

DESE Commissioner Search Preliminary Screening Committee (PSC) – Legal Orientation

December 2, 2024



Executive Office of Education

Overview

- I. Legal Authority for Commissioner Appointment
- II. Applicable Laws
 - Open Meeting Law
 - Public Records Law
 - Conflict of Interest Law
- III. Questions

Legal Authority

Search, Selection, and Appointment of the Commissioner

- Statutory Authority
 - G.L. c. 15, §1F – whenever a vacancy may occur, the board shall by two-third vote of all its members submit to the secretary, for the secretary’s approval, a recommended candidate to fill that vacancy
- Search Firm Documents
 - Procedural documents prepared by the search firm, in consultation with the Chair and DESE/EOE staff members staffing the committee

Open Meeting Law (OML) - Overview

- **Substantive Rule:** Requires that all meetings of public bodies must be: (a) properly noticed; (b) must be “open to the public” (unless an exemption applies); and (c) properly documented
- **Procedural Requirements:** Establishes rules public bodies must follow regarding noticing and documenting
- **Purpose:** Transparency of deliberations and decisions upon which public policy is based

Specific exemptions exist to help balance public's interest in witnessing the deliberations with government's need to efficiently manage operations

OML Continued

- Application: any *communication among quorum* of public body on any matter within its jurisdiction must be conducted during noticed meeting.
- Includes: verbal or non-verbal exchanges (emails, texts)
 - e.g., one way expression of an opinion to a quorum violates OML
- Does not include
 - Purely administrative matters (e.g., scheduling)
 - DESE/EOE staff member communication with committee members to share information/answer questions
 - Chance meetings, social gathering, conferences
 - Individual communications (under certain, limited circumstances) **(Provided!)**
- **Provided (!)** such communications:
 - do **not** request or suggest members discuss or attempt to arrive at any decision on public business
 - such communications are not meant to subvert letter or spirit of law (e.g., serial communications/phone trees)

OML – Substantive Requirements

- All meetings of a public body must be **open to the public**, unless an exemption applies
 - Meeting – defined as: “a deliberation by a public body with respect to any matter within the body’s jurisdiction”
 - Deliberation – defined as: “a communication between or among members of a public body”

OML – Procedural Requirements

- Notice
 - Agendas posted 48 hours in advance
 - Date, time, place, list of topics expected to be discussed
 - Content: Reasonably sufficient to inform public
- Accurate Minutes
 - Date, time, place, attendance
 - Summary of discussion
 - List of documents used
 - Decisions made and actions taken
 - Record of votes

OML – Exemption #8

- All meetings of a public body must be **open to the public**, unless an exemption applies
- *Exemption #8: To consider or interview applicants* for appointment by preliminary screening committee, if Chair declares open meeting will have detrimental effect in obtaining qualified candidates.
 - Rationale: **confidentiality**; strong public interest in attracting best pool of candidates.
 - *Does include* review of resumes and multiple rounds of interviews aimed at narrowing group of applicants down to finalists
 - *Does not* apply to stages in hiring process after this committee votes to recommend candidates to parent body (the Board)

OML – Executive Session

- Prescribed Process to enter into executive (closed) session
 - Convene in open session
 - State reason for executive session
 - State whether will reconvene in open session at end
 - Take roll call vote to enter into executive session.
- Accurate Records (minutes); roll call votes
- Discussion must be limited to purpose of executive session
 - Initial screening of candidates
 - Work done in executive session should remain **confidential**

Enforcement

- Attorney General's Office investigates complaints and enforces OML
- Penalties can include:
 - Compel attendance at training session
 - Nullify in whole or in part any action taken at the meeting
 - Impose civil penalty (\$1,000 for each intentional violation)
 - Compel minutes, records, or other materials be made public

OML - Resources

- [Attorney General's Open Meeting Law Guide and Educational Materials](#)
- [Open Meeting Law Trainings](#)
- [Training Videos](#)
 - In particular, a video regarding [Executive Session](#)
- An [FAQ](#) published by the Attorney General's Office

Public Records Law

Pursuant to the Public Records Law:

“Public records” are “all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, . . . unless such materials or data fall within [a specified exemption.]” G.L. c. 4, § 7(26)

In other words, all government records are public records, unless one of the Public Records' Exemptions applies.

- Examples of exemptions:
 - Attorney/client privileged documents
 - Home address/personal email of employee
 - “Exemption c”- Personnel records- Employment Applications** (unwarranted invasion of privacy)
- General Rules:
 - Presume your communications (emails/texts) are not exempt
 - Maintain confidentiality of candidate applications

Public Records Law - Resources

- Secretary of the Commonwealth's [Guide to the Massachusetts Public Records Law](#)
- [Information on the Public Records Law website](#)

PSC Responsibilities & Conduct- Conflict of Interest Law

- Because the committee is an entity that has been created to advise and make recommendations to a public body (the Board), members are subject to the Conflict of Interest Law, G.L. c. 268A
- Purpose: Prevent conflicts between private interests and public duties, foster integrity in public service, and promote the public's trust and confidence in that service
- Must review a Summary of the Conflict of Interest Law & complete training
- General relevant areas
 - Gifts
 - Self-dealing
 - Financial Interests
 - Confidential Information

PSC Responsibilities & Conduct- Conflict of Interest Law Continued

- Avoid situations or conduct which create a reasonable impression of favoritism or bias
- Section 23(b)(3) of the of the Conflict of Interest Law requires you to consider whether your relationships and affiliations could prevent you from acting fairly and objectively when you perform your duties for the committee
 - You can **avoid violating this provision** by making a public disclosure of the facts
 - Information about disclosures and appropriate forms on the State Ethics Commission's [website](#)

Conflict of Interest Law- Resources

- [Summary of the Conflict of Interest Law for State Employees](#)
- [Frequently Asked Questions about the State Ethics Commission](#)
- The State Ethics Commission is available to provide confidential advice using an [online form](#) or over the phone by calling (617)371-9500

Questions?



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Thank You!

