

## EXECUTIVE SESSIONS

All meetings of the School Committee are open to attendance by the public and media representatives. However, the Committee has the right to convene in a closed executive session when it meets the following procedural conditions imposed by state law:

1. The Committee will first convene in an open session for which due notice has been given.
2. The Chairperson (or, in his/her absence, the presiding member) will state the purpose for the executive session.
3. A majority of the members must vote to enter the executive session, with the vote taken by roll call and recorded in the official minutes.
4. The Chairperson or presiding member will state before entering the executive session whether the Committee will reconvene in open session after the executive session.

The law puts specific limitations on the purposes for which executive sessions may be convened. The Committee may enter executive sessions only to deliberate:

The ten Purposes for which a public body may vote to hold an executive session are:

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

This Purpose is designed to protect the rights and reputation of individuals. Nevertheless, it appears at least that where a public body is discussing an employee evaluation, considering applicants for a position, or discussing the qualifications of any individual, these discussions should be held in open session to the extent that that the discussion deals with issues other than the reputation, character, health, or any complaints or charges against the individual. An executive session called for this Purpose triggers certain rights on the part of an individual who is the subject of the discussion. The individual's right to choose to have his or her dismissal considered at an open meeting takes precedence over the general right of the public body to go into executive session.

While the proposed imposition of disciplinary sanctions by a public body on an individual fits within this Purpose, this Purpose does not apply if, for example, the public body is deciding whether to lay off a large number of employees because of budgetary constraints.

2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel; Collective Bargaining Sessions: These include not only the bargaining sessions but also include grievance hearings that are called for under a collective bargaining agreement.
3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;

**Collective Bargaining Strategy:** Discussions with respect to collective bargaining strategy include discussions of proposals for wage and benefit packages or working Open Meeting Law Guide Page 7 Version 7.1.10 conditions for union employees. The public body, if challenged, carries the burden of proving that an open meeting might have a detrimental effect on its bargaining position to justify an executive session on the basis of this Purpose. The showing that must be made is that the open discussion may have a detrimental impact on the collective bargaining process; the body is not required to demonstrate or specify a definite harm that would have arisen. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's bargaining or litigating position.

**Litigation Strategy:** Discussions concerning strategy with respect to ongoing litigation obviously fit within this Purpose, but only if an open meeting may have a detrimental effect on the litigating position of the public body. Discussions relating to potential litigation are not covered by this exemption unless that litigation is clearly and imminently threatened or otherwise demonstrably likely. That a person is represented by counsel and supports a position adverse to the public body's does not by itself mean that litigation is imminently threatened or likely. Nor does the fact that a newspaper reports a party has threatened to sue necessarily mean imminent litigation.

**Note:** A public body's discussions with its counsel do not automatically fall under this or any other Purpose for holding an executive session.

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

5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints; This Purpose permits an executive session to investigate charges of criminal misconduct and to consider the filing of criminal complaints. Thus it primarily involves discussions that would precede the formal criminal process in court. Purpose 1 is related, in that it permits an executive session to discuss certain complaints or charges, which may include criminal complaints or charges, but only those that have already been brought. Also, unlike Purpose 5, Purpose 1 confers certain rights of participation on the individual involved, as well as the right for the individual to insist that the discussion occur in open session. To the limited extent that there is overlap between Purposes 1 and 5, a public body has discretion to choose which Purpose to invoke when going into executive session.
6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body; Under this Purpose, as with the collective bargaining and litigation Purpose, an executive session may only be held where an open meeting may have a detrimental impact on the body's negotiating position with a third party. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's negotiating position.
7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;

There may be provisions in certain statutes or federal grants which require or specifically allow that a public body consider a particular issue in a closed session. Additionally, as the following section discusses, where Purpose (8) does not apply, Purpose (7) may nevertheless apply to the initial stage of a hiring process.

8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening; This Purpose permits a hiring subcommittee of a public body or a preliminary screening committee to conduct the initial screening process in executive session. This Purpose does not apply to any stage in the hiring process after the screening committee or subcommittee votes to recommend a candidate or candidates to its parent body. At the time that the executive session is proposed and voted on, the chair must state on the record that having the

discussion in an open session will be detrimental to the public body's ability to attract qualified applicants for the position.

9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that: (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session.
10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided:
  - a) in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to G.L. c. 164 § 1F,
  - b) in the course of activities conducted as a municipal aggregator under G.L. c. 164 § 134, or
  - c) in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to G.L. c. 164 § 136,
  - d) when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy

Accurate records of the proceedings conducted in executive session will be kept and may remain secret only so long as their publication would defeat the purpose of the session. The Committee will review executive session minutes for possible declassification at least once each year.

All votes taken in executive session will be recorded roll call votes, and will become part of the minutes of executive sessions.

Established by law and Committee policy

LEGAL REFS.: M.G.L. 39:23A; 39:23B

CROSS REFS.: BDE, Subcommittees of the School Committee  
BE, School Committee Meetings  
KEB, Public Complaints about School Personnel