

Meeting Protocols and Considerations



Running Effective School Board Meetings



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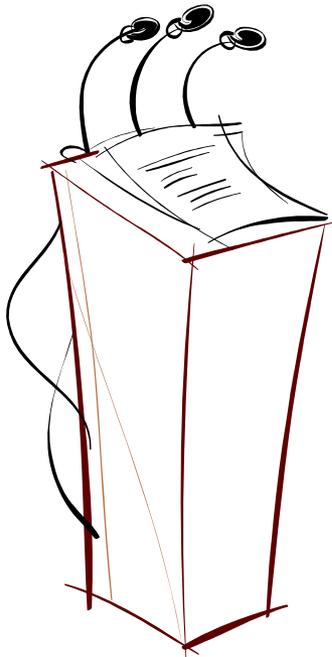
Introduction: The Board's Work is Framed and Guided by Local Policy

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At the Meeting: Public Hearings and Public Comment Period

Public Hearings



Some state and federal laws require the school board to hold “public hearings” or seek other public input prior to taking certain actions or adopting certain policies.

Public Hearings

- ▶ Some examples for holding public hearings:
 - Annual budget hearing. [Wis. Stat. § 65.90\(4\)](#)
 - Hearings on borrowing resolutions. [Wis. Stat. § 67.05\(6a\)\(a\)2.b](#)
 - Hearings on school district requests for a waiver of rules or statutory requirements from DPI. [Wis. Stat. § 118.38\(1\)\(b\)](#)

Public Hearing

Additional examples:

- Hearings regarding the establishment of a charter school.
 - [Wis. Stat. §§ 118.40\(2\) and \(2m\)](#)
- In some cases, school board policy may specify that the school board will hold a “public hearing” before the board takes certain actions (e.g., changing school attendance boundaries).

Public Comment Period - Overview

- ▶ The law provides a lot of flexibility to school boards in structuring public comment periods, but boards must be very cautious about content-based and viewpoint-based restrictions.
- ▶ It is almost always helpful to have (and follow!) a formal board policy regarding periods of public comment.
- ▶ The presiding officer of the meeting must be willing to assert a strong presence, consistently enforce the “rules,” and exercise patience.



Public Comment Period – Overview

- ▶ A public comment period is not the only way, or typically the “best” way, to:
 - (1) obtain broad input on an important question; or
 - (2) have fact-specific issues/complaints brought to the district’s attention.



Public Comment Period – Notice and Agendas

- ▶ **Notice:** When a school board chooses to allow members of the public an opportunity to address the board at a meeting, the period of public comment must be included on the meeting notice. [Wis. Stat. § 19.84\(2\)](#)
- ▶ **Scope of Public Comments:** When a school board receives public comments on topics/issues that are not otherwise part of the publicly noticed meeting agenda, it is permissible for board members to briefly discuss and respond to the issue.
- ▶ However, the school board may not take formal action on any such topic/issue (i.e., on a subject that is not otherwise identified in the meeting notice).
 - [Wis. Stat. § 19.83\(2\)](#) and the Wisconsin DOJ [Open Meetings Law Compliance Guide](#)



Public Comment Period – Scheduling and Agenda Issues

- ▶ During which meetings will the board offer a period of public comment? (e.g., regular meetings, special meetings, committee meetings)
- ▶ Will comments be open to any topic/issue, or will the period of public comment be confined, e.g., to noticed agenda topics?
- ▶ Will the board limit the total amount of meeting time that will be allocated to public comment, e.g., 30 minutes?
- ▶ When will the public comment period take place during the board meeting? (e.g., at the beginning of the meeting or at the end of the meeting)



Public Comment Period – Procedural Guidelines

- ▶ What pre-comment speaker “registration” process will be required for those interested in speaking?
- ▶ Will the board place a limit on the length of time each person will be permitted to speak, e.g., 3 minutes?
- ▶ Will the board limit the “class” of eligible speakers, e.g., school district residents and taxpayers?

Public Comment Period – Procedural Guidelines

- ▶ Will the Board allow for exceptions to be made to its “normal” public comment procedures?
- ▶ What additional “content-neutral” limitations will be placed upon speakers? (e.g., prohibiting repetitive appearances, and comments that are obscene, threatening, or that would constitute harassment)

Public Comment Period – Virtual Meetings

- ▶ If the board is going to offer an opportunity for public comment during a meeting via communications technology, that also needs to be accounted for.
 - The platform(s) selected for board member participation must also take into account the need to make the meeting appropriately accessible to the public. (See the section titled, “Considerations for Providing Public Access to Virtual Meetings,” below.)
 - Board member platforms and public platforms do not need to be exactly the same, but they do need to be sufficiently compatible.

Public Comment Period – Virtual Meetings

- ▶ Temporarily suspending all in-meeting public comment periods (perhaps emphasizing alternative methods of communicating with the board, such as sending an email).
 - Limiting public comment exclusively to comments that address one or more agenda items for the meeting in question.
 - Arranging for public comment to occur via a technology-facilitated method.
 - Note that a district that suspends or modifies their normal approach to public comment periods at board meetings still needs to be prepared to implement an approach to holding any legally-mandatory public hearings that may be required (e.g., in connection with requesting a waiver of legal requirements from DPI). See above for more information on public hearings.



Public Comment Period – President’s Role

- ▶ Many districts start the period of public comment by having the president deliver a standard “speech” that:
 - (1) identifies procedures; and
 - (2) reminds speakers that they are not immune from legal consequences related to the content of their speech.
- ▶ The president needs to consistently enforce an established limitations on speaker time or content.

Public Comment Period – President’s Role

- The president may interject during a speaker’s comments and attempt to redirect a complaint/issue to an established procedure.
- The president may interrupt, and potentially cut off, a speaker whose speech is, e.g., threatening, obscene, or unduly disruptive/disorderly (make sure board policy prohibits such conduct).
- The president may help direct the nature of the board’s response, if any, to a speaker’s comments.



Public Comment Period – First Amendment

- ▶ A period of public comment is a type of “designated forum” for speech that, generally speaking, has a substantial degree of protection under the First Amendment—including a requirement of “viewpoint neutrality.”
 - Any content-based exclusion of speech in a designated forum must serve a compelling government interest and be narrowly drawn to achieve that end.
 - The government may enforce reasonable “time, place and manner” restrictions, provided they are content-neutral, narrowly tailored to serve a significant government interest, and leave ample alternative channels for communication.



Public Comment Period

Addressing complaints that implicate individual employees or individual students...

- Approach #1:
Limiting public comment to noticed agenda topics will inherently limit the issues that can be brought to board meetings as complaints.
- Approach #2:
Make sincere efforts to redirect such complaints, but ultimately let the individual present his/her comments, perhaps with a follow-up “disclaimer” by the presiding officer.

Public Comment Period

Addressing complaints that implicate individual employees or individual students...

- Approach #3:

Take a calculated legal risk that potentially tests the limits of constitutional law, e.g., *Fairchild v. Liberty Independent Sch. Dist.*, 597 F.3d 747 (5th Cir. 2010); *but see*, e.g., *Mesa v. White*, 197 F. 3d 1041 (10th Cir. 1999); *Bach v. School Bd. of the City of Virginia Beach*, 139 F. Supp. 2d 738 (E.D. Va. 2001) (citing additional cases)

Public Comment Period – Addressing Complaints

- ▶ In a decision and order of the U.S. District Court for the Eastern District of Wisconsin, [Anderson v. Hansen](#), Case No. 20-C-1305 (Sept. 25, 2020), the court granted a preliminary injunction to prevent the defendant school district from enforcing a ban that prohibited a parent from being present on school district property without advance permission.
- ▶ The ban had been communicated to the parent after comments the parent made during a public comment period at a board meeting that the district interpreted as violating the district's anti-harassment policies.



Public Comment Period – Addressing Complaints

- ▶ The President or Superintendent may, to make clear that they do not condone certain viewpoints, issue a public statement denouncing certain remarks. see [Anderson v. Hansen, No. 20-C-1305 \(E.D. Wis. Sept. 25, 2020\)](#).
- ▶ The District may create policies that are reasonably tailored to prevent speakers from exceeding time limits, veering off topic or being belligerent at future board meetings.
- ▶ The government may not regulate speech based on its substantive content or the message it conveys.

At the Meeting: Rules of Order



Three important functions of a school board's rules of order



1. They serve as the procedural machinery by which the board accomplishes its substantive business within the confines of the “meeting” environment.
2. They serve to ensure that the will of the board majority is ultimately expressed in terms of:
 - the board’s ability to prioritize its time and effort; and
 - the specific decisions that are made.
3. They serve to protect board members who may be in the minority on a given issue by, e.g., providing a framework in which there is a fair opportunity for debate and discussion before action is taken.

Sources of rules of order for school boards

1. State law
2. Locally developed policy
 - These policies may incorporate a pre-existing “parliamentary” framework (such as *Robert’s Rules of Order*[™])
 - Pieces can sometimes be found in policies that cover related topics (e.g., agenda preparation, minutes of school board meetings, election of board officers, public comment periods, filling vacancies, etc.)
 - Sometimes, local policy will address meeting procedures that apply to a specific purpose/context (e.g., policy adoption, consent agendas, budget development, public hearings, committees, the annual meeting, etc.)
3. Local practices that have developed over time
4. Ad hoc decisions made during meetings



Some key points ...

1. There are some important aspects of meeting procedure that are dictated by state law, but many issues are matters of local policy/practice.
2. There is (very roughly) an “80/20” rule in regard to meeting procedure. School boards that focus on establishing a shared understanding of their “core” rules of order will function pretty well.
3. Many school boards and their policies state that they follow Robert's Rules[™] , and that is probably both accurate and a little misleading at the same time.
4. The presiding officer of the meeting needs to be reasonably prepared to consistently enforce local policy/practices and to fill in gaps when the school board encounters an unusual situation.
5. In the end, the most important things will be the wording of each motion before the board and the votes taken on the motion.



Some of the important areas where state law mandates/limits meeting procedures

The Wisconsin Open Meetings Law, including:

- Meeting notice requirements
- Specific procedures must be used to convene in closed session (in open session, there must be an announcement of the business proposed for closed session, a motion, a vote, and each person's vote must be recorded in the minutes)
- Any member of the board may require that a vote be taken in such a manner that each member's vote is ascertained and recorded
- A prohibition on the use of secret ballots (except for the election of board officers)
- All motions and roll call votes must be recorded, preserved, and (generally) open to the public
- Giving proper advance notice of intent to reconvene in open session following a closed session.

Other statutes:

- Changes to the amount of tax to be levied or certified, or to the amounts or purposes of appropriations in an adopted budget require a 2/3 vote of the entire membership of the board (section 65.90(5)(a))
- The employment or dismissal of persons holding contracts that are subject to section 118.22 or 118.24 of the state statutes must be determined by a majority vote of the full membership of the board
- Board vacancies are initially filled by a vote of the remaining members
- Various statutes mandate public hearings in connection with certain subject/decisions

Examples of areas where school board meeting procedures often deviate from a “strict” application of Robert’s Rules™ for large boards and assemblies

- Discussion of a topic/issue is often permitted before any motion has been made on the topic.
- Members are generally recognized simply by raising their hand, and a member who “has the floor” typically speaks from his/her seat.
- There may not be a pre-defined limit on the number of times that an individual member can speak to an issue.
- The school board president generally votes on and participates in the discussion of all motions, even though he/she is the presiding officer of the meeting.
- Voting may take place by a variety of methods, including a “roll call,” a voice vote, or a showing of hands.
- Procedures for nominating and electing board officers or for appointing an elector to fill a school board vacancy.



The “main motion”: A typical example

1. Member #1 makes a motion
2. Member #2 seconds the motion

The Presiding Officer:

3. States the question (i.e., repeats the motion)

4. Calls for discussion, recognizing each speaker in turn
5. States that discussion is closed and that the board will vote (may restate the motion again at this time)
6. Calls for affirmative votes
7. Calls for opposing votes
8. Announces the outcome of voting



Amendments: An important mechanism for preserving the will of the majority

1. A board member can generally propose an amendment to a pending “main motion” any time he/she would prefer that any action that might be taken on the subject matter be something that is different from the action proposed by the pending motion.
2. The ability to propose amendments helps to avoid a “race to make the motion.”
3. Some amendments merely clarify the action that is proposed in the main motion, while other amendments change (to a greater or lesser degree) the substantive nature of the proposed action.
4. An amendment must be minimally “germane” to the subject matter of the main motion. It cannot introduce an independent question.
5. There are no real limits on the number of times a pending motion can be amended before the board proceeds to a vote, but Robert’s Rules does limit the extent to which board members can propose “nested” amendments (i.e., proposing an amendment to an already-pending amendment).

Amendments: An important mechanism for preserving the will of the majority

1. Member #1 makes a motion
2. Member #2 seconds the motion

The Presiding Officer:

3. States the question (i.e., repeats the motion)

4. Calls for discussion, recognizing each speaker in turn
 - a. Member #3: “I move to amend the pending motion to ...”
 - b. Member #4: “I second the proposed amendment”
 - c. The presiding officer “states the amendment”
 - d. The presiding officer conducts discussion on the amendment
 - e. The presiding officer states that discussion on the amendment is closed and that the board will now vote to either approve or reject the proposed amendment.
 - f. The presiding officer conducts the vote on the proposed amendment and announces whether the amendment was approved or rejected. *(Please see the next slide!)*



Amendments: What happens following the vote on the amendment?

If Member #3's Motion to Amend is approved by a majority vote:

The effect of the vote is that the main motion as amended is now before the board.

The Presiding Officer will:

5. State the question (i.e., repeats the motion as it has been amended)
6. Call for discussion on the merits of the motion as amended, recognizing each speaker in turn
7. State that discussion is closed and that the board will vote (may restate the motion again at this time)
8. Call for affirmative votes
9. Call for opposing votes
10. Announce the outcome of voting

If Member #3's Motion to Amend is **rejected** by a majority vote:

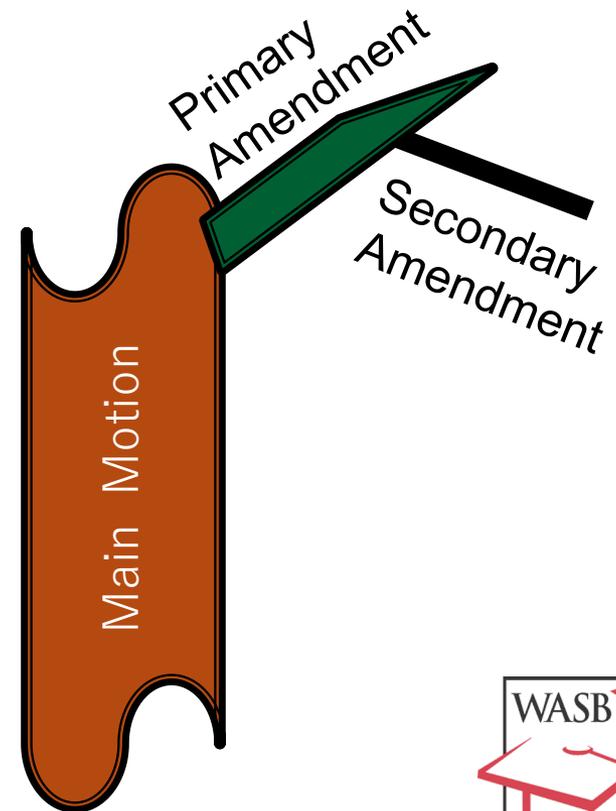
The effect of the vote is that the main motion, as it was originally stated, continues to be before the board.

The Presiding Officer will:

5. Restate the original question (i.e., repeat the main motion)
6. Continue to conduct discussion on the merits of the main motion
7. State that discussion is closed and that the board will vote (may restate the motion again at this time)
8. Call for affirmative votes
9. Call for opposing votes
10. Announce the outcome of voting

To handle main motions and proposed amendments correctly, create the “amendment tree,” and then vote to plant (or not to plant) the tree

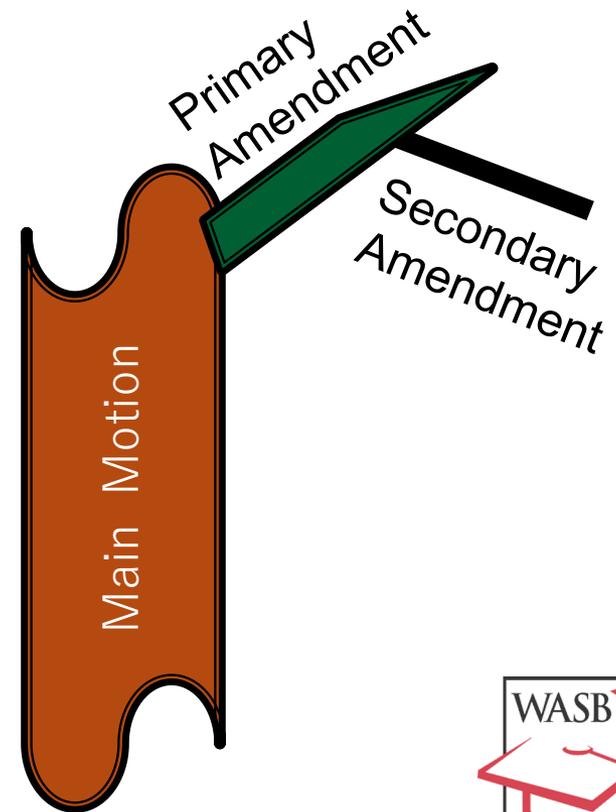
1. The original (main) motion serves as the “trunk” of the tree.
2. Each primary amendment is a “branch” that a board member is proposing to attach to the trunk.
3. Any secondary amendment is a “twig” that a board member is proposing to attach to a branch.
4. Under *Robert’s Rules*, an amendment to the third degree (a leaf on a twig?) is out of order due to the complexity of managing yet another layer of amendments.



Create the “amendment tree,” and then vote to plant (or not to plant) the tree

Key concepts:

1. After the trunk has been identified, resolve each proposed branch (including its twigs), one at a time, before proposing to attach any other branches.
2. Do not vote to approve attaching a proposed branch until all proposed twigs for that branch (if any) have been resolved (also one at time).
3. An approved twig does not survive a decision to vote down the branch to which the twig is attached.
4. Do not vote to approve planting the tree (i.e., vote on the main motion, with any approved amendments) until all proposed branches have been resolved.
5. Any approved branches (and any of their approved twigs) do not survive a decision to vote down the planting of the tree.



Amendments: Some odds and ends

1. What can a board do when a main motion was poorly worded, or when it seems the motion cannot be amended in a manner that would clearly/adequately/efficiently capture the intent of the board members?

ONE ANSWER: Any board member could make a “motion to substitute” an entirely new main motion to take the place of the pending motion.

2. The concept of a “friendly amendment” (i.e., an amendment that the maker of the main motion unilaterally deems acceptable) has very limited usage under Robert’s Rules™.
 - Board members may help each other word a motion before the presiding officer states the motion; however, once a motion is turned over to *the body*, the body should decide whether to approve or reject any proposed amendment(s).
 - If a proposed amendment corrects an error, is a relatively minor clarification, or otherwise seems to be without any controversy, the presiding officer may propose that the amendment be approved by “**unanimous consent**.”
3. Newer board members are often uncomfortable with the process of amending motions—it can be a good area to cover in an orientation.



Motions all board members should generally know/understand

- Motion to amend
- Motion to substitute/withdraw a motion
- Motion to divide a question

- Motion to reconsider (same meeting)
- Motion to rescind (later meeting)*
- Motion to amend prior action (later meeting)*

2/3 Vote Required under *Robert's*:

- Motion to limit/extend debate
- Motion to close debate and move to a vote on the immediately pending question (i.e., “move the previous question”)
- Motion to suspend the rules

- Motion to postpone to time certain
- Motion to postpone indefinitely
- Motion to refer (e.g., to a committee or the administration)
- Motion to table a question

* Under *Robert's Rules*, the voting requirements for these motions depend on whether the motion is made with or without previous notice.

Motion to Reconsider under Robert's Rules

- Allows majority to revisit an ill-advised decision, consider new information, etc.
- The motion must be made on the same day as the vote on the original motion (for school boards, this usually amounts to making the motion at the **same meeting** at which the original vote was taken).
- Both defeated motions and adopted motions may be reconsidered. However, only persons voting with the **prevailing side** on the original motion may make a motion to reconsider. (Second can be by anyone.)
- If the motion to reconsider is **made and seconded**, it has an immediate “suspending effect” as to any action that might be to be taken as a result of the vote that would be affected (can last as long as until the end of the next meeting).
- A standard majority vote is required for passage of the motion to reconsider.
- If the motion to reconsider **is adopted**, the original motion automatically stands before the board for more debate and another vote.

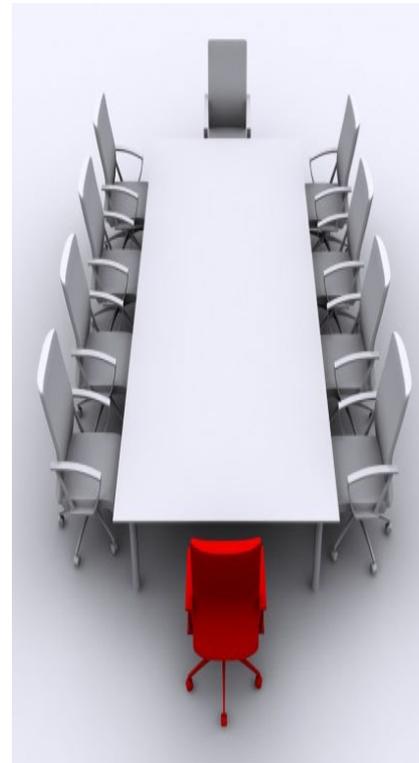


Motion to Rescind under Robert's Rules

- Applies to **action taken** by the board at a prior meeting.
- A motion to rescind may be made by **any board member**.
- No specific time limit for making the motion.
- A motion to rescind an action that cannot be “undone” is out of order.
EXAMPLE: A motion to unilaterally rescind a binding contract that has been offered and accepted is likely out of order.
- An affirmative vote on a motion to rescind negates the vote (i.e., cancels the action) on the original motion. After passing a motion to rescind, the original motion is **NOT** automatically before the board for more debate and another vote. However, it is possible for a new motion to be made.
- Consider the notice requirements of the open meetings law and beware of potential arguments over the voting implications of providing adequate prior notice to board members of a potential rescission motion.

Some procedures related to conducting board meetings that all board members should generally know/understand

- Request for information
- Parliamentary inquiry
- Point of order
- Appeal from a decision of the presiding officer
- Suspend the rules
- Adjournment



Some procedures related to conducting board meetings that all board members should generally know/understand

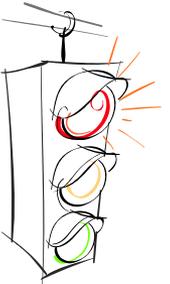
- **Request for information:** A request directed to the chair, or through the chair, for information relevant to the business at hand, but not related to parliamentary procedure. *“Can the high school principal explain the school’s current practice regarding ...?”*
- **Parliamentary inquiry:** A request for the chair’s opinion on a matter of parliamentary procedure as it relates to the business at hand – not involving a ruling. *“How do I ...?”*
- **Point of order:** When a member thinks that the rules of the assembly are being violated, the member can raise a point of order, thereby calling upon the chair for a ruling and an enforcement of the rules. *“Point of order. The chair just declared that the motion to close debate passed. I believe that any motion to close debate requires a 2/3 vote, and the vote was 4 to 3.”*

Some procedures related to conducting board meetings that all board members should generally know/understand

- **Appeal from a decision of the presiding officer:** Any two members have the right to appeal a parliamentary ruling made by the chair. This occurs by one member making (or taking) the appeal and another seconding it. The question is then taken from the chair and vested in the board for a final decision.
- **Suspend the rules:** May make a motion to suspend the board's rules of order provided that the proposed action would not violate the law. Such a motion requires a $2/3$ vote under Robert's Rules of Order.
- **Adjournment:** A motion to adjourn is neither amendable nor debatable under Robert's Rules of Order.

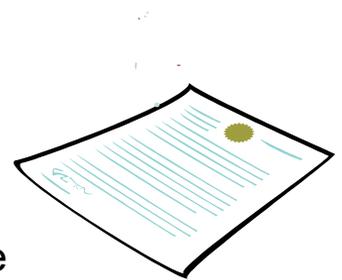
What are some of the things that the presiding officer of a meeting might need to know beyond the basic meaning of the common motions?

- The proper procedure to use for convening in closed session
- Any special voting requirements that apply to a motion
- His/her plan for directing discussion/debate among the board (as informed by board policy)
- The laws and board policies related to accepting public comment.
- Whether a particular motion is (1) amendable; or (2) debatable.
- Which motions take precedence over others
- How to handle procedural inquiries, points of order, and appeals
- How to handle issues surrounding “meeting decorum”



A board policy addressing rules of order can:

- Serve as a resource that assists with conveying important information to the general public, new board members, and others during times of transition;
- Serve as a resource to turn to in the event of disagreement among board members over procedural matters;
- Clarify the extent to which a standard work on parliamentary procedure, such as Robert's Rules, applies to school board meetings; and
- Assist with legal compliance in connection with those limited matters where state statute sets forth specific procedural requirements.



Some considerations for policy development ...

- What topics would address 80% of what happens at your meetings?
- What real-world examples of conflict/uncertainty have arisen in your district?

Some final nuggets on rules of order...

- One of the most helpful things that can be done to encourage efficient meetings and to facilitate the board members' understanding of the agenda items is to have pre-drafted "recommended" motions that go with the various agenda items.
- Being clear about your intent in making a motion is ultimately more important than using the specialized parliamentary terms/phrases that appear in Robert's Rules.
- The presiding officer can rarely go wrong by (1) running a meeting in a manner that helps to identify the will of the majority; (2) noting that his/her decisions on rules of order can be appealed to the board; and (3) regularly repeating the wording of the pending motion.
- Do some "cross-training" ... Have multiple board members who would be comfortable in the role of "presiding officer."
- It can be helpful for the board members to have a "tip sheet" of commonly used motions and related matters.

<http://www.jimslaughter.com/uploads/ROBERTS11th.pdf>

Wisconsin courts have not required strict compliance with non-statutory technicalities of parliamentary procedure, provided the proper number of board members have acted and the facts of the board's action can be ascertained from the meeting minutes.



At the Meeting: Voting



Voting



- ▶ Other than for the election of board officers, there can be no secret ballots.
- ▶ Any board member may call for a vote to be taken such that each member's vote is ascertained and recorded.
- ▶ Where no special voting requirements exist, the general rule is that, particularly where the total number of votes cast provides a quorum, a motion passes by a majority of the votes that were actually cast. *Exceptions exist under state law, under Robert's RulesTM, and under some school board policies/practices.*
- ▶ “Two-thirds” of 9? 7? 5? (6, 5, 4)
- ▶ A tie vote results in the defeat of a motion.





Voting



- Board policy can establish a particular order of voting for roll call votes (e.g., in a rotational system, by seniority, alphabetically, etc.)
- Abstention can occur for various reasons, and sometimes complicates voting and the determination of outcomes.
 - If a board member abstains from a vote, they should clearly announce that they will be abstaining and the abstention should be recorded in the minutes.
 - If a board member abstains from voting due to a conflict of interest (or a potential/perceived conflict of interest), they should generally refrain not only from voting on the matter, but also from participating in the discussion. Many school attorneys will recommend physically leaving the meeting room.



Using “unanimous consent” as a tool to promote efficiency and clarity

EXAMPLES

- To obtain approval to amend a pending motion
- To re-order items on the agenda
- To extend any time limit originally established for discussion of an issue
- To confirm that no board member objects to calling an end to discussion of an issue and proceeding to a vote
- To respond to a request by the maker of a motion to withdraw his/her motion
- To refer an item/task to a committee
- To direct the administration to do something

Any action approved by unanimous consent should be captured in the meeting minutes.

Any time the presiding officer seeks to document unanimous consent and any individual board member objects to the proposed action, the matter should be stated as a formal motion and put to a formal vote.

Approving an amendment using unanimous consent

consent

I move the adoption of the proposed revisions to Board Policy 363, “Student Acceptable Use of Technology”, as found in the written draft that has been included in the Board Packet and that is dated March 19, 2020.

Second.

[States the question and opens discussion on the proposed main motion.]

Dist. Admin.

Board President

I think the administrative recommendation is that the changes to Policy 363 should take effect at the start of the 2020-21 fall term. I also think that, in the second sentence of the draft policy, the word “Intranet” is intended to be “Internet”. Can we address these issues in the motion?

Is there any objection to amending the pending motion to specify an effective date of September 1, 2020, for these policy changes, and to strike-out the word “Intranet” in the second sentence and insert the word “Internet” in its place? [pause]
Seeing no objection...

At the Meeting: Closed Sessions

Open Meetings Law – Closed Session

- ▶ A board can enter into closed session only if one of the statutory exemptions applies. See [Wisconsin Statutes §§19.85\(1\)\(a\) - \(h\)](#)
- ▶ The board can discuss and consider only those items for which it legitimately convened in closed session.
- ▶ **Mandatory Procedure (set by state law):**
 1. All meetings must initially convene in open session.
 2. The presiding officer makes an “announcement” of the proposed closed session, identifying the proposed subject matter and the statutory exemption(s) applicable to each different subject.
 3. The announcement becomes part of the record of the meeting.
 4. There is a motion to convene in closed session for the reasons stated in the announcement.
 5. The board votes; the vote of each member is recorded in the minutes.
 6. If the motion passes, the board convenes in closed session.



Open Meetings Law – Closed Session

A board member's vote on the motion to convene in closed session is not a mere formality.

- A board member who votes “yes” is expressing his/her agreement that the announcement and motion present legitimate grounds for holding a closed session. By voting “yes” and participating in the closed session, a board member is accepting some liability under the open meetings law.
- If a board member believes the closed session would be unlawful, a “no” vote on the motion can be important because a member of a governmental body who is charged with attending a meeting held in violation of the law may raise one of two defenses: (1) that the member made or voted in favor of a motion to prevent the violation; or (2) that the member's votes on all relevant motions prior to the violation were inconsistent with the cause of the violation.



Open Meetings Law – Closed Session

- ▶ Can a board take final action on matters in a closed session? Yes, when voting is integral to the deliberations that are authorized to be conducted in closed session.
- ▶ Do requirements related to keeping minutes apply to closed sessions? Yes.
- ▶ Can minutes of a closed session be obtained under the public records law? Sometimes. And sometimes after some time passes.
- ▶ Who is permitted to attend a closed session? The decision is generally up to the board. However, the board may not exclude a board member from any board meeting.
- ▶ What should a board member do if they notice discussion drifting well off topic from the given reason(s) for a closed session? Interject and raise the concern. If necessary, make a motion to take up a properly-noticed issue that still needs to be addressed, move to adjourn the closed session, or leave the meeting (asking to have the departure noted in the minutes).



Keep Information from Closed Sessions Confidential

- ▶ Why is it important to keep closed session information confidential?
 - Confidentiality is sometimes expressly required by law.
 - Sound public policy generally supports keeping the information confidential.
 - Disclosing closed session information destroys trust among board members and between the board and the administration.
 - Disclosure can have legal consequences—such as the potential loss of attorney-client privilege.
 - Disclosure could result in legal liability for the individual who discloses the information.



Open Meetings Law – Closed Session

▶ Common exemption categories from 19.85(1):

- a) Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.
- b) Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such person, and taking of formal action on any such matter; provided that the public employee or person licensed is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employee or person licensed requests that an open session be held.
- c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.



Open Meetings Law – Closed Session

▶ Common exemption categories from 19.85(1):

- d) Considering strategy for crime detection or prevention.
- e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.
- f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.
- g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.
- h) Consideration of requests for confidential written advice from the elections or ethics commission



**At the Meeting:
How has COVID-19 affected
perspectives on virtual
meetings and remote
participation?**

Virtual Meetings and Remote Participation

► Pre-COVID

- Many school boards and school attorneys took a cautious, even skeptical, view of extensive remote participation in board meetings and virtual meetings.
- Concerns centered on:
 - Quorum counts,
 - Voting while not physically present,
 - Holding closed sessions with a remote participant,
 - Public accessibility, and
 - Changing the dynamics of board meetings.



Virtual Meetings and Remote Participation

▶ More Technology Options + COVID

- Many boards have taken a major leap in the direction of virtual meetings and remote participation.
 - Spurred by necessity
 - More capable technology
 - Permissive [Department of Justice guidance](#)
 - Local decisions to prioritize health concerns over other “unknowns”



Virtual Meetings and Remote Participation in a COVID-19 World

► Some of the lessons learned thus far:

- Adopting policy to establish a board's path toward virtual meetings has been critical.
- There is readily-available technology that, generally, has allowed districts to reasonably implement their intended processes.
- There has been relatively little public pushback to the transition. The context of the pandemic has likely facilitated a certain level of openness to the changes and an understanding attitude.



Virtual Meetings and Remote Participation in a COVID-19 World

► Some of the lessons learned thus far:

- Boards still have challenges with and concerns about providing meaningful public access to meetings, including comment periods.
- Closed sessions, hearings, and other special cases present challenges.
- It may take more time to evaluate how virtual meetings change the dynamics of the board's meetings.

Virtual Meetings and Remote Participation in a COVID-19 World

▶ Some of the lessons learned thus far:

- Going virtual adds some extra notice obligations for meetings.
- Preparing and testing the technology for each meeting is a new and important step.
- If the technology fails, there may be no meeting.
- Board members need practice/training using new tools.
- Little glitches and “user errors” inhibit holding a smooth virtual meeting.

Virtual Meetings and Remote Participation in a COVID-19 World

▶ Some of the lessons learned thus far:

- Using roll call votes for all motions at virtual meetings can be helpful.
- Trying to elect board officers with secret ballots is a huge challenge if board members are going to participating in that process remotely.
*(**Note: A board may choose not to use secret ballots this year.)*
- A board may find itself with recordings of board meetings for the first time—creating a records management and policy issue.



Virtual Meetings and Remote Participation in a COVID-19 World

- ▶ **Where will the experience take school boards in a post-COVID (hopefully) world?**
 - Is the expansion of virtual board meetings here to stay?
 - We essentially have “proof of concept” that virtual meetings can work and that the legal barriers do not appear to be insurmountable.
 - “Resistance to change” as a potential barrier has already been rendered moot in many districts.



Virtual Meetings and Remote Participation in a COVID-19 World

- ▶ **Where will the experience take school boards in a post-COVID (hopefully) world?**
 - What should school boards make of the DOJ's caution that "virtual only" public access to meetings may not be sufficient in a post-pandemic scenario?
 - Think about "digital divides" based on location and socioeconomic status.
 - Will we have board meetings where the only in-person attendees at the district building are staff and members of the public?



Virtual Meetings and Remote Participation in a COVID-19 World

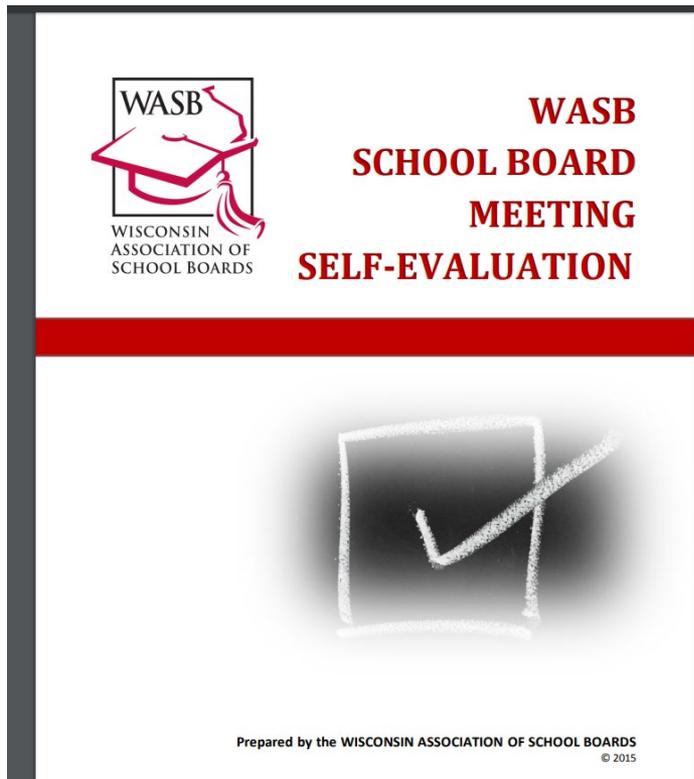
- ▶ **Where will the experience take school boards in a post-COVID (hopefully) world?**
 - Will boards end up using a “blended” approach for their meetings?
 - Some meetings will require in-person attendance,
 - Some meetings will be optional remote participation, and
 - Some meeting will be essentially all virtual participation.
 - If a board does take a blended approach, what factors will determine the choice of format for each meeting?

Virtual Meetings and Remote Participation in a COVID-19 World

- ▶ **Where will the experience take school boards in a post-COVID (hopefully) world?**
 - Will we see the rise of the “instant meeting”?
 - With 24-hours’ notice, everyone joins remotely from home for 20 minutes and a couple of decisions get made at a time.
 - If so, how would that affect governance?
 - Will the change trickle down to board committees, and how will that change the utility and actual work of committees?

Board Meeting Evaluation Tool

- ▶ [WASB School board meeting self evaluation tool](#)



- ▶ The document is available on the WASB website.
- ▶ Includes questions that can be used as discussion prompts even if the board does not want to go through the exercise of completing and tallying each section.



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