

Personnel Files & School Committee Meetings



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Today's Topics



Personnel Files



School Committee
Meetings

PERSONNEL FILES

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Mass.
General
Laws
Chapter
149,
Section
52C

- A personnel record is a record that identifies an employee to the extent that the record is used or has been used or may affect or be used relative to that employee's qualification for employment, promotion, transfer, additional compensation or disciplinary action.

Personnel Records Include:

- Name
- Address
- Date of birth
- Job title and description
- Rate of pay and any other compensation paid to the employee
- Starting date of employment
- Job Application, resumes
- Performance evaluations
- Warnings and discipline
- Waivers and agreements signed by the employee
- Probationary period
- Dated termination notices

7 The Following Are Not Maintained in the Employee's Personnel File



CORI RECORDS



I-9 RECORDS



MEDICAL RECORDS
(MAINTAIN IN A
SEPARATE MEDICAL FILE)

8 The Following Are Not Maintained in the Employee's Personnel File

Grievances filed by the employee

Complaints about another employee

Information of a personal nature about a person other than the employee if disclosure would constitute a clearly unwarranted invasion of such other person's privacy

Personnel Files: What's In? What's Out?

In	Out
<ul style="list-style-type: none"> ▪ Hiring process documents <ul style="list-style-type: none"> ▪ Application, résumé, transcripts ▪ Offer letter ▪ Receipt for handbook 	<ul style="list-style-type: none"> ▪ Unsupportable opinions <ul style="list-style-type: none"> ▪ Margin notes on resume: (“he’s too old”, “he’s too fat”, etc.)
<ul style="list-style-type: none"> ▪ Payroll Records 	<ul style="list-style-type: none"> ▪ Documents related to a legal case (kept in a separate litigation file)
<ul style="list-style-type: none"> ▪ Performance evaluations 	<ul style="list-style-type: none"> ▪ Grievance documents (kept in a separate grievance file with limited access)
<ul style="list-style-type: none"> ▪ Separation documents 	<ul style="list-style-type: none"> ▪ CORI Reports (kept in a separate file with limited access)
<ul style="list-style-type: none"> ▪ Benefits information 	<ul style="list-style-type: none"> ▪ I-9 Forms (kept in a separate file with limited access)
<ul style="list-style-type: none"> ▪ Wage/salary administration documents <ul style="list-style-type: none"> ▪ Job description ▪ Compensation history and recommendations 	<ul style="list-style-type: none"> ▪ Medical data (kept in a separate file with limited access) <ul style="list-style-type: none"> ▪ Medical records ▪ Lab reports ▪ Drug screening records ▪ Health and Life insurance application forms ▪ WC injury reports ▪ Any other form or document that contains medical information
<ul style="list-style-type: none"> ▪ Employee relations documents <ul style="list-style-type: none"> ▪ Discipline (warnings, reprimands, suspensions, discharge) ▪ Commendations ▪ Report of coaching session 	

A central storage of files:

Helps with consistent application of legal requirements and internal policy

Enables compliance with the law and policy regarding the confidentiality of files

Designate one or more specific individuals as the keeper of the files

Storing Personnel Records

Notice Requirement

An employer shall...

- Notify an employee;
- Within 10 days;
- Of the employer placing in the employee's personnel record any information to the extent that the information is, has been, or may be used to negatively affect the employee's qualification for employment, promotion, transfer, additional compensation, or the possibility that the employee will be subject to disciplinary action.

Notice Requirement (cont.)

Examples of Documents that Trigger Notice Requirement:

- Documents that address performance deficiencies
- Documents that address attendance issues
- Documents that address improper workplace conduct

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Request to Review Personnel Files

- Upon written request from the employee, the employer must provide the employee with an opportunity to review the file within 5 business days of the request during normal business hours



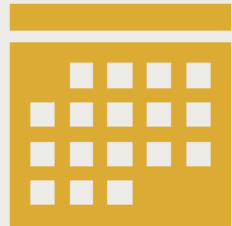
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Request for Copy of Personnel File

- The employer must provide a copy of the employee's personnel file within 5 business days of a written request from the employee.



15 Limitation on the Number of Requests Per Year from the Employee



The Employer is not required to permit the review of the personnel records by the employee on more than two separate occasions in the same calendar year.



However, if the employer places negative information in the file, the employee can review the file and that review does not count toward the two reviews per calendar year limit.

16 Disagreement with Information in a Personnel File



If there is a disagreement with the information in a personnel file, removal or correction may be mutually agreed upon by the employer and employee.



If there is no mutual agreement, the employee may submit a written statement explaining the employee's position which shall become part of the employee's personnel file.

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Retention



IN WRITING



20 YEARS AFTER TERMINATION OF
EMPLOYMENT
(SEE MUNICIPAL RECORDS RETENTION
SCHEDULE)

Destruction of Records

- Remember: **No municipal government records may be destroyed without authorization from the Supervisor of Records (unless the records are purely for administrative use).**
- Applications for destruction (or scanning and destruction) are available on the Secretary of the Commonwealth's website at <http://www.sec.state.ma.us/>





School Committee
Meetings

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Topics



POSTING AND
ACCESSIBILITY



QUORUM AND REMOTE
PARTICIPATION



MINUTES



Posting Requirements

ALL MEETINGS OF
A QUORUM OF A
PUBLIC BODY
MUST BE POSTED.

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What is a Meeting?

- A deliberation by a public body (school committee) with respect to any matter within the body's jurisdiction.



Deliberation



**Oral, written or email
communications**



On public business



**Between or among a
quorum of the school
committee**

Quorum: Majority of members
Subcommittees: Are included in
definition of public body (Any
multiple-member body created to
advise or make recommendations
to a public body)

A Gathering is Not a Meeting if:

- **Members Do Not Deliberate & the gathering is:**
 - An **on-site inspection** of a project or program
 - A **public or private gathering**, including a conference or training program or a media, social, or other event
 - The attendance by a quorum at a **meeting of another public body** that complied with open meeting law if the visiting members communicate only by open participation in the meeting on those matters discussed by the host body
 - A meeting of a quasi-judicial board or commission **held for the sole purpose of making a decision required in an adjudicatory proceeding** brought before it
 - A session of a **town meeting**

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Special Exclusions



Distributing meeting agenda



Distributing schedule information



Distributing reports or documents that may be discussed at the meeting



Deciding scheduling

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Posting Requirements



48 hours prior to meeting

Excluding Saturdays, Sundays & legal holidays
Emergency Exception: sudden, generally unexpected occurrence or set of circumstances demanding immediate action. Post as soon as reasonably possible.



Conspicuous, legible, & easily-understandable format

Posting Placement

- File with the municipal clerk(s) who post where conspicuously visible to the public **at all hours** inside or on clerk's office's building.

**NOTE: Watch out for limited hours
for the Clerk's office**

Posting Placement

- For Regional School Districts, meeting notices must be filed and posted in the same manner as local public bodies in each of the communities within the district.
- As an alternative method, a regional school committee may post a meeting notice on its website. It must file and post notice of the website address as well as directions on how to locate notices on the website in each of the municipalities within the district. A copy of the notice must be filed and kept by the Chair or the Chair's designee.

What if the Website goes down?

- Where the school committee or municipality has adopted the website as the official method of posting notices, it must make every effort to ensure that the website is accessible at all hours. If it becomes inaccessible within 48 hours of a meeting, not including Saturdays, Sundays or legal holidays, the website must be restored within 6 business hours of the discovery. If it is not restored within 6 business hours, the public body must re-post the meeting to another date and time with at least 48 hours notice (excluding Saturdays, Sundays, and legal holidays).

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Website Accessibility

- Remember that the website must be accessible to individuals with disabilities, including individuals who use screen readers.



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Notice Must Include



DATE & TIME OF THE MEETING AND OF THE POSTING



PLACE WHERE THE MEETING WILL BE HELD (INCLUDE STREET ADDRESS, ROOM LOCATION, ETC.)



TOPICS THE CHAIR ANTICIPATES DISCUSSING WITH SUFFICIENT SPECIFICITY TO REASONABLY ADVISE THE PUBLIC OF THE ISSUES TO BE DISCUSSED AT THE MEETING

Accessibility



MEETINGS OF THE
COMMITTEE MUST BE
ACCESSIBLE TO INDIVIDUALS
WITH DISABILITIES



LOCATIONS MUST BE
WHEELCHAIR ACCESSIBLE



SIGN LANGUAGE
INTERPRETERS FOR THE DEAF
OR HEARING IMPAIRED MUST
BE PROVIDED SUBJECT TO
REASONABLE NOTICE

Quorum & Remote Participation

34 Quorum

A quorum is a majority of the members of the full school committee or a majority of the members of a subcommittee.

Remember: for purposes of collective bargaining, the full school committee has one additional member – the municipal representative who may attend and vote on matters regarding collective bargaining.



Must have been adopted by the Board of Selectmen/Mayor/City Council depending on the municipality or if the school committee is regional, by vote of the regional school committee.



A member may participate remotely only if physical attendance would be unreasonably difficult.

35 Remote Participation

36 Minimum Requirements for Remote Participation:

Quorum of the Committee is present at the meeting

Member participating remotely and all persons present must be clearly audible to each other

All votes taken must be by roll call and recorded in the minutes by roll call.

The member participating remotely may vote.

37 Procedures for Remote Participation:



The Chair must announce at the start of the meeting the name of the member who is participating remotely.



This must be recorded in the minutes.



At the start of an executive session, the member participating remotely must state that no other person is present or able to hear the discussion at the remote location.

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Technical Issues During the Meeting with Remote Participation

- If a technical difficulty arises, the Chair decides how to address the difficulty.
- If the member participating remotely is disconnected from the meeting, the minutes must note the time that the member was disconnected.



39 **At the start
of the Open
Meeting**

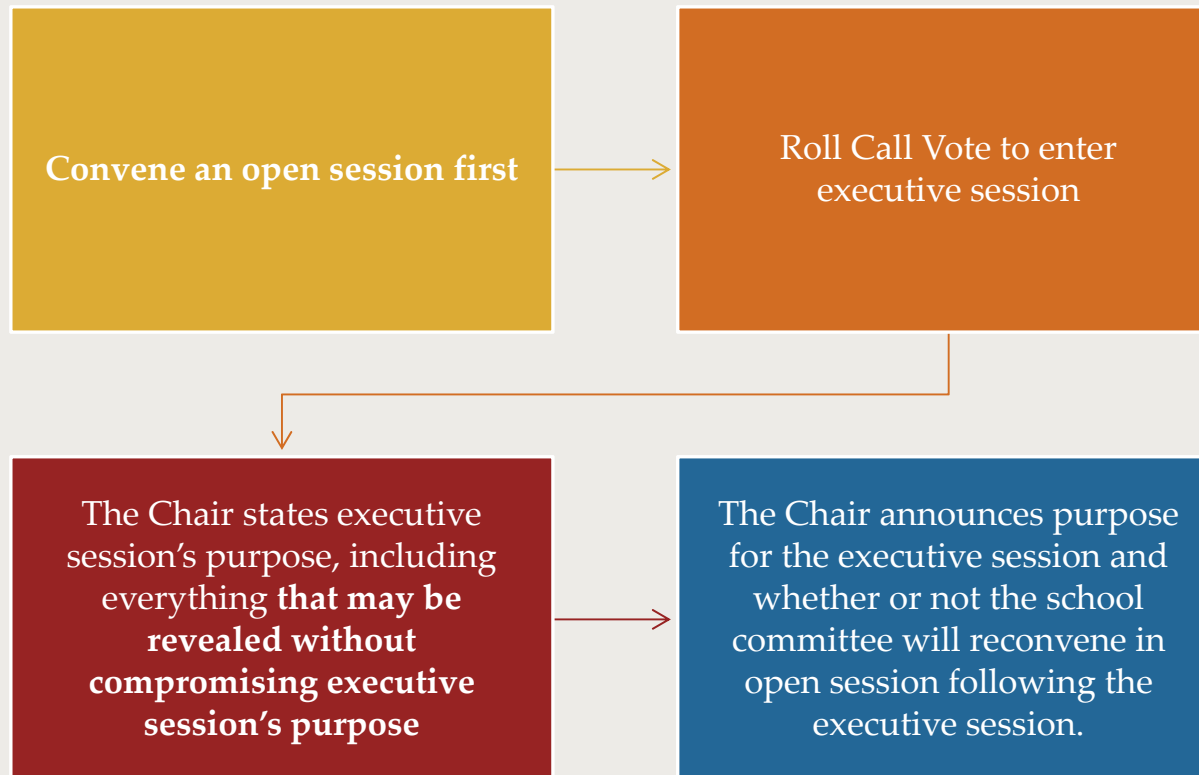
Recordings –

The Chair must inform attendees of any recordings. Record this in the minutes.

Remote participation –

The Chair must announce the name of any member participating remotely. Record this in the minutes.

Executive Session Procedure



41 The Open Session Minutes Must Include:



Motion for executive session including the purpose for the executive session



Roll call vote on the executive session motion



The Chair's statement announcing result of the vote, purpose for the executive session, and whether or not the committee will reconvene in open session following the executive session.

After the Executive Session

- Remember: all matters discussed during executive session are confidential
- The State Ethics law prohibits the disclosure of confidential information including matters discussed in executive session
 - M.G.L. c. 268A, § 23(c)

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Executive Session



Closed to the Public



10 Permissible purposes for Executive Session



See M.G.L. c. 30A §§ 21(a)

Executive Session Purpose (1)

- § 21(a)(1): To discuss an **individual**, public officer, employee or staff member's
 - Reputation
 - Character
 - Physical condition, or
 - Mental health
 - Discipline or dismissal, complaints or charges against the individual

Remember:

Open Session

- Professional competence

Executive Session*

- Reputation, character, physical condition, or mental health
- Discipline or dismissal, complaints or charges against the employee
- * At the individual's request, the meeting shall be held in open session.

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Individual's Rights in Executive Session under Purpose (1)

To receive **written notice**
at least 48 hours prior to
executive session

To be present

To speak on his/her own
behalf

To create an
independent record by
audio recording or
transcription

To have legal counsel or
a representative present
for purpose of advising
the individual (**not for
participation**)

47 Executive Session Purposes (2), (3) and (4)



§ 21(a)(2): Strategy session for negotiations, collective bargaining sessions, or contract negotiations with **non-union personnel**



§ 21(a)(3): Strategy session respecting **collective bargaining or litigation** if an open meeting will hurt the Committee's bargaining or litigating position **AND** the Chair so declares



§ 21(a)(4): **Security personnel** or device deployment or strategy

48 Executive Session Purposes (5), (6) and (7)



§ 21(a)(5): Investigate charges of criminal misconduct or consider filing criminal complaints



§ 21(a)(6): Consider purchase, exchange, lease or value of real estate if open discussion would hurt the Committee's negotiating position



§ 21(a)(7): Comply with any **general law**, special law, or federal grant-in-aid requirements

49 Executive Session Purposes (8), (9), (10)



§ 21(a)(8): Consider or interview applicants by a preliminary screening committee

If the Chair declares an open meeting will have a detrimental effect in obtaining qualified applicants

Not if applicants have already passed an initial screening committee



§ 21(a)(9): Meet or confer with mediator



§ 21(a)(10): Discuss trade secrets

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Taking Meeting Minutes

The Law

M.G.L. c. 30A, § 22(a)

“A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.”

The Law

OML Regulations (940 CMR 29.11)

- Minutes must be **created and approved** within the next three (3) meetings or within 30 days, whichever is later.



DATE, TIME,
LOCATION



MEMBERS
PRESENT/ABSENT



MEMBERS
PARTICIPATING
REMOTELY



SUMMARY OF THE
DISCUSSION ON
EACH AND EVERY
TOPIC



DECISIONS MADE
AND ACTIONS
TAKEN
(INCLUDING A
RECORD OF ALL
MOTIONS AND
ALL VOTES)



LIST OF ALL
DOCUMENTS
USED AT THE
MEETING AND
RETAIN A COPY
TO ATTACH TO
THE MINUTES

The Essentials

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Summary of Topic Discussions

- “Summary” vs. “Transcript”
- OML 2018-74
 - Minutes should contain “enough detail and accuracy so that a member of the public who did not attend the meeting could read the minutes and have a clear understanding of what occurred.”
 - “The minutes do not need to include every remark or opinion presented.”

Matching the Agenda Topics



Organize discussion summaries using the topics listed in the agenda



If the Committee does not deliberate on a topic listed in the agenda, state so in the minutes

Note-taking During Meetings

- Remember M.G.L. c. 30A, § 22(e)
 - “The minutes of any open session, *the notes, recordings or other materials used in the preparation of such minutes ... shall be public records in their entirety and not exempt from disclosure ...*”
 - § 22(f) – Even notes from executive sessions may eventually become public record after the purpose expires.

Responding to Requests for Minutes

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The Law

M.G.L. c. 30A, § 22(c)

“The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within **10 days.**”

10 days = 10 calendar days

Open Meeting Law vs. Public Records Law

- Open session minutes are public records
- However, the Open Meeting Law (“OML”) sets forth its own process for responding to requests for minutes
- Remember to follow the OML, *not* the public records law, when responding to requests for minutes
 - The OML does **not** permit you to charge a fee to produce minutes (the public records law does)
 - The OML requires a response within 10 **calendar** days (the public records law is 10 business days)

Who Responds to Requests for Minutes?

- Unlike the public records law, the OML doesn't specify *who* must respond to requests for minutes
- The Committee should designate one individual to be responsible for responding to requests for minutes. This could be:
 - The recording secretary
 - The school RAO
 - Another appropriate school administrator
- Direct all requests for minutes to the designated individual



After the Open Meeting

- Create minutes in a timely manner
- The individual designated to respond to requests for minutes must make minutes available within 10 calendar days of a request
- You may also be asked for:
 - **draft** minutes
 - copies of the documents and other exhibits used at the meeting

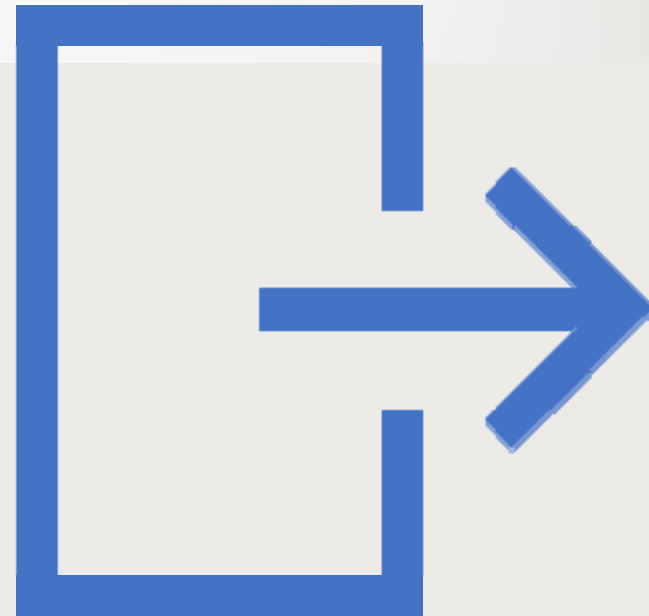
^ Both of these are public records unless an exemption applies



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Request for Open Session Minutes

- If minutes exist (draft or approved)
 - The designated individual must provide a copy to the requester within 10 **calendar** days of the request
 - Remember: under the Open Meeting Law, you cannot charge a fee



Request for Executive Session Minutes



If minutes exist (draft or approved):

The designated individual must check whether the Committee has voted to release the requested minutes



If the Committee has already voted to release the requested minutes, the designated individual must provide a copy to the requester within 10 calendar days.



If the Committee has not voted to release the requested minutes:

Within 10 calendar days, the designated individual must respond to the requester, explaining that the executive session minutes are exempt from disclosure and that the Committee will soon vote on whether to release them

At the Committee's next meeting or within 30 days (whichever is earlier), the Committee must review the requested minutes and determine whether they can be released

The designated individual must notify the requester of the outcome of the Committee's determination (and if the Committee voted to release, provide a copy of the minutes)

• **Caution:** the Committee may vote to release the minutes in redacted form only

I do not have to take minutes if the open session is video recorded and published on the municipal website.

True or
False?

Open session minutes must be published on the municipal website within 10 days.

Open session minutes must include the name of every person who addresses the Committee during public comment and a summary of each person's comments.

Scenario #1

You are the recording secretary for the Best School Committee. You recently attended an executive session where the Committee discussed a Step II grievance filed by the Best Association of Teachers (BAT), the union representing teachers. Carl Curious, a High School Social Studies teacher, was recently given a written warning for insubordination.

Mr. Curious comes to your office and says, "I'd like a copy of the executive session minutes from my Step II grievance hearing. As you know, I have a right to see them because I was the subject of the hearing."

- Can you give Mr. Curious the minutes?
- Can you give the minutes to Mr. Curious's Union representative?
- Why or why not?

Scenario #2

The Best School Committee voted in open session to change the bus routes for elementary students. More than 50 parents addressed the Committee during public comment and expressed their views on the change.

You are the Committee's recording secretary. Your notes from the meeting are difficult for others to read because you utilize short-hand and you have less-than perfect penmanship.

The next day after the meeting, a local reporter asks you for a copy of the meeting minutes.

You typically create typed draft minutes within 3-4 days after each meeting. You have not created draft minutes of the meeting yet.

The Best School Committee is not scheduled to meet for 14 days.

- How do you respond to the local reporter?

Scenario #3

Today, Friday, the Best School Committee Chair, Ms. Empire, just saw a social media posting stating that the Superintendent of the Best Public Schools was a finalist for the superintendent position in the Great Public Schools. The Great School Committee is meeting on Monday to vote on the appointment of a superintendent.

Ms. Empire calls you to post an emergency meeting for Monday.

- What do you tell Ms. Empire?

Scenario #4

The Best School Committee will be discussing changing the high school start time which will impact after-school athletics. The Committee usually meets in the school committee room which holds 50 people including the committee, superintendent, and you. Based on the postings on social media, hundreds of people are expected to attend the meeting.

- What should the Committee do?

Scenario #5

On Friday at 2:00 p.m., the Chair of the Best School Committee informs you that the Committee will be holding a meeting the following Tuesday at 6:00 p.m. and to she gives you the agenda items.

- What time does the post need to be up?

When you contact the Town Clerk to post the meeting, you discover that her office is closed and that everyone is out of the office for a professional development day.

- What can you do?

For
additional
information
on the
Open
Meeting
Law and
the Public
Records
Law

- **Open Meeting Law Guide:**
<https://www.mass.gov/files/documents/2017/09/25/2017%20Guide%20only.pdf>
- **A Guide to the Massachusetts Public Records Law:**
<http://www.sec.state.ma.us/pre/prepdf/A-Guide-to-Massachusetts-Public-Records-Law-2017-Edition.pdf>



Q & A

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