



Minnesota Statute 13D – Part I

OPEN MEETING LAW

The Minnesota Open Meeting Law, [MN Statute 13D](#), provides specific reasons a Charter School Board and other public bodies may, or are required to, close their meetings to the public. It also prescribes the language that should be used to “notice” that a closed meeting will take place and for which of the authorized reason(s) the meeting is being closed. Further, the law contains requirements for public bodies, including charter school boards, to follow both DURING a closed meeting and AFTER it has been conducted.

These issues of *The Sounding Board* will focus on MN Open Meeting Law and its implications for charter school boards of directors. It will include four parts:

Part 1. Reasons to Close a Charter School Board Meeting and How To Do It

Part 2. Requirements During and After a Closed Meeting

Part 3. Suggested Procedures and Language for Closing Charter School Board Meetings

Part 4. Holding Open Meetings Consistent with MN Statute 13D.

These issues include information from MN Statute 13D that are most pertinent to charter school boards as determined by the Audubon Center of the North Woods (ACNW); however, there may be other provisions of MN Statute 13D that are important in specific situations and the full text of the statute should be referenced for any situations other than those described below.

This paper is not intended to be legal advice. Please check with the school’s legal counsel and / or the full text of the statute for additional information.

Promoting Quality
Charter School
Governance

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**Audubon Center
of the North Woods**

Reasons to Close a Charter School Board Meeting

When a charter school board meeting **MUST** be closed

(Statute is in *orange*, ACNW comments are in regular font)

13D.05 Subd. 2. When meeting must be closed

(a) *Any portion of a meeting must be closed if expressly required by other law or if the following types of data are discussed:*

(1) data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults;

Example: A board hearing or information session regarding a student or staff member alleged to be a victim or reporter of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults.

(2) active investigative data as defined in section 13.82, subdivision 7, or internal affairs data relating to allegations of law enforcement personnel misconduct collected or created by a state agency, statewide system, or political subdivision;

Example: This circumstance is not likely to occur in a charter school environment.

(3) educational data, health data, medical data, welfare data, or mental health data that are not public data under section 13.32, 13.3805, subdivision 1, 13.384, or 13.46, subdivision 2 or 7; or

Example: Student expulsion hearing or other disciplinary discussion related to a specific student or students.

(4) an individual's medical records governed by sections 144.291 to 144.298.

Example: Board deliberations with respect to a potential settlement agreement with an employee who may have been diagnosed/treated for post-traumatic stress symptoms, for example.

(b) A public body shall close one or more meetings for preliminary consideration of allegations or charges against an individual subject to its authority. If the members conclude that discipline of any nature may be warranted as a result of those specific charges or allegations, further meetings or hearings relating to those specific charges or allegations held after that conclusion is reached must be open. A meeting must also be open at the request of the individual who is the subject of the meeting.

Example: The board is discussing allegations that the school director committed a theft.

What Else This Means: While the meeting(s) at which the board considers preliminary allegations must be closed*, if the board concludes that disciplinary action is warranted, all subsequent meetings on this topic must be open.

***What Else This Means:** if the person against whom charges or allegations are made wants the meeting to be open, it must be open to the public.

Reasons to Close a Charter School Board Meeting

When a charter school board meeting **MAY** be closed

(Statute is in *orange*, ACNW comments are in regular font)

*13D.05 Subd. 3. **When meeting may be closed***

(a) A public body may close a meeting to evaluate the performance of an individual who is subject to its authority. The public body shall identify the individual to be evaluated prior to closing a meeting. At its next open meeting, the public body shall summarize its conclusions regarding the evaluation. A meeting must be open at the request of the individual who is the subject of the meeting.

Example: The board is conducting the school director's annual evaluation.

What Else This Means: The board, at its next open meeting, must summarize the conclusions of the director's evaluation that was conducted in the closed meeting. That open meeting could immediately follow the closed meeting or be part of the next regularly scheduled public board meeting.

What Else This Means: If the director requests the meeting to be open, the meeting must be open to the public. (If a school's bylaws designate the school director as an ex-officio member of the board, s/he has the right to attend ALL board meetings, including closed board meetings.)

(b) Meetings may be closed if the closure is expressly authorized by statute or permitted by the attorney-client privilege.

What This Means: A board meeting may not be closed if the board is planning to discuss a sticky or delicate topic.

What are the limits of attorney client privilege? See p. 4 for more on this.

(c) A public body may close a meeting:

- (1) to determine the asking price for real or personal property to be sold by the government entity;*
- (2) to review confidential or protected nonpublic appraisal data under section 13.44, subdivision 3; and*
- (3) to develop or consider offers or counteroffers for the purchase or sale of real or personal property.*

Example: The board is considering the sale or purchase of property and determining the price, appraisal. or offers related to the sale or purchase.

It would be exceedingly rare that a charter school would close a meeting for any of the above reasons.

(d) Meetings may be closed to receive security briefings and reports, to discuss issues related to security systems, to discuss emergency response procedures and to discuss security deficiencies in or recommendations regarding public services, infrastructure and facilities, if disclosure of the information discussed would pose a danger to public safety or compromise security procedures or responses.

It would be exceedingly rare that a charter school would close a meeting for any of the above reasons.

Attorney-Client Privilege

The question often arises as to whether a charter school board can close a meeting under what is often referred to as the “attorney-client privilege.” Since MN Statute 13D is not specific on this question, ACNW requested an opinion about the topic from the Data Practices Office (formerly IPAD) at the Minnesota Department of Administration. The response below was received from Janet Hey at the Data Practices Office:

The Legislature did not provide a definition of “attorney client privilege” in the Open Meeting Law, but the courts have established guidelines. The Commissioner of Administration addressed this question in advisory opinions. For example, in Advisory Opinion [16-003](#), the Commissioner wrote:

The Minnesota Supreme Court established the test for the appropriate application of the exception:

To determine whether the attorney-client privilege exception to the Open Meeting Law applies, we balance the purposes served by the attorney-client privilege against those served by the Open Meeting Law. The exception applies when this balancing dictates the need for absolute confidentiality (emphasis added).

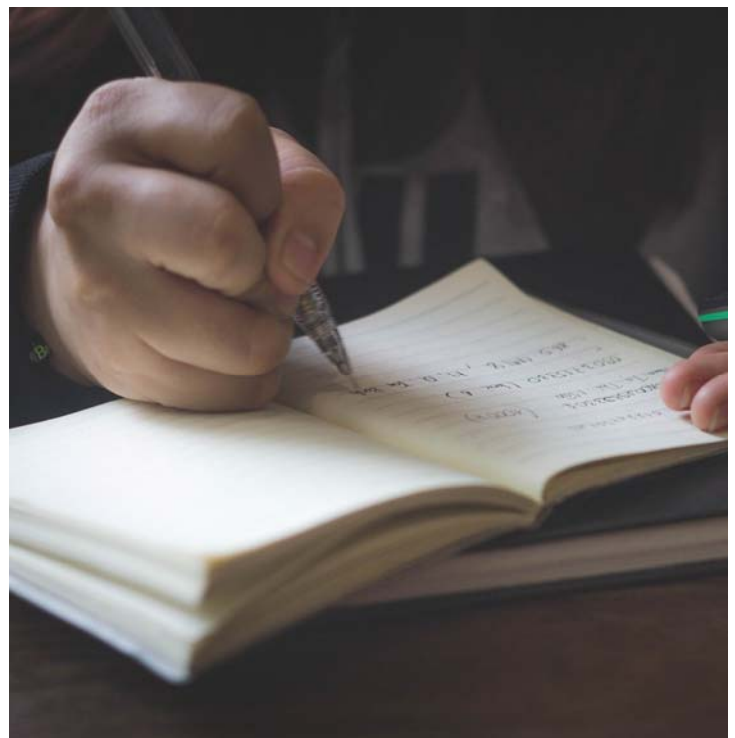
Prior Lake American v. Mader, 642 NW2d 729, 732 (Minn. 2002) (*Prior Lake American*). (See also *Minneapolis Star and Tribune v. the Housing and Redevelopment Authority*, 251 NW2d 620 (Minn. 1976) (*HRA*).)

The Court further held that because the exception only applies when absolute confidentiality is required, “the scope of the privilege is narrower for public bodies than it is for private clients.” *Prior Lake American* at 737. And that the exception “would almost never extend to the mere request for general legal advice or opinion by a public body in its capacity as a public agency.” *HRA* at 626 (emphasis added).

What This Means: In a charter school, there would be very few instances in which attorney-client privilege alone is sufficient to close a meeting. The reason to close a meeting should be identified and should be a reason that is expressly authorized by statute.

Final Thoughts on Reasons for Closing a Meeting

Sometimes school boards must discuss what they consider to be “difficult” or “very sensitive” topics that pertain to individuals or circumstances that could be awkward or embarrassing for the board, for the individuals, or for the community. In such cases, school boards are inclined to want to conduct closed board meetings to discuss those topics; however, it is imperative that all board members and school leaders understand that the meeting and discussion must take place in an open meeting, even if it is awkward, difficult, or very sensitive, unless the topic(s) specifically fall(s) into one of the categories in MN Statute 13D that authorize closed meetings.



How to Close a Charter School Board Meeting

Except for in unusual circumstances, closed board meetings should be planned for in advance of the closed meeting. Closed meetings must be properly noticed on the meeting's agenda, including a statement of the specific part of MN Statute 13D under which the meeting will be closed, and the closed meeting must be conducted in accordance with the above provisions as well as those included in Part 2 of this Sounding Board series on Open Meeting Law.

If a situation develops after a board meeting agenda has been distributed and there is little time for advanced planning for a closed meeting, the board chair should determine whether:

- the situation can be considered at the board's next regular meeting;
- the board should schedule an additional meeting (with proper notice) to consider the situation; or
- if the matter is of such urgency that it must be added to the current meeting's agenda.

In the first instance, the board chair can simply add the closed meeting to the next meeting's agenda; in the second instance, the board chair can propose an additional meeting to fellow board members during the current meeting and, with the board's approval, a separate meeting can be scheduled and properly noticed; and in the third instance, it is simply a matter of a board member making a motion to add the closed meeting to the agenda at the time the meeting agenda is being approved for the current meeting, again with the proper MN Statute 13D reference that is appropriate for the topic. Arrangements will also have to be made to record the closed meeting (see Part 2).



How to Close a Charter School Board Meeting

What to Include on the Agenda to Notice the Meeting

(Statute is in *orange*, ACNW comments are in regular font)

13D.01 Subd. 3. Subject of and grounds for closed meeting.

Before closing a meeting, a public body shall state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.

What This Means: A board meeting agenda or board meeting notice must state:

- that the meeting or a portion of the meeting will be closed;
- the specific statutory authority (from MN Statute 13D and Part A, above) that allows (or requires) the board to close the meeting; and
- the specific subject to be discussed.

Agenda Examples of Providing Notice of a Closed Meeting:

Example 1: “Closed meeting in accordance with MN. Stat.13D.05 Subd. 3. to evaluate the performance of the school director for the 2017-18 school year.”

When the board chair puts this agenda item before the board, a board member should say, “I move that the board conduct a closed meeting under the provisions of MN Stat.13D, Subd.3 to evaluate Ms. Ariana Oman’s performance as school director for the 2017-18 school year.” Another board member would “second that motion” and a vote would be taken (and recorded) and if a majority of board members present vote in the affirmative, the meeting is immediately closed until a second motion and vote to return to Open Session is approved by the board, after it concludes its deliberations during the closed meeting.

Example 2: “Closed meeting in accordance with MN. Stat.13D.05 Subd. 2(b). for preliminary consideration of allegations or charges against an individual subject to the board’s authority.”

It is important to note, that in this case the individual subject to the board’s authority must be made aware that the board is considering charges against him or her at an upcoming meeting, as s/he has the option to keep this meeting open.

MN Stat.13D.05 Subd. 5.Closed meetings.

The notice requirements of this section apply to closed meetings.

What This Means: The closed meeting, AND ITS PURPOSE must be noted on the agenda for the meeting.

What Else This Means: Notices of closed meetings must adhere to the same notice provisions, timelines and methods, contained in MN Stat. 13D, that apply to open meetings.

What Else This Means: Under normal circumstances, closed meetings **must be planned for in advance** and cannot simply be added to an agenda at the time of the meeting since that would violate MN Statute 13D as indicated above. If the board determines that it is dealing with an emergency as specified in MN Statute 13D, then it should follow MN Statute 13D in terms of posting and noticing an emergency meeting. Emergency meetings may be open or closed in accordance with all requirements and specifications of MN Statute 13D.