



# THE WASHINGTON STATE BOARD OF EDUCATION

*A high-quality education system that prepares all students for college, career, and life.*

<b>Title: Overview of the OPMA, PRR Training, and Resource Binder Review</b>		
<b>As related to:</b>	<input type="checkbox"/> <b>Goal One:</b> Develop and support policies to close the achievement and opportunity gaps. <input type="checkbox"/> <b>Goal Two:</b> Develop comprehensive accountability, recognition, and supports for students, schools, and districts.	<input type="checkbox"/> <b>Goal Three:</b> Ensure that every student has the opportunity to meet career and college ready standards. <input checked="" type="checkbox"/> <b>Goal Four:</b> Provide effective oversight of the K-12 system. <input type="checkbox"/> <b>Other</b>
<b>Relevant to Board roles:</b>	<input checked="" type="checkbox"/> Policy leadership <input checked="" type="checkbox"/> System oversight <input type="checkbox"/> Advocacy	<input type="checkbox"/> Communication <input type="checkbox"/> Convening and facilitating
<b>Policy considerations / Key questions:</b>	N/A	
<b>Relevant to business item:</b>	N/A	
<b>Materials included in packet:</b>	SBE 2018 Open Government Training  <u>Resource Binder (listed separately under Additional Materials on the website)</u> Table of Contents Example of Orientation Letter to New Members Example of Orientation Information for Students New Board Member Information Form Meeting Calendar and Topics Board Chart Vision and Mission Statement Revised Strategic Plan SBE Statutory Authority Publication: About NASBE and State Boards of Education 2018 SBE Legislative Priorities Updated Board Norms Board Bylaws Governor’s Handbook Emails Are Public Records Email Retention FAQ Public Disclosure Report Memo Copy of Agency Public Disclosure Form SBE Travel Policy for Board Meetings FAQ New Travel Policy Board Member Reimbursement Form Appropriate Conduct with Student Board Members Policy Social Media Policy HR Consultation Services SBE Partnership Organizations Additional Resources	
<b>Synopsis:</b>	During this agenda segment, Linda Sullivan-Colglazier will provide a training on the Open Public Meeting Act and the Public Records Act.  Alissa will also give a brief overview of the new, updated Board manual.	

# ***Open Government Responsibilities***



**STATE BOARD OF EDUCATION  
JANUARY 11, 2018**

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ASSISTANT ATTORNEY GENERAL**

## **Laws Affecting Governing Boards**

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**This Training will cover:**

- **Open Government Laws**
  - **Open Public Meetings Act**
  - **Public Records Act**
- **Ethics in Public Service**
- **Administrative Procedures Act - Rulemaking**
- **Additional Resources / Training**

## Open Government Trainings Act

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- **Requires Regular Training on the Requirements of:**
  - Open Public Meetings Act (OPMA) – RCW 42.30
  - Public Records Act (PRA) – RCW 42.56
- **Ongoing Requirement:**
  - Initial training – within 90 days of appointment
  - Refresher training – every **four years**
- **Purpose:**
  - Promotes increased knowledge and understanding of the open government requirements
  - Risk Management
    - ✦ Training can help avoid or reduce penalties

## Open Public Meetings Act (OPMA)

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RCW 42.30

## Declaration of Purpose

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- Public agencies exist to aid in the conduct of the people's business.
- Actions are to be taken openly and deliberations conducted openly.
- The people do not give public servants the right to decide what is good for the people to know and what is not good for them to know
- The people insist on remaining informed so they may retain control over the instruments they have created

## Meetings Declared Open and Public

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- ◆ All *meetings* of the *governing body of a public agency* shall be open and public
- ◆ public and all persons shall be permitted to attend any meeting of the governing body of a public agency

## What Is a Governing Body?

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“All meetings of a ***governing body*** of a public agency shall be open and public . . . .”

- ◆ Multi-member governing bodies of state and local agencies (like this board)
- ◆ Subcommittees, if quorum
- ◆ Subcommittee, if delegated final decision-making authority, conducting hearings, or taking public comment or testimony

## What Constitutes a Meeting ?

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“All ***meetings*** of a governing body of a public agency shall be open and public . . . .”

- ◆ A meeting is a gathering where “action” is taken. Any such meeting must be open.
- ◆ “Action” means “the transaction of the official business”

## What Constitutes Action?

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Includes (but is not limited to):

- ◆ Receiving public testimony
- ◆ All deliberations
- ◆ Discussions / Considerations
- ◆ Reviews / Evaluations
- ◆ and
- ◆ Final action – collective decision (positive or negative) or actual vote by a majority sitting as a body

## What About Emails & Texts?

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- **Caution:** An exchange of emails or text messages among board members can constitute a deliberation or discussion and become a “meeting” subject to the OPMA requirements
- Also phone discussions of board business between members may become a meeting
- Violations may subject members to penalties

## Travel and Gathering

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- Not a violation of OPMA for a majority of the members of a governing body to travel together or gather for the purposes other than a regular meeting or special meeting
- PROVIDED, that they take no action
- OK to discuss your kids, the weather, sports – but not board business

## Regular Meetings

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- ◆ Recurring meetings of the governing body
- ◆ Board must adopt a schedule of the time and place of meetings for each year
  - ◆ Schedule must be filed with the Code Reviser on or before January 1st of each year
- ◆ Agenda must be posted on website 24 hours before the meeting but subsequent modifications can be made

## Special Meetings

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### **Called by presiding officer or majority of members**

- ◆ Written notice must be given to:
  - ◆ Each member of governing body
  - ◆ Each media entity which has requested notice
- ◆ And posted on:
  - ◆ Website
  - ◆ Main entrance of principal location and meeting location
- ◆ And delivered at least 24 hours in advance
- ◆ Specify the time, place, and business to be transacted

### **Final Action Is Limited To Agenda Items**

## Executive Sessions

For limited, specific topics listed, including:

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- ◆ Receive and evaluate complaints or charges against a public officer or employee
- ◆ Review performance of an employee
- ◆ Evaluate qualifications of a job applicant
- ◆ Meet with legal counsel relating to potential or actual litigation and enforcement actions
- ◆ Site selection, acquisition, price of real estate (minimum acceptable value only, not factors)



## Going Into Executive Session

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- May be called at a regular or special meeting
- Presiding Officer publicly announces purpose for excluding the public from the meeting and the time when the executive session will be concluded
- Time may be extended by announcement of Presiding Officer

## Penalties for Violating Open Public Meetings Act

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- Personal civil liability (\$500/\$1,000)
- Costs and attorneys' fees
- Action taken is null and void
- Media attention (of the bad kind)

## Public Records

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RCW 42.56

## Records Shall Be Available

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“Each agency . . . shall make available for public inspection and copying all public records,

**unless** the record falls within the specific exemptions of . . . this chapter, or other statute which exempts or prohibits disclosure of specific information or records.”

## What Is a Public Record?

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- Any writing containing information relating to
  - (a) the conduct of government, or
  - (b) the performance of any governmental or proprietary function
- Prepared, owned, used, or retained by any agency
- Can be in any media or format

## Public Records Definition (cont'd)

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- The definition is broad enough to encompass anything you prepare or use for board business
- Includes email and text messages
- Includes materials you prepare or receive on **personal** computer, phone, iPad, and voicemail

**Public has right to review and seek copies**

## Public Policy Strongly Favors Disclosure

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- Duty to disclose public records is broadly construed
- Exemptions are narrowly construed
- Remember: Emails between and among board members are public records and must be disclosed if requested unless a specific exemption applies

## Some Exemptions

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- Communications protected by the attorney-client privilege (seeking/giving advice)
- Private information in employee personnel files/application materials
- Preliminary drafts in which policies are formulated
- Other statutes which exempt or prohibit disclosure: federal and state laws

## Potential Penalties

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- Penalties can range from \$0-\$100 per day per record for improperly withheld records
- Plus - attorney fees and costs
  
- It can really add up
- Plus - Negative Media Attention

## Email Tips

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- Compose email under the assumption that it will be made publicly available
  
- Don't hit "Reply All" to a message sent to multiple board members
  
- If using personal device for board business (computer or phone) including email, keep board business in a separate file

## Search Tips

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When you receive a public records request:

- Search all locations where you may have responsive records
- Communicate with and seek clarification from your public records coordinator – can help with search terms
- When in doubt, err on the side of disclosure and forward records to your public records coordinator for review
  
- Do NOT withhold records because you believe they are exempt – you must provide all responsive documents to your public records coordinator
  - Public records coordinator reviews for exemptions, redacts or withholds if exempt, and prepares an exemption log

## Open Government Take Aways

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- Open Meetings—Everything is action
- Public Records—Everything is a public record

**Be transparent in your board business  
ALWAYS**

# Executive Ethics Act

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**RCW 42.52**

## Why You Need to Know About the State Ethics Law

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- Public officers and employees are held to a high ethical standard
- **You are responsible for compliance**

## Basic Principles of Public Service

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- **Maintain public trust** & confidence in government
- **Place the public's interest first** - before any private interest or outside obligation
- **Serve best interest of all citizens** by exercising fair, independent, and impartial judgment
- **Conserve and protect public resources** & funds against misuse and abuse
- **Practice open and accountable government** in everything you do related to your position on the board

## General Prohibitions:

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- **No compensation or gift** - from any source except the state, for performing or deferring the performance of an official duty
- **No gift or favor** - if it could be reasonably expected to influence or reward your vote, judgment, action, or inaction
- **No conflict with official duties** - activities or interests, financial or otherwise
- **No special privileges** for self or any other person - can't use official position to secure special benefits



## Specific Activities Prohibited

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- Receipt of gifts, honoraria, outside compensation
- Disclosure of confidential information
- Use of state resources for private gain or benefit, including political campaigns
- Employment conflicts of former state officers and employees
- Financial interest in or assisting persons in transactions involving the state

## Additional Assistance

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- Contact Executive Ethics Board
  - Phone: 360.664.0871
- Visit Executive Ethics Board website
  - Advisory opinions & FAQs
  - Training materials & resources
  - General information – Ethics Quiz
- Compliance is YOUR responsibility

# Administrative Procedures Act (APA)

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**RCW 34.05**

## State Agency Rules

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- All current, permanently effective rules of each agency [includes boards] shall be published in the Washington Administrative Code (WAC)
- Code Reviser is responsible for compiling, indexing, and publishing WACs
- Courts must take judicial notice of published rules
  - May give deference to agency's interpretation of statute as established in published rules (WACs)

## What you need to know:

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- Because rules often affect the public, they must be adopted in compliance with the APA
- In developing rules, board members should keep the following guidelines in mind:
  - Board must have statutory authority to adopt the rules, and may adopt only those rules supported by statute
  - Board may not adopt a rule which conflicts with statute (RCWs) or the state Constitution.
  - Board must comply with the APA rulemaking procedures

## Rulemaking Procedures Overview

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- Board must provide:
  - Public notice
    - ✦ File forms with Code Reviser: **CR-101** (intent), **CR-102** (proposed rule), and **CR-103** (final adopted rule) consistent with minimum time periods
  - Opportunity for written public comments and a public hearing on proposed rule prior to adopting final rule
- Staff ensures Board compliance with APA procedures and deadlines

## For More Information

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- State Board of Education [website](#)
- Governor's Boards and Commissions [website](#)
  - Boards and Commissions Handbook
  - Online New Appointee Training
- Office of the Attorney General [website](#)
  - Open Government Resource Manual
  - Open Government Training
- Executive Ethics Board [website](#)

## The End

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