

**50 Frequently Asked Questions**  
**About Board Meetings, the Open Meeting Law and Public Participation**  
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**1. Can the board choose not to have a call to the public? Can a board choose to have a limited call to the public? Who decides that?**

Yes, the board can choose not to have a call to the public. They can choose to never have a call to the public or not have a call to the public for certain meetings. If a board chooses to have a call to the public, they can have a limited call to the public – only allowing comments about items appearing on the meeting agenda – or an open call to the public – allowing comments on any matter on the agenda or not on the agenda but still within the jurisdiction of the board and the school district. The board should choose whether to have a call to the public and what type of call to the public to have in a public meeting where the policy is adopted.

**2. Can the board require speakers to give their address? Can the board ask speakers to identify where they live by their school of attendance?**

No, privacy interests preclude requiring addresses of speakers. The board can ask speakers about their school of attendance, but any information provided is voluntary.

**3. Can the board limit speakers to those that live in the district? Can the board limit speakers to those who have a child in school?**

No, the board cannot limit speakers to those that live in the district. (With open enrollment and taxes coming from all residents of the state supporting schools, the question is largely irrelevant anyway.) The board also cannot limit speakers to only those having children in school. Taxpayers have an interest in being heard as well.

**4. How does the board handle written comments submitted beforehand?**

It is up to the board but there should be a policy or practice that has been agreed upon by the board beforehand. The board could read comments into the record – subject to a word or time limitation – or just note that the comments have been received and read by the board.

**5. What does the board do if someone asks that their comments are reflected in the record? What if a speaker is not in attendance but gives comments to someone else to read?**

Minutes are a summary of a meeting. They are not transcripts of everything said in a meeting. If a speaker asks for their comments to be in the record, you can either let them know that a summary of their comments will be in the minutes or that there will be a recording which will be kept according to the record retention requirements of the law. It is not advisable that a board allow any speaker to have their comments specifically memorialized.

**6. Can the board restrict speakers from commenting about school employees? Other students? Other parents? Other speakers?**

By allowing a call to the public the board has created a public forum for the purpose of the First Amendment and certain free speech rights are afforded to those engaging in the forum. For instance, the board cannot censor speech based on a speaker's viewpoint. However, the board can have reasonable time, place and manner restrictions which are allowed under the First Amendment. Most speech, even critical speech, must be allowed about school employees. However, the board will have greater discretion to censor speech about students or parents. In order to maintain decorum, it is best to steer speakers away from making comments personal to other speakers.

**7. Can the board restrict speakers from directing their comments to the audience (turning around from the dais and addressing the audience)?**

Yes. In order to maintain meeting decorum, the board can require speakers to direct their comments to the board and in doing so to face the board.

**8. Can board members participate as part of the call to the public? Can school employees?**

It is unsettled legally whether board members can participate in a call to the public for their board. It is not advisable. For one, the comments may indeed be a violation of the Open Meeting Law if the matter addressed is not on that night's agenda – possibly being construed as discussion among a quorum about board business that is not properly noticed on the agenda. Secondly, it further breaks down the decorum of an official governmental meeting, where the public officers conduct themselves in a manner that is customary of elected officials.

School employees can participate in the call to the public without violating the open meeting law. However, school employees should not use the call to the public to air grievances about their employment, circumventing other processes that allow an employee to complain through proper channels. Employees should also understand that speech from an insider's perspective of an employee may not be protected speech under the First Amendment (when actually speaking about one's job or working conditions).

**9. What can a board do to address comments that they believe are defamatory?**

It is not the board's role to police defamatory speech. However, it would be appropriate at the end of the call to the public to point out that critical comments made by the speaker may not be a reflection of the truth and that, perhaps, the person subject to the criticism is unable to respond.

**10. What if someone signs up to speak about one item and then talks about a different item or a matter not on the agenda?**

The board president can rule that speaker out of order or another board member can call for a point of order for violation of public participation rules and ask for a ruling by the chair.

**11. What if a speaker's comments are related to matters not within the jurisdiction of the district?**

The board president can rule the comments out of order and either ask the speaker for comments within the board's jurisdiction or dismiss the speaker.

**12. What if a vendor or potential vendor uses the call to the public to solicit business or complain?**

The vendor/speaker can be ruled out of order provided that the district has policies in place preventing this type of commercial speech in its call to the public. (ASBA recently included this ban in its model policies.)

**13. Can a board president recess a meeting without a vote of the board if meeting decorum needs to be restored?**

Yes. (However, adjournment – meaning a vote not to return -- would take a vote of the entire board.)

**14. Can a board pull a call to the public from the agenda when it has previously been noticed that one would occur? What if eliminating the call is within the 24-hour period before the meeting?**

Yes, the board can remove a call to the public previously noticed on the posted agenda prior to the meeting. However, it is advisable that this be done outside of the 24-hour period to amend the agenda (and amended agenda re-posted at least 24-hour before the meeting.) It is unclear whether the board can eliminate the call to the public within the 24-hours before the meeting.

**15. Can the board allow public comments on matters not on the agenda when it hasn't been previously noticed that an open call to the public will occur?**

No. If the board intends to allow an open call to the public it should be noticed in advance on the agenda. This advance notice can be accomplished by adopting a board policy as well.

**16. Can a speaker be banned from speaking for previously violating speaking rules?**

Yes, we believe they can but only if previous attempts to correct the speaker's behavior have failed.

**17. Can the board only decide to hear speakers that have signed up to speak before the meeting starts or before a particular agenda item has begun?**

Yes, to both questions. However, the board should have a written policy that supports this action and that policy should be consistently followed.

**18. What's the best practice for where the call to the public should go on the agenda?**

There are many ways to do this. We recommend a two-part call to the public, conducting an open call to the public (for items not appearing on the agenda), before agenda items are addressed. Then, when agenda items are brought forward for discussion/action, allowing comments on that agenda item. However, it is recommended that the school administration first be allowed to introduce the topic and give any presentation that is associated with the agenda item, with board members allowed to ask clarifying questions of the administration. Then public comments can be made. After this, the board can have its discussion and vote on the agenda item.

**19. Can you limit the overall time for the call to the public? If so, how do you prioritize speakers?**

Yes, the board can limit the overall time allowed for call to the public. If the board does this, it is recommended that there be a policy for prioritizing speakers that is agreed upon beforehand and well-communicated. In order of submission is defensible, as is a random drawing. What is not defensible is choosing speakers based on their viewpoint, shutting out speakers with a particular point of view.

**20. How should you address public comments in the minutes? Do you have to summarize a speaker's position?**

The summary in the minutes should identify the speaker, including the speaker's name spelled correctly and the general topic that the speaker spoke about – additional comments about points made in the speaker's comments could be included but are not advised.

**21. How do you address audience participation? Signs? Clapping?**

The board should have clear rules of decorum and it is permissible to ban holding up signs (so others can't see), clapping or yelling out comments from the audience. Attendees that refuse to follow the rules can be removed. In addition, board members should refrain from engaging in similar ways – no holding up signs, clapping for some speakers and not all, etc.

**22. What do you do if an audience member is recording you?**

You must allow the audience to record you under the Open Meeting Law. However, such recording cannot disrupt the meeting and can be stopped if it does.

**23. Is the public participation requirement of the OML satisfied if the public is allowed to watch video of the meeting? If so, does it have to be a live stream?**

Yes, you can comply with the public participation requirements of the meeting by allowing the public to view the meeting in a live stream. We do not believe these requirements would be met by allowing the public to watch a recording of a meeting that has already happened.

**24. What do we do if, after the meeting is over, we learn that our live stream wasn't working properly?**

It is important that the live stream works properly. If, however, it is discovered that the technology did not work properly, we do not believe that the meeting is invalid if a good faith attempt was made to provide that access. However, a district should seek legal counsel as to what its options are to address the situation.

**25. Do we have to allow comments from virtual participants if we are conducting an in-person meeting (where virtual access is also provided)?**

No. The board has discretion in this situation and can prioritize in-person attendees for speaking opportunities.

**26. How should we deal with the chat feature of our online meeting platform? Can board members use it? Can the public?**

It is strongly advised, if possible, that the chat feature be disabled from the online meeting platform. If that is not done, board members should refrain from using the chat feature.

**27. How does text messaging between board members during the meeting or between board members and staff and/or audience members impact public participation rights under the OML?**

The public has a right to attend public meetings and to watch, listen and record them. Inherent in this right is the ability to see what is truly happening at the meeting. If board members are having side conversations over text with other board members or members of the audience or staff, the public is not getting a full picture of what is happening at the meeting and the substantive conversations happening relating to the board's business. Because of this, it is strongly recommended that board members refrain from this type of communication during the board meeting. In addition, these communications may amount to discussion among a quorum that could violate the OML. Finally, all of these communications would be public records that would need to be maintained and disclosed upon a proper public records request.

**28. What do you do if a speaker uses their time to campaign for a candidate or an issue?**

While you cannot schedule time for a speaker to campaign – which if you did would be a violation of A.R.S. 15-511 – we do not believe you must prevent a speaker from engaging in campaign-related speech if you had no foreknowledge of it. It is also arguable whether you could censor such speech.

**29. Can board members or staff respond to public comments made? What about correcting factual errors?**

Legally, board members or staff can respond to public comments related to specific items appearing on the agenda (if the comments are not related to an agenda item, no comments are allowed, however at the conclusion of the call to the public, board members can respond to criticism). It is often not advisable to respond to comments, especially in a back-and-forth manner with the speaker, because the roles between the governance function of the board and the role of the public can break down and lead to the meeting becoming less controlled.

**30. Can board members call upon audience members to comment on an item or to rebut another speaker's comments?**

While this is legally allowed -- assuming the subject matter is on the agenda – it is highly inadvisable. In order to maintain control of the meeting and maintain decorum it is important that the roles of the board, staff and public be distinct. The practice of calling directly on audience members for support breaks these roles down.

**31. What should board members do when speakers ask them questions?**

If the matter is on the agenda, board members can respond legally to questions posed of them. It is inadvisable, however. Never forget that this is a board meeting that is in public – it is not a meeting between the public and the board.

**32. Are the public participation requirements of a public hearing different than a regular board meeting?**

In a public hearing, the board must allow for public comments. In a regular board meeting, public comments are optional. At a public hearing, the same time, place and manner regulations of a regular board meeting can apply. Most public hearings that are required by law are conducted as part of regular meetings.

**33. How does a board handle retreats? Study sessions?**

The public participation requirements of retreats and study sessions of the board – usually sessions where the board will not take legal action but where there will be a “deep-dive” into future issues or strategic planning – are the same as a regular meeting of the board. It is still a public meeting and the public has the right to attend and the right to expect that the board will follow the Open Meeting Law. The board can still have a call to the public but do not have to have one. It is NOT typical to have a call to the public in these settings.

**34. What does the board do if a member of the public demands to attend executive session? Can the board invite a member of the public to attend ES? If so, how does that work?**

The public is excluded from executive sessions. However, it may make sense in certain circumstances to allow a member of the public to attend. The board has the authority to determine what persons are necessary to conduct the functions of the executive session. All attendees must maintain confidentiality of discussions that occur in executive session. Before inviting another party to an executive session, the board should consult its attorney for advice.

**35. Can a board member defer his or her board comment (current event summary) period to a member of the public?**

No. The board member comment period (current event summary) is for board members only. It cannot be handed off to a non-board member.

**36. Can the board hold a “listening session” where all they do is take public comments? If so, what are the rules? Can an individual board member or a group of board members conduct such a session?**

The board can conduct a listening session where all they do is take public comments. It is still an official meeting and all OML requirements would apply. Also, there is nothing stopping an individual board member or less than a quorum of board members from conducting a listening session but it would not be a district or board sanctioned event, the OML does not apply and no district support should be provided. It is not advisable, however.

**37. Can the public request/demand that a matter be placed on the board agenda for consideration?**

That depends on the board policy. The vast majority of boards do not allow the public to place a matter on the agenda and that is good practice. Ideally, members of the public that want to see an item on the

agenda should work through board members and staff to see it addressed per the district's agenda setting policy (BEDBA).

**38. Can a board accept comments on some agenda items but not others?**

Yes, although the board needs to make sure it is not engaging in viewpoint discrimination. However, if the board chose not to allow public comments on consent agenda items or on discussion items that were eventually going to be put on a future agenda for action, that would be allowed. It should be communicated in advance that those will be the rules.

**39. Can a board take speaker viewpoints into consideration in allowing speakers to allow all sides of an issue to be represented?**

Yes, if the board has limited time for public comment, it can deviate from first-come, first-served calling of speakers to ensure a representative sample of viewpoints are represented in the comments.

**40. Does the board get to vote on speakers to speak or is it the prerogative of the board chair?**

It is typically the chair's prerogative to determine the order of speakers using the board's previously agreed upon policy or practice.

**41. How does the well written and timely agenda relate to public participation and the OML?**

One of the biggest "rights" the public has that is secured by the OML is the right to have timely notice as to what the board will discuss or take action on in a board meeting. The agenda must sufficiently describe the matters to be considered such that the public can decide whether to attend the meeting and, if attending the meeting, whether to engage in public participation under the board's policy. Therefore, a well written and timely agenda may be the most important thing to ensuring that the public's rights are satisfied.

**42. Is the public entitled to have all meeting materials that the board has?**

Most meeting materials will be considered disclosable public records and should be provided upon request and available at or before the meeting. Some materials, such as sensitive personnel issues or student issues, may not be disclosable public records. The board should consult its attorney in determining whether a document should be made available or not if there is a question about it.

**43. How should the board communicate its participation rules? Can it deviate from its rules in policy for a particular meeting?**

The board should spell out the public participation rules in its governing board policy. It should also state what those rules are at the meeting or have the rules posted in the meeting room. It is inadvisable to change rules for one particular meeting but it is likely not an OML violation to do so. Problems occur with a lack of predictability or from a sense of unfairness when rules change to address present circumstances – for these reasons, "on the fly" public participation rules changes should be avoided.

**44. How are the public's rights affected by placing controversial items on the board's consent agenda?**

The consent agenda is typically made up of non-controversial, routine board business items that can be addressed in a single motion to save time in a board meeting. The consent agenda should not be a place where controversial items are “hidden.” The public has a right to proper notice of items of interest as well as observation of board discussion and a vote.

**45. How quickly is the public entitled to see the minutes of a meeting after it happens? What about a recording of the proceedings?**

A draft of the minutes must be produced upon request three working days after the meeting. If a recording of the meeting was made and is readily available, the recording must be produced “promptly” upon a public records request.

**46. Can a district charge the public for copies of meeting agendas, minutes or other board meeting materials?**

No.

**47. Are the public participation requirements satisfied if attendance is greater than room capacity? What about moving the meeting to a bigger room?**

It is not an OML violation to have a meeting where the crowd is beyond meeting room capacity. However, the board can move a meeting to a larger facility with less than 24 hour notice so long as notice is provided as soon as possible and some sign provided at the previously-posted location where the meeting has been moved to.

**48. Do you have to provide a Spanish translator for board meetings where a significant part of the community speaks Spanish?**

You are not legally required to provide a Spanish translator (by statute, the official language of Arizona for the conduct of government business is English), however, depending on the makeup of your community, it may be a good idea to provide one.

**49. If a member of the public needs sign language interpretation, do you have to provide it? If so, can you require advance notice?**

Yes, you would have to provide a sign language interpreter if requested. You can require advance notice that a sign language interpreter will be needed to plan for it.

**50. The district has heard through social media that a group of politically motivated people are planning to come disrupt the board meeting. Can the board cancel the meeting? Can the board move the meeting to a virtual meeting? If so, does the board need 24 hours to do so?**

A district can always cancel a meeting if the district perceives a safety concern and no 24-hour notice is required. Further, the board can also move a meeting to a virtual format with less than 24 hours notice as long as all of the other rights of public access are met at that virtual meeting.