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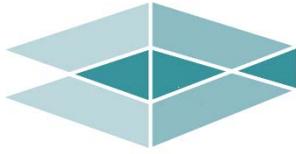
**SCHOOL BOARD MEETINGS AND MINUTES IN
LIGHT OF THE OPEN MEETINGS
LAW AND THE RULES GOVERNING CLOSED
SESSION**

*FOURTEENTH ANNUAL SPRING CONFERENCE
April 28, 2017*

Presented by Shana R. Lewis

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Practice Areas

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 - School and Higher Education Law
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Education

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Shana has extensive experience in labor and employment law, school and higher education law, and municipal 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 Wisconsin 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.

Recognitions

- *Best Lawyers® in America* - School Law, Labor & Employment (2013-2016)
 - *Best Lawyers' 2016 Labor Law - Management* “Lawyer of the Year” for Green Bay, WI
 - *Best Lawyers' 2016 Employment Law - Management* “Lawyer of the Year” for Green Bay, WI
- 40 Under 40 List - Greater Madison InBusiness Magazine (2005, 2012)
- Named “Wisconsin Rising Star” by Super Lawyers Magazine (2006 - 2013)
- Rated BV® Distinguished™ by Martindale-Hubbell®
- Top Lawyer, Madison Magazine (2009)
- ATHENA Young Professional Award Nominee (2008)
- 2016 Women to Watch, *Brava Magazine*

Professional Activities

- Member, State Bar of Wisconsin
- Member, Dane County Bar Association
- Member, Legal Association for Women
- Member, Council of School Attorneys
- Board Member, Wisconsin School Attorneys Association
- Adjunct Faculty, Edgewood College

Community Involvement

- President, Board of Directors, Theatre LILA
- Secretary, Greenridge Park Neighborhood Association
- Lifelong Ambassador, A Fund for Women
- Board Member, TEMPO Madison
- Marketing Committee Member, Operation Fresh Start

I. SCHOOL BOARD MEETINGS

A. School Board Meetings.

1. Wis. Stat. § 120.11.

(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 and may hold special school board meetings under sub.

(2). A majority of the school board members constitute a quorum at a regular or special school board meeting. The school district president shall preside at school board meetings. In the president's absence, the school district vice president shall preside or, in the case of a 3-member board, the school board may select another school board member to preside. The school district clerk shall record the minutes of school board meetings and, in his or her absence, the school board may select another school board member to act as the clerk of the meeting.

(2) 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 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 1st class mail to the usual place of abode of the school board member so as to arrive at least 24 hours before the special school board meeting. 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.

2. Wis. Stat. § 120.43.

(2) The school board shall meet at least once each month and at other 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.

B. Open Meetings Law (Wis. Stat. § 19.81 *et seq.*).

1. Policy.

a. It is the policy of Wisconsin that the public is entitled to the fullest and most complete information regarding the affairs of the government as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1).

- b. All meetings of all state and local governmental bodies must be publicly held in places reasonably accessible to members of the public and must be open to all citizens at all times unless otherwise expressly provided by law. Wis. Stat. § 19.81(2).
- c. Every meeting of a governmental body must be preceded by public notice and initially convened in open session. A governmental body may not start a meeting in closed session even if the closed session is the only item on the agenda.

2. Governmental Body.

A state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule, or order; a governmental or quasi-governmental corporation . . . ; a local exposition district under subch. II of ch. 229; any public purpose corporation, as defined in s. 181.79(1); or a formally constituted subunit of any of the foregoing. . . .” Wis. Stat. § 19.82(1).

3. Meeting.

- a. The convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. Wis. Stat. § 19.82(2).
- b. The number of members present must be sufficient to determine the present body’s course of action regarding the proposal discussed. “If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body.” Wis. Stat. § 19.82(2).
- c. Social/chance gatherings. The term “meeting” does not include social or chance gatherings or conferences which are not intended to avoid the Open Meetings Law. Wis. Stat. § 19.82(2).
- d. Meetings of bodies that do not include school board members, but which are directed to be held by the school board through policy or action, may still be subject to the Open Meetings Law. *State ex rel. Krueger v. Appleton Area Sch. Dist. Bd. of Educ.*, No. 2015AP231 (Oral Argument, February 15, 2017).

4. Notice Requirements.

- a. Public notice is required in the following manner:

- i. To the public;
 - ii. To those news media who have filed a written request for such notice; and
 - iii. To the official newspaper, or if none exists, to the news media most likely to give notice in the area.
- b. Notice Contents.
- i. Time.
 - ii. Date.
 - iii. Place.
 - iv. Subject Matter. The notice must be in a form that is reasonably likely to apprise members of the public and the news media of the subject matter.
 - v. Matters intended for consideration at a closed session.
 - (1) Statutory reference and narrative description for closed session portion(s) of meeting.
 - (2) In *State ex rel. Buswell v. Tomah Area School District*, 2007 WI 71, the Wisconsin Supreme Court adopted a “reasonableness standard”, which requires a “case-specific analysis” whether notice if sufficiently specific will depend upon “what is reasonable under the circumstances.” In making that determination, the factors to be considered are: (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.
- c. Notice Time Lines.
- i. A meeting notice must be posted at least twenty-four (24) hours prior to the commencement of the meeting.
 - ii. In an emergency (where “good cause” is shown), a meeting may be posted with two (2) hours prior to the commencement of the meeting.

- d. Public Comment.
 - i. A governmental body is not required to offer a public comment period.
 - ii. The Open Meetings Law permits a meeting of a governmental body to provide for a period of public comment, during which the body may receive information from the public. Wis. Stat. § 19.84(2).
 - iii. Most school boards have a policy addressing the public comment period and limitations on speakers.

5. Voting.

- a. Secret ballots. Unless the statutes specifically authorize, no secret ballot may be utilized to determine any election or other decision, except the election of a body's own officers. Wis. Stat. § 19.88(1).
- b. Roll-call votes. If a member requests that the vote of each member be recorded, a voice vote or show of hands is not sufficient unless the vote is unanimous and the minutes reflect who is present for the vote. I-95-89 (November 13, 1989).
- c. Typically, a motion will pass when a majority of those board members voting vote in favor of it. However, some statutes (e.g., Wis. Stat. § 118.24) and some policies require a vote of more than a majority of those voting, such as a majority of the full membership of the Board or 2/3 of those board members voting.

6. Closed Session.

- a. Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the specific exemptions of Wis. Stat. § 19.85.
- b. Only the elected or presiding officials may exercise the right to convene into closed session; the public does not have the right or power to close a meeting.
- c. The chief presiding officer must announce to all present the intention of going into a closed session and read the closed session notice that should include the reason(s) and the specific statutory exemptions to support the closed session. Wis. Stat. § 19.85(1).

- d. A motion, with a second, and roll call vote (supported by a majority of the members voting) as to closing the session, must be taken before convening in closed session and must be recorded in the minutes.
- e. A closed session may be held only if the reason for the closed session satisfies one or more of the purposes (known as exemptions) articulated in the Open Meetings Law, which include, but are not limited to:
 - i. Judicial or Quasi-Judicial Matters. Deliberations concerning a case which is the subject of any judicial or quasi-judicial trial or hearing before the governmental body. Wis. Stat. § 19.85(1)(a).
 - ii. Discharge/Discipline. Considering dismissal, demotion or discipline of a public employee provided the public employee is given actual notice of the evidentiary hearing prior to the final action being taken and the notice contains a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. Wis. Stat. § 19.85(1)(b).
 - iii. Compensation and Evaluation. Considering the employment, promotion, compensation or performance evaluation of a public employee. The discussion must pertain to a specific employee, as contrasted with general policies which do not involve specifically identified employees. Wis. Stat. § 19.85(1)(c).
 - iv. Competitive or Bargaining Reasons. Deliberating or negotiating the purchase of public properties, the investing of public funds, or conducting other specific public business, whenever competitive or bargaining reasons require a closed session. Wis. Stat. § 19.85(1)(e).
 - v. Personnel Matters. 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 Wis. Stat. § 19.85(1)(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. Wis. Stat. § 19.85(1)(f).

- vi. Conferring with Legal Counsel. 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. Wis. Stat. § 19.85(1)(g).
 - vii. Once the governmental body has convened in closed session, it may discuss or consider only those subjects specifically allowed by the statutory exemptions and is limited to matters that the presiding officer has announced would be the subject of the closed session.
- f. Attendance at a closed session is limited to the body, necessary staff and other officers, such as clerk and attorney, and other persons whose presence is necessary for the business at hand. If the meeting is of a subunit such as a committee, then the members of the parent body must be allowed in the closed session, unless rules of the parent body provide otherwise. Wis. Stat. § 19.89.
- g. Taking Action In Closed Session.
- i. Governmental bodies can take final action by voting in closed session. Motions and roll call votes of each closed session must be recorded and preserved and open to the public inspection to the extent prescribed by the Public Records Law. The record must show all motions made, who initiated and seconded the motion, how each member voted and all votes taken by the body.
 - ii. Guidelines for determining the appropriateness of voting in closed session:
 - (1) The governmental body must have convened itself into a proper closed session.
 - (2) The same reason for convening itself into closed session must apply to the need to vote in closed session, i.e., to keep the action in confidence.
 - iii. Mere convenience in voting in closed session is impermissible. The better practice is to notice a meeting to convene in open session, adjourn to closed session and then reconvene into open session for action where voting in open session is preferred.

- h. Reconvening Into Open Session.
 - i. Sometimes, the meeting notice will include an opportunity or obligation for the Board to reconvene in open session. Indeed, the notice may even state that the Board may take action on items disclosed in closed session after reconvening in open session.
 - ii. No governmental body may commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within twelve (12) hours after completion of a closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session. Wis. Stat. § 19.85(2).

C. School Board Member Technology Use and the Open Meetings Law.

- 1. The use of electronic communications, including e-mail, text messages, and social media sites, have the potential to implicate the Open Meetings Law.
- 2. The Wisconsin Department of Justice’s 2015 Open Meetings Law Compliance Guide describes this potential:

Written communications transmitted by electronic means, such as email or instant messaging . . . may constitute a ‘convening of members,’ depending on how the communication medium is used. Although no Wisconsin court has applied the open meetings law to these kinds of electronic communications, it is likely that the courts will try to determine whether the communications in question are more like an in-person discussion – e.g., a rapid back-and-forth exchange of viewpoints among multiple members – or more like non-electronic written correspondence, which generally does not raise open meetings law concerns. If the communications closely resemble an in-person discussion, then they may constitute a meeting if they involve enough members to control an action by the body. In addressing these questions, courts are likely to consider such factors as the following:

- (1) the number of participants involved in the communications;
- (2) the number of communications regarding the subject;

(3) the time frame within which the electronic communications occurred; and

(4) the extent of the conversation-like interactions reflected in the communications.”

D. Exclusion/Removal of a School Board Member from a School Board Meeting.

1. Wis. Stat. § 19.89. Exclusion of members. No duly elected or appointed member of a governmental body may be excluded from any meeting of such body. Unless the rules of a governmental body provide to the contrary, no member of the body may be excluded from any meeting of a subunit of that governmental body.
2. Wis. Stat. § 17.13. Only the public, through an election, or the judge of the circuit court of the circuit wherein the school district is situated, for cause, may remove or suspend a school board member.
3. When a situation arises where the exclusion or removal of a school board member is considered, work with the Superintendent and/or Board President. You are employed by the Board, as an entity, not an individual Board member, and you likely report to the Superintendent.

E. Enforcement and Penalties Under the Open Meetings Law.

1. Both the Wisconsin Attorney General and local district attorneys have authority to enforce the Open Meetings Law.
 - a. A district attorney has authority to enforce the Open Meetings Law only after an individual files a verified Open Meetings Law complaint with the district attorney. A verified complaint is a complaint that is signed by the individual and notarized and includes available information that will be helpful to investigators, such as: identifying the governmental body and any members thereof alleged to have violated the law; describing the factual circumstances of the alleged violations; identifying witnesses with relevant evidence; and identifying any relevant documentary evidence.
 - b. The district attorney has broad discretion to determine whether a verified complaint should be prosecuted.
 - c. An action to enforce the Open Meetings Law must be brought by a district attorney or by the Attorney General within six (6) years after the cause of action accrues or be barred.

- d. Proceedings to enforce the Open Meetings Law are civil not criminal, actions. As a result, enforcement of the Open Meetings Law does not involve arrests, posting bond, entering criminal-type pleas, or any other aspects of criminal procedure.

2. Civil Action to Enforce Open Meetings Law.

- a. If the district attorney refuses to commence an Open Meetings Law enforcement action or otherwise fails to act within twenty (20) days of receiving a complaint, the individual who filed the complaint has a right to bring an action, in the name of the state, to enforce the Open Meetings Law.
- b. Although an individual complainant may not bring a private enforcement action prior to the expiration of the district attorney's twenty (20) day review period, the district attorney may still commence an action even though more than twenty (20) days have passed. Note: It is not uncommon for the review and investigation of open meetings complaints to take longer than twenty (20) days.
- c. Actions to enforce the Open Meetings Law are exempt from the notice of claim requirements of Wis. Stat. § 893.80.
- d. Such a proceeding must be brought by a complainant within two (2) years after the cause of action accrues or it will be barred.
- e. The court is authorized to grant broad relief to the complainant, including a declaration that the law was violated, civil forfeitures where appropriate, and the award of the actual and necessary costs of prosecution, including reasonable attorney fees. Attorney fees are only awarded if the court concludes that such an award will provide an incentive to other private parties to similarly vindicate the public's rights to open government and will deter governmental bodies from skirting the Open Meetings Law.

3. Penalties.

- a. Any member of a governmental body who "knowingly" attends a meeting held in violation of the open meetings law, or otherwise violates the law, is subject to a forfeiture of between \$25 and \$300 for each violation.
 - i. Any forfeiture obtained in an action brought by the district attorney is awarded to the county.

- ii. Any forfeiture obtained in an action brought by the Attorney General or a private citizen is awarded to the State of Wisconsin.
 - iii. A governmental body may not reimburse a member for a forfeiture incurred as a result of a violation of the law, unless the enforcement action involved a real issue as to the constitutionality of the open meetings law. Although it is not required to do so, a governmental body may reimburse a member for his or her reasonable attorney fees in defending against an enforcement action and for any plaintiff's attorney fees that the member is ordered to pay.
- b. The Wisconsin Supreme Court has defined "knowingly" as not only positive knowledge of the illegality of a meeting, but also awareness of the high probability of the meeting's illegality or conscious avoidance of awareness of the illegality.
 - c. The Court also held that the "knowingly" requirement only applies to forfeitures sought for attending a meeting in violation of the Open Meetings Law. For all other violations, e.g., failing to give the required public notice of a meeting or failing to follow the procedure for closing a session, there is no requirement that the member have knowledge that his/her actions violate the law.
 - d. A member of a governmental body who is charged with knowingly attending a meeting held in violation of the Open Meetings Law may raise one (1) of two (2) defenses:
 - (1) that the member made or voted in favor of a motion to prevent the violation or
 - (2) that the member's votes on all relevant motions prior to the violation were inconsistent with the cause of the violation.
 - e. In addition to the forfeiture penalty, Wis. Stat. § 19.97(3) provides that a court may void any action taken at a meeting held in violation of the Open Meetings Law if the court finds that the interest in enforcing the law outweighs any interest in maintaining the validity of the action.
 - f. There is no provision in the Open Meetings Law to penalize anyone other than the members of the governmental body for violations of the Open Meetings Law, even if the members have delegated responsibilities for posting, etc., to an employee of the governmental body. However, an employee may be disciplined or held

accountable in an evaluation for failing to effectively assist the governmental body.

II. MEETING MINUTES

A. Purpose of Meeting Minutes.

The purpose of taking minutes at a school board meeting is to preserve an official record of the actions taken by the board. A school board and its members have a legal obligation to record the actions of the school board. In addition, accurate minutes of a school board meeting serve several functions, including, but not limited to:

1. Creating a history for the school board members and others about prior discussions, decisions, and actions;
2. Summarizing the meeting for school board members and others who were not able to attend the meeting;
3. Establishing evidence for the school board to rely upon in the event of a claim involving the school district; and
4. Providing proof or confirmation of the school board's discharge of its legal responsibilities.

B. Requirements for Meeting Minutes.

1. Wis. Stat. § 19.88 requires that school boards and other governmental bodies record all motions and roll call votes; preserve this record, and allow the public to inspect this record in accordance with the Wisconsin Public Records Law.
2. Wis. Stat. § 120.11(4) requires that, at a minimum, the minutes of a school board meeting reflect the "substance of every official action" taken by the board in both open and closed session. "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). Thus, as the official record of the meeting, the minutes of a school board meeting must identify each official action taken by the board, which includes a record of all motions, each school board member who made the motion, the separate school board member who seconded the motion, and the vote taken regarding the motion.

3. To the extent that a roll call vote is taken by the board, these “minutes” of the meeting must reflect how each school board member voted. This is true regardless of whether the roll call vote is required by law, such as when the school board votes to go into closed session, or when the roll call vote is requested by a school board member. However, if the school board makes a decision through a voice vote, to the extent that a roll call vote is not mandated, only the results of the voice vote must be reflected in the minutes, i.e., the motion passed or failed.

(Note: Wis. Stat. § 19.88 prohibits the use of secret ballots to determine any election or other decision of a governmental body except the election of the officers of such body in any meeting.)

4. 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). 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.
5. In some cases, the school board’s policy will set forth the form or format to be used by the school district clerk for the board’s meeting minutes. For example, in the Sun Prairie Area School District, Board Policy prescribes that “[t]he minutes will contain: 1) the kind of meeting; 2) the name of the society or assembly; 3) the date and time of the meeting; 4) the presence of the regular chairman and or secretary; 5) whether the minutes of the previous meeting were read and approved; 6) all main motions, including the wording of the motion and its disposition; 7) secondary motions that were not lost or withdrawn; 8) all notice of motions; 9) all points of order and appeals; and 10) the hour of adjournment.”

In some cases, the school board will simply rely upon Robert’s Rules of Order for purposes of the meeting procedures, including the form and format for the board’s meeting minutes. 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.

Roberts Rules of Order also warns that minutes should not reflect the opinion of the recorder or anyone else's opinion, favorable or otherwise, on anything said or done. In some school districts, the school board's meeting minutes resemble a transcript, chronicling the statements and sentiments expressed by board members and others throughout the meeting. In most cases, such a transcript is unnecessary.

6. Expulsion Hearings. Wis. Stat. §120.13(1)(c) requires board to keep minutes of a student expulsion hearing. At a minimum, minutes must reflect who was present at the hearing, what evidence was presented in support of allegations of misconduct and what decisions or actions the board took based upon the evidence presented. Peshtigo School District, (660) May 13, 2010; Wilmot Union High School (296) July 10, 1996. If there is a reasonable view of the evidence submitted which supports the board's findings, those findings will be upheld. It is not, required that the minutes reflect every statement made by the board members or by hearing participants. The Wisconsin Department of Public Instruction (DPI) has recommended that the minutes should 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.

7. *Journal Times v. City of Racine Board of Police and Fire Commissioners*, 2015 WI 56.

- a. Relevant Facts: The City of Racine Police and Fire Commission was well into its process for selecting a new police chief, having narrowed the field to three (3) finalists that had completed interviews with the Commission. The Commission held a special meeting and adjourned to closed session to discuss whether to select a candidate from the finalists or to seek additional candidates. The Commission deliberated and voted in closed session to reopen the interview process to determine if any of the eleven (11) original applicants were still interested in the position. Following the meeting, the Commission issued a public statement announcing that they were reconsidering applicants in order to have a broader pool of candidates moving forward. The Secretary did not draft the minutes from the closed session meeting until three (3) months after the meeting occurred.

Shortly after the meeting concluded, the newspaper requested a copy of the recorded motions and votes from the meeting. Despite the fact that no record existed at the time of the request, the City Attorney denied the request on the basis that "voting is an integral part of deliberating and merely formalizes the result reached in the deliberating process." The City Attorney assured the newspaper that the vote would be released five (5) days after the new police chief

was hired. The City Attorney sent an email to the newspaper five (5) days after the new police chief was hired and described the proceedings (including the motion and the vote) that took place during the meeting.

The newspaper filed suit asking the court to order the City to disclose the meeting minutes. The City responded that the information had been disclosed, but that the meeting minutes did not exist at the time of the request.

- b. Ruling: The Court held that the City did not prevail in substantial part because the requested records did not exist at the time of the request. Therefore, the City did not unlawfully deny or delay release of the records. The Court chastised the newspaper for asking for information instead of records and suggested that the newspaper's request leant to the confusion about the City's obligations under the Public Records Law.

C. Publication of Meeting Minutes.

1. Wis. Stats. §§ 120.11(4) and 120.43(4) require school boards to publish the proceedings of the school board meeting within forty-five (45) days after the meeting. These proceedings must be published 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.
2. The minutes of a school board meeting constitute public records under Wisconsin's Public Records Law. As such, generally speaking, the school district must retain the minutes for a minimum of seven (7) years. However, notwithstanding the retention period applicable to meeting minutes, in accordance with Wis. Stat. § 19.21(7), any audio recording of a school board meeting may be destroyed ninety (90) days after the minutes have been approved and published if the purpose of the recording was to make minutes of the meeting.
3. The Wisconsin Attorney General has opined that the publication requirements apply to the proceedings of both open and closed session portions of a school board meeting. 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). Thus, in many cases, (such as in the case of a student expulsion hearing), the school board will never publish the minutes of a closed session.

D. Recording a Meeting.

1. The school board must make reasonable effort to accommodate any person desiring to record, film or photograph the meeting. Wis. Stat. § 19.90. This requirement applies only to open session.
2. The Board cannot restrict such recording, videotaping, etc., unless the activity is disrupting the meeting, in which case the remedy is to address the disruption, not to prevent the media from covering the meeting.
3. There is nothing in the Open Meetings Law that authorizes members of the public or members of the governmental body to record a closed session portion of a meeting. Indeed, because of the confidentiality concerns, the Attorney General has advised that a governmental body may choose to record its closed session meetings, but must ensure the security of the records to prevent their improper disclosure.