Part I – Open Meetings
Open Meetings Hypo

The Board of ABC Charter School is contemplating whether to non-renew the contract of its Executive Director. The main reason being considered by the Board are poor performance on milestones and other internal assessments tracked by ABC.

On Monday morning, the Board Chair calls a virtual meeting for that evening. The agenda on the website states “1. Executive Session - personnel matter.” The entire meeting is held in executive session. Evidence of test data is reviewed, and the Board votes to not renew the ED’s contract. The minutes list one action item: “Employee non-renewal” and state that the motion passed unanimously.

Any issues?
Is it a Meeting?

“The gathering of a quorum of the members of the governing body [or a committee thereof] of an agency at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon.” OCGA § 50-14-1(3)(A).

- “Gathering”
  - In person
  - Phone or virtual only in certain circumstances
  - Not email communication (although subject to open records)

- “Quorum” – Defined by bylaws (typically majority)
  - Directors permissibly calling in do not count toward quorum

- “Formulated, presented, discussed or voted upon”
What is Not a Meeting?

- Inspecting facilities or property (where no votes taken)
- Seminars or training (where no votes taken)
- Meeting with government officials (where no votes taken)
- Traveling to a meeting (if no official business, policy or public matter is formulated, discussed, or voted upon)
- Attending social, ceremonial, civic or religious events (if no official business, policy or public matter is formulated, discussed, or voted upon)
- But cannot use these exceptions to “evade or avoid” the general requirement of having a meeting to discuss or act upon official business.
It’s a Meeting, So What?

Must:
1. Be open to public (except executive session)
2. Adequate notice
3. Publish agenda
4. Publish minutes and summary of actions
Required Notice

Regular Meetings
- Time, place, date
- Conspicuous place at the regular place for meetings
- Website
- At least one week in advance

OCGA 50-14-1(d)(1)
Required Notice Con’t

Non-Regular Meetings (Not Regular Time or Place)
- Time, place and date for 24 hours at regular meeting location and website
- Written or oral notice to legal organ (e.g. Fulton Daily Report) at least 24 hours prior

Special Circumstances Meetings
- If “special circumstances” occur, may hold meeting with less than 24 hours
- Notice of meeting and subjects expected to be considered “as is reasonable under the circumstances”
  - Notice to legal organ, website, and at regular location asap
  - Reason for meeting within 24 hours and nature of notice must be in minutes
Virtual Meetings – “Emergency Conditions”

“Emergency Conditions” Meeting By Teleconference

- “Emergency conditions involving public safety or the preservation of property or public services”
- May meet by teleconference IF (1) proper notice, and (2) public given means to participate
- What are “emergency conditions”?
  - Not defined under Act
  - Public Health Emergency – Yes
  - Not Public Health Emergency - ??
Individuals Participating Virtually

- Aside from “emergency conditions” meetings, individual directors may only participate (1) for health or “absence from the jurisdiction” and (2) only twice in a calendar year unless medical opinion.

- Directors on phone do not count toward quorum.
Agenda

- All matters expected to be addressed at meeting
- Must be made available upon request and at meeting site “as far in advance of the meeting as reasonably possible”
  - Best practice: on website
- Items not on agenda which become “necessary to address” during meeting may be addressed.
  - Best Practice: Amend the agenda at outset of meeting
Summary and Minutes

- Within 2 business days: summary of action items (draft minutes will suffice)
- By next regular meeting: regular approved minutes, which must include
  - Members present
  - Description of each motion
  - Person making and seconding motion
  - Record of votes (e.g. unanimous)
Executive Session

- To discuss with counsel “pending or potential” litigation, settlement, claims or other judicial actions
  - Threat of litigation must be real
    - Demand letter?
    - Previous existing litigation over other claims?
    - Engaged counsel?
- Discuss or vote on authorizing negotiations to purchase/dispose of/lease property
- Discuss or vote on acquisition, disposition, or lease of real estate
- Discuss hiring, compensation, evaluation, or disciplinary action for specific employee
  - But NOT: to receive “evidence or hear argument” on personnel matter
  - Vote must be public
- Interview applicant to be executive head of a department
- Discuss records exempt from disclosure
Executive Session

- *Votes* must be in public session
- Majority of quorum votes to go into executive session
- Minutes of general meeting must (1) state reason for executive session and (2) provide notarized affidavit swearing that subject matter was devoted to matters within the exception
- Minutes of executive session must be taken but are not available to the public
The Board of ABC Charter School is contemplating whether to non-renew the contract of its Executive Director. The main reason being considered by the Board are poor performance on milestones and other internal assessments tracked by ABC.

On Monday morning, the Board Chair calls a virtual meeting for that evening. The agenda on the website states “1. Executive Session - personnel matter.” The entire meeting is held in executive session. Evidence of test data is reviewed, and the Board votes to not renew the ED’s contract. The minutes list one action item: “Employee non-renewal” and state that the motion passed unanimously.

Any issues?
Part II - Open Records
Open Records - Who

- **Who must the request go to?**
  - Any employee, officer, director, or agent of the public agency (e.g. school)
  - School *can* designate a custodian of records—and require that ORRs go to that person. If so 3 days starts upon request to that person.
    - Must provide notice of this designation to any person requesting records
    - Must notify the county legal organ
    - Mut post the designation on website
Open Records – Requests

- **What must the request say?**
  - No magic words.
  - Need not be in writing (although cannot be enforced if it is not)
  - Best Practice: Have a form for requesters to use, available on website.

- **What can be requested?**
  - Need only seek any documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar information prepared and maintained or received in the course of the operation of an agency.
  - Includes handwritten notes, e-mails, text messages, calendars, etc.
  - It does not matter whether it is from a school account or personal account.
  - You do **NOT** need to create any new documents—only existing ones!
Open Records - Response

- **When** do you need to respond?
  - 3 business days to respond and produce if practicable

- **How** should you respond?
  - Estimate when documents can be produced if > 3 days
  - Estimate of costs
  - Documents that you won’t produce and the exception
  - If necessary, ask for clarification.
    - E.g. whether requester wants to inspect and copy or to receive e-copies
  - Direct to website if you have a form there
Open Records - Charges

- **How much can you charge?**
  - Prorated hourly salary of the lowest-paid full-time employee with necessary skill/training to fulfill request (first 15 minutes free)
  - Unless requester states a willingness to pay amount that exceeds search and retrieval costs, you can wait until requester agrees to pay estimated costs to retrieve documents
  - If estimated costs > $500, may insist on prepayment.
  - If requester has not paid for prior requests, may insist on prior payments before fulfilling new requests
  - If requester wants hard copies, may charge $0.10/page
Open Records – Exceptions

1. Attorney – Client Privilege or Work Product
2. Required by law to be exempt (e.g. FERPA)
   □ Note: Can redact student information
3. Evaluations: TKES and LKES or “in connection with appointing or hiring employees”
4. Related to law enforcement or ongoing investigations against school employees
Open Records – Exceptions

5. Real Estate appraisals and related documents
6. Sealed bids until award of contract
7. Reveal SS#, mother’s birth name, credit card/bank info or account numbers, passwords, financial or medical information, personal email/cell phone, home address/telephone number
8. Records regarding foster parent records
9. Department of Early Care and Learning Records
Enforcement and Consequences

- Actions at invalid meetings may be challenged
- Knowing/willful violation of open meetings/records is misdemeanor and fine up to $1,000
- False information on executive session affidavit may be a felony, up to $1,000 fine, and up to 5 years in prison.
Open Records Hypo

ABC charter school receives the following ORA request:

“Under the Open Records Act and Freedom of Information Act, this is a request for a list of all employees for fiscal year 2022 that contains the employee’s first name, position, middle initial, last name, hire date (mm-dd-yyyy), base salary amount, bonus amount, overtime amount, and gross annual wages. This list should be provided with columns in this order, preferably in an excel document.”

What should ABC charter school do?
Open Records Hypo – Con’t

ABC Charter’s Response

We received your request. The Georgia Open Records Act only applies to existing documents, it does not require the recipient of a request to create new documents. We do not currently possess a document containing all of the information in your request, in the format you are seeking. See OCGA 50-18-70 et seq..

If you would like us to provide you documents we currently possess that show our full and part-time employees for the 2022 school year, their positions, and salary/wage information, please let us know. It will not be in the format you requested and it may be in multiple documents. We estimate that it will take approximately 3 hours of work by the lowest-paid employee capable of handling this request to gather these documents and potentially redact any confidential information. The first 15 minutes would be free. Accordingly, the estimated cost to gather and product this information would be $67. Please confirm that you will pay this amount.