



# Policy Services

## NORTH DAKOTA SCHOOL BOARDS ASSOCIATION



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### Reasons for Executive Session

#### Health/medical records: NDCC 44-04-19.2 (1)

A governing body may hold an executive session to consider or discuss closed or confidential records.

- 44-04-18.1. Public employee personal, medical, and employee assistance records - Confidentiality - Personal information maintained by state entities. Any record of a public employee's medical treatment or use of an employee assistance program is not to become part of that employee's personnel record and is confidential and, except as otherwise authorized by law, may not be used or disclosed without the written authorization of the employee. As used in this section, the term "public employee" includes any individual who has applied for employment, is employed, or has been employed by a public entity.

#### Student Records: NDCC 44-04-19.2 (1)

- A governing body may hold an executive session to consider or discuss closed or confidential records.
- A.G. Opinion 2000-O-04: A discussion of the content of "education records" which are confidential under FERPA must be held in an executive session rather than in an open meeting. N.D.C.C. § 44-04-19.2(1); N.D.A.G. 98-O-06; N.D.A.G. 94-F-28. It is important to note that this exception applies only to the discussion of records, and not to all discussion regarding students. N.D.A.G. 98-O-06
- A.G. Opinion 94-F-28: It is my opinion that if a hearing held by a public school board will create or discuss records that are confidential under 20 U.S.C. 1232g, the hearing must be closed to the public unless the student's parent or guardian consents in writing to the hearing being open.

#### Nonrenewal Hearing: NDCC 15.1-15-06 (6)

Unless otherwise agreed to by the board of the school district and the individual subject to the nonrenewal, the hearing must be conducted as an executive session of the board, except that:

- a. The individual may invite to the hearing any two representatives, and the individual's spouse or one other family member; and
- b. The board may invite to the hearing any two representatives, the school district business manager, and the school district superintendent

#### Discharge Hearing: NDCC 15.1-15-08 (3)

Unless otherwise agreed to by the board and the individual, the administrative law judge shall close the hearing, except for the parties, their legal representatives, witnesses, three invitees requested by the individual, and three invitees requested by the board

**Suspending a licensed employee during discharge proceeding: NDCC 15.1-15-10 (1 and 2)**

1. The board of a school district may suspend an individual employed as a teacher, a principal, or as an assistant or associate superintendent if, by unanimous vote, the board determines that suspension is appropriate during the period in which a discharge for cause is pursued.
2. The board shall address the matter of the individual's suspension in an executive session, unless both the board and the individual agree that the matter may be addressed in the presence of others or at an open meeting of the board.
3. at an open meeting of the board.

**Negotiations Strategy: NDCC 44-04-19.1 (9)**

A governing body may hold an executive session under section 44-04-19.2 to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator regarding litigation, adversarial administrative proceedings, or contracts, which are currently being negotiated or for which negotiation is reasonably likely to occur in the immediate future. An executive session may be held under this subsection only when an open meeting would have an adverse fiscal effect on the bargaining or litigating position of the public entity.

**Negotiations Caucus: NDCC 15.1-16-22**

The board of a school district, or any authorized subcommittee of the board, may hold an executive session under section 44-04-19.2 to discuss negotiating strategies or to provide to its representative negotiating instructions, which are applicable to anticipated or pending: 1. Litigation; 2. Adversarial administrative proceedings; or 3. Contracts.

**Security Plans: NDCC 44-04-26**

Those portions of a meeting, which would reveal a security system plan, a public health or security plan, or a portion of any such plan, made exempt by section 44-04-24 or 44-04-25, are exempt from section 44-04-19 and section 5 of article XI of the Constitution of North Dakota.

**Attorney Consultation NDCC 44-04-19.1(2)**

That portion of a meeting of a governing body during which an attorney consultation occurs may be closed by the governing body under section 44-04-19.2.

**If the reason is not on this list, then the matter needs to be discussed in an open public meeting.**

**Executive sessions are for the purpose of deliberations only. No action may be taken during an executive session.**

**School boards must follow proper procedures to enter executive session.**

There must be a motion and a second to go into executive session, followed by a roll call vote. The motion must state which of the purposes listed above is the reason for executive session. While it is fine to use general topics to help remember the reason(s) the board can properly go into executive session, the actual wording of the resolution should incorporate the words found in RC 121.22. The board may invite any other persons into an executive session.

**School boards must promptly prepare, file and maintain minutes of regular and special meetings.**

Meeting minutes constitute the official record of all board actions. Minutes should be of sufficient specificity that an individual not present at the meeting could read, understand and appreciate both the board's official actions and the rationale behind those actions. A public body can meet its obligation to keep records of a board meeting by any of three methods: a verbatim written record; an audiotape or videotape of the meeting; or abstracts of discussions. Minutes should not be kept of executive sessions. However, the minutes of the meeting at which the executive session occurs must reflect the general subject matter discussed in the executive session.

**Additional Resources**

<https://www.ag.nd.gov/Brochures/FactSheet/OR-OMGuide.pdf>

<https://www.ag.nd.gov/Manuals/OROMManuals/OpenMeetingsManual.pdf>