

# SERVANT OF THE ASSEMBLY

## THE ROLE AND RESPONSIBILITIES OF THE SCHOOL COMMITTEE CHAIR



Massachusetts Association of School Committees

EDUCATION LEADERSHIP ALLIANCE PROJECT 2009

## **SERVANT OF THE ASSEMBLY: THE ROLE AND RESPONSIBILITIES OF THE SCHOOL COMMITTEE CHAIR**

**Material for this publication was prepared by the following individuals:**

**Glenn Koocher**, MASC Executive Director

**Jenifer Handy**, MASC Communications Director, managing editor

**Kari MacCormack**, MASC Graphic Designer, design editor

**Patricia Correia**, MASC Field Director, consultant

**Michael Gilbert**, MASC Field Director, consultant

**James Hardy**, MASC Field Director, consultant

**Carol Grazio**, MASC Operations Director, consultant

**Stephen Finnegan, Esq.**, MASC General Counsel

**Additional assistance provided by:**

**Nanette Olsen**, MASC Member Services Coordinator

**Jennyfer Cabral**, MASC Operations Coordinator

Special thanks to **Joseph Santos**, a member of the Ludlow School Committee and the 2007 President of the Massachusetts Association of School Committees, whose service as a trainer of school committee chairs and technical assistance to the Association laid the groundwork for this publication.

This publication was prepared in collaboration with the Massachusetts Department of Elementary and Secondary Education's (DESE) Education Leadership Alliance Project.

# TABLE OF CONTENTS

Introduction .....	4
The Chair as a Leader .....	5
The Chair and the Superintendent. ....	6
The Chair and the School Committee Secretary .....	7
The Chair and the Legal Counsel .....	7
Meeting Management Strategies .....	8
Mistakes School Committee Members Should Avoid .....	9
Public Participation: Presentations, Public Hearings and Open Comment Period	
Public Participation .....	10
Public Hearings .....	11
Public Comment Period .....	12
Guidance for Large Public Meetings .....	13
Strategies that Work .....	14
Parliamentary Procedure	
What is Parliamentary Procedure .....	15
Parliamentary Procedure and the Law .....	16
Adapting Rules to Fit your Committee .....	16
Selecting the Chair .....	17
Convening the Meeting .....	18
Making Motions .....	18
Executive Session .....	19
Adjournment .....	19
Key Parliamentary Questions for Chairs .....	20
Ranking Motions (chart) .....	23
Non-Ranking Motions (chart) .....	24
School Committee Self Evaluation: The Role of the Chair	
Evaluation Process .....	26
Sample Self-Evaluation Form .....	28
School Committee Chair-Superintendent Partnership .....	35
Superintendent Evaluation Process	
Process .....	38
Adopting the Instrument .....	39
Goal Setting .....	39
Periodic Review .....	40
Formal Evaluation .....	41
Sample Superintendent Evaluation Form .....	42
Appendices	
Open Meeting Law Requirements: Legal Opinion .....	50
Public Records Requirements: Advisory Opinion .....	52
Superintendent Selection: The Role of the Chair .....	54
Open Meeting Law .....	58

# INTRODUCTION

The chair of the school committee is “the servant of the assembly.” So says the authoritative source, *Robert’s Rules of Order Newly Revised*, the prevailing rules “bible” of choice for more than 80 percent of America’s school committees—or school boards as they are known outside of Northern New England and Rhode Island. The chair of the school committee, as is every other presiding officer of deliberative bodies, public and private, is the servant of the assembly, not the master.

On a school committee, the chair has special responsibilities well beyond those of his or her colleagues. For example, the chair has the obligation to ensure that every person has access to the work and actions of the board. This includes not only the members of the school committee at the meeting table, but also those who are not present. Moreover, it is up to the chair to ensure that the public, including those in the hall, those watching or listening on cable, or those who cannot be present have full access to what the committee does. Similarly, the chair must aid the media as it follows and reports actions of the school committee to the public.

There are parliamentary, legal, and collegial responsibilities for the school committee’s “first among equals,” but equal he or she must be. This School Committee Chair’s Guide is designed to help explain these multifarious responsibilities and to offer insights into effective board leadership.

There is hardly a guide for successful school committee leadership that does not recognizing the effectiveness and leadership of the chair as a primary criterion of productive—and efficient—board operation and performance.

## **This handbook includes several sections:**

- The Chair as a Leader
- The Chair and the Superintendent
- The Chair and the Secretary
- The Chair and Legal Counsel
- Meetings and Meeting Management Strategies
- Parliamentary Procedure
- School Committee Self Evaluation and the Role of the Chair
- School Committee-Superintendent Relationship and Evaluation
- Open Meeting Law
- Chair’s Guide to Electing the Superintendent

It is the goal of this publication to explain that, while there are many formal, legal and technical aspects to the role of the chair, and no short supply of facts, rules, and procedures inherent in school committee work, strong personal and communications abilities, coupled with leadership skill are often the most important elements to winning the respect of colleagues, public, and press and building a strong base for everyone’s ultimate goal: that the board, public, and other stakeholders will focus on educating children in the most effective way and secure for the community and society the best prepared and successful students.

# THE CHAIR AS A LEADER

The school committee sits in trust for the entire community, and the chair represents the school committee before the district and its residents. With the expansion of local cable coverage, the chair is the most visible member of the committee for people watching the meetings at home.

As the leader of the school committee, the chair ensures that members base their work on the foundations of effective governance.

Some important guiding principles of effective governance include:

- **Selecting a good leader for the district.** The school committee employs a superintendent, develops a contract of employment and evaluates that chief executive officer annually. One of the most effective and widely recognized strategies for a school committee to improve student achievement and build public credibility is to recruit and retain a superior superintendent.

- **Establishing and clarifying the purpose of the school district through its mission and vision statements, policies, and actions at the meeting table.** As it does this, board members must focus their attention on several important concerns under the leadership of the chair. These include:

- focusing specifically on how the board advances student learning as part of its work.
- identifying strategies to promote organizational effectiveness of the school district through its policies and decisions.
- guiding the work of the school committee in fulfilling its mission as the guardian of the public treasury by establishing a budget that fulfills the district's goals and monitoring the financial operation during the year to ensure the integrity and clarity of fiscal management.
- establishing a strategic planning process or a process of periodic goal setting and assessment to promote the work of the district and guide the superintendent as the administrator of district policy.

- **Delegating responsibilities and authority.** While the chair might delegate authority to the superintendent, including development of the agenda or authorizing the administrator to act for the school committee, the thoughtful presiding officer may also delegate responsibilities to the other members of the school committee. Some chairs will recommend creating subcommittees for colleagues to chair or engage in discussion to expedite the work of the board. Several Massachusetts school committees grant special responsibilities to the vice chair, board secretary, or treasurer. On other occasions, the chair may request a colleague to fill in at an important meeting or community event.

- **Building a strong relationship with the community.** School committee meetings are not only a place for business, it is a venue for effective discussion and communication with the entire community. During public comment sessions and deliberations, the school committee has an invaluable opportunity to hear and understand community concerns and to base public policy and advocacy upon the interests of the district.

The school committee is obligated to represent the entire district. This means looking out for the interests of every part of a city or town and every community within a regional district. Special interest constituencies are important, but it is up to the chair to remind colleagues that they should respond to their best judgment based on the greater good.

- Monitoring school committee performance. The chair should oversee a periodic self-evaluation so that members can reflect on their work as a group and as individuals.
- Helping the school committee take responsibility for itself. Not only should the board govern itself, it should also take responsibility for what it does. That means compliance with the law, particularly statutes for open meetings and deliberations.

School committee chairs can be particularly effective in working with problem members of the board. There are many types of outlier members who make thoughtful debate, principled dissent, collaboration, unity and effective meetings difficult. There are no fixed rules for managing difficult people, but the effective and thoughtful chair could be an important mentor and guide to such potentially disruptive individuals. The superintendent can be very helpful, sharing experiences and recommendations. However, the superintendent reports to the school committee and the school committee does not report to the superintendent. Superintendents may be reluctant to intervene when interpersonal disputes, ideological differences, strongly held divergence of views, and local politics are in play.

## THE CHAIR AND THE SUPERINTENDENT

The relationship between the superintendent of schools and the school committee is a vital one. Stakeholders, and especially faculty members, watch carefully to ascertain the nature of the relationship. If the relationship is a strong one, others will be more inclined to support the work of the board and superintendent and collaborate effectively.

One well researched indicator of the high functioning chair and school committee is the relationship between the superintendent and chair. In fact, in successful districts, the superintendent and chair can actually mentor each other. While school committee members bring a wide array of skills and abilities to the table, the superintendent also brings professional depth to the role and the chair brings, among other skills, a deep understanding of the district. All may have keen insights into the local schools themselves.

The chair can also assist the superintendent in building a relationship with veteran and new members as they join the board, promote connections to the community, establish links to business and academic institutions, and identify local problems before they escalate.

The relationship between the superintendent and chair, as well as the school committee, is built into a good contract of employment and job description, processes for communications – including a critical incident policy for important events – and ongoing assessment.

## THE CHAIR & THE SCHOOL COMMITTEE SECRETARY

The school committee hires a “secretary to the school committee” who may also serve in a number of other capacities, most often as secretary to the superintendent. The committee secretary fulfills special functions and, in this capacity, works closely with the chair. These responsibilities may include:

- handling board communications before or after a meeting.
- taking and transcribing minutes in draft form.
- presenting minutes for school committee review and preserving official versions for the record.
- retaining permanent copies of school committee official documents.
- performing special duties for the chair or members as assigned.
- acting as the agent of the school committee if needed.

In many smaller districts the secretary is a regular employee of the district who serves the school committee in addition to other duties. The job description for the board secretary should include a carefully described protocol for differentiating the responsibilities to the school committee from those other duties.

## THE CHAIR AND LEGAL COUNSEL

The school committee retains legal counsel for several purposes including general education law, special education, employment and collective bargaining, bonding and construction matters, and special litigation. In some cases, school committees may retain one or more attorneys, including discrete legal counsel for each specialized area.

Legal counsel is indispensable to the superintendent, but the client of your board attorney is the school committee. In the case of a dispute between the school committee and the superintendent, the legal counsel represents the board.

On some occasions, legal counsel will be accountable to the superintendent rather than to the school committee. These instances include:

- matters in which confidential student information is involved, such as an appeal of a decision related to a special education placement for a particular student.
- confidential personnel matters, including teacher termination hearings.
- cases where management has been delegated to the superintendent.

In private or confidential matters, the superintendent may be unable to provide detailed information to the school committee.

Access to your attorney is a matter that each school committee should authorize with care. Often the attorney is a lawyer in private practice whom the school committee will retain on a fee basis. Unmanaged access to legal counsel can result in additional professional expenses. For that reason, someone must manage access to the attorney. MASC recommends that school committees direct members to go through the chair before receiving authorization to call the board attorney.

In cases where the school committee uses the city or town solicitor to represent them, the attorney may have a conflict over client loyalty. Many school committees that use municipal counsel work out protocols for the chair, superintendent, and municipal officers to deal with the potential for conflict.

# MEETING MANAGEMENT STRATEGIES

An efficient meeting is critical to performing the committee's work, building public credibility, and creating a healthy environment for future meetings and actions of the school committee. The school committee chair is the person, working collaboratively with the superintendent, to ensure that meetings are purposeful, efficient, and exemplary.

## Starting with the Agenda

The school committee may delegate the preparation of the agenda to the superintendent, but most boards work through a collaboration. Working together, the superintendent and school committee chair can develop the agenda that incorporates the important items for the meeting and ensure that all members have an opportunity to include items of interest to them.

An effective practice is for the chair and superintendent to meet and develop the agenda together. Many school committees allow members to request items for the agenda by notifying the chair ahead of time.

- The agenda is the property of the board. Setting the agenda is formally the responsibility of the chair who represents and serves the membership. If a member wants an item on the agenda and is not successful at placing it before the board, that member may ask the majority of those present to add it, despite objections of the chair or the superintendent.

A good meeting agenda will include a range of items, including matters to be discussed, outcomes anticipated, and next steps (if appropriate). Outcomes do not identify the actual, formal results of debate in advance but would specify whether a matter is for preliminary review, discussion only, formal vote, or final action. Consider adding time parameters to the discussion with the understanding that they can be flexible to help move the meeting along.

## Some further points on agendas:

- The formal agenda does not have to be part of the Open Meeting posting, but revisions to the Open Meeting Law effective on July 1, 2010 will require a summary of items to be discussed.
- It can be very helpful to have, as part of the agenda an explanation and expected outcome plus a timeframe. For example:

### ITEM:

- |             |   |
|-------------|---|
| 7:45 – 8:15 | Superintendent's Recommendation Relative to the Addition of a Chinese Foreign Language Instruction Program, Grades 3-8. (Discussion Only to Consider Policy Options – No vote will be taken.) |
| 8:15 – 8:30 | Superintendent's Recommendation on Granting a School Holiday for the Friday, July 5. (Vote Scheduled)   |

Encourage members to do their homework before the meeting. If more people are better prepared, the meeting will flow more efficiently.

Use *Robert's Rules of Order* or some other documented format that clarifies any ambiguities. An important rule is that no one speaks twice until each interested speaker has had an opportunity.



While rules are important, the chair, especially on a small board, should also remain flexible enough so as not to make the meeting too technically managed and give the impression that the meeting is more about order than about outcome.

Have a “public comment period” at the start of the meeting and/or fixed rules for receiving public comment during the other parts of the meeting. Some districts include a mid-meeting public comment period.<sup>1</sup> (See section on public comment sessions.)

Each speaker (school committee member, faculty member, or local constituent) should direct comments to the chair. It is rarely helpful to engage the public in debate from the floor especially if a speaker attempts to take control of the meeting from the chair by questioning the board, an individual member, or posing a rhetorical question expecting an answer.

Since the chair is the servant of the assembly, and not the master, expediting harmoniously a satisfactory resolution to a particular matter is more important than control over members or the public.

Don't engage a fool in a debate.

## **MISTAKES SCHOOL COMMITTEE MEMBERS SHOULD AVOID**

MASC meets with school committee chairs regularly to discuss their evolving roles and responsibilities. Some of the important meeting tips that chairs offer their counterparts on other school committees are the following:

- Be careful about taking liberties with procedures, including formal parliamentary procedures. Making exceptions invites others to demand exceptions for themselves.
- Follow the agenda, unless there is a good reason to depart from it.
- Use the ability to declare consensus on a matter to move the meeting along. If you have the opportunity to say, “Without objection, we will:
  - (a) declare the minutes approved;
  - (b) proceed to the next item on the agenda;
  - (c) take an item out of order; or
  - (d) close public comment,” you can expedite action.
- Be cautious about declaring unanimity on a matter where members truly wish to express their will or take and record their votes.
- Similarly, avoid “dead air time” at a meeting. For example, after people have spoken, if an issue has been discussed sufficiently, it is sometimes unwise to ask, “Does anyone else have anything they'd like to add,” because it could introduce another flow of repetitious or unnecessary comment that takes time from other parts of the meeting.

---

<sup>1</sup>A common problem for public boards is the presence, on occasion, of disruptive members of the public. Sometimes these individuals are concerned about an item before the assembly, but other times they simply seek attention. A public comment period allows these individuals to have their moment in the spotlight with a microphone in their hand. In this way, they are allowed to speak. Occasionally, chairs let themselves be perceived as being heavy handed. For the outraged or even perpetually indignant speaker, a courteous explanation that their time is up or that the appropriate forum for their comments has either passed or is yet to come will satisfy the rest of the public.

The individual may be foolish, but the species is wise. The public will respect a chair who follows the rules of order. Do not make martyrs out of fools.

# PUBLIC PARTICIPATION

Presentations, public hearings, and formal public comment periods are distinct elements of a school committee meeting. Many school committees have practices of hosting presentations as part of a formal meeting or as a regularly scheduled portion of special meetings dedicated for a specific purpose. In each instance, the chair has a vital role in keeping the meeting on point and moving forward.

One effective practice for chairs and school committees is to schedule academic presentations during which the superintendent, principals and other faculty members can describe the ongoing work of the school district. These academic presentations are particularly popular as the budget season approaches, but many school committees will schedule them at intervals so that a range of topics will be at the top of mind for members as they make their programmatic and fiscal policies with good information.

One truly effective model is to schedule a diverse set of presentations before the school committee at which department heads and key teachers and staff will join the central office administrators. A model schedule might include the following, for which the school committee reserves either a portion of a meeting each month or a second monthly meeting exclusively for the presentation:

September	Budget Preparation and Process for Next Fiscal Year
October	High School Science
November	Elementary Music
December	Primary Grade Reading
January	Interscholastic Sports Issues
February	District Analysis of Test Scores (Methods and Deployment)
March	Building Management and Operations
April	Middle School Curriculum
May	Physical Education
June	Johnson Elementary School Student Achievement
July	Emerging Issues for Public Education
August	Social Studies in Grades 7-12

The board might feature two presentations if time allows to provide for more content.

## **Critical to the success of an academic presentation are the following:**

- Presentations should focus on substantive issues to educate the school committee and the public on the topic.
- The superintendent should provide to the school committee enough advance information and materials so the board can ask good questions, informed by doing its homework.
- The superintendent should alert the presenters to make efficient use of time and get to the point. A presentation that turns into a self-congratulatory or self serving program without substance or link to the work of the school committee defeats the purpose of the meeting.
- The presenters should link the program directly to advancing student achievement, well-being, and success.
- The presentation should not exploit children by using them as props or by defaulting to entertainment rather than substance. For example, it may be entertaining to see a group of students singing or watching a scene from a dramatic production or listening to the successes of the sports team during the year. However, these presentations do nothing inherently to explain how music, drama, or sports increases student achievement, reduces the drop out rate, raises the graduation rate, offers residual benefit to other academic pursuits, or benefits the school and community.

- Programs should explain how these programs or functions benefit students, improve achievement levels, lead to life-long skills, and demonstrate value for the investment the school committee makes.

One school committee chair, seeking to implement such a schedule, warned principals and department heads that any presentation that was more for show than for substance would be terminated at once. At the same time, the board chair explained that this was an invaluable opportunity to explain to everyone why a particular program, learning strategy, curriculum, or issue was linked directly to measurable and significant improvement in the lives of students and the school community.

## **PUBLIC HEARINGS**

Hearings usually deal with a particular subject, often a timely matter of interest. They may respond to a recent crisis or local issue. Annually the school committee will also conduct one or more public hearings on the budget. Public hearings may or may not include participation by the public. Some hearings are called specifically to host an interactive discussion with the school committee or administration as is often the case when experts are invited to make presentations at meeting. On some occasions, questions and answers with the public may be appropriate. On other occasions, it may be best to allow people to speak without a response from the board or superintendent.

A great chair emerges as a trusted leader during a public hearing. The chair has a special challenge during these meetings to build credibility for the board, establish an orderly process for discussion, engage the public, and keep the focus on the matter at hand. The chair also has a responsibility to diffuse tension or anxieties. Some issues follow up on a recent crisis or media event, or they might involve a controversial topic (i.e., district restructuring, school closing, redistricting, or budget cuts that affect many people). Many skillful chairs are able to put the audience at ease right away. Veteran chairs and town meeting moderators advise their colleagues to remain calm at all times and think carefully about how what they say or do is perceived by the audience in the meeting room or viewing on local cable.

Public hearings often begin with a welcome and introduction, explanation of the purpose of the meeting, protocols and timelines, and other information that attendees need to follow the meeting.

At the start, it is important for the chair to explain the timeframe for the meeting, who will speak, when public discussion will take place, whether public comment will be accepted, and what present and future outcomes might be.

When a hearing is scheduled to discuss an important topic the chair will often give a background that might summarize what has led up to the meeting. For example, if the public hearing deals with a proposal to redistrict the schools, the chair might ask the superintendent to give a summary of the issue and the planning to date that has brought people to the room. The explanation might describe the planning process, groups involved, information gathered, input solicited, and preliminary actions prior to the meeting.

Recent trends in education law have applied new privacy rights to students and faculty members. It is usually very helpful at the start of meetings at which the public may speak to remind everyone about these rights so that speakers, including parents, students, or fac-

ulty members do not disclose information that is considered private. These comments might include:

- Confidential information about a particular student.
- Confidential information related to personnel.
- Health or medical information protected as confidential.
- Rumor presented as fact that compromise the privacy rights of stakeholders.

As an example, consider a case where parents testify at a public hearing on special education to advocate for a program in which their child is enrolled. The parents begin by explaining their child's medical and psychological history to put the importance of the program in context. Without realizing it, those parents have sacrificed their child's confidentiality by disclosing medical or student record data in public.

Similarly, consider the case of a student who has been encouraged to testify publicly in support of a particular interscholastic sport at the hearing. The student begins to describe the courses failed, interactions with the juvenile justice system, a dysfunctional family and, the likelihood of ending up in jail or living a failed life without interscholastic athletics. In this case, the privacy rights of the students and family are at risk by that very student who may have no idea of the implications of the testimony.

The chair often has the responsibility to protect people from themselves or people who are advocating for them.

## **HEARINGS AND MEETINGS FOLLOWING A CRITICAL EVENT**

Sometimes a public hearing is a highly charged event because of a critical incident or evolving issue. Great passion or emotion follows issues like potential school closing, budget cuts, redistricting, school bus route adjustments, damage to buildings, accidents or injuries, and even controversial personnel matters such as a principal or superintendent termination.

In the aftermath, the chair must deal not only with the efficiency of the meeting, but also the possible misinformation that often follows a critical incident or development and the hearing itself.

Here again, it is important for the chair to welcome the audience and explain the guidelines and protocols for the meeting and the opportunities for individuals to participate. Some chairs have effectively diffused tension by assuring the audience that there will be ample opportunity to participate and encouraging all to follow the appropriate procedure for speaking and responding.

## **PUBLIC COMMENT PERIOD**

Public comment period may be a fully open forum or restricted to items on the agenda for the meeting at hand. School Committees host these sessions at various parts of the meeting, depending upon local preference and practice. For example, public comment period might be held at the start or conclusion of the meeting, and, in some instances, the public is invited to speak after certain agenda items. In addition, at the discretion of the chair, any member of the public may be recognized.

Depending upon the operating rules one uses, public comment may:

- Address any matter of interest to the speaker.

- Limit comments to items on the meeting agenda.
- Limit comments only to items not on the agenda.
- Establish a time limit for each speaker.

The chair should make a point to explaining the role of the school committee during the public comment period and making clear whether the committee or members of the faculty will or will not be responding.

School committees will often post the protocols for public comment period on the agenda or on the podium where speakers will address the board.

In each case, it is important for the chair to state the guidelines for the meeting. These ground rules often carry the force of law (especially if you reference them through *Roberts Rules of Order* or your By-Laws).

## GUIDANCE FOR LARGE PUBLIC MEETINGS

Periodically, highly charged and controversial items will bring dozens, if not hundreds of people to a school committee meeting. It may be a school closing, sensitive curriculum matter, employee termination, budget, or other local crisis.

At sensitive meetings such as this, it is incumbent on the chair to keep the meeting focused, orderly, civil, and even peaceful.

There are several consistent themes at large public meetings on controversial topics. First, people will attend for different reasons. Some want to speak to the issues and help resolve them. Others want an opportunity to speak publicly. Still others merely seek attention. Some people will come well prepared and respect the time limits. Others will get before the microphone and ramble until told to stop. Still others will go on past the warning long after the audience has stopped listening. Speakers may play to the crowd for political gain. Job seekers often appear. It is all part of the American democratic process and the town meeting tradition.

The chair must manage every one of them. Formal rules must yield to general guidance in order to help create a situation at the end of which as many people as possible are satisfied. This may take several hours.

Also, if a meeting is run fairly, the public generally accepts the rules and guidance from the chairperson. In fact, even if a decision is rendered after the meeting, both supporters and opponents of the outcome are more likely to accept the outcome if the chair is effectively impartial.

## STRATEGIES THAT WORK

- Welcome everyone. The chair establishes the tone for the meeting and a rational chair with good communication skills and personal warmth can set the right tone immediately.
- Give the ground rules for the discussion. Describe the process that has led to the issue at hand and the forum of the moment.
- Set a concluding time, if possible.
- Explain who may speak and the time allotted to them. It may be helpful to have a sign-up sheet for those wishing to speak.
- Ask speakers to identify themselves for the record and benefit of everyone present or viewing.
- Alternate between various perspectives of a question so people can engage in more point/counterpoint dialogue than lengthy periods of hearing only one side.
- Remind people cordially that their time is up and ask them to conclude. (Some chairs do not manage time and successive speakers assume the right to take more of it than is desirable.)

### **MASC Recommended Guidelines for Public Comment Periods:**

1. Identify at what point during the meeting the public comment period will take place so people will know when to appear.
2. Set a specific time table and point during the meeting (unless the meeting is a fully, unlimited open forum) for people to speak.
3. Establish the process for order of speakers, including advance sign up, raising of hands, standing in line, rotating microphones, etc.
4. Set time limits for each speaker.\*
5. Announce whether the public comment period is being recorded.
6. Make sure all speakers are first recognized by the chair. Note that the chair has the right to rule a speaker out of order if it is appropriate. A person who ignores the chair can be determined to be a disruptive person.
7. Limit speakers to a single opportunity until all others wishing to speak have had the floor. (You may limit speakers to a single opportunity during public comment period.)
8. Ask all speakers to address the chair or to address others through the chair (with the chair determining if the comment is appropriate.)
9. Unless you want to engage public in discussion and are prepared to answer questions, explain that the school committee and administration will not be responding to the speakers. MASC strongly recommends that there be no responses during public comment period.

\* The chair should exercise good judgment and flexibility in allowing speakers to continue. Strict time limits can appear narrow minded, but they may also be necessary to curb unnecessary or longwinded comments.

# PARLIAMENTARY PROCEDURES FOR THE CHAIR AND THE SCHOOL COMMITTEE

Having a good set of rules of order is critical to a successful school committee meeting. For the school committee chair it is not only important to have them, but also to understand and follow them. A common problem at public meetings is that there is an assumption that presiding officers are experts in rules of order, but, in fact, chaos may ensue if the chair is unable to direct the flow of the meeting in a way that is fair, impartial, and clear to those present and those watching the meeting.

When rules of order are deployed formally and even informally, meetings are more efficient, participants will respect the process and the board, people are more likely to leave with a greater measure of satisfaction, the chair will appear to be fair and gain credibility and the public perception of order and responsibility will enhance the respect for the board.

Skillful school committee members will also be able to call upon the rules of procedure to expedite their own agenda or to derail a potential outcome. While the rules of procedure should be used to facilitate open and transparent meetings, masters of the rules are at a distinct advantage.

This section presents a cursory review of key elements of parliamentary procedure. MASC recommends that all chairs keep close at hand a good reference guide to parliamentary procedure, including charts explaining requirements for motions and procedures.

## WHAT IS PARLIAMENTARY PROCEDURE?

Parliamentary Procedure is not a formal, copyrighted term. It is a generic one for any set of rules of procedures and customs that govern deliberative assemblies. While about 85% of American school boards use *Robert's Rules of Order Newly Revised* (RoNR), there are several alternatives, including *Sturgis's Standard Code*; *Demeter's Rules*; and even *Cushing's Manual* that is used in some older cities.

Most sets of parliamentary procedures rely on a similar set of principles. MASC recommends *Robert's Rules* because they are comprehensive and the book itself will guide the presiding officer and members through both formal and informal elements of leadership and meeting management. RoNR gives the chair, in clear language, many helpful recommendations for keeping order. It is also helpful in guiding the development of minutes, operations of small boards, and dealing with disruption. There are also several guides to Robert's Rules for those who do not wish to use the 700-page comprehensive edition.

The key purpose of parliamentary procedure is to assure the rights of the majority, minority, individual members, members who are not present, and the public at large. If followed skillfully by the chair, stakeholders will have the information they need and understand the process that is taking place during the meeting. Even viewers on cable or those in the audience who are not as facile with rules of procedure will be able to follow the progress of any meeting if the chair adheres to the roles of order.

## PARLIAMENTARY PROCEDURE AND THE LAW

Committees are not required to select a specific set of parliamentary procedure rules, but will find it important to adhere to the rules they set. In addition, the school committee may adopt any rules it desires and modify them to suit its needs. However, several important provisions of state law override any parliamentary procedures including protocols for executive sessions and preliminary steps to call and post meeting notices for public information.

Also, following the district's own formal procedures will protect the committee from allegations that it failed to follow its own rules in making public policy. Potential litigants in lawsuits will often argue that the school committee failed to follow its own rules in arriving at a decision. Even union grievances often cite failure to use the formal rules of procedure in adjudicating a particular matter yielded an adverse result for a faculty member.

MASC is often asked about cases where school committee members may have, or be perceived as having, a conflict of interest and the role of the chair in those cases. In Massachusetts, it is for the conflicted member to step aside on his or her own and not participate in any matter in which there may be a legal conflict of interest. If the chair believes the member is in violation of law, the presiding officer may inform the member but may not preclude that same member from participating in deliberation or voting.

## ADAPTING RULES TO FIT YOUR SCHOOL COMMITTEE

Massachusetts school committees range in size from as few as three members to as many as 30 or more. Rules for very small boards need not be as formal as those for larger groups. In 2000, the 10th Edition of RoNR established flexible rules for smaller boards defined as groups up to 12 members.

Many school committees have adopted special rules to complement *Robert's Rules* or other parliamentary procedures. For example, special exceptions to school committee rules or by-laws may, but do not necessarily have to include:

- Requirement that a motion be seconded. In small boards of five, for example, requiring a second to a motion means that an 80% majority could exclude the 20% faction from even having a say on a critical issue.
- Placing a time limit on debate.
- Limiting the time during which a member may speak.
- Restricting or allowing the chair to participate in debate and to vote.
- Requirements for moving reconsideration of a matter.
- Rules for moving the question to curtail or shut off debate.
- Rules for tabling a motion.
- Determining what motions are or are not debatable.
- Requirements to suspend the rules and for which purposes rules may be suspected.
- Setting a customized order of precedence of motions when several items are before the board.
- When motions to adjourn are in order. Generally, a motion to adjourn is not in order when someone is speaking. Some committees, by special provision, may allow a motion to adjourn at any time.

Any exceptions a committee makes to standard operating procedures would generally be allowable as long as they are fairly and impartially administered.



### **Where Does One Find the Rules of Procedure?**

New members and the public will often want to access the committee's rules of procedure. School committees generally post them in their formal by-laws, policy manuals, or in distinct publications just for rules and regulations. Often districts simply reference a formal publication, while other school committees list the main resource and outline the exceptions such as those noted above. Rules of procedure are often made accessible on-line.

### **SELECTING THE CHAIR**

Depending upon the local city or town charter or regional agreement, the selection of the chair can be simple or contentious. In most Massachusetts cities and some towns, municipal charters put the mayor on the school committee, often as the chair. In other districts, including towns without mayors, members elect the chair by majority vote.

Local tradition may guide the board in designating a chair. Some routinely rotate the chair and historically elect a new leader each term. Another model is to select the senior most member who has not previously been chosen chair. Others re-elect the same chair year after year. Unless the municipal charter or regional agreement specifies how the chair is appointed, members generally elect their presiding officer by majority vote. Most districts also elect a vice chair. Vice chairs not only fill in when the chair is absent, but also take the chair when the presiding officer yields the gavel in order to speak or make a motion. Also, many districts delegate special responsibilities to the vice chair as needed.

Three important questions have arisen in Massachusetts over the appointment of the chair. One point of contention addresses the problem of an even numbered and divided board, or a situation where an even numbered membership is present to vote to elect the chair.

### **What should a committee do if the vote is deadlocked?**

MASC recommends that every school committee have a procedure for resolving the deadlock, at least temporarily. It is never helpful for the board to be without a presiding officer. A formal provision for identifying a temporary chair eliminates this problem until the board can elect a permanent one.

For example, in some districts in case of a tie vote, the incumbent chair continues until a successor is formally elected. In other cases, the senior member or most veteran member might be designated. Any other alternative is also acceptable so long as it is part of your formal policy.

RoNR tells members to keep trying to elect a permanent chair and recommends no fixed alternative to having more ballots.

A second question deals with a chair who has lost the confidence of the school committee. Because state law requires boards to reorganize periodically and chose their presiding officers for specific terms, the election of a chair is considered unrescindable. In other words, permanent chairs, once elected, must serve for the balance of the term for which they elected unless they voluntarily elect to step down.

A third question relates to the role of the superintendent of schools in the selection of the chair or in performing in the role of the presiding officer. Superintendents are not members of school committees and, thus, except where the law or district charter designates them to conduct the election of the chair, they should not preside over any other function of a school committee meeting.

## CONVENING THE MEETING

The chair calls the meeting to order in the presence of a quorum that is usually defined by law, the municipal charter, or regional agreement. In the absence of the chair, the vice chair may convene the meeting. In fact, in the absence of the chair and vice chair, RoNR allows any quorum of the board to convene the meeting, but this provision is rarely used.

The chair would then follow the agenda as it is established for the meeting.

A common question arises about the presence of a quorum. The meeting may not convene without a quorum present. However, it does not automatically adjourn when a quorum is not in the room once the meeting has started. The chair is responsible for seeking out the missing members once the session has begun. Thus, it would be unethical for a chair to adjourn a meeting when members were readily accessible at the meeting site. In the absence of a quorum, however, the only business that may be conducted is to adjourn.

Meeting agendas vary in style and format across Massachusetts. Most agendas include:

- Call to Order (often by roll call)
- Announcements
- Public Comment Period
- Approval of Minutes
- Reports of Officers or Committees
- Report and Recommendations of the Superintendent
- Unfinished Business (RoNR does not recognize the term "old business.")
- New Business
- Adjournment

Some committees take advantage of an emerging trend toward a "consent agenda." In this portion of the meeting, non-controversial items or matters unlikely to be opposed may be grouped together for a single vote.

Both law and practice require that no person address the meeting who has not been recognized by the chair. *Robert's* recommends that no person speak twice until all others have been recognized. All speakers should address the chair unless otherwise directed by the presiding officer.

It is not necessary to vote to approve reports that do not include recommendations. However, should a subcommittee or other group present a report with recommendations, it is appropriate to accept the item in order to have a basis for putting those recommendations on a present or future agenda.

## MAKING MOTIONS

When a member makes a motion for consideration by the board, the chair should also solicit a second. Once the motion is made and seconded, the chair should inform the board and the public about the motion by stating it.

Once a motion is made and seconded, it becomes the property of the school committee and not any individual member. In other words, the motion may not be withdrawn without the consent of the full body. In addition, RoNR does not recognize the concept of the "friendly amendment." It is not required that an amendment to a motion be accepted by the maker, but only that the membership accept it for discussion.

Usually, the maker of the motion gets to speak first and other board members may speak subject to recognition by the chair. Generally, members should not speak a second time until all members have spoken.

**Most sources recognize four kinds of motions:**

1. A **Main Motion** moves forward a principal action for school committee consideration.
2. A **Subsidiary Motion** modifies the main motion and affects how the body deals with the main motion. Subsidiary motions can include those which amend, refer or commit, postpone action, table, or extend time for debate.
3. A **Privileged Motion** is not directly related to the main motion but is important enough to interrupt discussion. Such motions may be proposed to recess or adjourn the meeting or to raise a question of privilege, such as introducing a distinguished guest at the meeting.
4. An **Incidental Motion** relates to the business at hand but not to the content of the main motion. For example, a point of order, parliamentary inquiry, suspension of rules, or an appeal of a ruling of the chair.

Whether any motion is in order is up to the chair who would rule on the basis of several criteria explained in detail in formal rules of order. For this reason, MASC recommends that chairs keep close at hand a reference with lists of motions and the requirements for them, as well as a chart of "precedence" which describes which motions must be considered first when more than one item is before the board.

Throughout the meeting, the chair should explain to the members, audience, and public the nature of the motion, the intent of amendments or subsidiary motions, and, after the vote, what the school committee has done.

**EXECUTIVE SESSIONS**

The chair has several special responsibilities for an executive session from which the public is excluded. These include ensuring that the appropriate people have been notified about the meeting and are present if they desire to participate, announcing the purpose of the executive session to the public, explaining whether the board will reconvene after the executive session, and conducting a roll call vote of the membership to ensure a majority to convene. The full scope of the Open Meeting Law and purposes for executive session are included in this publication (see page 58) and are contained in the *MA General Laws Related to Schools and School Personnel*, published by MASC.

**ADJOURNING A MEETING**

As Yogi Berra said, "It ain't over 'til it's over," and a public meeting is no exception. To adjourn a meeting, the chair must entertain a motion to adjourn and obtain an affirmative vote of the board. Only when the chair declares that "The meeting is adjourned," however, is the meeting formally over.

## KEY PARLIAMENTARY QUESTIONS FOR CHAIRS

Most school committees will confront some questions that merit explanation because of the frequency with which they arise. For example:

### **What is a majority for voting purposes?**

This question is critical because definitions of majority vary from district to district. School committees should be careful to define its definitions.

Generally, a majority is 50% + one member of those present and voting. However, in some districts and in certain circumstances, a majority is defined as 50% + one member of the full board quorum.

For example, on a seven member board, with two members absent, a majority may be three of five; however, on another board of seven and of whom five are present, a majority may require four votes regardless of who is present or absent.

### **How many times may a motion be amended?**

There is no limit to the number of times a motion may be amended. However, if an amendment to the motion is proposed, only one amendment to the amendment may be entertained at one time. In other words, you may not consider an amendment to the amendment to the amendment.

### **What is the affect of an abstention?**

An abstention means that the individual abstaining is not voting. An abstention may have the effect of a negative vote (in cases where 2/3 of the full membership or a majority of the full membership is required for approval); on the other hand, an abstention, as a non-vote, may reduce the requirement for a majority by lowering the number of voting members. For example, on a seven member board, should two members abstain, a motion may be approved on a 3-2 vote.

### **Who may seek reconsideration of a vote?**

Technically, reconsideration of a vote taken may be moved by a member of the prevailing side. If a motion is defeated on an even vote (i.e., 3-3), the negative is deemed to be the prevailing side.

Individuals on the side that does not prevail have the alternative option to propose a **motion to rescind** the matter. However, you can't rescind that which is unrescindable. For example, if the board votes to declare a school holiday for Friday, July 5, 2012 it cannot rescind that decision on July 9, 2012.

### **Which motions are non-debatable?**

Among the most common non-debatable motions before school committees are:

- To adjourn.
- To table.
- To amend an non-debatable motion.
- Limit or extend limits of debate.

It is generally considered unethical to use the motion to table to thwart or kill a motion for two reasons. First, the motion to table may not be debated and it may shut off discussion of an important matter. Second, at the conclusion of the meeting, the table is erased unless the your customized rules of order provide otherwise.

A more ethical alternative is the debatable rule to “postpone to a time certain.” In this way, the members and the public will know when debate will resume.

**When is a supermajority vote required?**

A supermajority is a vote that requires more than a simple majority of the membership. Some motions, including suspending your rules, calling the question to shut down debate, or require a 2/3 vote according to normal rules of procedure. (Some customized rules of order require a 3/5 vote to suspend the rules.) In many districts, local by-laws or regional agreements may require a supermajority for approval of certain items like a budget. In fact, regional school committees must obtain a 2/3 vote to approve their budgets.

**Who must vote on matters before the school committee?**

No school committee member can be forced to cast a vote on any matter. As noted above, members who are in a legal or ethical conflict of interest must decide whether or not to vote or to abstain. The chair may not require any member to vote on any matter.

**How may the school committee deal with a ruling of the chair with which other members disagree?**

Generally, a member who objects to the ruling of the chair may move to overrule the chair by stating, “I appeal from the decision of the chair.” This appeal must obtain a second. With a majority vote, the chair may be overruled.

**How may a member move to shut off debate?**

A member may state “I move the previous question.” Upon receiving a second, the board must vote without debate. A two-thirds vote is generally required to move the question.

**May the chair vote?**

Under state law, any member of the school committee may vote on any issue. By tradition, some mayors who are chairs choose not to vote and some chairs of town and regional school committees refrain from voting except to create or break a tie.

**If there is reason to believe that a member has a conflict of interest in a matter before the school committee, may the chair disqualify that member for discussion or voting?**

It is up to the individual member to disqualify himself or herself, not the chair or the rest of the membership. However, should a member participate in deliberation or vote on a matter in which there is a conflict of interest as defined by law, the State Ethics Commission may investigate and sanction that member at a future time.

**Are there particular rules of decorum that must be followed?**

RoNR authorizes the chair to maintain order and to hold members to temperate debate. Ad hominem attacks against an individual are out of order. If the school committee has adopted formal rules of order, the chair may rule a member attacking another individual by name to be out of order. Similarly, during public comment period, the chair may rule out of order any speaker who fails to follow the rules for speaking as established by the school committee.

**What discretion does the committee have to suspend its rules?**

The committee may suspend its rules for most matters covered by them, but may not suspend the rules to circumvent the municipal charter, regional agreement, or state and federal law. Some school committees limit suspension of the rules to certain situations or areas. In all cases, a supermajority, usually 2/3 is required and motions to suspend the rules are generally not debatable.

**What should a committee do when a matter is just too complicated?**

RoNR recognizes that things can get too complicated – almost incomprehensible because of an excess of amendments, confusion, rhetoric, and chaos. In that case, it may be wise to suspend your rules and start over by invoking the “Gordian Knot” provision that wipes the slate clean and allows the committee to start over.

**Does the committee have to debate every item on the agenda when many are routine?**

The chair can take the initiative by “Acting Without Objection.”

*Robert’s Rules* allows items for which there is little controversy or where there is consensus to expedite discussion through unanimous consent. The chair may ask, “Is there any objection to \_\_\_\_\_?” This can happen with the consent agenda, approval of the minutes, taking a recess, taking items out of order, or virtually any other matter before the school committee. The chair may then declare, “Seeing no objection, we will declare \_\_\_\_\_ to be approved.”

(See section, MISTAKES TO AVOID, page 9)

**When must there be a roll call vote?**

Except where required by your own rules, local ordinance, regional agreement or law (i.e., to enter executive session), local rules prevail in determining whether or not to have a roll call vote. Often a single member may be authorized to request a roll call. Generally, roll call votes require no more than the request of 1/5 of the membership.

On line resources in addition to printed materials you may have at hand during a meeting include:

- National Association of Parliamentarians [www.parliamentarians.org](http://www.parliamentarians.org)
- Jim Slaughter (Parliamentarian to NSBA) [www.jimslaughter.com](http://www.jimslaughter.com)

## RANKING MOTIONS

These motions are listed in order of rank. When any one of these motions is immediately pending, those above it are in order and those below it are not in order.

	Principle Requirements					
	Recognition	Second	Debatable	Amendable	Vote Required	Reconsiderable
<b>Privileged Motions</b>						
14. Fix the time to which to adjourn	yes	yes	no	yes	maj	yes
13. Adjourn	yes	yes	no	no	maj	no
12. Recess	yes	yes	no	yes	maj	no
11. Raise a question of privilege	no	no	no	no	*	no
10. Call for orders of day	no	no	no	no	chair	no
<b>Subsidiary Motions</b>						
9. Lay on the table	yes	yes	no	no	maj	no
8. Previous question (to close debate)	yes	yes	no	no*	2/3	yes*
7. Modify rules of debate	yes	yes	no	yes	2/3	yes
6. Postpone definitely	yes	yes	yes	yes	maj	yes
5. Commit or recommit	yes	yes	yes	yes	maj	yes*
4. Amend the Amendment	yes	yes	yes*	yes*	maj	yes
3. Amend	yes	yes	yes*	yes*	maj	yes
2. Postpone indefinitely	yes	yes	yes	no	maj	+
<b>Main Motions</b>						
1. Main Motion	yes	yes	yes	yes	maj*	yes
<b>Motions That Bring Back a Question</b>						
Reconsider	yes	yes	=	no	maj	no
Rescind	yes	yes	yes	yes	maj*	yes*
Take from the Table	yes	yes	no	no	maj	no

### Key to Markings

\* see *Robert's Rules of Order, Newly Revised* for special rules

x usually no vote taken; chair rules

+ only an affirmative vote may be reconsidered

# only a negative vote may be reconsidered

= debatable when applied to a debatable motion; see *Robert's Rules of Order, Newly Revised*

## NON RANKING MOTIONS

Whether these motions are in order depends upon the business already under consideration and what purpose they may serve when introduced.

	Principle Requirements					
	Recognition	Second	Debatable	Amendable	Vote Required	Reconsiderable
<b>Incidental Motions</b>						
Appeal	no	yes	ltd*	no	maj*	yes
Close nominations	yes	yes	no	yes	2/3	no
Consider serialim	yes	yes	no	yes	maj	no
Divided the question	yes	yes*	no	yes*	maj*	no
Division of the assembly	no	no	no	no	x	no
Object to consideration of a question	yes	no	no	no	2/3*	#
Parliamentary inquiry	no	no	no	no	chair	no
Point of order	no	no	no	no	chair	no
Reopen nominations or the polls	yes	yes	no	yes	maj	#
Suspend the rules*	yes	yes	no	no	2/3*	no
Withdraw a motion	yes	yes*	no	no	maj	#

### Key to Markings

\* see *Robert's Rules of Order, Newly Revised* for special rules

x usually no vote taken; chair rules

+ only an affirmative vote may be reconsidered

# only a negative vote may be reconsidered

= debatable when applied to a debatable motion; see *Robert's Rules of Order, Newly Revised*



# SCHOOL COMMITTEE SELF-EVALUATION: THE ROLE OF THE CHAIR

The chair can play a major role in keeping the mission of the school committee on track by leading the process of self-evaluation or self-assessment on a regular basis. For the school committee there are several purposes and benefits of the self evaluation process.

In fact, effective chairs should look at this list to assess not only the school committee, but also their own leadership. The exemplary chair and school committee prove their effectiveness by:

- Demonstrating exemplary leadership to the community by taking a careful look at how the school committee works. This can help communicate to the community that schools are being managed at the board level as effectively and efficiently as possible.
- Helping the school committee understand where it is and where it is going so that the board is in a stronger position to exercise leadership and communicate these facts to the school stakeholders.
- Evaluating and reassessing the committee's goals and reviewing its primary responsibilities so that the school committee sets an example for others within the system.
- Showing by the school committee's own performance that the committee is an accountable, businesslike entity, intent upon doing the best possible job.
- Helping the committee have a better understanding of its roles and responsibilities and to serve as a yardstick for how well it is fulfilling those duties.
- Presenting school committee members with a process to establish a better working relationship among the board colleagues and the superintendent.
- Directing the school committee as it identifies where to put its energy and effort in the future.
- Monitoring how effectively the school committee clarifies its mission and sets district goals.
- Identifying and resolving intra-committee problems that are interfering with the committee's ability to conduct school business.
- Improving the effectiveness of school committee meetings.
- Allowing colleagues to appreciate one another's strengths.
- Helping the committee appreciate its strengths as a collective group since the board acts only as a body and not as a set of individuals.
- Setting and monitoring adherence to standards for school committee conduct and operations.
- Defining the role of the committee's officers.
- Helping the committee prepare for an effective superintendent evaluation process.
- Bringing the individual members together as a team.

Finally, if the chair and superintendent work together effectively in the self evaluation process, the committee can use the superintendent as a principled critic or advisor and take advantage of the superintendent's experience and skill.

## THE SELF-EVALUATION PROCESS

The Education Reform Act of 1993 strengthened the requirement for accountability in the delivery of education to our students. To that end, the law now calls for the superintendent of schools to "cause the evaluation" of every employee in the school system.

But who is to evaluate the school committee, if not the school committee itself? While it is true that, as individuals, members of the committee are "evaluated" when they stand for re-election or reappointment, there is no prescribed agency, no prescribed vehicle for the school committee, as a body, to be evaluated—except by the body itself.

Please note that the school committee self-assessment is a public process and self-assessment scoring sheets can be considered public documents. Many boards elect to hold a "retreat" meeting at a time other than a regular meeting night to have a less formal, more relaxed opportunity for evaluation.

Why do a self-evaluation? While there are many potential benefits, there are two essential questions that could be answered. They are:

- Is the committee doing the right things?
- Are the "right things" being done the "right way"?

Self-evaluation by the school committee, led by the chair, can yield significant insights and improvement in the total operation of the committee. It can also demonstrate to the entire organization the committee's affirmation of, and commitment to, improvement and accountability in the continuing implementation of Education Reform.

### **The process for performing a self-evaluation is a three-step process:**

1. Planning the evaluation through a coordinated effort of the chair, vice chair and the membership. In addition, it is helpful to ask for input from the superintendent who can be a knowledgeable and constructive critic of school committee operations.
2. Completing the evaluation within a timeframe that allows the committee to integrate the process with other strategic planning, goal setting, budgeting, or other critical policymaking activity.
3. Processing the data and using time to study the information, the meaning of the information and the plan for improving school committee operations.

Planning the evaluation requires the committee to reach agreement on areas of evaluation. This can include, but is certainly not limited to, the following areas of concern:

- governance
- operations
- member relations
- committee/superintendent relations
- strategic planning
- community relations
- advocacy at the local, state and federal levels
- fiscal management
- conduct of school committee meetings

A list of specific items that the chair and membership may wish to consider in each category is listed in the sample school committee self-evaluation.

At this point it is important to note that while the process for the evaluation of the superintendent calls for clear, measurable goals, the committee need not restrict itself to that specifically for this process. Much of what the committee needs to address are the more subjective and qualitative factors in areas such as group dynamics that are such an integral part of a school committee's effectiveness.

The question of facilitation of the self-evaluation process is important. A skillful chair or superintendent can help facilitate, but some school committees find it helpful to use someone from outside the district to ensure an absence of bias.

Once the committee has met (with or without the help of a facilitator) to decide on what categories will be incorporated into the evaluation, they can begin to choose the descriptors within each category (see sample self-evaluation beginning on page 29).

This important step may involve a considerable amount of discussion. The facilitator should try not to "split hairs" and have too many variations of the same point. Later in the process, the committee should recognize that one of the key benefits of self-evaluation is the actual discussion among members as they review the results. Once the committee has settled on the categories and descriptors, it is ready to complete the self-evaluation.

When establishing a deadline for completing the evaluation, it is important to give each member enough time so they won't feel rushed. It is common for each evaluation to be anonymous. Designate someone to collect the forms and do a composite scoring.

Processing the data can often be more effective when the committee uses a facilitator. Many of the issues and examples that will be used by members in the discussion can involve personalities and interpersonal dynamics, and an objective non-member can be an invaluable aid in keeping the dialogue on-track and focused.

Remember that a key benefit, apart from the "report card" that results from the processing of data, is the discussion of issues that would never have been "agenda items" on their own. To this end, try and choose a setting that is comfortable and informal. While the meeting must be an open meeting, it must be set up for the benefit of committee members to have an honest and productive dialogue. Limit the discussion to the participants.

There are two ways to look at the scoring. The most obvious way is to find the areas where there is strong agreement. If there is strong agreement that improvement is needed in a particular area, then this should become part of a new "action plan." If there is agreement that something is working, then keep up the good work!

The other way to view the scoring is to look for areas where there is no strong agreement. If half the committee believes the committee does a great job on the budget, and half the committee believes that there is room for improvement, then an area for discussion has been identified. It is in these discussions that members can learn about each other, find ways to reach common ground, and develop a plan to move forward together. The most important thing is not to let the report hang in the air—use it to develop the committee's own "professional development plan." The chair or the facilitator or one of the members can draft a synopsis of the discussion, and initiate plans to put into action the ideas generated in the process, or to develop a plan for the committee to receive training.

# SAMPLE SCHOOL COMMITTEE SELF-EVALUATION

## SAMPLE DESCRIPTORS

### Scoring is done as follows:

1—Strongly agree

2—Agree

3—Disagree

4—Don't know

### GOVERNANCE

The school committee is a governing body, charged with setting the educational goals and objectives for the school system, adopting policies that enable the administration to achieve these goals and objectives, adopting a budget to provide necessary resources, the hiring and evaluation of the superintendent, and the ongoing review and evaluation of the school system's performance in fulfilling its mission.

1. The committee's policies are clear and up-to-date. \_\_\_\_\_
2. The committee has adopted a mission statement. \_\_\_\_\_
3. The committee regularly evaluates its progress relative to the goals and objectives that have been adopted. \_\_\_\_\_
4. The committee refrains from involvement in the administration of the school system. \_\_\_\_\_
5. The members take part in educational workshops and conferences to help them make informed decisions. \_\_\_\_\_

### Comments

---

---

---

---

**Scoring is done as follows:**

1—Strongly agree

2—Agree

3—Disagree

4—Don't know

**OPERATIONS**

Any group or team functions best when the norms, rules and dynamics are spelled out, easily understood, and agreed upon. Aside from certain Massachusetts General Laws and Robert's Rules of Order, the school committee generally develops its own ways of doing things. City charters and town by-laws may also provide direction for the committee. The more that is discussed up-front, the smoother the process for making decisions can be.

1. Roles of committee officers are defined in policy  
and roles and functions are understood by all members. \_\_\_\_\_

2. New members receive introductory training and  
orientation when they join the committee. \_\_\_\_\_

3. Procedures and protocols for committee operations  
are published and understood. \_\_\_\_\_

Comments

---

---

---

---

**Scoring is done as follows:**

1—Strongly agree

2—Agree

3—Disagree

4—Don't know

**MEMBER RELATIONS**

Group dynamics and teamwork are an extremely important part of school committee success. Members can have strong opinions on issues yet still remain open-minded and willing to work out differences. How committee members treat each other goes a long way in affecting the ultimate success of the committee as a whole and as individuals.

Members treat each other with courtesy and respect.

1. All members are encouraged to voice opinions and take positions on issues. \_\_\_\_\_

2. Members respect the will of the majority and support decisions once they are made. \_\_\_\_\_

3. Members are appropriate in how they dissent, using principled statements of opposition and avoiding an uncollegial tone. \_\_\_\_\_

4. Members share pertinent information with each other to prevent surprises and promote informed decision making. \_\_\_\_\_

5. Members "do their homework" and come prepared to make decisions. \_\_\_\_\_

6. Members understand the role of the individual as part of the whole group. \_\_\_\_\_

Comments

---

---

---

---

**Scoring is done as follows:**

1—Strongly agree

2—Agree

3—Disagree

4—Don't know

**COMMITTEE/SUPERINTENDENT RELATIONS**

The superintendent is a critical member of the management team, implementing school committee policies and leading the school system in the direction set by the school committee. The relationship between the committee and the superintendent is an area that deserves the utmost attention and care.

1. The committee regularly evaluates the superintendent using a mutually agreed-upon process. \_\_\_\_\_
2. The types and frequency of communications are agreed to in advance. \_\_\_\_\_
3. The superintendent is accessible to committee members. \_\_\_\_\_
4. Committee members contact the superintendent when seeking information. \_\_\_\_\_
5. The superintendent informs the committee of major personnel decisions. \_\_\_\_\_
6. The superintendent and committee treat each other with mutual respect and professionalism. \_\_\_\_\_
7. Both the committee and the superintendent operate on a "no-surprises" model. \_\_\_\_\_

Comments

---

---

---

---

**Scoring is done as follows:**

1—Strongly agree

2—Agree

3—Disagree

4—Don't know

**STRATEGIC PLANNING AND FISCAL MANAGEMENT**

The school committee is accountable to the community for the responsible management of the school system's finances. It is also responsible for providing the resources necessary to enable the school system to perform its mission. Solid planning is needed to maximize short-term and long-term allocation of resources.

1. A long term, strategic plan exists and is regularly reviewed.

2. All constituencies of the school district are involved in the strategic planning process.

3. The budget process is documented and published.

4. Budgets are developed based on needs, from the "bottom-up."

5. The committee, as a group, presents and advocates the budget to the community.

6. The committee receives regular reports with budget and financial status for the school system.

7. School committee members understand the basic principles of the budget process and state financial aid systems.

Comments

---

---

---

---



**Scoring is done as follows:**

1—Strongly agree

2—Agree

3—Disagree

4—Don't know

**COMMUNITY RELATIONS**

The school committee is the chief advocate for students in the community. As such, it needs to strive for a positive relationship between the community and the school system. The perception of the school system's quality impacts nearly all facets of the system, and is an integral component of school committee success in advocacy.

1. The committee has a public relations plan for the school system. \_\_\_\_\_

2. The committee encourages the inclusion of community members to the extent possible or appropriate in decision making. \_\_\_\_\_

3. The committee works cooperatively with other branches of municipal government. \_\_\_\_\_

4. The district regularly reports its own progress and accomplishments. \_\_\_\_\_

Comments

---

---

---

---

**Scoring is done as follows:**

1—Strongly agree

2—Agree

3—Disagree

4—Don't know

**CONDUCT OF MEETINGS**

The quality of school committee meetings affects not only the quality of committee decisions and committee credibility, but also the level of confidence the community has in the committee. School committee decisions can be made only at these meetings, which often provide the public its only "window" into the school system. The meeting agenda is planned jointly by the committee chairman and the superintendent, and must be adhered to by the committee.

1. Committee members receive sufficient information far enough in advance to prepare for meetings. \_\_\_\_\_
2. Public input is welcomed, and is done according to an established policy. \_\_\_\_\_
3. Full and sufficient debate is allowed. \_\_\_\_\_
4. Discussion is focused on issues, not personalities. \_\_\_\_\_
5. The meeting site is fosters productive discussion and decision making. \_\_\_\_\_
6. Meetings are frequent enough to prevent overcrowded agendas. \_\_\_\_\_

Comments

---

---

---

---

# SCHOOL COMMITTEE CHAIR-SUPERINTENDENT PARTNERSHIP

A strong school committee-superintendent partnership is based on six elements: full disclosure, sufficient information, careful planning, informal interaction, periodic evaluation, and mutual support. The school committee chair is the leader in building a good working relationship.

The chair is often the principal link between the superintendent and the chair. In some school districts, the superintendent speaks to the membership through the chair or receives inquiries through the chair. In other districts, the chair is the first among equals with no greater authority or power than other members except for the responsibility of running the meetings. In fact, strong chairs emerge as real leaders, but weak chairs can be trumped by stronger members.

The school committee should review and determine carefully what the role of the chair should be in some of the most important elements of the partnership between its chief executive and the members.

## **Chairs and colleagues should focus on some of these principles:**

**FULL DISCLOSURE:** The cornerstone of a strong chair/school committee-superintendent partnership is the frank disclosure of school problems to the committee members. Complete and thorough disclosure requires the superintendent be open and receptive to inquiries from members of the committee, that your chief executive be knowledgeable about the district's activities in order to provide information as quickly as possible.

**FREQUENT TWO-WAY COMMUNICATION:** The superintendent should provide timely oral and written communications of pending or emergency items. Committee members should reciprocate, immediately informing the superintendent of citizens' concerns. If the district does not have a critical incident policy to explain how news about important developments, problems or events can be communicated to the school committee, members should develop such a statement quickly.

The committee must be well informed to make wise decisions. The superintendent is responsible for keeping committee members informed on an on-going basis (not just at meetings). Before major decisions are made, committee members should have an opportunity to read background information, examine alternatives, and consider the implications of alternative action.

**CAREFUL PLANNING:** No one enjoys surprises, and careful planning will avoid most of them. The superintendent and the committee should plan together. Planning begins with the committee adopting yearly objectives for the district, by which the committee provides direction for the superintendent. The superintendent oversees the implementation of the objectives. An excellent approach to global planning that involves the community is strategic planning.

**INFORMAL INTERACTION:** The superintendent must interact regularly with committee members. They should attend conferences together, and participate in school activities. Through such informal interaction, they become more sensitive to each other's interests and values, without, of course, breaching professional relationships.

**PERIODIC EVALUATION:** The superintendent and the committee should evaluate the work of the school district at sessions scheduled throughout the year. Periodic evaluations, in addition to the regularly scheduled formal annual evaluation, keep the committee apprised of the progress on district goals. At these meetings the committee should evaluate the superintendent, discuss the relationship between the committee and the superintendent and agree to any modifications necessary.

**MUTUAL SUPPORT:** Both parties need support from the other. A strong partnership is strengthened when committee members support the superintendent from unjust criticism and the superintendent, in turn, defends committee members from unwarranted accusations.

The relationship between the superintendent and the school committee can be at risk during the normal flow of activity in any school district. The chair should recognize and take steps to intervene when potential problems arise such as:

- When it appears that members are not treated equally.
- When members are not informed about important events and issues.
- When members do not have enough information to make informed decisions.
- When poor public management practices lead to problems.
- When information or newsworthy events are generated for the public before the school committee learns of them. Just as a school committee member who tries to steal the spotlight from fellow members may have problems with colleagues, so too can superintendents who spend time on self-promotion when matters of public interest might best be shared with the board.
- When relationships with the school committee are not open and honest.
- When policy prerogatives are limited because the superintendent has either made critical steps that limit board options or when the superintendent fails to provide alternatives in advance of early discussion and debate.
- When superintendents cannot adjust to a committee that wants to be appropriately engaged in a matter of public interest, policy, or finance.
- When the superintendent fails to support the committee in a way that reflects an inappropriate lack of loyalty.
- When the administration has a hidden agenda that is not shared with the membership.
- When the superintendent springs surprises at meetings that minimize the ability of the school committee to engage in thoughtful discussion and debate.

#### **What the School Committee Should Expect from the Superintendent**

As the chair leads the school committee through the evaluation process, some important characteristics should weigh heavily. The superintendent should:

- Personify personal integrity – an ethical leader who will be objective under pressure and respectful of the spectrum of opinion in the school department and district.

- Demonstrate leadership skills to model best behaviors and practices.
- Be responsible for the work in developing, maintaining and implementing district policy.
- Manage the school district effectively through actions, team building, and knowledge of best practices.
- Show sensitivity to feelings, beliefs and commitments of public, staff and committee.
- Understand that committee members are elected officials and respect their unique position in the community or district.
- Understand the importance of disseminating information impartially to the committee.
- Exercise skill in communication and delegation of authority.
- Manage district resources prudently.
- Develop, understand and communicate the details of a budget and financial plan.
- Cultivate the relationship with the committee.
- Lead the school committee through the process of understanding their mutual roles and responsibilities, including areas where ambiguity may exist.
- Respect the policy-making role of the committee and supports it in reaching decisions.
- Avoid surprises.

### **What the Superintendent Has a Right to Expect from the School Committee**

The chair should exhibit the skills and attributes of what the exemplary school committee member should be:

- Personify trust, confidence and professional respect.
- Articulate principled dissent where appropriate, and constructive, tactful criticism.
- Provide a fair, honest job evaluation based on agreed upon criteria.
- Adhere to and supports policies it has adopted.
- Consider willingly and respectfully the staff recommendations when subject to school committee advice and consent.
- Prepare the committee to do its job before, during and after public meetings.
- Aspire to high standards of ethical behavior.
- Exemplify realism, confidence and patience.
- Strive for educational above personal goals.
- Spring no surprises.

# SUPERINTENDENT EVALUATION PROCESS

The evaluation of the superintendent provides an opportunity for the school committee and the superintendent to review, on a regular basis, the status of the school system and the roles and responsibilities of the school committee and the superintendent. It serves to inform the superintendent of the committee's expectations. It promotes a dialogue that allows both the committee and the superintendent to assess performance and to identify areas needing improvement. It improves superintendent/school committee communication which helps build a better relationship. And it improves planning.

The attached sample evaluation tool has been designed to offer the greatest opportunity for an objective evaluation of the superintendent and the school system. Each section contains a narrative, defining "general" expectations for the category. Its purpose is to assist the evaluator in better understanding the connection the superintendent may have to the goals that will be established. It also should help the committee and the superintendent to formulate the goals.

The goals need to be developed and agreed upon by both the superintendent and the school committee. During the process of developing the goals, the dialogue should focus on defining expectations and then determining the action necessary to meet those expectations. For instance, in the category: **RELATIONSHIP WITH THE SCHOOL COMMITTEE**, one issue may be that the school committee is concerned that they are not receiving information for agenda items on a timely basis. Past practice may have dictated the current schedule for distribution of agenda and meeting materials to the committee but, for whatever reason, this no longer meets the "expectations" of the current committee. The expectation then would be that the committee receive the information and material sooner.

A goal, dealing with this issue, and most often seen in an evaluation is: **The superintendent will provide the agenda to school committee members on a timely basis.** Would this be considered a "good" goal? We need to first look at what constitutes a "good" goal. Three questions should be asked before any goal is assigned to the evaluation.

1. **Does it address the need?** In this case it certainly does. If agenda material is not, in the opinion of committee members, getting to them in time to provide an opportunity for review and/or response, then it should be sent "on a timely basis".
2. **Is it attainable?** Again, in this case it is. It requires only that material go out sooner than before, and of course, that the superintendent is able to accommodate this request.
3. **Is it measurable?** No. Any goal that is measured by either individual standards or by some objective rather than the subjective standard is not clearly enough defined. The possibility is great that "timely" would be defined differently by the superintendent and/or individual school committee members. **The superintendent will insure that school committee members will receive the agenda and supporting materials at least 48 hours in advance of every regularly scheduled school committee meeting** would be a more appropriate goal.

Superintendent evaluations provide an opportunity to assess the performance of the superintendent but they should also do much more than that. They provide an opportunity to evaluate the condition and direction of the school district. School committees should not assume that the superintendent is solely responsible for the successes and failures of their school district. If the school committee accepts this fact, then they need to agree on the purpose of the superintendent evaluation. The evaluation should clarify the roles of the superintendent and the school committee and it should serve to inform the superintendent of the school committee's expectations.

If this sounds simple, it's not. The first roadblock to creating an effective evaluation is, as evidence suggests, that school committee members are not adequately trained for evaluating superintendents. The process most often used is one where the school committee adopts an evaluation instrument and then, once a year, fills in the blanks. It's usually an effortless, but not necessarily painless, endeavor. Without an opportunity to assess the expectations listed in an evaluation instrument and without an opportunity to discuss the expectations and measurements with the superintendent, the process becomes too subjective and "personality" driven.

We believe the following sample evaluation instrument offers the best opportunity to complete an effective and worthwhile superintendent evaluation. In order for it to work, however, the process of developing and adopting the instrument needs to be understood.

## STEP ONE - ADOPTING THE INSTRUMENT

The superintendent and the school committee need to meet and review the sample instrument. There are seven categories contained within the following sample. This is not to imply that these are the only categories a committee may use. These are presented as categories we feel best cover the scope of the superintendent's area of responsibility. It is important that both parties agree that these categories fairly represent the areas the superintendent has influence over and that they merit consideration in an evaluation. Under each category heading is a narrative describing the expectations, in a general sense, for that area. The committee and the superintendent need to agree that this narrative reflects their understanding of the expectations in this area.

This is also the place to include performance standards. The Department of Elementary and Secondary Education regulations dealing with performance standards may be enhanced by the addition of performance standards specific to the district. Both the superintendent and the school committee should agree upon them. It is important to keep in mind that these are still in general terms. Performance standards and other expectations go into building the narrative or "mission statement" for each category. These will not be specifically rated.

## STEP TWO - GOAL SETTING

Setting the goals is critical to the effectiveness of the evaluation. Too often evaluations reflect the "feel good" or "feel bad" attitudes of the evaluator. In either case, this often fails to produce a fair assessment of the performance of the superintendent and almost never provides a true assessment of the school district. The greatest benefit to any superintendent evaluation may be the opportunity it provides for the school committee and the superintendent to assess what is happening in the district. The school committee needs to understand that they share the responsibility, along with the superintendent, for what happens within the school system.

The process of establishing goals provides an opportunity for both the superintendent and the school committee to articulate specific actions that they expect will lead towards a better educational system. It is important that every goal be specific enough so that no matter who is doing the evaluation, there should be no doubt about the measurement of performance against the goal. If the possibility of subjective measurement exists, then the goal was poorly constructed.

Consider: **The superintendent will improve public awareness in the schools.** This goal reflects an expectation based on the premise that the public needs to be better informed about what is happening in the schools. On the surface it seems to be important enough

to include as an expectation of the superintendent and, therefore, should be included in an evaluation. There are, however, several problems with this. First of all the responsibility of improving public awareness in the schools is not the sole responsibility of the superintendent. More importantly, it is virtually impossible to measure the impact any individual might have in this area. The perceptions, expectations, and attitudes of individual evaluators play a bigger role in the rating of this goal than the efforts of the evaluatee. Does this mean that increasing public awareness should not be a "goal" of the superintendent and school committee? Certainly not.

The process of determining the goals needs to include the expectations of both the superintendent and the school committee. Improving public awareness may be a high priority of both. What needs to happen, then, is for the superintendent and school committee to agree on this expectation. At that point they need to determine what responsibility each may have in the accomplishment of this expectation and then agree on specific actions that may be taken to affect the desired outcome. The dialogue should focus on what action the superintendent will take to meet this "goal". The superintendent may suggest, for instance, that he/she will send out a newsletter or a press release periodically. In order to meet the expectations of the school committee it may be necessary to have more than one goal dealing with this expectation. One example would be: **The superintendent will generate one press release quarterly dealing with positive stories about the school system and distribute it to the local media.** This action is one step towards improving public awareness. It also provides a "goal" that is measurable by anyone completing the evaluation. The school committee is able to see each press release and determine whether or not this goal has been accomplished. It is not subject to individual perceptions, expectations, or attitudes.

If goals are too general then the opportunity for subjective impressions is great. Discuss in detail what the expectations are and then formulate goals that you feel will work towards meeting those expectations. Use this simple test to determine if your goal is "good".

1. Does it address the need?
2. Is it attainable?
3. Is it measurable?

### STEP THREE - PERIODIC REVIEW

The most serious shortcoming in many evaluation processes is the failure to periodically review and assess the status of the evaluation goals. A school district is not static. When the superintendent and the school committee establish the goals for the year, they do so based on what they perceive to be the needs at that point in time. As the year progresses, more information becomes available, conditions change, and priorities change. Keep in mind the stated purpose of the evaluation: "...to assess the performance of the superintendent" and to "...provide an opportunity to evaluate the condition and direction of the school district."

The review process provides the best opportunity to enhance the performance of the superintendent, school committee, and the school district. It accomplishes this by promoting a dialog, on a regular basis, dealing with conditions and events affecting the school district. If conditions or priorities change, then goals may also change. As a school district is not static, neither should the goals that affect the district be static. It is critical to the process that, when conditions within the district cause the committee to modify its expectations or priorities, goals be reviewed. If any goals need to be modified, added or dropped, do not be afraid to do so. The committee should not be evaluating performance goals that are no longer relevant.



## **STEP FOUR - FORMAL EVALUATION**

The formal evaluation can only take place after all the preliminary steps have been completed. The superintendent and the school committee should have begun the process a year earlier by agreeing on the areas to be evaluated, developing specific goals to meet expected objectives, and to periodically have reviewed the progress and status of those goals. If all of that has been accomplished, it is time to put the results to the test.

The committee should begin the formal evaluation by reviewing the evaluation instrument at a regular meeting. The purpose of this is to insure that the entire committee is in agreement with the goals to be evaluated and clearly understands the expectations. Following that meeting, each member should record his/her ratings on their copy of the evaluation. It is important to remember that comments should accompany each rating. If there is the expectation that this instrument may be used for improving and/or maintaining excellence within the school district, then the rationale behind each observation is important in order to be able to react to them. When a school committee member has completed his/her evaluation, it should be forwarded to the committee chair.

The committee chair will compile the results of the individual evaluations and develop a "committee" evaluation. The chair will then review the results with the superintendent before presenting this "committee" evaluation to the full committee at an open meeting. This step will allow the superintendent an opportunity to prepare his/her response to the evaluation. It is this "committee" evaluation that becomes the official superintendent evaluation. (See legal opinion included on page 50)

## **STEP FIVE - THE END AND THE BEGINNING**

Review the results of the formal evaluation, go back to STEP ONE, and begin all over again. Remember: the superintendent evaluation is a never-ending process.

# SAMPLE SUPERINTENDENT EVALUATION FORM

## A. RELATIONSHIP WITH THE SCHOOL COMMITTEE

The school committee relies on the superintendent in order to make informed decisions that will affect the quality of education for the public school children in our community. In order to promote a climate of mutual respect and trust, a professional working relationship should be maintained. The superintendent should establish clear direction for the school committee meetings by providing agendas and support materials that allow for reasonable policy formation and informed decision making. It is expected that the superintendent will support and implement school committee policies and directives and effectively communicate these to the students, staff, and members of the community.

### GOALS:

Fails to Meet / Meets / Exceeds Expectations

1.

\_\_\_\_\_

2.

\_\_\_\_\_

3.

\_\_\_\_\_

4.

\_\_\_\_\_

5.

\_\_\_\_\_

RATING:

\_\_\_\_\_  
Fails to Meet/ Meets/ Exceeds Expectations

## B. EDUCATIONAL LEADERSHIP

The focus of decisions must address the needs of all students. In order to provide effective leadership, the superintendent should keep abreast of the latest developments in the field of education. Curriculum evaluation and development, professional evaluation and development, and student assessment should all be considered in the formulation of short and long range goals and objectives.

### GOALS:

Fails to Meet / Meets / Exceeds Expectations

1.

\_\_\_\_\_

2.

\_\_\_\_\_

3.

\_\_\_\_\_

4.

\_\_\_\_\_

5.

\_\_\_\_\_

RATING:

\_\_\_\_\_  
Fails to Meet/ Meets/ Exceeds Expectations

### C. GENERAL MANAGEMENT

The Superintendent has the responsibility for the efficient operation of the school system. The response of those assigned the task of carrying out the activities necessary to the success of the system depend on having an awareness of the goals and objectives of the system. The Superintendent is expected to provide the leadership to the School Committee in the development of these goals and objectives. It is important that the Superintendent is familiar with and has a strong understanding of state and federal laws, Department of Elementary and Secondary Education regulations, and School Committee policy.

#### GOALS:

Fails to Meet / Meets / Exceeds Expectations

1.

\_\_\_\_\_

2.

\_\_\_\_\_

3.

\_\_\_\_\_

4.

\_\_\_\_\_

5.

\_\_\_\_\_

#### RATING:

\_\_\_\_\_  
Fails to Meet/ Meets/ Exceeds Expectations

## D. BUDGET MANAGEMENT

The School Committee has the responsibility of approving the budget and the Superintendent has the responsibility to present that budget to the School Committee in a manner that promotes their full understanding. The budget should take into consideration the needs of the entire system based on a formal assessment process. The need to promote the school system and gather community support for school finances is an integral component of the budget process.

### GOALS:

Fails to Meet / Meets / Exceeds Expectations

1.

\_\_\_\_\_

2.

\_\_\_\_\_

3.

\_\_\_\_\_

4.

\_\_\_\_\_

5.

\_\_\_\_\_

### RATING:

\_\_\_\_\_  
Fails to Meet/ Meets/ Exceeds Expectations

## E. PERSONNEL MANAGEMENT

The Superintendent is responsible, either directly or indirectly, for the hiring of all school personnel. Personnel decisions should be approached in a non-discriminatory and impartial manner. It is the Superintendent's responsibility to foster an environment conducive to good teaching. The Superintendent should be alert to issues that affect staff morale, should be actively concerned with a meaningful staff evaluation program, and should provide a balanced staff development program. The School Committee should be kept informed in appropriate matters of collective bargaining, performance standards, professional development, and grievances.

### GOALS:

Fails to Meet / Meets / Exceeds Expectations

1.

\_\_\_\_\_

2.

\_\_\_\_\_

3.

\_\_\_\_\_

4.

\_\_\_\_\_

5.

\_\_\_\_\_

### RATING:

\_\_\_\_\_  
Fails to Meet/ Meets/ Exceeds Expectations

## F. COMMUNICATIONS/PUBLIC RELATIONS

Public awareness is the cornerstone for support of education in our community. The Superintendent should insure that staff, students, parents, and the community are kept informed of the mission and the accomplishments of the school system. A strong, positive posture is needed in building public support for the school system.

### GOALS:

Fails to Meet / Meets / Exceeds Expectations

1.

\_\_\_\_\_

2.

\_\_\_\_\_

3.

\_\_\_\_\_

4.

\_\_\_\_\_

5.

\_\_\_\_\_

### RATING:

\_\_\_\_\_  
Fails to Meet/ Meets/ Exceeds Expectations

## G. PERSONAL QUALITIES AND CHARACTERISTICS

It is expected that the superintendent maintain high standards of ethics, honesty, and integrity in personal and professional matters and, at all times, represent the school system in a professional manner. The Superintendent should encourage open communication with staff, administrators, community representatives, and school committee members.

### GOALS:

Fails to Meet / Meets / Exceeds Expectations

1.

\_\_\_\_\_

2.

\_\_\_\_\_

3.

\_\_\_\_\_

4.

\_\_\_\_\_

5.

\_\_\_\_\_

RATING:

\_\_\_\_\_  
Fails to Meet/ Meets/ Exceeds Expectations



NOTE: An evaluation should help to clarify Superintendent and School Committee roles. It should also serve to inform the Superintendent of the Committee's expectations, assess performance against established goals, identify successes and those areas needing improvement, improve educational performance, and aid in professional development. Any issue that "FAILS TO MEET EXPECTATIONS" should be explained in order to determine the course of action needed for improvement. It is equally important to the process to comment on ratings where the performance meets or exceeds expectations. The challenge to improve requires that work be done on those areas that have less than satisfactory results, but that school leaders also build on district strengths.

COMMENTS:

---

---

---

---

---

---

---

---

---

---

---

---

# APPENDICES

Open Meeting Law Requirements: Legal Opinion

Public Records Requirements: Advisory Opinion

Role of the Chair in the Selection of the Superintendent

Open Meeting Law as Revised for Implementation on July 1, 2010

## OPEN MEETING REQUIREMENTS: A LEGAL OPINION

In response to an inquiry concerning the process by which a superintendent is evaluated, MASC legal counsel, Stephen Finnegan responded with the following opinion. The issue at question was whether a superintendent can be evaluated in executive session, whether individual evaluations submitted by committee members in preparation of a composite evaluation are subject to public disclosure, and whether these individual evaluations need to be saved once the composite has been presented to the superintendent.

Mr. Finnegan's response:

The procedures utilized by school committees in evaluating superintendents are different from committee to committee. This comes about as a result of the policy making authority of school committees. This policy-making authority of school committees is derived from M.G.L. c.71, s37 and is only limited by "the requirements of law and statewide goals and standards established by the Board of Education." Each school committee adopts policies which govern the operation of the committee. A policy adopted concerning the evaluation of a superintendent must be sure to comply with state law.

M.G.L. c. 39, s23B of the Open Meeting Law states:

"All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting **except as otherwise provided by this section.**" (emphasis added.)

A governmental body, as defined by M.G.L. c. 39, s23A, includes "a committee or sub-committee of any district, city, region or town, however elected, appointed or otherwise constituted." Therefore, school committee meetings, and any subcommittee thereof, would fall within the purview of the Open Meeting Law.

One exception to the general requirement that governmental bodies meet in open session is where the purpose of such a meeting is to discuss the "reputation, character, physical condition or mental health of an individual." M.G.L. c. 39, s23B(1). As a result, these are proper subjects of an executive session, provided however, that a meeting is first held in open session and a majority of the committee members have voted to go into the executive session. M.G.L. c. 39, s23B. Despite this explicit exception regarding the "reputation and character" of an individual, M.G.L. c. 39, s23B(1) goes on to provide that discussions of the "professional competence" of an individual should be held in open session.

M.G.L. c.39, s23B(3) also maintains that a governmental body may meet in executive session for the purposes of conducting contract negotiations. The evaluation of a superintendent is clearly subject to an open meeting, and the committee should be careful not to circumvent the law by loosely applying various statutory exceptions which would allow an executive session. For those areas of the evaluation which actually apply to contract negotiations, a committee may enter into executive session pursuant to a vote of the governmental body.

When the process used to derive a final evaluation of the superintendent is that each committee member submits their own individual evaluation to the chairperson, and that

the chairperson then prepares a composite evaluation. This composite evaluation is then presented to the superintendent. Should a discussion of the superintendent's evaluation occur in public session, the underlying documentary materials (i.e. the composite evaluation) may be made available to the public, upon request. Since the composite evaluation is prepared by the chairperson alone, it is clear that there are no "deliberations" under the Open Meeting Law, since this requires a "verbal exchange between a quorum of members of a governmental body attempting to arrive at a decision on any public business within its jurisdiction." M.G.L. c. 39, s23A. As a result, the individual evaluations considered by the chairperson would not become public information. It should be noted, however, that if these individual evaluations are later referenced and discussed in public session, perhaps in connection with the composite evaluation, then they too may become public information. *Opinion of the Secretary of State, Commonwealth of Mass., February 27, 1989.*

Stephen J. Finnegan, Esq.

## PUBLIC RECORDS REQUIREMENTS: AN ADVISORY OPINION

The following is a copy of the contents of a letter from James W. Igoe, Supervisor of Public Records for the Commonwealth of Massachusetts, dated February 27, 1989:

Pursuant to 950 C.M.R. 32.07, I am in receipt of your request for an advisory opinion. Specifically, you ask whether forms containing evaluations of the Superintendent of Schools made by members of the ( ) school committee are public records subject to mandatory disclosure provision of the Public Records Law. ( ) also initiated an appeal under M.G.L. c.66, s7 (26) (a-1) (1986 ed.). The statutory exemptions are strictly and narrowly construed. *Attorney General v. Assistant Commissioner of the Real Property Department of Boston*, 380 Mass. 623, 625 (1980). Public records, and any non-exempt, segregable portions thereof, are subject to mandatory disclosure upon request. M.G.L. c. 66, s10(a) (1986 ed.); *Reinstein v. Police Commissioner of Boston*, 378 Mass. 281, 289-90 (1979) (none of the statutory exemptions provide a blanket exemption from disclosure).

You suggest in your December 20, 1988 letter that the requested evaluations are exempt by reason of the privacy exemption. It applies to:

... personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.

Massachusetts General Laws, c. 4, s7 (26) (c) (1986 ed.)

The privacy exemption contains two distinct and independent clauses each requiring its own analysis. *Globe Newspaper Company v. Boston Retirement Board*, 388 Mass. 427, 432-334 (1983). Only the first clause is relevant to this determination.

The first clause of the privacy exemption requires an objective analysis. Personnel information which is of a "personal nature" and relates to a specifically named individual is absolutely exempt. *Brogan v. School Committee of Westport*, 401 Mass. 306, 308 (1987); *Globe Newspaper Company*, 388 Mass. at 438. The requested evaluation forms contain personnel information which relates to a specifically named individual. Therefore, the remaining inquiry is whether the requested information is of a "personal nature."

Information which is subjective or evaluative in nature constitutes "personal" information. *Connolly v. Bromery*, 15 Mass App. Ct. 661, 664 (1983). Even raw data appraising the job performance of individuals is personal and volatile. *Id.* Consequently, the evaluation forms prepared by the individual committee members which contain their personal evaluations of the superintendent's performance would ordinarily be exempt from mandatory disclosure as personnel information of a personal nature under the privacy exemption.

However, the fact that evaluation forms were the subject of an open meeting and are referred to in the minutes of that meeting is significant. See M.G.L. c. 39, s 23B (1986 ed.) (requirement that all meetings, with certain exceptions, be conducted in open sessions and a record kept of the proceedings). The legislation which codified the current statutory definition of "public records" and its exemptions contains a provision which prohibits the use of any of the current exemptions to withhold materials which were public records prior to the effective date of the Act. St. 1973, c. 1050, s 6. The intent of the General Court was to expand the disclosure of records and to ensure that governmental activities are open to public examination. *Hasting & Sons Publishing Company*, 374 Mass. at

816; see also *Brandt, Public Records FIPA and CORI*, 15 Suff. Law Rev. 23, 24 (1981). Prior to the effective date of the Act, the controlling law provided that all records referred to in the minutes were public records. St. 1969, c. 831, s 1, codified as M.G.L. c. 66, s 17B (f). This provision complements the requirements of the Open Meeting Law by ensuring that the public will have access to all documentary materials discussed in an open session. In the absence of such a requirement, the purpose served by the requirement that meetings be conducted in public could easily be subverted by discussions relating to documents which are characterized as "confidential." Meaningful public participation would be precluded. Accordingly, since the requested evaluations were the subject of an open meeting and are referred to in the meeting minutes, you are hereby advised that they are public records in their entirety.

Therefore, you are hereby ordered to provide ( ) with copies of the requested evaluation forms prepared by Committee members within ten (10) days of the receipt of this determination. Failure to comply with this order may result in notification to the Department of the Attorney General for enforcement.

Very truly yours,

JAMES W. IGOE  
Supervisor of Public Records

# THE ROLE OF THE CHAIR IN THE SELECTION OF THE SUPERINTENDENT

It is important for the school committee chair to conduct the meeting at which the superintendent of schools is to be selected be run openly and fairly. The selection process culminates in a formal meeting at which a final, formal vote will be taken. Usually, there is a large audience in attendance to observe the process.

## VOTING PROCESSES

MASC recommends the following process for the selection of a superintendent of schools.

1. At a legally called meeting, once the portion of the agenda appropriate for appointing a superintendent of schools is reached, the chair calls for discussion, or it is appropriate for a member to propose a motion as follows:

"I move that we proceed to the discussion related to the superintendency and appointment of a superintendent of schools."

2. The chair, having obtained a second to the motion, declares the matter is appropriately before the school committee. At this point, the chair may call for a discussion that will include two components, in no particular order:

- a. Discussion about the candidate(s).
- b. The method of selection/election.<sup>2</sup>
- c. Any special protocols that may be required in more complex settings such as a dual meeting of more than one board or an "all-region" body.<sup>3</sup>

3. At this point it is also critical that any ambiguities regarding the counting of votes be clarified.<sup>4</sup> Specifically, the number of votes necessary to elect a candidate or to approve an appointment by motion must be clear and unambiguous. To resolve this matter, the chair must declare the number of votes necessary to approve the motion. In particular, the chair must rule on whether:

- a. a simple majority of the full membership is required, or
- b. a majority of the quorum, or
- c. a majority of those present at the meeting is required, or
- d. a supermajority is required.

MASC strongly recommends that the chair declare:

"The chair declares that the appointment of the superintendent will require \_\_\_\_ affirmative votes cast for any candidate."

---

<sup>2</sup>Two methods of election/selection are generally used. The "ballot method" allows each member to vote for any eligible candidate. The "motion method" allows any member to propose a motion to appoint any eligible candidate.

<sup>3</sup>In regional school districts, including those that involve a joint meeting with other school committees under a union governance structure, the chair or chairs may wish to explain how the voting procedure works. Since most multi-community regions have unique voting structures, you may wish to consult with MASC about the best way to explain this to the public or the media.

<sup>4</sup>Robert's Rules requires a majority of those voting (i.e., four members out of seven, or four members out of six). However, many school committees have supplemented Robert's Rules with their by-laws that provide added specificity. For example, some districts require a majority of the full membership to approve any motion or election involving the expenditure of funds. Thus, a seven member board, with two members absent, must still obtain four affirmative votes to make an appointment of a salaried person.

4. Discussion may proceed during which school committee members present their views on the candidates and discussion proceeds under the direction of the chair.

The Open Meeting Law requires that this discussion take place in public in most circumstances.

*Robert's Rules* encourages the chair to recognize each school committee member who seeks the floor with preference given to those who have not yet spoken. Once all who wish to do so have spoken, the chair may recognize those wishing to speak again. Robert's limits each speaker to two opportunities in the same day. However, the chair may recognize individuals as often as necessary since cutting off debate on an issue of this importance may be very inappropriate.

Generally, the public does not speak at these meetings. Subject to the willingness of the chair and the school committee, the chair may recognize members of the public who have requested to speak. Should the chair allow the public to speak, MASC recommends strongly that:

- Citizens speak only when recognized by the chair.
- Citizens address the chair and remain on point.
- Comments should be limited to a specific period of time.
- The school committee should not respond to comments.

5. Once discussion has concluded, the chair announces either:

- a. "We will now proceed to determine the method of election of the superintendent," or, if this procedure is determined,
- b. "We will now proceed to the election of a superintendent."<sup>5</sup>

6. If the method of election has been chosen, the chair declares:

a. For a ballot method:<sup>6</sup>

i. The chair announces,

"The chair will call the roll and each member will announce the name of the candidate of his/her choice; at the end of the ballot, I will announce the vote and ask if all members have voted or if any member wishes to change his/her vote. I will then declare the ballot closed and announce the vote."

ii. The chair proceeds to call the roll.

---

<sup>5</sup>If the school committee elects to utilize the "ballot method," MASC urges that the school committee require that all balloting which results in a majority vote to appoint a superintendent will be subject to approval of a motion to make the appointment conditional, subject to successful negotiation of a contract of employment. This is a critical step since your candidate or school committee may seek provisions the other party is unwilling to accept. In such a case, the school committee may wish to rescind the appointment vote and elect another candidate.

<sup>6</sup>The ballot method is often preferred for an important reason. On a ballot, school committee members simply state the name of their preferred choice and do not have to express a negative vote relative to the other candidates. When the ballot method is used first, a motion to hire A may result in advocates of B having to vote against a person they may still like and respect and who may ultimately be elected on a subsequent ballot. The ballot method allows members to determine if a candidate has a majority of support and then change their votes before the final gavel closes the balloting.

- iii. The chair announces the number of votes each candidate has received and asks if all members wishing to vote have done so or if any members wish to change their vote.
- iv. The chair announces the vote. If a candidate has received the required majority, the chair declares the person elected.
- v. The chair should then call for a motion as follows:

“Moved: that \_\_\_\_\_ be appointed superintendent of schools for \_\_\_\_\_ subject to the successful negotiation of a contract of employment mutually agreeable to the candidate and the school committee”

b. For a motion method of election:

- i. The chair announces,

“Is there a motion relative to the election of a superintendent of schools?”

- ii. The chair entertains a motion and calls for a second.
- iii. The chair calls for debate or discussion as the standard of the committee requires.
- iv. The chair calls the roll.
- v. The chair declares the vote and explains what has happened.

## DETERMINING THE NUMBER OF VOTES

Determining the number of votes necessary to confirm a vote is a critical issue. If your rules call for using *Robert's* and require a “majority vote”:

A majority vote is normally required to adopt a motion or to elect to office. It is defined as “more than half of the votes cast by persons legally entitled to vote, excluding blanks or abstentions, at a regular or properly called meeting at which a quorum is present.”

*Roberts of Order Newly Revised* (10th Edition.) p. 387, 1. 7-13.

Unless your rules call for a majority of the full membership, you could be in a position where someone abstains and you can appoint someone with less than a traditional majority votes if someone abstains.

There may be fewer votes cast than the number of members present, since some may choose not to vote – resulting in “abstentions.” Only a majority of those actually voting is required. If, for example, there are 10 members present at a meeting, and 4 vote in favor of a motion, while three vote against it, the four votes in favor are a majority of the 7 votes cast, and the motion is therefore adopted.

Under *Robert's Rules of Order Newly Revised*, however, plurality votes are not sufficient; decisions require a majority vote. Therefore, in an election in which there are three or more candidates, if no candidate gets a majority, the vote must be repeated until one of them does get a majority.



Also: in response to the question, "Do abstention votes count?" Robert's advises:

The phrase "abstention votes" is an oxymoron, an abstention being a refusal to vote. To abstain means to refrain from voting, and, as a consequence, there can be no such thing as an "abstention vote."

In the usual situation, where either a majority vote or a two-thirds vote is required, abstentions have absolutely no effect on the outcome of the vote since what is required is either a majority or two thirds of the votes cast. On the other hand, **if the vote required is a majority or two thirds of the members present, or a majority or two thirds of the entire membership, an abstention will have the same effect as a "no" vote.** Even in such a case, however, an abstention is not a vote.

*Roberts Rules of Order Newly Revised In Brief, pp 66-67*

# AN ACT TO IMPROVE THE LAWS RELATING TO OPEN MEETINGS AND ETHICS

(reprinted from the *Massachusetts Selected General Laws for the School Committees and School Personnel 2009*, published by the Massachusetts Association of School Committees)

Note from Stephen J. Finnegan, Esq.,

In July, 2009 the Governor signed legislation that repeals the Open Meeting Law (MIL c.39, st.23A-D), and inserts in place thereof the following new chapter (MIL c.30A). The Open Meeting Law revision will not become effective until July 1, 2010. The new law merges the local government and state versions of the Open Meeting Law and makes various other changes.

## OPEN MEETING LAW

Effective July 1, 2010

### Chapter 30A, Section 18

#### *Definitions*

As used in this section and sections 19-25, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

**Deliberation:** an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that “deliberation” shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

**Emergency:** a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

**Executive session:** any part of a meeting of a public body closed to the public for **deliberation of certain matters.**

**Intentional violation:** an act or omission by a public body or a member thereof, in knowingly by violating the open meeting law.

**Meeting:** a deliberation by a public body with respect to any matter within the body’s jurisdiction; provided, however, “meeting” shall not include:

- (a) an on-site inspection of a project or program, so long as the members do not deliberate;
- (b) attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate;
- (c) attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate;
- (d) 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; or
- (e) a session of a town meeting convened under section 10 of chapter 39 which would include the attendance by a quorum of a public body at any such session.

**Minutes:** the written report of a meeting created by a public body required by subsection (a) of section 23 and section 5A of chapter 66.

**Post notice:** to display conspicuously the written announcement of a meeting either in hard copy or electronic format.

**Preliminary screening:** the initial stage of screening applicants conducted by a committee or subcommittee of a

public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.

**Public body:** a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that “public body” shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

**Quorum:** a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

## **Chapter 30A, Section 19**

### *Duties of the Attorney General; Advisory Commission*

(a) There shall be in the department of the attorney general a division of open government under the direction of a director of open government. The attorney general shall designate an assistant attorney general as the director of the open government division. The director may appoint and remove, subject to the approval of the attorney general, such expert, clerical and other assistants as the work of the division may require. The division shall perform the duties imposed upon the attorney general by the open meeting law, which may include participating, appearing and intervening in any administrative and judicial proceedings pertaining to the enforcement of the open meeting law. For the purpose of such participation, appearance, intervention and training authorized by this chapter the attorney general may expend such funds as may be appropriated therefor.

(b) The attorney general shall create and distribute educational materials and provide training to public bodies in order to foster awareness and compliance with the open meeting law. Open meeting law training may include, but shall not be limited to, instruction in: (1) the general background of the legal requirements for the open meeting law; (2) applicability of sections 18 to 25, inclusive, to governmental bodies; (3) the role of the attorney general in enforcing the open meeting law; and (4) penalties and other consequences for failure to comply with this chapter.

(c) There shall be an open meeting law advisory commission. The commission shall consist of 5 members, 2 of whom shall be the chairmen of the joint committee on state administration and regulatory oversight; 1 of whom shall be the president of the Massachusetts Municipal Association or his designer; 1 of whom shall be the president of the Massachusetts Newspaper Publishers Association or his designer; and 1 of whom shall be the attorney general or his designer. The commission shall review issues relative to the open meeting law and shall submit to the attorney general recommendations for changes to the regulations, training, and educational initiatives relative to the open meeting law as it deems necessary and appropriate.

(d) The attorney general shall, not later than January 31, file annually with the commission a report providing information on the enforcement of the open meeting law during the preceding calendar year. The report shall include, but not be limited to: (1) the number of open meeting law complaints received by the attorney general; (2) the number of hearings convened as the result of open meeting law complaints by the attorney general; (3) a summary of the determinations of violations made by the attorney general; (4) a summary of the orders issued as the result of the determination of an open meeting law violation by the attorney general; (5) an accounting of the fines obtained by the attorney general as the result of open meeting law enforcement actions; (6) the number of actions filed in superior court seeking relief from an order of the attorney general; and (7) any additional information relevant to the administration and enforcement of the open meeting law that the attorney general deems appropriate.

## **Chapter 30A, Section 20**

### *Notice Requirements; Recording Meeting; Open Meeting Law Receipt Requirement*

(a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located. For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies.

For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or town within such district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose.

For meetings of a state public body, notice shall be filed with the attorney general by posting on a website in accordance with procedures established for this purpose.

The attorney general shall have the authority to prescribe or approve alternative methods of notice where the attorney general determines such alternative will afford more effective notice to the public.

(d) The attorney general may by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. Such authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

(e) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting the chair shall inform other attendees of any such recordings.

(f) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(g) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated pursuant to section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application pursuant to section 19. Unless otherwise directed or approved by the attorney general, the appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designers, shall obtain such certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

## **Chapter 30A, Section 21**

### *Executive Session*

(a) A public body may meet in executive session only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

(i) to be present at such executive session during deliberations which involve that individual;

(ii) to have counsel or a representative of his own choosing present and attending for the purpose of advising

the individual and not for the purpose of active participation in the executive session;

(iii) to speak on his own behalf; and

(iv) to cause an independent record to be created of said executive session by audio- recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

(2) To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;

(3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;

(4) To discuss the deployment of security personnel or devices, or strategies with respect thereto;

(5) To investigate charges of criminal misconduct or to consider the filing of criminal complaints;

(6) To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;

(7) To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;

(8) To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;

(9) To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:

(i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and

(ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or

(10) to discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

(b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that:

(1) the body has first convened in an open session pursuant to section 21;

(2) a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;

(3) before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;

(4) the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and

(5) accurate records of the executive session shall be maintained pursuant to section 23.

## **Chapter 30A, Section 22**

### *Minutes*

(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.

(b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.

(c) Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open ses-

sion, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.

(d) Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.

(e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause twenty-sixth of section 7 of chapter 4. Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.

(f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.

When the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

(g)(1) The public body, or its chair or designer, shall, at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure. Such determination shall be announced at the body's next meeting and such announcement shall be included in the minutes of that meeting.

(2) Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body shall respond to the request within 10 days following receipt and shall release any such minutes not covered by an exemption under subsection (f); provided, however, that if the body has not performed a review pursuant to paragraph (1), the public body shall perform the review and release the non-exempt minutes, or any portion thereof, not later than the body's next meeting or 30 days, whichever first occurs. A public body shall not assess a fee for the time spent in its review.

## **Chapter 30A, Section 23**

### *Enforcement; Remedies*

(a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law.

(b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.

(c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. The attorney general may, and before imposing any civil penalty on a public body shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation,

the attorney general may issue an order to:

- (1) compel immediate and future compliance with the open meeting law;
- (2) compel attendance at a training session authorized by the attorney general;
- (3) nullify in whole or in part any action taken at the meeting;
- (4) impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation;
- (5) reinstate an employee without loss of compensation, seniority, tenure or other benefits;
- (6) compel that minutes, records or other materials be made public; or
- (7) prescribe other appropriate action.

(d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review.

(e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be open to review in an action to compel compliance.

(f) As an alternative to the procedure in subsection (b), the attorney general or 3 or more registered voters may initiate a civil action to enforce the open meeting law.

Any action under this subsection shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets.

In any action filed pursuant to this subsection, in addition to all other remedies available to the superior court, in law or in equity, the court shall have all of the remedies set forth in subsection (b).

In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of the open meeting law. In the hearing of any action under this subsection, the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by the open meeting law; provided, however, that no civil penalty may be imposed on an individual absent proof that the action complained of violated the open meeting law.

(g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel.

(h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth.

## NOTES