

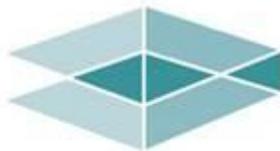
# **FIFTEENTH ANNUAL WASSA SPRING CONFERENCE**

## **The Essentials of School Board Meetings**

**April 27, 2018**

Presented by:

Attorney Kirk D. Strang  
Strang, Patteson, Renning, Lewis & Lacy, s.c.  
660 W. Washington Avenue, Ste. 303  
Madison, WI 53703  
(844) 626-0906 - Direct Phone  
[kstrang@strangpatteson.com](mailto:kstrang@strangpatteson.com)



**STRANG, PATTESON  
RENNING, LEWIS & LACY**

**Copyright © Strang, Patteson, Renning, Lewis & Lacy, s.c. 2018  
All rights reserved**



STRANG, PATTESON  
RENNING, LEWIS & LACY



## **Kirk D. Strang**

Attorney Shareholder

*Madison*

*Direct Toll Free Phone: (844) 626-0906*

*Email: [kstrang@strangpatteson.com](mailto:kstrang@strangpatteson.com)*

Denise Richardson

Office Administrator/Legal Assistant

*Direct Toll Free Phone: (844) 626-0904*

## **Practice Areas**

- Labor and Employment
- School and Higher Education Law

---

## **Education**

- B.A., University of Wisconsin Madison
- J.D., University of Wisconsin Madison

---

Kirk has extensive experience in school and higher education law, as well as labor and employment law issues.

Kirk is one of Wisconsin's leading school and higher education attorneys, representing school districts, technical colleges, and other higher education institutions in all aspects of their operations. He advises school and higher education clients on all of the issues related to their status as governmental bodies, including open meetings, public records, search and seizure, and public contracting and bidding. He also advises schools and higher education institutions on the range of issues that are unique to educators and educational institutions, including pupil rights and discipline, pupil services, employment relations, administrator and teacher contracting, pupil transportation, regulation of co-curricular activities, open enrollment and residency, and other matters that are central to educational institutions' day to day operations.

Kirk also works with small and large private companies.

Kirk is also been recognized by Best Lawyers in America in education and labor law, and as a Wisconsin Super Lawyer in schools and education law, as well as labor and employment law. He maintains an active labor and employment practice, advising employers on the full range of labor and employment relations issues, including collective bargaining and contract negotiations, claims of unfair and prohibited labor practices, family and medical leave, grievance and interest arbitration, employment policies and handbooks, unemployment and worker compensation, employment agreements, disability claims and accommodation, and other substantive areas that are central to human resources management and employment relations.

In addition to his transactional work, Kirk continues to practice at the agency, circuit court and appellate court levels, and has made multiple appearances before our Wisconsin Supreme Court.

Kirk regularly presents legal information to and training for groups around the state on education and labor and employment law issues. Kirk provides regular programming and training for the Wisconsin Association of School District Administrators (WASDA), the Association of Wisconsin School Administrators (AWSA), the Wisconsin Association of School Business Officials (WASBO), the Wisconsin Association of School Superintendents Assistants (WASSA), the Wisconsin School Attorneys Association (WSAA), and the Wisconsin Technical College District Boards Association (WTCDBA). He also actively and regularly participates in programs and seminars sponsored by our firm for clients and friends, and provides programming and training for clients at their request.

Kirk is a contributing author of the State Bar of Wisconsin's treatise on "Public Sector Labor Law Relations in Wisconsin." He has also advised the School Administrators' Alliance on legislation and legislative issues affecting our public schools. Kirk also chaired the State Bar of Wisconsin's annual employment law program for 13 consecutive years.

---

## Credentials

- 2017 WASDA Award of Special Recognition for Service to Wisconsin
- 2013 Leader in the Law, Wisconsin Law Journal
- Wisconsin Super Lawyer, Schools and Education, Employment and Labor
- Best Lawyers in America, Education Law and Labor Law – Management
- Top Lawyer: Madison Magazine
- Member, State Bar of Wisconsin Continuing Legal Education Committee (1999-2005)
- Member, State Bar of Wisconsin Board of Directors - Labor & Employment Law Section (1998-2001)
- Wisconsin Academic Decathlon Board of Directors
- CESA Foundation Board of Directors
- Former President, Wisconsin School Attorneys Association
- General Counsel to the Wisconsin Technical College District Boards Association

## I. SCHOOL BOARD DUTIES.

School boards are responsible for a number of operational matters. The Attorney General has indicated that failing to follow the statutory requirements exposes board members to charges for malfeasance in office. 20 Op.Atty.Gen. 850 (1931).

### 120.12. School board duties.

The school board of a common [ ] high school district shall:

**(1) Management of school district.** Subject to the authority vested in the annual meeting and to the authority and possession specifically given to other school district officers, have the possession, care, control and management of the property and affairs of the school district, except for property of the school district used for public library purposes under s. 43.52.

**(2) General supervision.** Visit and examine the schools of the school district, advise the school teachers and administrative staff regarding the instruction, government and progress of the pupils and exercise general supervision over such schools.

**(3) Tax for operation and maintenance.** (a) On or before November 1, determine the amount necessary to be raised to operate and maintain the schools of the school district and public library facilities operated by the school district under s. 43.52, if the annual meeting has not voted a tax sufficient for such purposes for the school year. On or before November 6, the school district clerk shall certify the appropriate amount so determined to each appropriate municipal clerk who shall assess the amount certified and enter it on the tax rolls as other school district taxes are assessed and entered.

(b) If a tax sufficient to operate and maintain the schools of a school district for the ensuing school year has not been determined, certified and levied prior to the effective date of school district reorganization under ch. 117 affecting any territory of the school district, the school board of the affected school district shall determine, on or before the November 1 following the effective date of the reorganization, the amount of deficiency in operation and maintenance funds on the effective date of the reorganization which should have been paid by the property in the affected school district if the tax had been determined, certified and assessed prior to the effective date of the reorganization. On or before November 6, the school district clerk shall certify the appropriate amount to each appropriate municipal clerk who shall assess, enter and collect the amount as a special tax on the property. This paragraph does not affect the apportionment of assets and liabilities under s. 66.0235

(c) If on or before November 1 the school board determines that the annual meeting has voted a tax greater than that needed to operate the schools of the school district for the school year, the school board may lower the tax voted by the annual meeting. On or before November 6, the school district clerk shall certify the appropriate amount so determined to each appropriate municipal clerk who shall assess the amount certified to him or her and enter it on the tax rolls in lieu of the amount previously reported.

(d) If on or before November 1 the school board determines that the annual meeting has voted a tax that would violate the limit under subch. VII of ch. 121, the school board shall lower the tax to bring it into compliance with that limit.

**(4) Tax for debt retirement.** On or before November 1, determine the amount necessary to meet any irrevocable tax obligations or other financial commitments of the school district not otherwise provided for. The school district clerk shall certify the amount apportioned to each appropriate

municipal clerk who shall include the amount certified and enter it on the tax rolls as other school district taxes are assessed and entered.

**(5) Repair of school buildings.** Keep the school buildings and grounds in good repair, suitably equipped and in safe and sanitary condition at all times. The school board shall establish an annual building maintenance schedule.

**(6) Insurance on school property.** Keep the school buildings, equipment and other property amply insured. If there are no funds in the school district treasury sufficient to pay the premium, the school board may execute a note for that purpose.

**(7) Depository.** Designate one or more public depositories in which the money belonging to the school district shall be deposited and specify whether the moneys shall be maintained in time deposits subject to the limitations of s. 66.0603(1m), demand deposits or savings deposits. When the money is so deposited in the name of the school district, the school district treasurer and bondsmen are not liable for any loss as defined in s. 34.01(2). The interest on such deposits shall be paid into the school district treasury.

**(9) Discussion of public questions.** Upon the written application of one-half of the electors of the school district, allow the use of the school buildings or grounds for the free discussion of public questions so far as such use does not interfere, in the opinion of the school board, with the prime purpose of the school buildings or grounds.

**(11) Indigent children.** Provide books and school supplies for indigent children residing in the school district.

**(12) Sanitary facilities.** Provide and maintain enough suitable and separate toilets and other sanitary facilities for both sexes at each school.

**(14) Course of study.** Determine the school course of study.

**(15) School hours.** Establish rules scheduling the hours of a normal school day. The school board may differentiate between the various elementary and high school grades in scheduling the school day. The equivalent of 180 such days, as defined in s. 115.01(10), shall be held during the school term. This subsection shall not be construed to eliminate a school district's duty to bargain with the employee's collective bargaining representative over any calendaring proposal which is primarily related to wages, hours and conditions of employment.

**(16) Immunization of children.** (a) In cooperation with local health departments, as defined in s. 250.01(4), develop and implement a plan to encourage compliance with par. (b) and s. 252.04(2) and submit the plan to the department of health and family services by September 1, 1991, and annually thereafter.

(b) Require each student to present evidence of completed basic and recall (booster) series immunizations unless the student, if an adult, or the parent, guardian or legal custodian of a minor student submits a written waiver to the school board under s.252.04(3).

**(17) University of Wisconsin system tuition.** Pay the tuition of any pupil enrolled in the school district and attending an institution within the university of Wisconsin system if the pupil is not participating in the program under s. 118.55, the course the pupil is attending at the university is not offered in the school district and the pupil will receive high school credit for the course.

**(18) Continuity of educational programming.** Coordinate and provide for continuity of educational programming for pupils receiving educational services as the result of a court order under s.48.345(12) or 938.34(7d), including but not limited to providing a report to the court assigned to exercise jurisdiction under chs. 48 and 938 and the agency which is required to

submit an educational plan for a child under s.48.33 or 938.33(1)(e). The report shall describe the child's educational status and make recommendations regarding educational programming for the child. The report shall be in writing, except that if the educational plan under s. 938.33(1)(e) is presented orally at the dispositional hearing the report may be presented orally to the court assigned to exercise jurisdiction under chs. 48 and 938 and the agency at the dispositional hearing. If written, the report shall be provided to the court assigned to exercise jurisdiction under chs. 48 and 938 and the agency at least 3 days before the date of the child's dispositional hearing.

**(19) Integrated service program.** If the county board of supervisors establishes an integrated service program for children with severe disabilities under s. 59.53(7), participate in an integrated service program for children with severe disabilities under s. 59.53(7) and may enter into written interagency agreements or contracts under the program.

**(20) Prohibition of tobacco.** Prohibit the use of all tobacco products on premises owned or rented by, or under the control of, a school board, except that the school board may allow the use of tobacco products on premises owned by the school district and rented to another person for noneducational purposes.

**(21) Consideration of effects on historic properties.** (a) In the earliest stage of planning any action related to the following, determine if its proposed action will affect any historic property that is a listed property, as defined under s.44.31(4), or that is on the list of locally designated historic places under s.44.45:

1. Long-range planning for facilities development.
2. Razing any historic property that it owns.

(b) Notify the state historic preservation officer of any proposed action that the school board determines under par. (a) would affect any historic property.

**(22) Advanced placement examinations.** Using federal, state, local, or private funds, pay the costs of advanced placement examinations taken by pupils enrolled in the school district who are eligible for free or reduced-price lunches in the federal school lunch program under 42 USC 1758.

**(23) Pupil participation in school activities.** Adopt a policy on access to extracurricular and recreational school programs and activities that encourages full participation by all elementary grade pupils in these programs and activities. This subsection does not apply to the school board of a union high school district.

**(24) Health care benefits.** Prior to the selection of any group health care benefits provider for school district professional employees, as defined in s. 111.70(1)(ne), solicit sealed bids for the provision of such benefits.

**(25) Early admission to kindergarten and first grade.** Prescribe procedures, conditions and standards for early admission to kindergarten and first grade.

**(26) School safety plans.** Have in effect a school safety plan for each school in the school district.

## II. SCHOOL BOARD MEETINGS.

### A. Statutes Regarding Board Meetings

#### 1. General provisions regarding school board meetings and reports.

- a. Regular meeting: The Board must hold a regular meeting at least once each month at a time and place determined by the Board at which a majority of the members must be present for a quorum.

Section 120.11(1), Stats.:

(1) The school board in a common [ ] 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.

#### b. Special meeting:

- (i) Notice of special meeting must be published not more than 8 days nor less than 1 day before the day of the special meeting.

Section 120.08(2)(6), Stats.:

(b) Notice of a special meeting shall be published as a class 2 notice, under ch. 985. The last insertion shall be not more than 8 days nor less than one 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.

- (ii) A special meeting may be held upon written request of any board member provided 24 hours notice is given. This notice requirement may be waived if all board members are present and consent or if each board member consents in writing even if that member does not attend.

Section 120.11(2), Stats.:

(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.

- (iii) A special meeting may be held upon the filing of a petition signed by electors.

Section 120.08(2)(a), Stats.:

**(2) Special meeting.** (a) Upon petition filed with the school district clerk signed by 3% of the electors residing in the school district or 100 electors, whichever is fewer, or upon the motion of the school board in a common [ ] 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.

c. Annual meeting:

- (i) Notice of annual meeting must be published not more than 8 days nor less than 1 day before the annual meeting.

Section 120.08(1)(c), Stats.:

(c) The school district clerk shall publish a class 2 notice, under ch. 985, of the time and place of the annual meeting, the last insertion to be not

more than 8 days nor less than one day before the annual meeting. The school district clerk shall give like notice for any adjourned meeting, if the adjournment is for more than 30 days. No annual meeting shall be deemed illegal for want of notice.

- (ii) Annual meeting is to take place on the 4<sup>th</sup> Monday in July (unless electors determine otherwise) at a schoolhouse in the school district which will accommodate the electors.

Section 120.08(1), Stats.:

**(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. No annual meeting may be held before May 15 or after October 31. The first school district meeting in a common [ ] high school district created under s. 117.08, 117.09, or 117.27 shall be considered an annual meeting.

(b) 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.

- (iii) Prior to the annual meeting the Board must meet to examine the accounts of the treasurer and prepare a full itemized report which must be presented and read at the annual meeting.

Section 120.11(3), Stats.:

(3) 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. 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. The report also shall include the budget summary required under s.65.90. If a school board has established a trust described in s. 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 s. 66.0603(3)(b). 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.

**B. Meeting Minutes**

**1. Who takes or records the school board meeting minutes?**

**a. School District Clerk duties**

**(i) Required to record minutes of school board meetings.**

Section 120.11(1), Stats.:

(1) The school board in a common [ ] 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.

Section 120.17(3), Stats.:

The school district clerk of a common [ ] high school district shall:

\* \* \*

(3) Enter in the record book provided by the school board the minutes of its meetings, orders, resolutions and other proceedings.

- (ii) Required to record proceedings of annual and special meetings.

Section 120.17(2), Stats.:

The school district clerk of a common [ ] high school district shall:

\* \* \*

(2) Act as clerk and record the proceedings of annual and special meetings.

- (iii) Required to enter minutes of meetings, orders, resolutions and other proceedings in the record book provided by the school board.

Section 120.17(3), Stats.:

The school district clerk of a common [ ] high school district shall:

\* \* \*

(3) Enter in the record book provided by the school board the minutes of its meetings, orders, resolutions and other proceedings.

- (iv) Must copy the itemized written report of the school district financial accounts and all other proceedings of the annual meeting in the school district record book.

Section 120.11(3), Stats.:

(3) 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. 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. The report also shall include the budget summary

required under s. 65.90. If a school board has established a trust described in s. 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 s. 66.0603(3)(b). 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.

- (v) If the school district clerk is absent from a meeting, the school board selects the acting clerk for the meeting.

Section 120.11(1), Stats.:

(1) 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.

- b. School board president is responsible for ensuring that minutes of meetings are properly recorded, approved and signed.

Section 120.15(5), Stats.:

The school district president of a common [ ] high school district shall:

\* \* \*

(5) Act as chairperson of school board meetings and see that minutes of the meetings are properly recorded, approved and signed. In the absence of the president, the vice president or, in the case of a 3-member board, another school board member selected by the school board, shall act as chairperson of school board meetings.

## 2. What must be included in the minutes?

- a. Recorded minutes shall reflect the outcome of every official action taken by the board, which must include the subject matter of the motion, the person making and seconding the motion and the roll call vote taken on the motion.

Section 985.01(4), Stats.:

As used in this chapter, unless the context requires otherwise:

\* \* \*

(4) "Proceedings", when published in newspapers, mean the substance of every official action taken by a local governing body at any meeting, regular or special.

Section 985.01(6), Stats.:

As used in this chapter, unless the context requires otherwise:

\* \* \*

(6) "Substance" is an intelligible abstract or 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, except that ordinances and resolutions published as required by law need not be republished in proceedings, but a reference to their subject matter shall be sufficient.

- b. When a school board moves to go into closed session the vote of each member of the board must be recorded in the minutes.

Section 19.85(1), Stats.:

(1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session.

- c. Avoid including descriptions of board member's comments in the school board meeting minutes to avoid creating the following risks:
  - (i) That a statement recorded in the minutes, even though accurate, will be used against the board in a legal dispute, e.g., where one board member's comment is taken as representative of the board's views.
  - (ii) That a statement recorded in the minutes will be inaccurate or incomplete and the district will have to admit it in a legal dispute.
  - (iii) That a board member may make comments that end up being used in a lawsuit.
- d. To keep up with the pace of the board meeting, consider using a form that lists the agenda items and fill in the form with notes regarding action items.

3. How are minutes disseminated?

- a. Posting/Publication requirements
  - (i) Must publish school board meeting minutes in a newspaper published in the school district, if any, or publicize by school district-wide distribution prepared and directed by the school board and paid out of school funds within 45 days of the school board meeting.

Section 120.11(4), Stats.:

(4) The proceedings of a school board meeting shall be published within 45 days after the meeting as a class 1 notice, under 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. 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.

- (ii) If there is no newspaper published in the school district, the proceedings shall be posted or published as the school district directs. Section 120.11(4), Stats.
  - (iii) 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 the receipts and expenditures in the aggregate. Section 120.11(4), Stats.
- b. Copies of minutes of each school board meeting should be sent to each school board member and administrator as soon as practical to allow for prompt review. Corrections in the minutes may be made prior to or at the next meeting when the minutes are to be approved.
  - c. It is the school board president's responsibility to ensure minutes of meetings are properly recorded, approved and signed. Section 120.15(5), Stats.
  - d. Specific entries from closed session minutes must be provided to the public once their content is no longer confidential. Atty Gen. Op., March 30, 1981.
4. How should records be retained in the District?
- a. Some argue that school board meeting minutes must be retained for a minimum of seven (7) years, except as otherwise provided by the public records board.

Section 19.21(6), Stats.:

(6) A school district may provide for the destruction of obsolete school records. Prior to any such destruction, at least 60 days' notice in writing of such destruction shall be given to the historical society, which shall preserve any records it determines to be of historical interest. The historical society may, upon application, waive the notice. The period of time a school district record shall be kept before destruction shall be not less than 7 years, unless a shorter period is fixed by the public records board under s. 16.61(3)(e) and except as provided under sub. (7). This section does not apply to pupil records under s. 118.125.

- b. Tape recordings used for the purpose of preparing minutes may be destroyed no sooner than 90 days after the minutes have been approved and published.

Section 19.21(7), Stats.:

(7) Notwithstanding any minimum period of time for retention set under s. 16.61(3)(e), any taped recording of a meeting, as defined in s. 19.82(2), by any governmental body, as defined under s. 19.82(1), of a city, village, town or school district may be destroyed no sooner than 90 days after the minutes have been approved and published if the purpose of the recording was to make minutes of the meeting.

- c. Best practice: Permanent retention of school board meeting minutes is strongly recommended. Consider scanning/saving on computer or putting the year's worth of board meeting minutes on microfiche after the auditor's report is done each year to save space.
- d. School board meeting minutes (open and closed session) are considered public records and must be maintained in accordance with provisions of Wisconsin's Public Records Law.

Section 19.32(2), Stats.:

As used in ss. 19.22 to 19.39:

\* \* \*

(2) "Record" means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. "Record" includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts and optical disks. "Record" does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.

### III. THE WISCONSIN OPEN MEETINGS LAW

#### A. Policy and Construction

##### 1. Policy

“In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state 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).

“To implement and ensure the public policy herein expressed, 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 unless otherwise expressly provided by law.” Wis. Stat. § 19.81(2). (Emphasis added).

##### 2. Construction

The Open Meetings Law is to be liberally construed (any doubts should be resolved in favor of openness). Wis. Stat. § 19.81(4).

#### B. Definitions

##### 1. 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; a long-term care district under § 46.2895; or a formally constituted subunit of any of the foregoing. . . .” Wis. Stat. § 19.82(1).

a. What authority created the body?

b. What means were used to create the body?

A “governmental body” does not include any body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining. Wis. Stat. § 19.82(1).

- c. Where a municipal common council hears a labor dispute/grievance under a procedure established under a signed contract, the council is engaged in collective bargaining and, is therefore for that purpose not a “governmental body.” 67 Op. Att’y Gen. 276 (1978).

## 2. Meeting

“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).

- a. There must be a purpose to engage in governmental business be it discussion, decision or information gathering. *State ex rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77 (1987).
- b. The number of members present must be sufficient to determine the present body’s course of action regarding the proposal discussed. *Id.*
  - (1) Majority Presumption. “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).
  - (2) Negative Quorum. A gathering of less than one-half of the members of a governmental body may be a meeting if that group possesses the power to defeat action taken by the governmental body. *Showers, supra*.
  - (3) Walking Quorum. Even though a limited number of members gathered together may not be able to determine the outcome of a matter, the gathering may nonetheless constitute a “meeting” under the Open Meetings Law if it is one of a series of meetings through which ultimately agreement as to a particular matter is reached. *Showers, supra*.

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).

- c. Members must convene for there to be a meeting, which includes both face-to-face gatherings and situations where members are able to effectively communicate with each other and exercise the body's authority, even if the members are not physically present together.

### 3. Open Session

"A meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times." Wis. Stat. § 19.82(3).

- a. Room size: Rooms must be reasonably calculated to be large enough to accommodate all citizens who wish to attend the meetings. *State ex rel. Badkev v. Greendale Village Bd.*, 173 Wis.2d 553 (1993).
- b. Location: Meetings should be held in places within the geographical area they serve and should be held on premises that are open and accessible to the public. The body should take special precautions with meetings involving travel.
- c. Access for persons with disabilities: Meetings must be held in buildings and rooms that permit persons with functional limitations to enter, circulate and leave the facility without assistance. Wis. Stat. § 19.82(3); 69 Op. Att'y Gen. 251 (1980).

### C. Notice Requirements

- 1. Every meeting of a governmental body must be preceded by public notice and initially convened in open session. Wis. Stat. § 19.83.

Exemption from notice requirements: Formally constituted subunits may meet without notice during a meeting of the parent body, during a recess of the parent body, or immediately after a meeting of the parent body, for the purpose of discussing or acting on a matter which was the subject of the parent body's meeting, and where the presiding officer of the parent body publicly announces the time, place, and subject matter of the subunit's meeting in advance, at the parent body's meeting. Wis. Stat. § 19.84(6).

2. Public notice of all meetings (open and closed) must be noticed in the following manner:
  - a. As required by any other statute; and where a required Class II notice of a public hearing Wis. Stat. § 62.23(7)(d) before a committee of the Milwaukee Common Council was not provided, the committee's approval of a zoning change was held to be void. *Oliveira v. City of Milwaukee*, No. 98-2474 (Ct. App. 2000).
  - b. To the public; to those news media who have filed a written request for such notice; and to the official newspaper, or if none exists, to the news media most likely to give notice in the area.
3. Methods of providing notice
  - a. Direct Public Notice. Post in one or more public places or through sufficient newspaper publications.
  - b. Notice To The Media. Written or verbal notice to members of the news media.
4. Notice contents
  - a. Time
  - b. Date
  - c. Place
  - d. Subject Matter:
    - (1) 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. For example, the Village Board for the Village of West Milwaukee was not required to provide notice of the names of the candidates for Commission vacancies on the Civil Service and Zoning Board of Appeals even if the Village Board knew that relatives of trustees were candidates for the vacancies. *State ex rel. Blonien v. Carl*, No. 98-0911 (Ct. App. 1999) (unpublished decision).

(2) Rule of Thumb for Drafting Meeting Notices: Would a citizen interested in a specific subject be aware from the meeting notice that the subject might be discussed? *Wisconsin Open Meetings Law: A Compliance Guide*, Department of Justice (2009).

e. Matters intended for consideration at a closed session.

5. Notice time lines

a. Generally at least 24 hours prior to the commencement of the meeting. When calculating the 24 hour notice period, Wis. Stat. § 990.001 (4)(a) requires that Sundays and legal holidays shall be excluded.

b. In an emergency (where “good cause” is shown) at least 2 hours prior to the commencement of the meeting.

6. Public comment

1997 Wisconsin Act 123 amended the Open Meetings Law to permit public notice of 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). During a period of public comment, a governmental body may discuss any matter raised by the public. Wis. Stat. § 19.83(4).

a. The amendments do not require governmental bodies to designate a public comment period.

b. The amendments authorize only discussion and not other action by the governmental body. A governmental body should refrain from deliberating or taking action on items raised during public comment sessions and, if necessary, should place such matters on future agendas.

c. Governmental body members may not bring up items not specifically designated on the agenda under a period of public comment. This may be interpreted as an attempt to circumvent the notice requirements of the Open Meetings Law.

7. Separate notice

Separate notice of each meeting must be given to the public at a time and date reasonably proximate to the time and date of the meeting. Wis. Stat. § 19.84(4).

8. Sub-units of a parent body

Sub-units of a parent body, such as a committee, may meet during the meeting of the parent body during recess, or directly after such meeting to discuss or act on matters that were the subject of the meeting of the parent body without public notice required under Wis. Stat. § 19.84. However, the presiding officer of the parent body must announce the time, place and subject matter of the committee meeting in advance at the meeting of the parent body. Wis. Stat. § 19.85(6).

9. Compliance with notice

A governmental body is free to discuss any aspect of any subject identified in the public notice of the meeting, as well as issues reasonably related to that subject, but may not address any topics that are not reasonably related to the subject identified in the meeting notice. *State of Wisconsin ex rel. Brian L. Buswell v. Tomah Area School District*, 2007 WI 71, ¶ 34. (See VII. B). A body need not follow the agenda in the order listed on the meeting notice unless a particular agenda item has been noticed for a specific time. Nor is a body required to address every item contained in the meeting notice.

10. Dual meeting notices

Where a quorum of one governmental body regularly attends the meetings of another governmental body, and one or more of the members of the quorum is not also a member of the second governmental body, separate meeting notice must be given.

**D. Closed Session**

1. The right to close a meeting of a governmental body

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, Wis. Stat. § 19.85(1).

- 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. Even under Wis. Stat. § 19.85(1)(b), an employee cannot close a meeting.
  - (1) All meetings are open, unless the governmental body decides to invoke an exemption to the Open Meetings Law.
  - (2) If the governmental body invokes an exemption to the Open Meetings Law, then and only then, does an employee have the right to:
    - (a) Specific, individual notice of the meeting; and
    - (b) The right to require that the governmental body conduct the meeting as an open session.
  - (3) Not all disciplinary meetings of a governmental body require notice to the employee, only those meetings at which evidence is presented or a final decision is made.

Actual notice to an employee and the right to demand that the meeting be held in open session is only required if there is an “evidentiary hearing” (the taking of testimony and the receipt of evidence) or final action is taken in closed session. *Epping v. City of Neillsville Common Council*, 218 Wis. 2d 516 (Ct. App. 1998).

## 2. Requirements

- a. The chief presiding officer must announce to all present the intention of going into a closed session. Wis. Stat. § 19.85(1).
- b. The chief presiding officer must state the specific exemption or exemptions, by number, which allow such a closed meeting.
- c. A motion, with a second and roll call vote as to closing the session, must be recorded by the custodian of records.

- d. Majority vote required.
- e. If notice has been given of the intent to reconvene into open session in the announcement for the meeting at which the closed session is held, the chief presiding officer should also announce the estimated time at which the reconvened open session will commence.

### 3. Exemptions to the Open Meetings Law

A closed session may be held for any of the following purposes:

- a. 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).
- b. 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).
- c. 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).
- d. Crime Prevention. Considering specific applications of probation or parole or considering strategy for crime detection or prevention. Wis. Stat. § 19.85(1)(d).
- e. 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).

- (1) The burden is on the governmental body to show that competitive or bargaining interests require closure. *State ex rel. Citizens for Resp. Dev. v. City of Milton*, 2007 WI App. 114.

(2) Once a tentative agreement has been entered into with a bargaining unit, the governmental body must conduct its vote as well as its deliberations leading up to the vote on final ratification in open session. 81 Op. Att’y Gen. 139 (1994).

- f. 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).
- g. 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).

NOTE: 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. Wis. Stat. § 19.85 (1).

4. Reconvening into open session

No governmental body may commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within 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).

5. Closed session minutes

- a. The Open Meetings Law provides that minutes of all meetings (open and closed) must be prepared. Wis. Stat. § 19.88(3).

- b. In closed session, it is common practice to be specific; however, there is no statutory requirement that the minutes be specific.
- c. All actions must be preserved, recorded and open to public inspection.

6. Taking action in closed session

- a. 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.
- b. 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.
  - (3) 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.

**E. Miscellaneous Provisions**

1. Exclusion of a member of a governmental body

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.

2. Secret ballots, votes and records

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. Record-keeping.

The open meetings law requires a governmental body to create and preserve a record of all motions and roll-call votes at its meetings. Wis. Stat. § 19.88(3). This requirement applies to both open and closed sessions. Written minutes are the most common method used to comply with the requirement, but they are not the only permissible method. Other methods, such as tape recording, are also permitted.

Wis. Stat. § 19.88(3) does not indicate how detailed the record of motions and votes should be. However, in light of the general legislative policy of the open meetings law that "the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business," Wis. Stat. § 19.81(1), it seems clear that a governmental body's records should provide the public with a reasonably intelligible description of the essential substantive elements of every motion made, who initiated and seconded the motion, the outcome of any vote on the motion, and, if a roll-call vote, how each member voted.

*Wisconsin Open Meetings Law: A Compliance Guide*, Department of Justice (2010).

3. Use of equipment in open session

The governmental body 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.

**F. Enforcement and Penalties**

1. Enforcement

Violations of the Open Meetings Law may be prosecuted by:

- a. The Attorney General. Wis. Stat. § 19.97(1);
- b. The District Attorney upon the verified complaint of any person, Wis. Stat. § 19.97(1); or
- c. The individual who filed the complaint if the District Attorney fails to commence an action within 20 days after receiving a complaint. Wis. Stat. § 19.97(4).

2. Penalties

Members of a governmental body who knowingly attend meetings in violation of the Open Meetings Law or otherwise violate the Open Meetings Law by some act or omission are subject to a forfeiture of between \$25 and \$300 for each violation. This is a personal liability not reimbursable by the municipality or state agency. Wis. Stat. § 19.96.

- a. “Knowingly includes positive knowledge and an awareness of the high probability of the existence of a violation. *State v. Swanson*, 92 Wis.2d 310 (1979).
- b. Even if a “knowing” violation has occurred, a private individual who prevails in an open meetings action may be awarded attorneys’ fees and costs in order to deter future violations unless “special circumstances” exist.
- c. No definition of “special circumstances” exists. However, a good faith mistake on the part of government does not amount to “special circumstances” and will not necessarily avoid an award of fees and costs.

d. No member is liable for attendance at an unlawful meeting if that member makes or votes in favor of a motion to prevent the violation from occurring. Wis. Stat. § 19.96.

3. Actions may be voided

Any action taken at a meeting held in violation of the Open Meetings Law is voidable if the public interest and enforcing provisions of the law is greater than the public interest in upholding the action. Wis. Stat. § 19.97(3).

#### IV. BOARD OFFICER DUTIES.

A. School District President

1. Responsibilities include:

a. Signing checks.

Section 120.15(1), Stats.:

The school district president of a common [ ] high school district shall:

\* \* \*

(1) Countersign all checks, share drafts or other drafts for disbursement of school district moneys.

b. Prosecuting and defending any action involving the district.

Section 120.15, Stats.:

The school district president of a common [ ] high school district shall:

\* \* \*

(2) Defend on behalf of the school district all actions brought against the school district.

(3) Prosecute, when authorized by an annual meeting or the school board, actions brought by the school district.

(4) Prosecute an action for the recovery of any forfeiture incurred under chs. 115 to 121 in which the school district is interested. If the school district president has incurred the forfeiture, such action shall be prosecuted by the school district treasurer. Of the net sum recovered under such action, one-half shall be paid into the school

district treasury and one-half to the county treasury for the benefit of the school fund.

- c. Chairing board meetings, including ensuring that the meeting minutes are recorded, approved and signed.

Section 120.15(5), Stats.:

The school district president of a common [ ] high school district shall:

\* \* \*

(5) Act as chairperson of school board meetings and see that minutes of the meetings are properly recorded, approved and signed. In the absence of the president, the vice president or, in the case of a 3-member board, another school board member selected by the school board, shall act as chairperson of school board meetings.

## B. School District Treasurer

### 1. Responsibilities include:

- a. Applying, receiving and disbursing school district funds along with suing for all money owed to the District.

Section 120.16(2), Stats.:

The school district treasurer of a common [ ] high school district shall:

\* \* \*

(2) Apply for, receive and sue for all money appropriated to or collected for the school district and disburse the same in accordance with this subsection and s. 66.0607 Disbursements from the school district treasury shall be made by the school district treasurer upon the written order of the school district clerk after proper vouchers have been filed with the school district clerk. Such disbursements shall be by order check, share draft or other draft and no order check, share draft or other draft is valid nor may it be released to the payee unless signed by the school district clerk and school district treasurer and countersigned by the school district president. In a school district having 5 or more school board members, another school board member may countersign such order checks, share draft or other draft in lieu of the school district president. No order check, share draft or other draft may be drawn for the payment of which money has not been appropriated according to law. The school district treasurer may receive money

raised in extracurricular activities. The school board may by resolution authorize the use of facsimile signatures as provided in s. 66.0607(3). A certified copy of the resolution shall be filed with the school district clerk and each public depository concerned.

b. Accounting for all money received and disbursed.

Section 120.16(3), Stats.:

The school district treasurer of a common [ ] high school district shall:

\* \* \*

(3) Enter in the treasurer's account books all money received and disbursed by the treasurer, specifying the source from which it was received, the person to whom it was paid and the object for which it was paid.

c. Presenting a written accounting at the annual meeting.

Section 120.16(4), Stats.:

The school district treasurer of a common [ ] high school district shall:

\* \* \*

(4) Present to the annual meeting a written statement of all money received and disbursed by the treasurer during the preceding year.

d. Promptly depositing all district funds upon receipt.

Section 120.16(5), Stats.:

The school district treasurer of a common [ ] high school district shall:

\* \* \*

(5) Immediately upon receipt, deposit the funds of the school district in the name of the school district in a public depository deposit designated by the school board under s. 120.12(7). Failure to comply with this subsection shall be prima facie grounds for removal from office. When such funds are so deposited, the school district treasurer and his or her bonders are not liable for losses as defined in s. 34.01(2). The interest derived from such funds shall be paid into the school district treasury.

e. Executing withdrawals of district funds as directed.

Section 120.16(6), Stats.:

The school district treasurer of a common [ ] high school district shall:

\* \* \*

(6) Withdraw funds of the school district deposited in savings or time deposits by written transfer order in accordance with this subsection and s. 66.0607. Written transfer orders may be executed only for the purpose of transferring deposits to an authorized deposit of the school district in the same or another authorized public depository. The transfer shall be made directly by the public depository from which the withdrawal is made. No transfer order is valid unless signed by the school district clerk and school district treasurer and countersigned by the school district president. In a school district having 5 or more school board members, another school board member may countersign transfer orders in lieu of the school district president. The school board may, by resolution, authorize the use of facsimile signatures as provided in s. 66.0607(3). A certified copy of the resolution shall be filed with the school district clerk and each public depository concerned.

C. School District Clerk

1. Responsibilities include:

a. Recording the proceedings of all meetings.

Section 120.17(2), Stats.:

The school district clerk of a common [ ] high school district shall:

\* \* \*

(2) Act as clerk and record the proceedings of annual and special meetings.

b. Keeping the record book up to date.

Section 120.17(4), Stats.:

The school district clerk of a common [ ] high school district shall:

\* \* \*

(3) Enter in the record book provided by the school board the minutes of its meetings, orders, resolutions and other proceedings.

(4) Enter in the record book copies of all the school district clerk's reports to the municipal clerks and the certificate of the proceedings of a meeting returned by a temporary school district clerk.

c. Reporting the contact information of board members in the district.

Section 120.17(1), Stats.:

The school district clerk of a common [ ] high school district shall:

\* \* \*

(1) Report the name and post-office address of each officer of the school district, within 10 days after the election or appointment of the officer, to the clerk and treasurer of each municipality having territory within the school district.

d. Furnishing teachers with copies of contracts.

Section 120.17(6), Stats.:

The school district clerk of a common [ ] high school district shall:

\* \* \*

(6) Furnish each teacher with a copy of the contract between the teacher and the school board.

e. Delivery of annual statement to municipal clerk addressing taxes.

Section 120.17(7), Stats.:

The school district clerk of a common [ ] high school district shall:

\* \* \*

(7)(a) Annually on or before November 6, deliver to the clerk of each municipality having territory within the school district a certified statement showing that proportion of the amount of taxes voted and not before reported, and that proportion of the amount of tax to be collected in such year, if any, for the annual payment of

any loan to be assessed on that part of the school district territory lying within the municipality. Such proportion shall be determined from the full values certified to the school district clerk under s. 121.06(2).

f. Notifying postmaster of name, location and number of new school.

Section 120.17(8), Stats.:

The school district clerk of a common [ ] high school district shall:

\* \* \*

(8) Within 5 days after receipt of notification from the school board of the name of a new school, notify the proper postmaster of the name and location of the school and the number of the school district. If a school is not located on a mail route, the school district clerk shall furnish the postmaster with the names of persons to whom the mail for the school may be delivered. The school board may rent a lock box at school district expense for each school not on a mail route. The school district clerk shall notify the postmaster of school vacations and shall direct what disposition shall be made of the school mail during vacations.

g. Filing the annual school district report.

Section 120.18, Stats.:

(1) Annually at such time as the department prescribes but after the end of the school year and no later than September 1, the school district clerk of a common [ ] high school district shall file a verified annual school district report with the department, on forms supplied by the department. The school district clerk shall send a copy of the annual school district report to the school district administrator and shall notify the person in charge of each school in the school district that the reports are on file in the school district clerk's office. Accounting and financial information provided by the school district in the annual report shall be prepared from the system of accounts prescribed by the department. If the school district clerk neglects to make the annual report, the clerk shall be liable to the school district for the whole amount of money lost by the school district because of such neglect. The annual report shall contain:

(a) The school count, showing the numbers and ages of persons who are at least 4 years old but not yet 14 years old and who reside in a school district operating only

elementary grades, showing the number and ages of persons between the ages of 14 and 20 residing in a union high school district and showing the number and ages of persons between the ages of 4 and 20 residing in any other school district. Children cared for at a charitable or penal institution of this state may not be included in the report. The school district clerk may employ a competent person to take the school count.

(b) The number of children between the ages of 4 and 20 taught in the schools of the school district during the school year.

(c) The number of children attending the schools of the school district during the school year under the age of 4 and over the age of 20 years.

(d) The number of school days taught, including holidays, and the number of hours of direct pupil instruction provided in each school, by teachers legally qualified to teach.

(e) The names of all teachers employed by the school district during the school year; the number of days taught by each, including holidays; the monthly salary paid to each; and the time allowed each teacher for attendance at an educational convention for which no wages were deducted.

(f) The amount of money received during the school year, designating separately the amount received from the school fund income, from taxes levied by the county board, from taxes voted by the school district and from all other sources and the manner in which such money was expended, showing separately the expenditure of school money received from the state.

(g) The amount and character of school district debts.

(gm) Payroll and related benefit costs for all school district employees in the previous school year. Costs for represented employees shall be based upon the costs of any collective bargaining agreements covering such employees for the previous school year. If, as of the time specified by the department for filing the report, the school district has not entered into a collective bargaining agreement for any portion of the previous school year with the recognized or certified representative of any of its employees and the school district and the representative have been required to submit final offers under s. 111.70(4)(cm)6. Increased costs limited to the lower of the school district's offer or the representative's offer shall be reflected in the report. The school district shall amend the annual report to reflect any change in such costs as a result of any award or settlement under s. 111.70(4)(cm)6. between the date

of filing the report and October 1. Any such amendment shall be concurred in by the certified public accountant licensed or certified under ch. 442 certifying the school district audit.

(i) A description of the educational technology used by the school district, including the uses made of the technology, the cost of the technology, and the number of persons using or served by the technology. In this paragraph, "educational technology" has the meaning given in s. 16.99(3).

(s) Such other facts and statistics in relation to the schools, public or private, in the school district as the department requires.

(3) The state superintendent may promulgate rules to implement and administer this section.

**D. Election of School Board Members; Oath of Office (Wis. Stats. §§ 120.06; 19.01).**

1. **Wis. Stat. § 120.06(4).** School board members elected for regular or unexpired terms shall take office, provided they have taken and filed the official oath, on the 4th Monday in April.
2. **Wis. Stat. § 120.06(10).** On or prior to the day provided for taking office, a school board member shall take and file the official oath.
3. **Wis. Stat. § 19.01.**

(1) Every official oath required by article IV, section 28, of the constitution or by any statute shall be in writing, subscribed and sworn to and except as provided otherwise by s. 757.02 and SCR 40.15, shall be in substantially the following form:

State of Wisconsin,

County of ....

I, the undersigned, who have been elected (or appointed) to the office of ....., but have not yet entered upon the duties thereof, swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will faithfully discharge the duties of said office to the best of my ability. So help me God.

.... ..,

Subscribed and sworn to before me this .... day of .....,  
.... (year)

...(Signature)....,

(1m) Form of oral oath. If it is desired to administer the official oath orally in addition to the written oath prescribed above, it shall be in substantially the following form:

I, ....., swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will faithfully and impartially discharge the duties of the office of .... to the best of my ability. So help me God.

**E. School Board Officer-Specific Responsibilities:**

**1. President.**

a. Wis. Stat. § 120.15. The school district president of a common or union high school district shall:

(1) Countersign all checks, share drafts or other drafts for disbursement of school district moneys.

(2) Defend on behalf of the school district all actions brought against the school district.

(3) Prosecute, when authorized by an annual meeting or the school board, actions brought by the school district.

(4) Prosecute an action for the recovery of any forfeiture incurred under chs. 115 to 121 in which the school district is interested. . . .

(5) Act as chairperson of school board meetings and see that minutes of the meetings are properly recorded, approved and signed. . . .

- b. Often, the President is also responsible for:
  - (1) Serving as the District/Board spokesperson.
  - (2) Filling a Board vacancy if the vacancy persists for more than sixty (60) days.
  - (3) Setting the Board meeting agenda.
  - (4) Assigning Board members to committees.
  - (5) Monitoring Board member behavior to ensure that it is consistent with laws, regulations and the Board's own rules and policies.
  - (6) Compiling and facilitating the Board's summative evaluation of the Superintendent/Superintendent.
- 2. **Vice president (Wis. Stat. § 120.11(1); § 120.15(5)).** The Vice President primarily performs certain duties of the president when the president is absent.
- 3. **Clerk (Wis. Stat. § 120.17).** The school district clerk of a common or union high school district shall:
  - (1) Report the name and post-office address of each officer of the school district, within 10 days after the election or appointment of the officer, to the clerk and treasurer of each municipality having territory within the school district.
  - (2) Act as clerk and record the proceedings of annual and special meetings.
  - (3) Enter in the record book provided by the school board the minutes of its meetings, orders, resolutions and other proceedings.
  - (4) Enter in the record book copies of all the school district clerk's reports to the municipal clerks and the certificate of the proceedings of a meeting returned by a temporary school district clerk.
  - (5) Draw orders on the school district treasurer as directed by an annual or special meeting or the school board and record all orders drawn on the school district treasurer.

(7) Furnish each teacher with a copy of the contract between the teacher and the school board.

(8)

(a) Annually on or before November 10, deliver to the clerk of each municipality having territory within the school district a certified statement showing that proportion of the amount of taxes voted and not before reported, and that proportion of the amount of tax to be collected in such year, if any, for the annual payment of any loan to be assessed on that part of the school district territory lying within the municipality. . . .

(bm) If the equalized valuation of that part of a municipality lying within a school district is reduced due to the removal of property from the tax roll because the imposition of the property tax on that property is found unconstitutional, the school district clerk shall notify the supervisor of equalization. . . .

(c) If an order of school district reorganization under ch. 117 is effective after January 1 and before July 1 of any year, the school district clerks of the school districts affected shall prepare the statement under par. (a) based on the equalized valuation of the school districts as altered by the order and related to the equalized valuation of the year upon which the tax levy is required to be made. . . .

(9) Within 5 days after receipt of notification from the school board of the name of a new school, notify the proper postmaster of the name and location of the school and the number of the school district. . . .

(10) Have authority to administer the oath of office to school board members.

4. **Treasurer (Wis. Stat. § 120.16).** The school district treasurer of a common or union high school district shall:

- (2) Apply for, receive and sue for all money appropriated to or collected for the school district and disburse the same in accordance with this subsection and s. 66.0607. . . .

- (3) Enter in the treasurer's account books all money received and disbursed by the treasurer, specifying the source from which it was received, the person to whom it was paid and the object for which it was paid.

- (4) Present to the annual meeting a written statement of all money received and disbursed by the treasurer during the preceding year.

- (5) Immediately upon receipt, deposit the funds of the school district in the name of the school district in a public depository deposit designated by the school board . . . .

- (6) Withdraw funds of the school district deposited in savings or time deposits . . . .

## **V. THE SCHOOL BOARD MEETING**

### **A. The "School Board Packet":**

1. The school board packet can include both open and closed session materials.
2. Distribution through a board packet can change the "record" status of a document.
3. Including closed session materials does not mean that they are now open and available for inspection (distributing them in open session, however, does mean that).
4. Pupil record information is not necessarily appropriate to share with the school board, even if it is distributed in confidence (e.g., the "legitimate educational interests, including safety interests" standard).

### **B. The Meeting Notice/Agenda**

1. Subject matter requirement.

2. Informing the “boilerplate” provisions.
3. Contingency planning for meeting location.
4. Closed session notices.

**C. Minutes of the Meeting:**

1. What must be in the minutes?
2. What is a good idea to include in minutes?
3. What is a really bad idea to include in minutes?
4. Closed and open session minutes.
5. Publishing proceedings of the school board.

**D. The Expulsion Hearing:**

1. The public notice should include Wis. Stat. § 19.85(1)(f) and 118.125.
2. The statutory language regarding the parents/pupils right to demand a closed session creates false impressions. An expulsion hearing cannot be in open session. Ever.
3. The 5 day notice rule does not include the day sent, but does include the day of hearing.
4. The hearing notice can be sent by U.S. Mail. I send it both First Class and Certified, and then to both the pupil and the parents/guardians.
5. You can notify the person identified as the guardian, but notify any parents whose parental rights have not been terminated, no matter where they live.
6. Pupil records are confidential unless a specific exception says otherwise.
7. School officials are members of the community and know things about kids like any other member of the community. However, people (especially parents) will presume that school officials are

breaching pupil record confidentiality any time they comment on or gossip about a student.

8. School officials can sometimes be held liable for breaching pupil record confidentiality even in circumstances where it appears that discussing the pupil openly was demanded by the parents.
9. Pupil records are, indeed, a variety of public records. The rules of handling requests for those records are completely different, however, whether the subject is fees for production, who has access, whether and how they are redacted, and a host of other issues.
10. Records that are prepared for administrator, staff, or faculty members' personal use are not pupil records. Records are almost never prepared solely for personal use.
11. Memorandum prepared by a teacher concerning a student's classroom behavior.
12. Video of pupil going in and out of bathroom where a bomb scare note was found.
13. Grades of students that are placed on the Honor Roll or Dean's List.