



**PORTLAND SCHOOL DISTRICT 1J
BOARD OF EDUCATION
PUBLIC MEETING NOTICE**

The Board of Directors of Portland Public

Chinese

Russian

Somali

Hadii aad u baahantahay turjubaan, ama in la'guu turjubaano waxyaabaha looga hadlaayo kulanka dadweynaha iyo gudiga sare ee iskoolada Portland, fadlan la xariir:

Spanish

Aviso para la reunión pública de la Mesa Directiva del Distrito Escolar de Portland. La reunión se llevará a cabo en un lugar accesible para personas con discapacidad. Las personas que asistirán a esta reunión y necesiten interpretación favor de comunicarse por lo menos con 48 horas de anterioridad a fecha de la reunión, para poder hacer los arreglos necesarios. Personas que desean testificar ante la Mesa Directiva deben apuntarse en la lista para los comentarios públicos antes de que inicie la reunión.

Vietnamese

*Lời Phỏng vấn của Ban Điều Hành Giáo Dục
Đây là thông cáo về buổi họp công cộng của Ban Điều Hành Giáo Dục Sở Học Chánh Portland. Nếu quý vị cần thông dịch ngôn ngữ tin tức này, hoặc cần thông dịch viên trong buổi họp, xin liên hệ:*

Interpretation & Translation Services
(503) 916-3427

(1984).

C. Definition of “Meeting”.

A “meeting” is any convening of a quorum of a governing body which makes a decision or deliberates toward a decision on any matter. ORS 192.610(5).

1. Does this include social gatherings at which a quorum of members is present? As a general rule the answer is “no,” because it is the purpose of a meeting that triggers the law. Harris v. Nordquist, 96 Or App 19, 771 P2d 637 (1989). BUT if a quorum gathers together and starts deliberating on official business during the social gathering, a violation occurs. Attorney General Letter of Advice, 12/14/1988 (OP-6292).
2. Does this include purely informational meetings, goal setting sessions, or work sessions regarding public business? Yes. 38 Op Atty Gen 1471, 1474 (1977); Oregonian Publishing Co. v. Board of Parole, 95 Or App 501, 505-506, 769 P2d 795 (1989).
3. Does this include electronic communications among a quorum? Yes. ORS 192.670(1). There can be a problem with e-mail, particularly with “groups” and “reply all.”
4. Does this include training sessions on improving personal interaction among the governing body’s members? The Attorney General has opined that if the training session is carefully structured to avoid any discussion of official business, it is not covered.
5. The statute excludes from the definition of meeting any on-site inspection of any project or program, or the attendance of the members of a governing body at any national, regional, or state association to which the public body or the members belong. ORS 192.610(5).

D. Handy v. Lane County (Sequential Deliberations Among a Quorum is a Potential Violation).

In Handy v. Lane County, 274 OR 644, 362 P3d 867 (2015) rev. allowed, 358 Or 550 (2016), the court concluded that any private discussion by a quorum of a governing body of a decision that requires a vote of the governing body violates

evidence in the record as to the "meeting" included a series of e-mails and phone calls among the county administrator and the three members of the five-member Board of Commissioners who constituted the agenda team.

2. Holding. The court determined that "meet," as used in ORS 192.630(2),

many policy discussions can and frequently do evolve into decisions that require a vote. The court's decision indicates that the question turns on whether the topic could result in a decision and not on the timing of such discussions. If the topic is likely to involve or could lead to a future decision, then a governing body could get itself in trouble by serial discussions among a majority of its members. At some point it would seem that serial conversations would be too far apart in time and differ too greatly to be deliberations by a quorum on a decision. Unfortunately, as the dissent notes, "with unpredictable hindsight, a court can now conflate all the unwitting discussions together into one so-called 'sequential meeting.'" 274 Or App at 692.

5. Practice Tips.

A board member should avoid communications with his or her colleagues outside of a public meeting if it involves a topic that will or could reasonably be expected to come before the governing body for a decision.

Board members should avoid use of e-mail or texting to communicate about potential pending decisions because there is no way to control distribution once the member hits "send."

If e-mail is used, beware of the "forward," "reply," "forward all," and "reply all" buttons and review all e-mail strings before hitting "send."

When discussing business with a governing body colleague, remember with whom previously discussions have taken place regarding the matter and remind the colleague to be careful about with whom they discuss the same topic.

Review the public body policies to determine or clarify which decisions have to be made by the vote of a governing body. For example, a decision to disclose a public record does not require a vote of the governing body under the Public Records Law (the fact that he county decided to take the matter to the board of commissioners for a vote was the determinative factor in Handy).

Public body staff should be very careful not to become the conduit for communications among a quorum.

E. Public Meeting Requirements

1. **Location:** Meetings must be held within the geographic boundaries over which the governing body has jurisdiction, at the administrative headquarters of a public body, "or at the other nearest practical location." ORS 192.630(4). The only exceptions are training sessions at which no deliberations are held, joint meetings with other governing bodies, and

emergency meetings. Meetings cannot be held at any place which discriminates on the basis of race, creed, sex, sexual orientation, age, disability, or national origin. ORS 192.630(3).

2. **Conference calls.** Public meetings can be held by conference call. ORS 192.670. If the meeting is an executive session, however, the public body must make at least one place available for the public to listen to the conversation.
3. **Smoking prohibited.** Smoking is prohibited in a room “rented, leased or owned” by a public body where a public meeting is being held or will continue after a recess. ORS 192.710.
4. **Right to request interpreter.** An interpreter must be provided if one is requested by a hearing impaired person at least 48 hours in advance of the public meetings. ORS 192.630(5).
5. **No Public Right to Participate:** Under the Public Meetings Law, the right to attend does not include the right to participate.

The right to attend a public meeting does not include the right to disrupt or disturb a public meeting. Any person who fails to comply with reasonable rules of conduct or who causes a disturbance may be asked or required to leave, and upon failure to do so becomes a trespasser. State v. Marbet, 32 Or App 67, 573 P2d 736 (1978); July 13, 1983, Letter of Advice, OP-5468. Absent a present threat to disrupt the meeting, a person cannot, however, be excluded based on past behavior.

Although a presiding officer may place reasonable restrictions on the use of cameras, tape recorders, or other recording devices, the governing body may not issue a blanket prohibition against unobtrusive recording of a public meeting. 38 Op Atty Gen 50 (1976).

6. **Types of Meetings:** The Public Meetings Law provides for regular meetings, special meetings, emergency meetings, and executive sessions.

“Regular meetings” are the regularly scheduled meetings of the governing body.

“Special meetings” are ad hoc meetings called as needed. Special meetings may only be held with at least 24-hour advance notice to the governing body, the press, and the general public. ORS 192.640(3).

“Emergency meetings” are special meetings called with less than 24-hour notice. An “actual emergency” must exist and the minutes must explain why the nature of the emergency required a meeting with less

than 24 hours' notice. Finally, the governing body must give as much notice as is practicable under the circumstances.

of the meeting, but only when the governing body specifically prohibits disclosure to any media representative present.

1. Although members of the news media have the right to attend executive sessions, the statute does not give them the right of access to minutes or tapes of the session beyond that given to the general public. See ORS 192.650(2); 192.502(9).
2. What qualifies as a “news medium” has been a perennial problem. On April 18, 2016, Attorney General Ellen Rosenblum issued a formal opinion (Op-8291) on the topic. It is a significant opinion because it attempts to address what qualifies as a news medium in the age of electronic communication and because it modifies prior advice on the topic given in earlier opinions and the Attorney General’s Public Records and Meetings Manual § II.E.4 (2014). She concludes:

"Representatives of the news media" include news-gathering representatives (including employees, agents, and contractors) who have a formal affiliation with an institutional news medium.

"Specialty publications and broadcasts may qualify to attend (a change from prior advice that such media entities could only attend if they ordinarily report on the activities of the governing body).

Bloggers qualify *if* they represent an institutional news medium. This is determined based upon factors that "might include its business structure, the nature of its overall operations, regular public dissemination of the news, and similar factors that demonstrate that it is formally organized for the purposes of gathering and disseminating news."

3. Regulation of Attendance by the News Media. In Op-8291, Attorney-General Rosenblum also reconsidered advice in the manual regarding the ability of governing boards to regulate attendance by the news media. She concludes:

A governing body cannot cap attendance or limit the number of representatives of the new media that can attend.

The sole statutory justification for excluding a representative is if the representative or medium is a party to litigation with the public body.

4. Attorney/Client Privilege Issues. ORS 40.280 provides that voluntary disclosure does occur when the news media attends executive sessions or if the media discloses information from an executive session when they have been directed not to.

D. Calling Executive Sessions.

An executive session may be called during any appropriately noticed public meeting by announcing the specific provision under which it is being called. ORS 192.660(1). Executive sessions should be listed on the agenda by citing the correct provision if the governing body is aware at the time of agenda setting that an executive session will be called. If the only purpose of a public meeting is to consider a matter in executive session it must be so noticed. ORS 192.640.

E. No Final Decision.

A governing body may not make a final decision in executive session. ORS 192.660(6). In order to make a final decision, the Chair must continue the decision to a public meeting or call the executive session into open session. Preliminary consensus or informal decisions can be made in executive session as long as the formal decision is made in open session. If the meeting has been noticed solely as an executive session, however, the decision must be continued to a meeting noticed as a public session. If the governing body goes into executive session at the end of an open session, but reasonably anticipates returning to open session to make a decision, that intent should be stated at the time that the meeting is called into executive session to put persons on notice that a decision in open session could be made.

F. Penalties.

In addition to the general Public Meetings Law remedy provisions discussed above, ORS 192.685 allows potential violations of the executive session law to be made to the Oregon Ethics Commission (“OEC”). The OEC is empowered to investigate and penalize such violations in the same manner as a violation of the Code of Ethics, except that the civil penalty is limited to \$1000. ORS 244.350(2)(a). A civil penalty may not be imposed, however, if the governing body was acting on advice of legal counsel. ORS 244.350(2)(b).

G. Potential Liability for Disclosing Executive Session Information.

client and damage the Public Body's legal case.

2. Potential Employee Lawsuits. Employees have a liberty interest in their professional reputations. Disclosure of confidential personnel matters outside of executive session can give an employee a claim against the District.
3. Unfair Labor Practices. Discussion of confidential labor negotiation information outside of executive session can provide the basis for an unfair labor practice ("ULP"). The Public Employees Collective Bargaining Act is very strict about how communications can occur