Board Member Roles, Responsibilities, and Governance

Marcia Herring,
Director Board Development
Questions New Board Member(s) May Ask

1. When does a new board member officially become a member of the board?

2. What do I need to know about conflict of interest? How do I protect myself and the district?

3. What voting procedures should the board follow to elect officers? Is this the same procedure as voting during a regular board meeting?

4. What is the primary function of the school board and what are some of the powers and duties of the board?

5. How do the school board’s responsibilities differ from the superintendents?

6. Where or to whom does a board member go for information?

7. How much time can a board member expect to spend on school board responsibilities?

8. What guidelines should a board member follow to be effective?

9. What is Rule 10?

10. What is the purpose of the Educational Service Unit?

11. What is the role of the board when there are problems with an administrator?
12. Is it okay for a board member to call the superintendent?

13. If a board member disagrees with the board or the superintendent, what is the best way to handle the matter?

14. Is it okay for board members to talk about board business outside of the board meeting?

15. What can a board member say, or not say to parents, friends, and family regarding school issues?

16. What information is considered confidential?

17. How does a board member address concerns for their children with a teacher once they are elected to serve the district?

18. How does a board member respond to community questions regarding the board’s decisions?

19. What is the School Improvement Plan?

20. How does a board member respond to media?

21. How does a board member respond to parental/community complaints?

22. Should board members communicate with each other via email?

23. What is the Nebraska Open Meetings Act?
24. What role does the public play at a Board Meeting? A work session?

25. Can board members meet socially without violating the Open Meetings Act?

26. When is it appropriate to abstain or vote no?

27. How does a board member support what they think is a bad decision?

28. When and how does the board evaluate the superintendent?

29. What laws govern what a school board can or cannot do?

30. How are public schools funded?

31. How does a school board set the levy?

32. What is a school bond referendum

33. What is option enrollment?

34. Is board development mandatory?

35. What is Nebraska Association of School Boards?
Board members... admit that the most surprising discoveries about board service is the:

- Amount of time it takes to be an effective board member
- Variety of concerns with which the board deals
- Abrupt change from “citizen” status to board member status
- Amount of board-related paperwork
- Mismatch between initial assumptions and the actual roles, responsibilities, and relationships of the board and administration in operating the school district

Resource: Becoming a Better Board Member NSBA
Third Edition 2006 p.6
Advice to the New Board Member

The Association would offer the following advice to new board members as they embark upon their journey as a steward of education.

▪ As a new member of the board, it is wise to spend more time listening than expressing your opinion. It will not take long to acclimate to general board procedure and to feel comfortable engaging freely in the give-and-take discussion at the meeting table.

▪ Do your homework, i.e., study the board agenda, past minutes and supporting documentation included in the board packet, the state and national journals. Other documents of interest will be the budget, auditor’s report, and policy manual.

▪ Plan to attend as many local, area, state meetings, as your schedule will allow. As well as being educational, it will help provide perspective on how the district operates.

▪ Regardless of what your major interests are and the sector(s) of the community you identify most closely with, realize that once elected you represent all the patrons and all students and that you must address all the issues ... hopefully in an informed, sensible, and balanced manner.

▪ When discussing school affairs in the community, remember you are just another taxpayer, albeit a well-informed one, and that you only make decisions while in formal session with the rest of the board.

▪ Remember that a board meeting is a work session in public, not a public meeting. That is to say, energies must be focused on the agenda and not dissipated in prolonged discussion with the audience. This “rule of thumb” is not intended to isolate the board nor deny public input. Patrons can place topics for discussion on the agenda, and there is an assigned agenda spot for general public comment. Also, if major issues arise, the board can direct surveys and/or hold public hearings on the matter in question.

▪ If the press attends board meetings, anything you say may be quoted ... unfortunately, not always correctly. Sensitive matters involving student or personnel problems should be referred to closed/executive session and the discussions therein kept confidential.

▪ When hearing complaints from patrons, make it a practice to refer them to the appropriate administrator. Tell them they must follow the chain of command.

▪ Suspend judgment on major decisions until you are confident that you have heard all sides of an issue. Realize, too, that decisions have to be made sometimes without being able to predict all the consequences. On those occasions, it is good to remember that nothing would be done at all if a person waited until he could do it so well that no one could find fault with it.

▪ It is not a problem to vote “No” once in a while or to go against what seems to be the mainstream. Do not surprise the administration with a major issue at a board meeting. The administrator should also refrain from asking you to vote on an issue that you have not had appropriate time to consider and debate prior to taking formal action.
Board Member Code of Ethics/Conduct

NASB Policy Service - Policy No. 0202.01

This is intended as an inclusive listing of board ethics.

Board members’ actions, verbal and nonverbal, reflect the attitude and the beliefs of the school district. Therefore, board members must conduct themselves professionally and in a manner fitting to their position.

Each board member shall follow the code of ethics stated in this policy.

AS A SCHOOL BOARD MEMBER:

1. I will listen.
2. I will respect the opinion of others.
3. I will recognize the integrity of my predecessors and associates and the merit of their work.
4. I will be motivated only by an earnest desire to serve my school district and the children of my school district community in the best possible way.
5. I will not use the school district or any part of the school district program for my own personal advantage or for the advantage of my friends or supporters.
6. I will vote for a closed session of the board if the situation requires it, but I will consider “secret” sessions of board members unethical.
7. I will recognize that to promise in advance of a meeting how I will vote on any proposition to be considered is to close my mind and agree not to think through other facts and points of view which may be presented in the meeting.
8. I will expect, in board meetings, to spend more time on education programs and procedures than on business details.
9. I will recognize that authority rests with the board in legal session and not with individual members of the board, except as authorized by law.
10. I will make no disparaging remarks, in or out of the board meeting, about other members of the board or their opinions.
11. I will express my honest and most thoughtful opinions frankly in board meetings in an effort to have decisions made for the best interests of the children and the education program.
12. I will insist that the members of the board participate fully in board action and recommend that when special committees are appointed, they serve only in an investigative and advisory capacity.
13. I will abide by majority decisions of the board.
14. I will carefully consider petitions, resolutions, and complaints and will act in the best interests of the school district.
15. I will not discuss the confidential business of the board in my home, on the street or in my office; the place for such discussion is the board meeting.
16. I will endeavor to keep informed on local, state, and national educational developments of significance so I may become a better board member.
IN MEETING MY RESPONSIBILITY TO MY SCHOOL DISTRICT COMMUNITY:

1. I will consider myself a trustee of public education and will do my best to protect it, conserve it, and advance it, giving to the children of my school district community the educational program and facilities that are as complete and adequate as it is possible to provide.
2. I will consider it an important responsibility of the board to interpret the aims, methods, and attitudes of the school district to the community.
3. I will earnestly try to interpret the needs and attitudes of the school district community and do my best to translate them into the education program of the school district.
4. I will attempt to procure adequate financial support for the school district.
5. I will represent the entire school district rather than individual electors, patrons or groups.
6. I will not regard the school district facilities as my own private property but as the property of the people.

IN RELATIONSHIP WITH THE SUPERINTENDENT AND EMPLOYEES:

1. I will function, in meeting the legal responsibility that is mine, as part of a legislative, policy-forming body, not as an administrative officer.
2. I will recognize that it is my responsibility, together with that of my fellow board members, to see the school district is properly run and not to run it myself.
3. I will expect the school district to be administered by the best-trained technical and professional people it is possible to procure within the financial resources of the school district.
4. I will recognize the superintendent as executive officer of the board.
5. I will work through the administrative employees of the board, not over or around them.
6. I will expect the superintendent to keep the board adequately informed through oral and written reports.
7. I will vote to hire employees only after the recommendation of the superintendent has been received.
8. I will insist that contracts be equally binding on teachers and board.
9. I will give the superintendent power commensurate with the superintendent’s responsibility and will not in any way interfere with, or seek to undermine, the superintendent’s authority.
10. I will give the superintendent friendly counsel and advice.
11. I will present any personal criticism of employees to the superintendent.
12. I will refer complaints to the proper administrative officer.
TO COOPERATE WITH OTHER SCHOOL BOARDS:

1. I will not employ a superintendent, principal, or teacher who is already under contract with another school district without first securing assurance from the proper authority that the person can be released from contract.
2. I will consider it unethical to pursue any procedure calculated to embarrass a neighboring board or its representatives.
3. I will not recommend an employee for a position in another school district unless I would employ the individual under similar circumstances.
4. I will answer all inquiries about the standing and ability of an employee to the best of my knowledge and judgment, with complete frankness and within the limits of the law.
5. I will associate myself with board members of other school districts for the purpose of discussing school district issues and cooperating in the improvement of the education program.

Legal Reference: Neb. Statute 79-526
Cross Reference: 201.01 Board Powers and Responsibilities
                   202.02 Board Member Conflict of Interest
Orientation of New Board Members

The Association recommends the superintendent, board president, and current sitting board members provide a board member orientation. There are numerous district documents and elements of information the leadership team may wish to include in the session including, but not limited to the following list per responsible party:

Preparing for the New Board Member(s) Orientation

The sitting board members and superintendent should share the following responsibilities when orienting new board members:

Superintendent responsibilities:

✓ Notify NASB of the newly elected board members, who they will replace and appropriate contact information and email addresses
✓ Register new board members for the NASB New Board Member Workshop
✓ Organize packets to distribute at the district-conducted New Board Member Orientation

Superintendent/Board President responsibilities:

✓ Invite the new board member to the district office to meet staff/tour district facilities
✓ Organize New Board Member Orientation (include current administrators, board members)

Orientation Materials

Topic: School-Community Relations and General Responsibilities

Superintendent will review:

✓ Board policy manual and administrative guidelines (or instructions for accessing the manual)
✓ Minutes from the past year’s board meetings
✓ A description of the geographic boundaries of the school district
✓ Review student enrollment, recent trends in the district pertaining to enrollment and option enrollment
Board members will review:

✓ Board meeting procedures utilized by the board, explanation of how board meetings are conducted

✓ Explanation of the organization of the school board (officers, standing and ad hoc committees, if any, etc.)

✓ Explanation of the board’s Code of Ethics

✓ Explanation of board member conflict of interest

Superintendent/board members together will review:

✓ District short and long-range goals, School Improvement Plan and strategic plan including timelines

✓ District grievance procedures (i.e., public, staff, curriculum, student, etc.)

✓ Explanation of authority and responsibilities of the board, superintendent, administrators, and individual board members

✓ List of NASB board member development opportunities throughout the year

Topic: School Finance

Superintendent will review:

✓ Current district budget summary; explanation of how, when and by whom it is prepared; how educational needs are translated into a budget plan, how the money is derived and the board's role in the process

✓ Explanation of the assessed valuation and tax structure of the district

✓ Explanation of the funding/budgeting process for school districts

✓ Data to address current existing bonded indebtedness of the district and when various building debts will expire

✓ Information regarding federal aid to school district’s education

✓ Explanation of how the tax rate is determined

Topic: Curriculum and Instruction

Superintendent will review:

✓ Explanation of the district’s overall curriculum program, including local standards and assessments

Superintendent/board members* together will review:
✓ District’s educational philosophy
✓ Most recent student test data

**Topic: Administration and Staff**

Superintendent will review:

✓ District organization chart of personnel structure
✓ District salary schedules and fringe benefit program, and recent salary array data for certificated staff and administration
✓ Copies of all handbooks including certified, classified, student, and other pertinent district handbooks
✓ Copy of the district’s evaluation criteria and procedures for administrators, certificated and classified support staff
✓ Copy of district’s staff development program

Board will review:

✓ Copy of the superintendent’s contract, evaluation, job description, superintendent salary and benefits
✓ Annual Board Calendar/district activities

**Superintendent/board members together will review:**

✓ Copies of all district’s collective bargaining agreement(s), and a brief history of recent collective bargaining activities in the district

**Topic: School District Facilities**

**Superintendent/board members* together will review:**

✓ A current list of all district facilities and/or property, location and condition of each building
✓ Explanation of construction projects contemplated and in progress
✓ Description of the district’s building maintenance program
✓ Explanation of the student transportation system
✓ Current District Facility Survey/Plan

*If the board utilizes the committee structure, committee members could present the appropriate information during the new board member orientation.
Conflict of Interest Law

School Boards and the Provisions of the Nebraska Political Accountability & Disclosure Act

For many boards the laws governing conflict of interest are not well known or understood opening the board to legal ramifications. Therefore, it is the role of the board president to review with the board periodically the statute and board policy regarding conflict of interest.

The Nebraska Political Accountability and Disclosure Act (NPADA) establishes ethical standards for public officials and public employees in the State of Nebraska. Certain provisions of the NPADA apply to members of school boards. Not all provisions of the NPADA apply to all public officials and public employees. This synopsis is intended to be a general guide for school board members and for those who provide information and advice to school board members. It is not intended to be an exhaustive examination of the provisions of the NPADA applicable to school board members. The bracketed references are to the NPADA.

I. Three General Categories
   A. Hiring of immediate family members
   B. Interests in a contract (including changes in a family member’s employment contract)
   C. Other conflicts

II. Hiring of an immediate family member [§49-1499.04]
   A. A school board member may hire, supervise the hiring of, or recommend the hiring of an immediate family member if:
      1. He or she does not abuse his or her official position;
      2. He or she makes a reasonable solicitation and consideration of applications for employment.
      3. He or she discloses the matter to the school board either on the record or in writing (You may use NADC Form C-4. Do not file this statement with the Commission); and
      4. The school board approves the employment or supervisory position.

   B. The term immediate family member means a child residing in an individual's household, a spouse of an individual, or an individual claimed by that individual or that individual’s spouse as a dependent for federal income tax purposes. [State Statute §49-1425]

   C. Abuse of official position includes, but is not limited to employing an immediate family member who:
      1. Is not qualified for and able to perform the duties of the position;
2. Is paid an unreasonably high salary; or
3. Is not required to perform the duties of the position. [§49-1499.05]

SCENARIO: Brown is a school board member who is in charge of hiring a summer grounds keeper. The main duty of this position is to keep the grass cut on school property. Brown’s 18 year old son just graduated from high school and is looking for a summer job before he heads off to college in the fall. He is well qualified to perform the duties of the job. He has been maintaining the grounds around their farm for years using equipment similar to the school’s equipment. Brown carefully researches the going rate locally for people performing similar duties so as to ensure that the pay is commensurate with the tasks performed. His son has been a reliable worker who has always worked hard at any job he has ever held. Brown hires his son and files a written statement with the school board secretary disclosing that he hired his son.

Violation: Yes. Brown has violated the NPADA. He has done many things correctly. His son is qualified to do the job, is not being overpaid and Brown expects his son to actually perform the duties. In addition, Brown has filed a written statement disclosing this matter. However, he failed to make a reasonable solicitation of applications for the position and the hiring was not approved by the school board.

D. In the event that an immediate family member was employed by the school district prior to the time that the school board member was elected or appointed, the school board member shall make the required disclosure as soon as reasonably possible after taking office. (Use NADC Form C-4) [§49-1499.04(4)]

SCENARIO: Johnson was recently elected to the school board. Her husband has been employed by the school district as a custodian for twenty years. On the day she takes office she files a written statement with the school board secretary disclosing that her husband is employed by the district.

Violation: No. Johnson has complied with the law.

NOTE: A person required to make a disclosure pursuant to §49-1499.04, is not required to disclose the same matter pursuant to §49-14,103.01 or §49-1499.03.

III. Contracts [§49-14,103.01]

A. A school board member may not have an interest in a contract with the school district unless:

1. The contract is an agenda item at a board meeting;

2. The interested board member makes a declaration on the record of the school board of his or her interest in the contract. This disclosure must be made prior to the consideration of the matter by the board. It may be made at the meeting as long as the disclosure is made part of the minutes of the meeting. It may be made in
writing and filed with the person who normally keeps records for the board. (You may use NADC Form C-3 for this purpose) **Do not file this with the Commission.**

3. The interested board member does not vote on the matters of granting the contract, making payments pursuant to the contract, accepting performance under the contract, or similar matters relating to the contract.

B. The prohibition against having an interest in a contract only applies when a board member, his or her spouse, parent or child has a business association as defined in §49-1408 or will receive a fee or commission as the result of the contract.

C. Business Defined: any corporation, partnership, limited liability company, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint-stock company, receivership, trust, activity, or entity.  

[§49-1407]  
NOTE: The statute does not distinguish between for profit and non-profit entities. Either can be a “business”.

D. Business Association Defined: A business in which the individual is a partner, limited liability company member, director, or officer; or a business in which the individual or immediate family member of the individual

D. (continued) is a stockholder. If closed corporate stock, the stock must have a value of $1,000 or more or represent more than a five percent equity interest. If publicly traded stock, the stock must have a value of $10,000 or more or represent more than a ten percent equity interest.  

[§49-1408]

SCENARIO: The school board decides to build an equipment storage shed near the athletic fields. Jones is a member of the school board and owns the only lumberyard in the school district. Jones agrees to sell the needed materials to the school district for $1,500. At an open public meeting the school board approves the contract. Jones abstains from participating or voting on the matter.

Violation: Yes. Jones failed to make a disclosure of his interest in the contract. He may make the disclosure at the meeting as long as it is made part of the record or by filing a written disclosure statement with the person who keeps records for the board.

SCENARIO: Jones has provided the lumber ordered by the school district and submits a claim for $1,500. At the next meeting the school board takes up the matter of the payment of claims. The Jones claim is number 31 on a list of 45 claims. There is a motion and vote to pay all claims on the list except number 31. Jones and the other board members vote yes. There is a second motion and vote to pay claim number 31. Jones abstains.

Violation: No. Jones has properly abstained from voting to make payment on a contract in which he has an interest.
E. Receiving deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of a school district is not considered a contract for the purposes of this section. [§49-14,103.01(5)]

F. If a school board member’s parent, spouse or child is an employee of the school district, the board member may vote on all issues of the contract which are generally applicable to (1) all employees or (2) all employees within a classification and do not single out his or her parent, spouse, child for special action. [§49-14,103.01(6)]

NOTE: It is important to comply with the NPADA provisions relating to an interest in a contract. A contract entered into in violation of these provisions may be declared void by a court.

NOTE: A person required to disclose an interest in a contract pursuant to §49-14,103.01, is not required to disclose the same matter pursuant to §49-1499.03.

IV. Open Contracts

A. School districts often deal with a series of small transactions or purchases with the same business. Each transaction is a separate contract.

B. If a board member has an interest in such a contract, he or she must comply with section III, above, as to each transaction unless the school board enters into an open contract with the business. An open contract allows the school board to make purchases from a business as needed. If the contract is “non-exclusive” the board is making it clear that it can seek the same goods or services from other sources. It permits the board member with the interest to avoid the process of making a separate disclosure for each transaction.

C. To enter into an open contract:

1. The school board places the matter on the agenda of a board meeting.

2. The board member with the interest discloses the interest as set forth in paragraph III.

3. The school board votes to enter into the open contract and the interested member abstains.

4. During the life of the open contract the board member abstains from voting on any payment under the contract.

Scenario: The only hardware store in the school district is owned by Smith who is a member of the school board. The school district regularly purchases small items such as nails, small hand tools, etc. In order to avoid going through the whole disclosure process for each small purchase, the school district enters into a non-exclusive open contract with the hardware store. At a regular meeting the board takes up the matter which is a clearly stated agenda item. A motion is made to
enter into a non-exclusive purchase agreement with the hardware store by which specified school personnel can purchase items up to a specified dollar limit as needed. A written statement of the terms of this contract is placed on file with the school district. Smith abstains from the vote.

Violation: There is no violation.

V. Other Conflicts of Interest [§49-1499.03]

A. This section does not apply if either subdivision II (Hiring of Family Members) or subdivision III (Contracts) apply.

B. A school board member has a potential conflict of interest if he or she is faced with taking an official action or making an official decision which could result in a financial benefit or detriment to:

1. The school board member;
2. A member of his or her immediate family; or
3. A business with which he or she is associated.

C. The financial benefit or detriment must be distinguishable from that experienced by the general public or a broad segment of it.

D. If the school board member has a potential conflict of interest he or she is required to:

1. Prepare a written statement describing the matter requiring action or decision and the nature of the potential interest (Use NADC Form C-2);
2. Deliver a copy to the Commission and to the person who keeps records for the school board; and
3. Take such action as the Commission shall prescribe to remove himself or herself from influence over the matter.

NOTE: This provision contemplates that the written statement shall be filed sufficiently in advance such that the Commission has time to respond in writing. If the Commission determines that there is a conflict of interest, it will typically require the official to abstain from participating or voting on the matter.

Scenario: Smith is a member of the school board. At the next meeting the board will decide who will receive The Outstanding Citizen Scholarship. The scholarship is awarded to the graduating senior who best demonstrates leadership and achievement in all three areas of scholarship, athletics, and community service. The award includes $5,000 in cash. Smith’s daughter is a candidate for the award. In advance of the meeting, Smith prepares a written statement describing the action the board will take at the next meeting and disclosing the fact that his daughter is a candidate for the award. He also discloses that the award includes $5,000 in cash. Smith sends
his written statement to the Nebraska Accountability and Disclosure Commission and submits a

copy to the person who keeps records for the school board. The Commission responds in writing
to Smith’s written statement. It states that Smith has a conflict of interest because the action of
the board may result in financial gain to a member of his immediate family. He is advised by
the Commission to abstain from participating or voting on the matter. At the meeting, Smith
abstains as directed.

Violation: No. Having a conflict of interest is not a violation of law as long as all provisions of law
are followed. Smith followed all provisions.

VI. PROHIBITED ACTS

A. A school official or school employee may not use or authorize the use of school
property, personnel, resources or funds for personal financial gain, that of an
immediate family member, or that of a business with which he or she is associated.
[$49-14,101.01]

B. A school official or school employee may not use confidential information received
through the holding of a public office for personal financial gain, that of an immediate
family member or that of a business with which he or she is associated. [$49-
14,101.01]

Scenario: School board members frequently use the photocopier in the superintendent’s office to
make copies in connection with school business. No one monitors the use of the machine. Board
member Brown is in charge of his family’s annual reunion. He designs an invitation and runs 100
copies on the school photocopy machine. He makes no reimbursement to the school.

Violation: Brown has violated §49-14,101.01(1) which provides that government resources may be
used for personal financial gain.

Requirements: Brown may only use the school photocopy machine for personal business on the
same basis as any other citizen. Thus, if it is school policy to allow any citizen to make a copy for a
charge of 25¢ per page, Ron may use it for personal business for 25¢ per page also. Otherwise the
personal use of the photocopier is prohibited.
Civil Penalties and Criminal Penalties

Any violation of the provisions of the Nebraska Political Accountability and Disclosure Act can result in a civil penalty of up to $2,000 being assessed by the Commission. A violation of certain provisions of the NPADA can result in criminal prosecution.

It is the policy of the Nebraska Accountability and Disclosure Commission to assist public officials and public employees in complying with the provisions of the NPADA. A public official or public employee should always feel free to contact the Commission office if he or she has a question about any part of the Nebraska Political Accountability and Disclosure Act.

Nebraska Accountability and Disclosure Commission
11th Floor State Capitol
P.O. Box 95086
Lincoln, NE 68509
402-471-2522
Website: http://nadc.nol.org
Nebraska Open Meetings Law

Nebraska

Chapter 84. State Officers
Article 14. Public Meetings

Current through the 2012 legislative session

§ 84-1408. Declaration of intent; meetings open to public

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

Cite as Neb. Rev. Stat. § 84-1408


§ 84-1409. Terms, defined

For purposes of the Open Meetings Act, unless the context otherwise requires:

(1)(a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, (v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions; and

(b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, except that all meetings of any
subcommittee established under section 81-15,175 are subject to the Open Meetings Act, and (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders;

(2) Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body; and

(3) Videoconferencing means conducting a meeting involving participants at two or more locations through the use of audio-video equipment which allows participants at each location to hear and see each meeting participant at each other location, including public input. Interaction between meeting participants shall be possible at all meeting locations.

Cite as Neb. Rev. Stat. § 84-1409


§ 84-1410. Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops

(1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close. Closed sessions may be held for, but shall not be limited to, such reasons as:

(a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;

(b) Discussion regarding deployment of security personnel or devices;

(c) Investigative proceedings regarding allegations of criminal misconduct;

(d) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting; or
(e) For the Community Trust created under section 81-1801.02, discussion regarding the amounts to be paid to individuals who have suffered from a tragedy of violence or natural disaster; or

(f) For public hospitals, governing board peer review activities, professional review activities, review and discussion of medical staff investigations or disciplinary actions, and any strategy session concerning transactional negotiations with any referral source that is required by federal law to be conducted at arms length.

Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.

(2) The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion to close as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1) (a) of this section.

(3) Any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for (a) the protection of the public interest or (b) the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the public body. Such challenge and its disposition shall be recorded in the minutes.

(4) Nothing in this section shall be construed to require that any meeting be closed to the public. No person or public body shall fail to invite a portion of its members to a meeting, and no public body shall designate itself a subcommittee of the whole body for the purpose of circumventing the Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax, or other electronic communication shall be used for the purpose of circumventing the requirements of the act.

(5) The act does not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.
Cite as Neb. Rev. Stat. § 84-1410


History. Amended by Laws 2012, LB 995, §17, eff. 4/6/2012.

Amended by Laws 2011, LB 390, §29, eff. 5/27/2011.

§ 84-1411. [Effective Until 7/19/2012] Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body

(1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a public power district having a chartered territory of more than fifty counties in this state, of a board of an educational service unit, or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by means of videoconferencing or, in the case of the Judicial Resources Commission in those cases specified in section 24-1204, by telephone conference, if:

(a) Reasonable advance publicized notice is given;

(b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing or telephone conferencing was not used;
(c) At least one copy of all documents being considered is available to the public at each site of the videoconference or telephone conference;

(d) At least one member of the state entity, advisory committee, board, or governing body is present at each site of the videoconference or telephone conference; and

(e) No more than one-half of the state entity's, advisory committee's, board's, or governing body's meetings in a calendar year are held by videoconference or telephone conference.

Videoconferencing, telephone conferencing, or conferencing by other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(3) A meeting of a board of an educational service unit, of the governing body of an entity formed under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by telephone conference call if:

(a) The territory represented by the educational service unit or member public agencies of the entity or pool covers more than one county;

(b) Reasonable advance publicized notice is given which identifies each telephone conference location at which an educational service unit board member or a member of the entity's or pool's governing body will be present;

(c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the educational service unit board or entity or pool or at a place which will accommodate the anticipated audience;

(d) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used;

(e) At least one copy of all documents being considered is available to the public at each site of the telephone conference call;

(f) At least one member of the educational service unit board or governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice;

(g) The telephone conference call lasts no more than one hour; and
(h) No more than one-half of the board's, entity's, or pool's meetings in a calendar year are held by telephone conference call, except that a governing body of a risk management pool that meets at least quarterly and the advisory committees of the governing body may each hold more than one-half of its meetings by telephone conference call if the governing body's quarterly meetings are not held by telephone conference call or videoconferencing.

Nothing in this subsection shall prevent the participation of consultants, members of the press, and other nonmembers of the governing body at sites not identified in the public notice. Telephone conference calls, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(4) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(5) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

Cite as Neb. Rev. Stat. § 84-1411


Note: This section is set out twice. See also Section 84-1411, as amended by Laws 2012, LB 735, §1, eff. 7/19/2012.
(1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a public power district having a chartered territory of more than one county in this state, of the governing body of a public power and irrigation district having a chartered territory of more than one county in this state, of a board of an educational service unit, or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act, or of a community college board of governors may be held by means of videoconferencing or, in the case of the Judicial Resources Commission in those cases specified in section 24-1204, by telephone conference, if:

(a) Reasonable advance publicized notice is given;

(b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing or telephone conferencing was not used;

(c) At least one copy of all documents being considered is available to the public at each site of the videoconference or telephone conference;

(d) At least one member of the state entity, advisory committee, board, or governing body is present at each site of the videoconference or telephone conference; and

(e) No more than one-half of the state entity's, advisory committee's, board's, or governing body's meetings in a calendar year are held by videoconference or telephone conference.

Videoconferencing, telephone conferencing, or conferencing by other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.
(3) A meeting of a board of an educational service unit, of the governing body of an entity formed under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act, of a community college board of governors, of the governing body of a public power district, or of the governing body of a public power and irrigation district may be held by telephone conference call if:

(a) The territory represented by the educational service unit, community college board of governors, public power district, public power and irrigation district, or member public agencies of the entity or pool covers more than one county;

(b) Reasonable advance publicized notice is given which identifies each telephone conference location at which an educational service unit board member, a member of a community college board of governors, a member of the governing body of a public power district, a member of the governing body of a public power and irrigation district, or a member of the entity's or pool's governing body will be present;

(c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the educational service unit board, community college board of governors, governing body of the public power district, governing body of the public power and irrigation district, or entity or pool or at a place which will accommodate the anticipated audience;

(d) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used;

(e) At least one copy of all documents being considered is available to the public at each site of the telephone conference call;

(f) At least one member of the educational service unit boards, community college board of governors, governing body of the public power district, governing body of the public power and irrigation district, or governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice;

(g) The telephone conference call lasts no more than one hour; and

(h) No more than one-half of the board's, governing body's, entity's, or pool's meetings in a calendar year are held by telephone conference call, except that a governing body of a risk management pool that meets at least quarterly and the advisory committees of the governing body may each hold more than one-half of its meetings by telephone conference call if the governing body's quarterly meetings are not held by telephone conference call or videoconferencing.
Nothing in this subsection shall prevent the participation of consultants, members of the press, and other nonmembers of the governing body at sites not identified in the public notice. Telephone conference calls, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(4) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(5) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

Cite as Neb. Rev. Stat. § 84-1411


§ 84-1412. Meetings of public body; rights of public; public body; powers and duties

(1) Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to section 84-1410, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.

(2) It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not be
required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.

(3) No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body may require any member of the public desiring to address the body to identify himself or herself.

(4) No public body shall, for the purpose of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.

(5) No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state.

(6) No public body shall be deemed in violation of this section if it holds a meeting outside of this state if, but only if:

(a) A member entity of the public body is located outside of this state and the meeting is in that member's jurisdiction;

(b) All out-of-state locations identified in the notice are located within public buildings used by members of the entity or at a place which will accommodate the anticipated audience;

(c) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including making a telephone conference call available at an instate location to members, the public, or the press, if requested twenty-four hours in advance;

(d) No more than twenty-five percent of the public body's meetings in a calendar year are held out-of-state;

(e) Out-of-state meetings are not used to circumvent any of the public government purposes established in the Open Meetings Act;

(f) Reasonable arrangements are made to provide viewing at other instate locations for a videoconference meeting if requested fourteen days in advance and if economically and reasonably available in the area; and

(g) The public body publishes notice of the out-of-state meeting at least twenty-one days before the date of the meeting in a legal newspaper of statewide circulation.

(7) The public body shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at the meeting.
(8) Public bodies shall make available at the meeting or the instate location for a telephone conference call or videoconference, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.

Cite as Neb. Rev. Stat. § 84-1412


§ 84-1413. Meetings; minutes; roll call vote; secret ballot; when

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a municipality, a county, a learning community, a joint entity created pursuant to the Interlocal Cooperation Act, a joint public agency created pursuant to the Joint Public Agency Act, or an agency formed under the Municipal Cooperative Financing Act which utilizes an electronic voting device which allows the yeas and nays of each member of such city council, village board, county board, or governing body to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.

Cite as Neb. Rev. Stat. § 84-1413

§ 84-1414. Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties

(1) Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of the Open Meetings Act shall be declared void by the district court if the suit is commenced within one hundred twenty days of the meeting of the public body at which the alleged violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty days after but within one year of the meeting of the public body in which the alleged violation occurred. A suit to void any final action shall be commenced within one year of the action.

(2) The Attorney General and the county attorney of the county in which the public body ordinarily meets shall enforce the Open Meetings Act.

(3) Any citizen of this state may commence a suit in the district court of the county in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of the Open Meetings Act, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of the act to discussions or decisions of the public body. It shall not be a defense that the citizen attended the meeting and failed to object at such time. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this section.

(4) Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.

Cite as Neb. Rev. Stat. § 84-1414