

***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
Burbidge & White, L.L.C.
102 South 200 East, Suite 600
Salt Lake City, Utah 84111
(801) 359-7000

November 2020

Table of Contents

I. INTRODUCTION.....	3
II. DEFINITIONS.....	4
A. “Meeting”.....	4
1. <i>What Constitutes a Meeting.....</i>	4
2. <i>What Does Not Constitute a Meeting.....</i>	4
a. <i>A Chance Gathering.</i>	4
b. <i>A Social Gathering.....</i>	4
c. <i>No Public Funds Are Appropriated.....</i>	4
B. “Convened”.....	5
C. “Public Body”.....	5
1. <i>What Constitutes a Public Body.</i>	5
2. <i>What Does Not Constitute a Public Body.</i>	5
D. “Quorum”.....	6
III. CONVENING A MEETING WHICH IS OPEN TO THE PUBLIC.....	6
A. “Public Meeting” Does Not Require Public Participation.....	6
B. Public Notice.....	6
1. <i>Requirements for All Non-Emergency Meetings.</i>	7
2. <i>Meeting Limited to Agenda Items.</i>	7
3. <i>Requirements for Regular Meetings Scheduled in Advance.</i>	7
4. <i>Requirements for Emergency Meetings.....</i>	7
C. Notice to Local Government Officials.....	8
D. Meeting Location.....	8
E. Electronic Meetings.....	8
F. Record-Keeping Requirements.....	9
G. Approval of and Availability of Open Meeting Record.....	10
H. Violation of Open Meetings Requirements May Invalidate Board Action.....	10
IV. HOLDING A CLOSED MEETING.....	11
A. Voting and Public Announcement Requirements.....	11
B. Permissible Purposes.....	11
C. Record-Keeping Requirements of a Closed Meeting.....	13
1. <i>General Rules.....</i>	13
2. <i>Method of Keeping Record Dependent Upon Purpose of Closed Meeting.</i>	13
3. <i>Scheduling and Notice of Closed Meetings.....</i>	13
V. PENALTIES FOR VIOLATIONS OF THE OPEN MEETINGS LAW.....	14
A. Penalty for Knowing or Intentional Violation of Closed Meetings Requirements.....	14
B. Penalty for Improper Disclosure of Closed Meeting Records.....	14
C. Legal Claim of Violation of Open Meetings Law.....	14
VI. SUMMARY.....	15
VII. APPENDICES.....	16
Appendix A: Links to Utah’s Open and Public Meetings Statute.....	16
Appendix B: Sample Notice Documents.....	17
1. <i>Notice of Annual Schedule of Regular Board Meetings.</i>	17
2. <i>Notice to Be Given at Least 24 Hours Before a Meeting.....</i>	18
Appendix C: Sample Statements by Person Presiding at a Closed Meeting.....	19
1. <i>Statement for a Meeting Discussing the Character, Professional Competence, or Physical or Mental Health of an Individual.</i>	19
2. <i>Statement for a Meeting Discussing the Deployment of Security Personnel, Devices, or Systems.....</i>	19

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 2020 sessions. 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 52, 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. Links to the relevant statutes are included in the text and 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.

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\(3\)\(a\)](#))

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\(9\)\(a\), \(b\)](#)). 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 “public body” also includes an interlocal entity or joint or cooperative undertaking and certain “governmental nonprofit corporations.”

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\(9\)\(c\)](#)). 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 formal or informal action is taken. (§ 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(52)). 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. Except for certain electronic meetings where there is no anchor location, 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 requirement to post notice at the main office or meeting location does not apply where there is a proper electronic meeting without an anchor location (*see* E. below). 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.

Sample notice documents are provided in [Appendix B](#).

C. Notice to Local Government Officials (§ 53G-7-208(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). (§ 53G-7-208(3)(a)). In addition to notice to the public, school boards are required to give notice of their meetings to these officials. (§ 53G-7-208(3)(b)). This notice may be provided by mail, email, or some other means that the official has agreed to. (§ 53G-7-208(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 within the geographic boundaries of the district 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.

By statute, board meetings must be held within the geographic boundaries of the district unless doing otherwise is necessary because of a disaster or local emergency or unless the board is conducting a site visit where no action is taken and where the location of the site visit provides the opportunity to see or experience an activity relating to board responsibilities which is not available within the boundaries of the district. (§ 53G-4-202(3).)

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 unless the requirements for holding an electronic meeting without an anchor location are met. (§ 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)(i)). 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)(i)). An electronic meeting may be held without an anchor location if the board president makes a written determination (including the facts on which the determination is based) that conducting the meeting with an anchor location presents a substantial risk to the health and safety of those who may be present at the anchor location. (§ 52-4-207(4)). This written determination expires after 30 days (§ 52-4-207(5)), must be included in the public notice of the meeting, and must be read at the beginning of the meeting. (§ 52-4-207(4)(c)). The board must also provide means by which the public may hear (or view and hear) the open portions of the meeting (§ 52-4-207(3)(d)(ii)) and (if public comment is to be accepted at the meeting) provide means by which the public may provide comments. (§ 52-4-207(3)(e)(ii)). The information on how the public may thus access and participate in this meeting must also be included in the meeting notice. (§ 52-4-207(4)(d)). (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).)

Rather than including in the meeting minutes the substance of matters discussed, actions taken, and public comments or testimony, a public body may instead maintain a publicly available online version of the minutes that provides a link from the particular topic to the portion of the meeting recording which contains the pertinent discussion, comments, or testimony. (§ 52-4-203(2)(b)).

Assuming that a local school board is a “state public body” (see discussion [below](#)), electronic information publicly presented by individuals at an open board meeting is included in the record of the meeting. For this purpose, the board must require an individual who presents such information to provide the board with an electronic or hard copy of the information. (§ 52-4-203(4)(d)).

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 posted to the Utah Public Notice Website within three business days after approval. (§ 52-4-203(4)(e)(ii)(A)). They must also be made available at the board’s main office. (§ 52-4-203(4)(e)(ii)(B)). If the board elects to link minutes to the meeting recording, those linked minutes and the meeting materials must also be posted to the district’s website. (§ 52-4-203(4)(e)(C)). 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 30 days 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 the recording or a link to the recording must be posted to the Utah Public Notice Website within three business days after the end of the meeting. (§ 52-4-203(4)(e)(iii)). (The digital audio recording of a meeting for comment on a proposed tax increase or bond measure must also be posted on the district website (if one exists) or made 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)).

NOTE:

The meeting record availability requirements outlined above are those which apply to a “state public body,” which is defined as “a public body that is an administrative, advisory, executive, or legislative body of the state.” (§ 52-4-203(4)(a)(v)). Although a locally elected board of education, with jurisdiction over a limited geographic area, seems more like a local body (similar to the “specified local public body” under the statute, which means “a legislative body of a county, city, town, or metro township.” (§ 52-4-203(4)(a)(iv)), and thus under the requirements for “A public body that is not a state public body or a specified local public body” (§ 52-4-203(4)(g)), the Utah State Auditor has taken the position that a local school board is a “state public body” and has directed school boards to follow the requirements applicable to a “state public body.”

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 this restriction, 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 by a government attorney 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: Links to Utah's Open and Public Meetings Statute

- 52-4-101. Title.**
- 52-4-102. Declaration of public policy.**
- 52-4-103. Definitions.**
- 52-4-104. Training.**
- 52-4-201. Meetings open to the public – Exceptions.**
- 52-4-202. Public notice of meetings – Emergency meetings.**
- 52-4-203. Minutes of open meetings – Public records – Recording of meetings.**
- 52-4-204. Closed meeting held upon vote of members – Business – Reasons for meeting recorded.**
- 52-4-205. Purposes of closed meetings.**
- 52-4-206. Record of closed meetings.**
- 52-4-207. Electronic meetings – Authorization – Requirements.**
- 52-4-208. Chance or social meetings.**
- 52-4-209. Electronic meetings for charter school board.**
- 52-4-210. Electronic message transmissions.**
- 52-4-301. Disruption of meetings.**
- 52-4-302. Suit to void final action – Limitation – Exceptions.**
- 52-4-303. Enforcement of chapter – Suit to compel compliance.**
- 52-4-304. Action challenging closed meeting.**
- 52-4-305. Criminal penalty for closed meeting violation.**

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 2021:

<u>Date</u>	<u>Time</u>	<u>Location</u>
2/10/21	7:00 p.m.	<i>Jefferson High School 3511 Elm Street Johnson City, UT</i>
6/15/21	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: *6/15/21*

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 (discussion of the character, professional competence, or physical or mental health of an individual)*

(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, 2021*. 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 declare under criminal penalty under the law of Utah that the foregoing is true and correct.

Signed on the *10th* day of *February, 2021* at *Appleton City*, Utah

Linda Harris

(Signature)

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, 2021*. 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.

Signed on the *15th* day of *June, 2021* at *Appleton City*, Utah

Bob Smith

(Signature)