_ (Date)

\_\_\_\_\_  
(Signature)  
*Linda Harris*

2. *Statement for a Meeting Discussing the Deployment of Security Personnel, Devices, or Systems*

### **STATEMENT AFFIRMING THE PURPOSE OF A CLOSED MEETING**

I, *Bob Smith*, certify that I am the member of the Board of Education of the *Appleton* School District who presided at the closed board meeting held on *June 15, 2015*. I hereby affirm, pursuant to Utah Code § 52-4-206(6), that the sole purpose of holding this closed meeting was to discuss the deployment of security personnel, devices, or systems.

I certify under criminal penalty of the State of Utah that the foregoing is true and correct.

Executed on \_\_\_\_\_ (Date)

\_\_\_\_\_  
(Signature)  
*Bob Smith*