

School District Governing Board Transitions – Frequently Asked Questions

New Board Member Participation Prior to Being Sworn In

Can a new board member-elect attend board meetings and sit on the dais?

It is a good idea for a board member-elect to attend board meetings to observe and get a “feel” for how board meetings are conducted. Board members-elect cannot attend board meetings in any kind of official role. Although it is not typical, there is nothing in law that would prohibit a board member-elect from engaging in discussions with the current board – like in a work study format - should the current board agree. The board member-elect would not have a vote and could not make any motions during the discussion.

Can a new board member-elect meet with other board members-elect or other current board members without violating the Open Meeting Law?

It takes a quorum of sitting board members (defined as a majority of those current members) discussing board business outside of a legally called and noticed meeting to violate the Open Meeting Law. If this does not occur, the Open Meeting Law is not violated. However, the spirit of the Open Meeting Law would be violated if a number of board members and board members-elect equal to a future quorum as of January met to discuss current or future board business. The Open Meeting Law exists to ensure public accountability and openness and such a meeting would be contrary to this objective.

Can a board member-elect meet with the superintendent and/or other administrators or employees related to district business prior to taking a seat?

It is a great idea for board members-elect to meet with the superintendent, prior to taking office but board members-elect should respect the school district chain of command and work through the superintendent in arranging visits or meetings with other district staff. The board member-elect must be mindful that they do not have any power, cannot and should not make any promises and keep an open mind for when they do take their seat. It is important that new board members understand that the superintendent is the only employee that the board (collectively) evaluates and oversees and all communication/contact with other employees should be with the superintendent’s awareness and involvement. The vast majority of superintendents are more than happy to have board members-elect talk with other school employees – as long as they are kept in the loop and the communication does not interfere with the important jobs the employees have to do.

Can board members-elect attend executive sessions of the board?

Executive sessions are meetings of the board that have been properly noticed, for a reason authorized in law, from which the public is excluded. The attendance at these sessions is limited to board members and “only individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities.” It is up to the school board to decide who those individuals are, after following the law and receiving advice from their attorney. Simply put, if the matter the board is discussing is one that may carry over to the new board, and the board has sought and receiving advice of counsel to do so, we believe that board members-elect could be invited to attend an executive

session of the board. Those board members-elect would be subject to the same confidentiality restrictions as current board members and anyone else attending the executive session and would not participate as board members but would be there to observe and discuss as the board would allow.

Can board members-elect see executive session minutes prior to coming onto the board?

Arizona Revised Statutes §38-401.03(B) contains a finite list of persons that may review executive session minutes. Board members-elect are not included in this list and, therefore, cannot have access to executive session minutes. However, once in office, new board members are able to see previous executive session minutes, but would be bound by the same confidentiality as those board members that attended that executive session. New board members should not go on “fishing expeditions” by requesting executive session minutes and should work with their superintendent and district’s attorney before obtaining executive session minutes for meetings that occurred prior to them taking office.

Board Member Oath of Office

What is the oath of office?

Arizona Revised Statutes §38-231 requires all public officers of this state and its political subdivisions to “take and subscribe” to the oath or affirmation contained in the statute which is stated to be:

“I, _____ (type or print name) do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona, that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of _____ (name of office) _____ according to the best of my ability, so help me God (or so I do affirm).

(signature of officer or employee)

It is important to know that the required oath or affirmation is actually the written document – not the “swearing in” or oral oath that may be administered in a ceremony. There is no state requirement to have such a ceremony, though local custom may incorporate one.

Essentially, what is the board member that takes the oath agreeing to?

To follow the law, even if they disagree with it and even if they may work legally to change laws with which they disagree.

Who must/can administer the oath of office?

Because the ceremonial/oral administration of the oath is not statutorily required, anyone can do it. Common practices include administration by the county superintendent, current board president, another board member or even the superintendent – all are acceptable under the law.

Who provides the oath?

Anyone can provide a copy of the oath document. In addition to verbiage provided here, the district's policy (if they subscribe to ASBA's Policy Services) BBBB-E reproduces the oath and can be copied and signed.

What do you do with a copy of the written oath of office once taken/signed?

The oath is filed with the school district per Arizona Revised Statutes §38-233D.

When can/must the oath be taken? Can a board member-elect take the oath of office and participate in a meeting the same day?

Yes a board member can participate in a board meeting on the same day as taking or subscribing to the oath. According to Arizona Revised Statutes §38-232, the oath "shall be taken and subscribed:

1. If appointed, at or before commencement of the term of office.
2. If elected, at any time after receiving the officer's certificate of election, and at or before commencement of the term of office."

What does it mean that board members must review the Arizona Open Meeting Law at least one day prior to taking the oath?

It is critical that new board members have a general understanding of, and an appreciation for, Arizona's Open Meeting Law which ensures public bodies hold their discussions and decisions in public. To ensure new board members understand this, Arizona Revised Statutes §38-431.01 G. requires that all new members of public bodies in the state review the Open Meeting Law, using materials prepared by the Arizona Attorney General at least one day prior to taking office. The Arizona Attorney General's Agency Handbook (Chapter 7) is an excellent resource to examine in complying with this requirement. Also, ASBA publishes an Open Meeting Law Handbook that reproduces the text of the Open Meeting Law statutes, Chapter 7 of the AG's Agency Handbook and basic rules to lead to compliance. Finally, it is recommended that new board members-elect attend ASBA's New Board Member Orientation, which contains a full briefing on the Open Meeting Law.

Organizational Meetings

What is an organizational meeting?

Required by Arizona Revised Statutes §15-321, an organizational meeting is a meeting of the new school district governing board that must occur between January 1 and January 15 in a year following a general election (basically odd number years), in which the board chooses its board president and, should they have one, either a board vice-president or board clerk. It often is also the meeting at which basic board meeting procedures are reviewed – when the board will meet for the coming year, basic board meeting policies such as agenda setting, approval of signatures for payment vouchers and contracts, the board's code of ethics, mission, vision and strategic goals, among other topics.

When can/must it be held?

It must be held between January 1 and January 15 in the year after a general election. ASBA believes however, additional board organizational meetings can be held at other times through the year as well, since the school district governing board also has the authority to “prescribe rules for its own government” under Arizona Revised Statutes §15-421D.

Who chairs the meeting if the preceding board president is no longer on the board?

The beginning of the organizational meeting is typically chaired by the preceding board president. If that person is no longer on the board or unavailable, someone from the current board should be appointed for the purpose of chairing the board organizational meeting.

What if no candidate is elected by a majority of board members for president – what happens then?

The preceding board president will serve until a successor is chosen. If that person is no longer on the board, the board vice-president or clerk (either the one just elected or if no selection of that position has been made by the current board, the preceding board vice-president or clerk) will serve as the board chair until a president has been chosen. If a current or preceding board vice president or clerk does not exist, the person appointed to run the board organizational meeting will serve as interim or temporary board president until a permanent board president can be agreed upon by a majority of the board.

Can election for board president or vice president/clerk be done by secret ballot?

No – such a procedure would be a violation of Arizona’s Open Meeting Law. All motions and votes are a matter of record and must be done in the open.

Can board members campaign for board president by lobbying other board members prior to the board meeting?

Yes, but board members should be mindful that any discussion by a quorum of board members discussing board business (a discussion about board president is board business) outside of a public meeting violates Arizona’s Open Meeting Law. A quorum can be triggered by a number of separate conversations between a majority of board members about the same board business topic, particularly if any or all the board members are aware such conversations are going on. Remember that e-mail exchanges among board members count as conversations.

Is the organizational meeting a stand-alone meeting or can it be part of a regular or special meeting?

Board organizational meetings are typically part of a regular meeting but can be done in a special meeting. The important issue for compliance is that the meeting occur between January 1 and January 15 in the year after a general election; if a board does not have a regular meeting scheduled in that timeframe, the board should schedule a special meeting to conduct the organizational meeting.

What does the board president do? What does the board vice-president or clerk do?

The board president chairs the board meetings and represents the board in the agenda setting process. In addition, governing boards have assigned other tasks to the board president such as serving as spokesperson for the board (NOT the district) or representing the board at official functions. It is up to the board to assign these responsibilities through policy and board action and a board president cannot

assume authority that has not been given through policy and board action. The board vice-president or clerk typically serves as backup to the board president if they are not in attendance at meetings or unable to perform other functions. As with the board president, it is up to the entire board to assign through policy any functions for the vice-president or board clerk.

Attendance/Eligibility to Serve

What if a board member-elect does not show up for the first meeting?

The meeting can continue and the board member can be sworn in and begin serving at a later date. However, it should be noted that if a board member ceases to perform the duties of a board member for three consecutive months -- typically three months of missed meetings -- the office is deemed vacant pursuant to Arizona Revised Statutes §38-291 and the county school superintendent can move to fill the seat.

What if a board member no longer lives in the district?

Board members must continue to meet the same qualifications that they had to meet when they ran for election or were appointed to the board. Under Arizona Revised Statutes §15-424, a governing board member must be “a registered voter of this state and has been a resident of the school district for at least one year immediately preceding the day of election.” The question comes down to residency, which involves where someone lives at least part of the time and has an intent to remain there. If an individual lives in multiple places, but maintains that his or her residency is at a property location with the school district and spends some time there, it likely will be seen that he or she has met the residency requirement. An individual can only have one place of residency. If, however, the individual has moved or now claims a residency outside of the district, especially if voter registration shows an address outside of the district, that member has vacated the office under Arizona Revised Statutes §38-291.

Conflicts of Interest

What is considered a conflict of interest?

A board member could have one of two types of conflicts of interest: disqualifying to serve or disqualifying for a particular issue. First, the board member could have a conflict of interest that prevents them from being able to serve in the position because law prohibits it. Arizona Revised Statutes §15-421 D. prohibits a person from serving on a school district governing board if the individual is an employee of the district or if that individual’s spouse is an employee of the district. (The statute does not prohibit a past employee of the district from serving nor a current employee from being elected to governing board if that individual resigns from employment prior to taking office on the governing board.) Second, the board member could have a conflict of interest on an individual issue or decision that does not disqualify service on the board altogether but requires that board member to declare a conflict of interest if that issue arises and refrain from discussing, deliberating or deciding the issue. This second type of conflict of interest is much more common and occurs whenever it meets the definition of a substantial conflict of interest found in Arizona Revised Statutes §§38-502 and 38-503. In a nutshell, a board member has a substantial conflict of interest requiring the previously mentioned actions if the board member or the board member’s spouse or a dependent child has a financial interest in the outcome of a decision.

