

WASSA FALL WORKSHOP

The Essential Mechanics Of A School Board Meeting

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Presented by:

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Biography

Shana has extensive experience in school, municipal, labor, and employment law. She represents private and public sector employers in a broad range of labor and employment law matters, including family and medical leave, harassment, employment contracts, and collective bargaining. Shana’s practice focuses on representing school districts throughout the State on issues ranging from labor and employment matters to pupil discipline, open meetings, public records, and other matters of import to Wisconsin schools. She also has significant experience conducting investigations for private and public sector entities concerning allegations of harassment, bullying, and discrimination involving staff and/or students.

I. SCHOOL BOARD AND DISTRICT MEETINGS

A. Regular Board Meeting.

1. The school board in a common or union high school district shall hold a regular meeting at least once each month at a time and place determined by the school board. Wis. Stat. § 120.11(1).
2. In a unified school district, the school board shall meet at least once each month. Wis. Stat. § 120.43(2).

B. Special Board Meeting.

1. Common or Union High School District.
 - a. A special school board meeting shall be held upon the written request of any school board member. The request shall be filed with the school district clerk or, in the clerk's absence, the school district president who shall notify in writing each school board member of the time and place of the special school board meeting at least twenty-four (24) hours before the meeting. The notice shall be delivered to each school board member personally or shall be left at the usual place of abode of the school board member or shall be mailed by first (1st) class mail to the usual place of abode of the school board member so as to arrive at least twenty-four (24) hours before the special school board meeting. Wis. Stat. § 120.11(2).
 - b. A special school board meeting may be held without prior notice, if all school board members are present and consent, or if every school board member consents in writing even though he or she does not attend. Wis. Stat. § 120.11(2).
2. In addition to monthly meetings, the school board in a unified school district may meet at times upon the call of the school district president or upon the filing of a request with the school district clerk signed by a majority of the school board members. Wis. Stat. § 120.43(2).
3. Special meetings may only be held through strict compliance with the statutory provisions governing such meetings. *Village of Coon Valley v. Spellum*, 190 Wis. 140, 208 N.W. 916 (1926).

C. Organizational Meetings.

1. As per Wis. Stat. § 120.05, in a common or union high school district:
 - a. The members of a school board shall be the officers of a school district.
 - b. In the case of a three (3)-member school board, the school district president, treasurer and clerk shall constitute the school board. At the first election of a three (3)-member school board, the clerk shall be elected for a one (1)-year term, the treasurer for a two (2)-year term and the president for a three (3)-year term.
 - c. In the case of a school board with more than three (3) members, the school board shall annually elect a school district president, vice president, treasurer and clerk from among its members at a school board meeting held on or within thirty (30) days after the 4th Monday in April.
 - d. A school district officer shall be a resident of the school district in which the officer serves. A school district officer who represents an apportioned area pursuant to a plan adopted under Wis. Stat. § 120.02 (2) shall be a resident of the apportioned area for which he or she is elected or appointed at the time the officer takes the oath of office. If a school district officer who represents an apportioned area ceases to be a resident of that area after beginning his/her term but continues to be a resident of the school district, the officer may continue to serve for the balance of the term for which he/she was elected or appointed.
 - e. If the school district president, vice president, treasurer or clerk of any school board is unable to discharge the duties of the office due to disability or absence, the school board may appoint a person to discharge the duties of such person until the disability or absence no longer exists. In the case of a three (3)-member school board the appointee shall be an elector of the school district. In the case of a larger school board the appointee for the president shall be the vice president and the appointee for the other officers shall be another school board member. The school board shall determine the compensation of such appointees. A person acting as school district clerk or school district treasurer shall have the powers of a deputy and shall take and file an

official bond covering the person's acts unless the bond of such officer includes a bond for the officer's deputy. This subsection does not apply to vacancies caused by absence from the school district for a period exceeding sixty (60) days covered by Wis. Stat. § 17.03(4).

2. In a unified school district, annually, on or within thirty (30) days after the 4th Monday in April, the school board shall elect a school district president, vice president, clerk and treasurer from among its members and a school board secretary who need not be a member of the school board. Wis. Stat. § 120.43(2).

D. Meetings of Subunits, Committees and Other Bodies.

1. The definition of “governmental body” includes a “state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order[.]” Wis. Stat. § 19.82(1).
2. State and local bodies created by “rule or order” are also included in the definition. The term “rule or order” has been liberally construed to include any directive, formal or informal, creating a body and assigning it duties. 78 Op. Att’y Gen. 67, 68-69 (1989). This includes directives from governmental bodies, presiding officers of governmental bodies, or certain governmental officials, such as county executives, mayors, or heads of a state or local agency, department or division. 78 Op. Att’y Gen. 67.
3. A “formally constituted subunit” of a governmental body is itself a “governmental body” within the definition in Wis. Stat. § 19.82(1). A subunit is a separate, smaller body created by a parent body and composed of members who are also members of the parent body. 74 Op. Att’y Gen. 38, 40 (1985).

E. Annual Meeting/Special Meeting of the Electors.

1. Annual Meeting.
 - a. Common school districts shall hold an annual meeting on the 4th Monday in July at 8 p.m., unless the electors at one annual meeting determine to thereafter hold the annual meeting on a different date or hour, or authorize the school board to establish a different date or hour.

- b. Union high school districts shall hold an annual meeting on the 3rd Monday in July at 8 p.m., unless the electors at one annual meeting determine to thereafter hold the annual meeting on a different date or hour, or authorize the school board to establish a different date or hour.
- c. No annual meeting may be held before May 15 or after October 31.
- d. The place of the annual meeting shall be in a schoolhouse in the school district. If a schoolhouse which will accommodate the electors is not available, the place of the annual meeting shall be the nearest available place designated by the school board.
- e. The school district clerk shall publish a class 2 notice, under Wis. Stat. ch. 985, of the time and place of the annual meeting, the last insertion to be not more than eight (8) days nor less than one (1) day before the annual meeting. The school district clerk shall give like notice for any adjourned meeting, if the adjournment is for more than thirty (30) days. No annual meeting shall be deemed illegal for want of notice. Wis. Stat. § 120.08.
- f. As per Wis. Stat. § 120.11, before the annual meeting, the school board shall meet to examine the accounts of the school district treasurer and to prepare a full, itemized written report which shall be presented and read at the annual meeting.
 - (1) The report shall state all receipts and expenditures of the school district since the last annual meeting, the current cash balance of the school district, the amount of the deficit and the bills payable of the school district, the amount necessary to be raised by taxation for the support of the schools of the school district for the ensuing year and the amount required to pay the interest and principal of any debt due during the ensuing year.
 - (2) The report also shall include the budget summary required under Wis. Stat. § 65.90. If a school board has established a trust described in Wis. Stat. § 66.0603(1m)(b)3., the report shall also state the amount in the trust, the investment return earned by the trust since the last annual meeting, the total of

disbursements made from the trust since the last annual meeting, and the name of the investment manager if investment authority has been delegated under Wis. Stat. § 66.0603(3)(b).

- (3) The school district clerk shall copy the report, with the action taken thereon, and all other proceedings of the annual meeting in full in the school district record book. Wis. Stat. § 120.11(3).

3. Special Meeting of the Electors.

- a. Upon a petition filed with the school district clerk signed by three percent (3%) of the electors residing in the school district or one hundred (100) electors, whichever is fewer, or upon the motion of the school board in a common or union high school district, a special meeting shall be called by the school district clerk or, in his or her absence, by the school district president or school district treasurer. If the petition includes a subject beyond the power of the special meeting to transact, the school district clerk shall reject such subject and so notify each elector signing the petition.
- b. Notice of a special meeting shall be published as a class 2 notice, under Wis. Stat. ch. 985. The last insertion shall be not more than eight (8) days nor less than one (1) day before the day of the special meeting. If no hour for the special meeting is fixed in the notice, it shall be held at 8 p.m.
- c. No more than two (2) special meetings may be held between annual meetings to consider or act upon the same subject, except that in counties having a population of five hundred thousand (500,000) or more no more than four (4) such meetings may be held.
- d. A special meeting has the same powers of the annual meeting.
- e. No tax may be voted at a special meeting, unless notice thereof is included in the notice under par. (b). The amount of the tax proposed to be voted shall be set forth in the notice. The special meeting may vote a tax of a lesser amount than stated in the notice, but not a greater amount. Wis. Stat. § 120.08.

4. There is no annual meeting or a meetings of the electors in a unified school district. Wis. Stat. § 120.44(2).

II. NOTICE OF SCHOOL BOARD MEETINGS

A. Public Notice.

1. Every school board meeting must be preceded by public notice.
2. The notice must be issued to:
 - a. the public;
 - b. any members of the news media who have submitted a written request for notice; and
 - c. the official newspaper designated pursuant to state statute or, if none exists, a news medium likely to give notice in the area. Wis. Stat. § 19.84(1).
3. Issuing notice to the public means posting the notice in one (1) or more places likely to be seen by the general public. As a general rule, the Attorney General has advised posting notices at three (3) different locations within the jurisdiction that the governmental body serves. 66 Op. Att’y Gen. 93, 95 (1977).
4. There is no obligation to post the notice by paid publication in a news medium likely to give notice in the jurisdictional area the body serves. However, if this method of notice is used, the school district must ensure that the notice is actually published. 63 Op. Att’y Gen. 509, 510-11 (1974).
5. Meeting notices may also be posted at a governmental body’s website as a supplement to other public notices, but web posting should not be used as a substitute for other methods of notice. *Att’y Gen. Correspondence to Peck* (April 17, 2006).
6. The notice must be issued at least twenty-four (24) hours prior to the start of the meeting.
 - a. In exceptional circumstances and for good cause, notice may be issued with less than twenty-four (24) hours’ notice, but not less than two (2) hours before the start of the meeting. Wis. Stat. § 19.83(3).

- b. When calculating the twenty-four (24) hour notice period, Wis. Stat. § 990.001(4)(a) requires that Sundays and legal holidays shall be excluded. Posting notice of a Monday meeting on the preceding Sunday is, therefore, inadequate, but posting such notice on the preceding Saturday would suffice, as long as the posting location is open to the public on Saturdays. *Att’y Gen. Correspondence to Caylor* (December 6, 2007).

B. Content of the Notice.

1. Every public notice of a school board meeting must include the “time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof.” Wis. Stat. § 19.84(2).
2. With regard to the subject matter included in the notice, the notice must identify each item that will be discussed and/or acted upon during the school board meeting.
 - a. Whether notice is sufficiently specific will depend upon what is reasonable under the circumstances. In making that determination, the factors to be considered include:
 - (1) the burden of providing more detailed notice,
 - (2) whether the subject is of particular public interest, and
 - (3) whether it involves non-routine action that the public would be unlikely to anticipate.

State ex rel. Buswell v. Tomah Area Sch. Dist., 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804.

- b. The Wisconsin Attorney General has advised that agenda items with purely generic subject matter descriptions, e.g., “old business,” “new business,” or “other matters as are authorized by law,” do not comply with the Open Meetings Law. *Att’y Gen. Correspondence to Erickson* (April 22, 2009).
- c. The Wisconsin Attorney General has advised that the practice of using such designations as “mayor comments,” “alderman comments,” or “staff comments” for the purpose of communicating information on matters within the scope of

the governmental body's authority "is, at best, at the outer edge of lawful practice, and may well cross the line to become unlawful." Because members and officials of governmental bodies have greater opportunities for input into the agenda-setting process than the public has, they should be held to a higher standard of specificity regarding the subjects they intend to address. *Att'y Gen. Correspondence to Rude* (March 5, 2004); *Att'y Gen. Correspondence to Thompson* (September 3, 2004).

- d. Wis. Stat. § 19.84(2) does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken. Adequate notice may not require information about whether a vote on a subject will occur, so long as the subject matter of the vote is adequately specified. The information in the notice must be sufficient to alert the public to the importance of the meeting, so that they can make an informed decision whether to attend. In some circumstances, a failure to expressly state whether action will be taken at a meeting could be a violation of the open meetings law.

C. Closed Session.

- 1. Every school board meeting must be held in open session, except that closed session portions of the meeting may occur as explicitly permitted by the Open Meetings Law. Therefore, the notice should clearly state that the meeting will begin in open session.
- 2. If the school board intends to move into closed (or executive) session at any time during the school board meeting, the meeting notice must include a description of the subject matter to be considered in closed session. Such notice must contain enough information for the public to discern whether the subject matter is authorized for closed session under Wis. Stat. § 19.85(1).
- 3. Wis. Stat. § 19.85(1) contains thirteen (13) exemptions to the open session requirement which permit, but do not require, a governmental body to convene in closed session. The exemptions relevant to a school district are as follows:
 - a. Wis. Stat. § 19.85(1)(a) authorizes a closed session for deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.

Note: In order for this exemption to apply, there must be a “case” that is the subject of a quasi-judicial proceeding.

- b. Wis. Stat. § 19.85(1)(b) authorizes a closed session for considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter.

Note: If a closed session for such a purpose will include an evidentiary hearing or final action, then the school board must give the public employee or licensee actual notice of that closed hearing and/or closed final action. The term “evidentiary hearing” means a formal examination of accusations, by receiving testimony or other forms of evidence, that may be relevant to a dismissal, demotion, licensing, or discipline of any public employee or person covered by Wis. Stat. § 19.85(1)(b). *Campana v. City of Greenfield*, 38 F. Supp. 2d 1043, 1051 (E.D. Wis. 1999).

Note: Where actual notice is required, the notice must state that the person has a right to request that any such evidentiary hearing or final action be conducted in open session. If the person makes such a request, the governmental body may not conduct an evidentiary hearing or take final action in closed session. The body may, however, convene in closed session under Wis. Stat. § 19.85(1)(b) for the purpose of deliberating about the dismissal, demotion, licensing, discipline, or investigation of charges. Following such closed deliberations, the body may reconvene in open session and take final action related.

- c. Wis. Stat. § 19.85(1)(c) authorizes a closed session for considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.

Note: The purpose of the exemption is to protect individual employees from having their actions and abilities discussed in public and to protect governmental bodies from potential lawsuits resulting from open discussion of sensitive information. It is not the purpose of the exemption to protect

a governmental body when it discusses general policies that do not involve identifying specific employees.

- d. Wis. Stat. § 19.85(1)(d) authorizes a closed session for considering applications for probation or parole, or considering strategy for crime detection or prevention.
- e. Wis. Stat. § 19.85(1)(e) authorizes a closed session for deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.

Note: This exemption applies only when competitive or bargaining reasons require a closed session. The exemption is restrictive rather than expansive.

- f. Wis. Stat. § 19.85(1)(f) authorizes a closed session for considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.
- g. Wis. Stat. § 19.85(1)(g) authorizes a closed session for conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

Note: The presence of the school board's legal counsel is not, in itself, sufficient reason to authorize closure under this exemption. The exemption applies only if the legal counsel is rendering advice on strategy to adopt for litigation in which the governmental body is or is likely to become involved.

- h. Wis. Stat. § 19.85(1)(h) authorizes a closed session for the consideration of requests for confidential written advice from an ethics board.

D. School Board Meeting Packet.

1. Many school districts create a school board packet to be distributed to school board members in advance of a school board meeting. The school board meeting packet may include open and closed session materials.
2. If the packet includes closed session materials, the materials should be marked confidential and school board members should be reminded of their obligation to maintain the confidentiality of such records.
3. Be cautious about sharing certain records with the school board in the school board meeting packet. Such records include employee/pupil medical information, pupil records, employee home telephone number, home address and home email address, and social security numbers.

E. Pupil Expulsion Hearing Notice.

1. The Notice of Pupil Expulsion Hearing must be sent not less than five (5) days before the hearing, to the pupil and, if the pupil is a minor, to the pupil's parent or guardian.
 - a. The separate notices to the pupil and the parent should be sent in separate envelopes.
 - b. Many school districts send the notice via Certified Mail in addition to U.S. Mail.
 - c. The five (5) days is calculated from the date the notice is mailed, not received.
2. Wis. Stat. § 120.13(1)(c)4., provides that the Notice of Pupil Expulsion Hearing must include all of the following information:
 - a. The specific grounds, under Wis. Stat. § 120.13(1)(c) 1., 2. or 2m., and the particulars of the pupil's alleged conduct upon which the expulsion proceeding is based.
 - b. The time and place of the hearing.
 - c. That the hearing may result in the pupil's expulsion.
 - d. That, upon request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing shall be closed.

- e. That the pupil and, if the pupil is a minor, the pupil's parent or guardian may be represented at the hearing by counsel.
 - f. That the school board shall keep written minutes of the hearing.
 - g. That if the school board orders the expulsion of the pupil the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil's parent or guardian.
 - h. That if the pupil is expelled by the school board the expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the school board's decision to the department.
 - i. That if the school board's decision is appealed to the department, within sixty (60) days after the date on which the department receives the appeal, the department shall review the decision and shall, upon review, approve, reverse or modify the decision.
 - j. That the decision of the school board shall be enforced while the department reviews the school board's decision.
 - k. That an appeal from the decision of the department may be taken within thirty (30) days to the circuit court for the county in which the school is located.
 - l. That the state statutes related to pupil expulsion are Wis. Stats. § 119.25 and 120.13(1).
3. If it is necessary for a school district to modify or amend a Notice of Pupil Expulsion Hearing, the school district must send the modified or amended Notice of Pupil Expulsion Hearing at least five (5) days before the hearing.
4. The Notice of Pupil Expulsion Hearing may be sent to the person identified as the pupil's guardian, but that does not supersede the obligation to notify the pupil's parents.

III. CONDUCTING SCHOOL BOARD MEETINGS

A. Quorum.

1. A majority of the school board members constitute a quorum at a regular or special school board meeting. Wis. Stats. §§ 120.11(1) and 120.44.
2. School board members must be present at a meeting in order to be counted for purposes of a quorum.
3. Electronic presence of a school board member (e.g., telephone, Skype, etc.) is a new development that has not yet been resolved from a legal perspective.

B. Chairperson of the Meeting.

1. The school district president shall preside at school board meetings. Wis. Stats. §§ 120.11(1) and 120.44(2).
2. In the president's absence, the school district vice president shall preside or, in the case of a three (3)-member board, the school board may select another school board member to preside. Wis. Stats. §§ 120.11(1) and 120.44(2).
3. However, a school board/district president is a school board member with all the rights and responsibilities of other school board members, including the duty to vote on all motions before the school board.

C. Parliamentary Procedure.

1. In a common or union high school district, subject to the authority vested in the annual meeting and to the authority and possession specifically given to other school district officers, the school board has the obligation to possess, care, control and manage the property and affairs of the school district, except for property of the school district used for public library purposes under Wis. Stat. § 43.52. Wis. Stat. § 120.12(1).
2. In a unified school district, the school board has the power to manage, control and supervise the school district. Wis. Stat. § 120.44(2).

3. By policy, most school boards have committed to using *Roberts Rules of Order* in full or as a guideline during all meetings of the school board and electors.

D. Voting.

1. Form.
 - a. Generally speaking, the votes of school board members may be made by voice vote or by hand vote.
 - b. Secret ballots are not permitted, except for purposes of the election of school board officers. Wis. Stat. § 19.88(1).
 - c. Any member of the school board may require that a vote be taken in a manner that the vote of each school board member can be ascertained and recorded, i.e., a Roll Call Vote. Wis. Stat. § 19.88(2).
 - d. In some cases (because of policy or statute), a Roll Call Vote is required. For example, the vote of a school board to convene in closed session must be carried by a majority vote that is recorded and preserved by ascertaining the vote of each board member. Wis. Stat. § 19.85(1).
 - e. When asking school board members to identify their vote for purposes of a Roll Call Vote, the record keeper may wish to stagger, rotate or alternate the voting order. In some cases, the school board members may request the use of a written (not a secret) ballot.
2. Number of Votes.
 - a. Generally, actions of a school board must be approved by a majority of those school board members voting. Under such circumstances, a margin of one vote is sufficient for the school board to pass or reject a motion. A motion would fail on a tie vote.
 - b. In some cases (because of policy or statute), a certain number of votes is needed for a motion to pass. For example, in order for a school board to act to employ or dismiss a teacher or administrator, which requires “a majority vote of the full membership of the school board”. Wis. Stats. §§ 118.22 and 118.24. A two-thirds (2/3) vote of the entire membership of the school board is required to change the

various appropriations and the purposes for such appropriations stated in the budget. Wis. Stat. § 65.90(5).

- c. If a school board member(s) abstains from voting, unless it is a situation where a certain number of votes is needed for a motion to pass (because of policy or statute) and unless the abstention creates a lack of a quorum, the motion may pass when a plurality of votes are in the affirmative. *State v. Tyrrell*, 158 Wis. 425, 149 N.W. 280, 283 (1914)
3. The Wisconsin Statutes do not require that each school board member vote on each and every motion that comes before the school board. In some cases, a school board member will abstain from voting because of a perceived or actual conflict of interest. The other school board members may not require that the school board member participate in the vote.
4. The Wisconsin Statutes do not permit “proxy” voting by school board members.
5. Some school boards avoid formal voting and instead gather a “consensus” on a subject. Nothing in the Open Meetings Law prevents school board action without a formal vote; it is advisable for school boards to refrain from using “consensus” except in the most minor, routine procedural matters, such as approval of minutes or adjourning. *Att’y Gen. Correspondence to Huebscher* (May 23, 2008).
6. Voting in closed session. A school board should vote in open session, unless the vote is clearly an integral part of deliberations authorized to be conducted in closed session under Wis. Stat. § 19.85(1). Stated another way, a governmental body should vote in open session, unless doing so would compromise the need for the closed session.

E. Recording.

1. Whenever a school board holds a meeting in open session, the school board must make a reasonable effort to accommodate any person desiring to record, film or photograph the meeting, provided that such activities do not interfere with the conduct of the meeting. Wis. Stat. § 19.90.

2. The Open Meetings Law does not itself give the members of a school board any statutory rights to record a closed session meeting. *Att’y Gen. Correspondence to Maroney* (October 31, 2006).
3. If the school board chooses to record a closed session meeting, the school board must take appropriate steps to maintain the confidentiality of that recording. 66 Op. Att’y Gen. 318 (1977).

F. Public Participation.

1. School boards have the discretion to decide whether and to what extent to allow public participation at school board meetings. The Wisconsin Statutes do not require that the public be given an opportunity to speak or actively participate at school board meetings. *Att’y Gen. Correspondence to Zwiag* (July 13, 2006); *Att’y Gen. Correspondence to Lundquist* (October 25, 2005).
2. School boards are required to hold public hearings on certain matters, which would require the school board to solicit public input in those situations. For example, before a school board adopts its budget, a public hearing must be held at which any resident or taxpayer of the school district must be given the opportunity to be heard on the proposed budget. Wis. Stat. § 65.90(4).
3. If a school board intends to permit public participation at a school board meeting, the notice for the school board meeting should indicate that the school board will provide for a period of public comment period. Wis. Stat. § 19.84(2). Many school boards include limits on the time and subject matter of public participation.
4. While Wis. Stat. § 19.83(2) provides that, during a period of public comment under Wis. Stat. § 19.84(2), a school board may discuss any matter raised by the public, it is advisable for school boards to refrain from discussing and taking action on a subject discussed during the public participation period that was not otherwise described in the Open Meetings Law notice. Rather, the school board should defer such discussion and action to a subsequent meeting.
5. A school board member may speak as a citizen during a public comment period at a school board meeting. However, doing so creates potential legal concerns about the school board member’s capacity during the meeting.

6. School boards and school district officials must be careful not to infringe on a citizen's First Amendment (free speech) rights during a public comment period at a school board meeting, even if the speech is critical of the school district and/or its officials or employees.

G. Closed Session.

1. Every school board meeting must be held in open session, except closed session portions of the meeting may occur as explicitly permitted by the Open Meetings Law.
2. Every school board meeting must begin in open session. Wis. Stats. §§ 19.83 and 19.85(1).
3. Before the school board votes on the motion to move into closed session, the school board president must announce and record in open session the nature of the business to be discussed and the specific statutory exemption which is claimed to authorize the closed session. 66 Op. Att'y Gen. 93, 97-98. Stating only the statute section number of the applicable exemption is not sufficient because many exemptions contain more than one reason for authorizing closure.
4. A frequently asked question concerns who may attend the closed session meetings of a governmental body. In general, the Open Meetings Law gives wide discretion to a governmental body to admit into a closed session anyone whose presence the body determines is necessary for the consideration of the matter that is the subject of the meeting. *Att'y Gen. Correspondence to Schuh* (December 15, 1988).
5. If the governmental body is a subunit of a parent body, the subunit must allow members of the parent body to attend its open session and closed session meetings, unless the rules of the parent body or subunit provide otherwise. Wis. Stat. § 19.89. Where enough non-members of a subunit attend the subunit's meetings that a quorum of the parent body is present, a meeting of the parent body occurs, and the notice requirements of Wis. Stat. § 19.84 apply.

H. Accessibility.

1. All meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times." Wis. Stat. § 19.81(2).

2. The requirement that meeting locations be reasonably accessible to the public and open to all citizens at all times means that governmental bodies must hold their meetings in rooms that are reasonably calculated to be large enough to accommodate all citizens who wish to attend the meetings. *State ex rel. Badke v. Vill. Bd. of Vill. of Greendale*, 173 Wis. 2d 553, 580-581, 494 N.W.2d 408, 418-419 (1993). Any doubt as to whether a meeting facility is large enough to satisfy the requirement should be resolved in favor of holding the meeting in a larger facility.
3. The policy of openness and accessibility favors governmental bodies holding their meetings in public places, such as a municipal hall or school, rather than on private premises. 67 Op. Att’y Gen. 125, 127 (1978). The law prohibits meetings on private premises that are not open and reasonably accessible to the public. Wis. Stat. § 19.82(3).
4. The policy of openness and accessibility also requires that governmental bodies hold their meetings at locations near to the public they serve. Accordingly, the Attorney General has concluded that a school board meeting held forty (40) miles from the district, which the school board served, was not “reasonably accessible” within the meaning of the Open Meetings Law. *Att’y Gen. Correspondence to Miller* (May 25, 1977). The Attorney General advises that, in order to comply with the “reasonably accessible” requirement, governmental bodies should conduct all their meetings at a location within the territory they serve, unless there are special circumstances that make it impossible or impractical to do so. *Att’y Gen. Correspondence to Sherrod* (October 17, 1991).
5. The public accessibility requirements of the Open Meetings Law have long been interpreted by the Attorney General as meaning that every meeting subject to the law must be held in a location that is “reasonably accessible to all citizens, including those with disabilities.” 69 Op. Att’y Gen. 251, 252 (1980).

IV. SCHOOL BOARD MEETING MINUTES

A. Content.

1. Minutes should, at a minimum, reflect the “substance of every official action” taken by the school board in both open and closed session. Wis. Stat. § 120.11(4).

2. “Substance” is defined as “an intelligible abstract synopsis of the essential elements of the official action taken by a local governing body, including the subject matter of a motion, the persons making and seconding the motion and the roll call vote on the motion” if any. Wis. Stat. § 985.01(6).
3. School boards are required to record, preserve and make available to the public, all motions and roll call votes of each meeting of the school board, committees, and other meetings of “governmental bodies” occurring under the school board’s jurisdiction. Wis. Stat. § 19.88(3).
4. According to *Roberts Rules of Order*, the standard form for minutes include:
 - a. The kind of meeting, the name of the organization, the date and time of the meeting, the presence of officers, and whether the minutes of the previous meeting were reviewed and approved.
 - b. A separate paragraph for each subject on the agenda, the main motions, and all points of order and appeals.
 - c. The time of the adjournment and the motion to adjourn.
5. According to *Roberts Rules of Order*, minutes should not reflect the opinion of the recorder or anyone else’s opinion, favorable or otherwise, on anything said or done.
6. As a practical consideration, it is advisable to avoid including detailed descriptions of the board member’s comments.

B. Drafts/Notes.

1. Before school board meeting minutes are approved, they may be classified as “drafts” under the Public Records Law. Wis. Stat. § 19.32(2).
2. The personal notes of school board members taken during school board meetings are not the official minutes of the school board. Furthermore, they are not public records unless they have been shared with others. Wis. Stat. § 19.32(2).

C. Recordkeeping.

1. In a common or union high school district, the school district clerk shall record the minutes of school board meetings and, in his/her absence; the school board may select another school board member to act as the clerk of the meeting. Wis. Stats. §§ 120.11 and 120.17(3).
2. In a unified school district, the school board has the authority to appoint a school board secretary. Wis. Stat. § 120.43(1). Typically, in such districts, the school board secretary will record the minutes of school board meetings.

D. Retention.

1. The minutes of school board meetings must be retained for at least seven (7) years except as otherwise provided by the Public Records Board. Wis. Stat. § 19.21(6).
2. Any recording of a school board meeting may be destroyed no sooner than ninety (90) days after the minutes have been approved and published if the purpose of the recording was to make minutes of the meeting. Wis. Stat. § 19.21(7).

E. Publication.

1. In a common or union high school district, the proceedings of a school board meeting shall be published within forty-five (45) days after the meeting as a class 1 notice, under Wis. Stat. ch. 985, in a newspaper published in the school district, if any, or publicized by school district-wide distribution prepared and directed by the school board and paid out of school funds. If there is no newspaper published in the school district, the proceedings shall be posted or published as the school board directs. Wis. Stat. § 120.11(4).
2. In a unified school district, the proceedings of the school board shall be published in accordance with Wis. Stat. § 120.11(4). Wis. Stat. § 120.43(4).
3. For the purpose of publication, the proceedings shall include the substance of every official action taken by the school board at the meeting and a statement of receipts and expenditures in the aggregate. The school board shall make a detailed record of all receipts and expenditures available to the public for inspection at each school board meeting and upon request. Wis. Stat. § 120.11(4).

4. The Wisconsin Attorney General has advised that these publication requirements apply to proceedings conducted in both open and closed sessions. However, the Attorney General explained that school boards should publish the proceedings in a manner that preserves the confidentiality of closed sessions, if the public interest still weighs in favor of keeping the proceedings confidential. *Att'y Gen. Correspondence to Litscher* (March 30, 1981).

F. Pupil Expulsion Hearings.

1. The school board must keep written minutes of the pupil expulsion hearing. In order to satisfy this obligation, the minutes must reflect:
 - a. Who was present,
 - b. What evidence was presented in support of the allegations of misconduct, and
 - c. What decision or action the board took based on the evidence presented. *Peshtigo School District*, (660) May 13, 2010; *Wilmot Union High School* (296) July 10, 1996.

It is not, however, required that the minutes reflect every statement made by the board members or by hearing participants. DPI has suggested that it is helpful when the minutes identify which individuals present at the hearing testified and were cross examined. *Wheatland School District*, (613) March 27, 2008; *Phillips School District*, (435) June 25, 2001.

2. Many school boards audio record the pupil expulsion hearing. An audiotape is sufficient for taking minutes of a pupil expulsion hearing provided that it is of satisfactory quality to allow a meaningful review of the hearing. *Little Chute Area School District*, (490) April 22, 2003. However, such a recording is not required by law.

G. Annual Meetings and Special Meetings of Electors.

1. The school district clerk is required to record the proceedings of the annual meeting and any special meeting of the electors. Wis. Stat. § 120.17(2).
2. The agenda for the annual meeting should not include approval of the annual meeting minutes from the prior year.

3. In its discretion, the school board may decide to make public the minutes of the annual meeting or a special meeting of the electors. However, the Wisconsin Statutes do not require such publication.
4. The minutes of the annual meeting or a special meeting of the electors are public records subject to disclosure.