

## 1. Applicable Laws:

- a. Default - Open Meetings and Public Meetings Law - ORS 192.610 to 192.690 - **All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.**
- b. Exception - Executive Sessions - ORS 192.660 - The Public Meetings Law authorizes governing bodies to meet in executive session in certain limited circumstances. Executive session is defined as “**any meeting** or part of a meeting of a governing body **which is closed to certain persons** for deliberation on certain matters.” ORS 192.610(2).
- c. Governing bodies are required to comply with the other public meeting law requirements in executive session, including (but not limited to): **keeping minutes**, complying with the notice requirements, holding executive sessions in an accessible/ADA compliant location, complying with the quorum and voting rules if applicable.

## 2. Common Exceptions to Enter Executive Sessions:

- a. **Employment** - ORS 192.660(2)(a) - to consider the employment/hiring of a public officer, employee, staff member or individual agent. Only applies to original hiring of employee, not rehires, and not the filling of board vacancies. This does not apply to hiring a chief executive officer (e.g. superintendent) unless specific requirements have been met.
- b. **Dismissal, Discipline or Complaints about Employees** - ORS 192.660(2)(b) - to consider the dismissal or disciplining of, or to hear complaints against a public officer, employee, staff member or individual agent who does not request an open hearing. Written notice must be given to the employee at least 24 hours or one business day (whichever is greater) beforehand. Does not include discussion of RIF/staff reductions.
- c. **Deliberations with Labor Negotiator** - ORS 192.660(2)(d) - to conduct deliberations with persons designated by the governing body to carry on labor negotiations. This does not include the negotiations themselves; labor negotiations between the board and union are held in open session unless both parties agree to executive session (ORS 192.660(3)).
- d. **Real Property Transactions** - ORS 192.660(2)(e) - to conduct deliberations with persons designated to negotiate real property transactions. Needs to be related to a specific transaction - not general discussions about property or facilities.
- e. **Records Exempt from Public Inspection** - ORS 192.660(2)(f) - to consider information or records that are exempt from public inspection, including, letters from attorney, student records, personnel files. Include basis for exempting the public record in notice of the executive session.
- f. **Consultation with Attorney** - ORS 192.660(2)(h) - to consult with counsel regarding the legal rights and duties of the public body with regard to current litigation or litigation likely to be filed. Tort claim notice is sufficient to establish "litigation likely to be filed." General advice is not. The attorney with whom the governing body is consulting must be present at the executive session, either in person or by telephone or by other concurrent means of oral or video electronic communication.
- g. **Evaluate Employee Performance** - ORS 192.660(2)(i) - to review and evaluate the employment-related performance of the chief executive officer, a public officer, employee or staff member who does not request an open hearing. Written notice must be given to the employee at least 24 hours or one business day (whichever is greater) beforehand.

- h. **School Safety** - ORS 192.660(2)(k) - to consider matters relating to school safety or a plan that responds to safety threats made toward a school.
- i. **Expulsions and Examination of Confidential Student Records** - ORS 332.061 - **Must be held in executive session** unless parent or student requests open session. Can make decisions in executive session and exclude the media. General discussions of discipline are not sufficient.

### 3. Common Pitfalls:

#### a. Notice

- i. Must provide public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings.
- ii. Must be at least 24 hours in advance unless there is an “actual emergency.”
- iii. Notice must cite the complete law, including subsection, that applies to the topic along with a brief description of the topic.

#### b. Voting

- i. Can only vote in executive session on matters regarding confidential student records and student expulsions.
- ii. Boards may reach a consensus regarding other appropriate topics discussed in executive session, as long as the actual vote is taken in an open session.
- iii. Common pitfall is failing to schedule or provide notice for an open session following the executive session in order to conduct the vote.

#### c. Media

- i. Can be excluded in four cases: 1) when the board meets with labor negotiators to discuss bargaining strategies; 2) when the board meets to consider expelling a student; 3) when the board discusses a student’s confidential records; and 4) when the board discusses litigation against the district or community college in which the reporter or the reporter’s media organization is involved.
- ii. If permitted to attend, media should be advised prior to the start of the executive session that they cannot report subjects discussed in executive session. Absent this warning, the media may report everything discussed. Media may report on any matters discussed beyond the topics included in the notice of executive session.
- iii. Can report general subject of the session as announced.

**d. Minutes** - Minutes must be kept and should be kept to the same standards as open session minutes. If disclosure of executive session minutes would be inconsistent with the purpose of the executive session, they should remain confidential.

**e.** Discussing **additional subjects** other than what was announced in the notice. Media may report these discussions.

**f.** Discussing **general personnel matters**.

### 4. Executive Session Violations– Consequences

Failure to comply can result in lawsuits and Oregon Government Ethics Commission civil penalties against the district and/or individual board members up to \$1,000. Decisions made by a public body in violation of the Public Meetings Law may be voidable and open to legal action by anyone affected by the decision.

### 5. Resources

Oregon Department of Justice Attorney General’s Public Records and Meetings Manual  
OSBA’s Public Meetings Law, Board Meeting and Executive Sessions Guide  
OSBA’s Litigation Services Department 503-485-4800

**Disclaimer:** This memorandum offers general guidance only and is intended to familiarize attendees with the general scope of this topic. Nothing contained herein should be construed as legal advice. Districts and community colleges are encouraged to contact OSBA’s Member Services Attorney or local counsel for specific questions related to Oregon’s Public Meetings Law.