



Maricopa County Community College District Governing Board Minutes April 9, 2013

Open Meeting Law Overview, Agenda Review, Executive Session, and a Work Session of the Maricopa County Community College District Governing Board were scheduled to be held at 1:30 p.m. at the District Support Services Center, 2411 West 14th Street, Tempe, Arizona, pursuant to A.R.S. Section 38-431.02, notice having been duly given.

PRESENT

GOVERNING BOARD

- Doyle Burke, President
- Dana Saar, Secretary
- Randolph Lumm, Member
- Ben Miranda, Member
- Debra Pearson, Member

ADMINISTRATION

Rufus Glasper
Maria Harper-Marinick
Debbie Thompson
Jim Bowers
Steve Helfgot
Lee Combs

OPEN MEETING LAW OVERVIEW The open meeting law review was called to order at 1:36 p.m. Outside consultant Ms. Julia Smock, Esq. facilitated.

President Burke introduced Ms. Smock, saying she attended the University of Cincinnati (B.A., Summa Cum Laude, Phi Beta Kappa, 1973) and Indiana University (J.D., Cum Laude, 1976). After completing a clerkship for the Honorable Phil M. McNagny, Jr., Judge, U.S. District Court, Northern District of Indiana, and practicing law with the Legal Services Organization of Indiana, Ms. Smock relocated to Arizona. She served as an Assistant Attorney General from 1980-2010, representing both licensing agencies and the Child Support Enforcement Administration of Department of Economic Security. From 1983-2010, she also served as a member of the Attorney General's Open Meeting Law Enforcement Team. She received the Distinguished Service Award from the Arizona Family Support Council in 2004, the Public Lawyer Team of the Year Award from the Volunteer Lawyers Program in 2007 and the Attorney General's Career Service Award in 2010.

Ms. Smock began by saying she would be providing an overview of Arizona Open Meeting Law and some public records information. She also noted that if ever a question were to arise regarding if the Open Meeting Law applies it is best to always assume that it does and act accordingly. The following information was presented in a PowerPoint presentation created by Ms. Smock.

The purpose of the Open Meeting Law is:

- To allow the public to observe and to listen
- "It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided...which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided."
- "Toward this end, any person or entity charged with the interpretation of this article shall construe any provision of this article in favor of open and public meetings." A.R.S. §38-341.09

The Open Meeting Law covers:

- Multi-member boards and commissions
- Advisory/subcommittees—by any name or designation—if created by the board or appointed by the presiding officer (Board Chair/President)

- This includes a task force and any other group the board/presiding officer appoints to meet and then gets back to the board with a recommendation
- It does not matter that there are no board or staff in the group
- Advisory Committees and subcommittees are required to comply with the same requirements with which the board must comply including:
 - Notice
 - Agenda
 - Minutes

The basic requirements are:

- Notice of not less than 24 hours before the meeting starts including who, what, where, why and when
- An agenda for the meeting which cannot be changed less than 24 hours before the meeting
- Public bodies of the counties must “conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations...”
- “...and post all public notices on their website...”
- And “...shall give such additional public notice as is reasonable and practicable for all meetings.” A.R.S. §38-431.02(A)(2)(a)(b)
- Agenda must be specific enough to inform the public of the items to be discussed
- Agenda limits what can be discussed (it could include other matters as long as they are reasonably related thereto)
- Board should review agendas carefully well in advance of the meetings so that the issues to discuss are fully and clearly set forth
- 24-hour notice includes Saturday if the public has access to the physical posted location in addition to any website posting, but it does not include Sundays or holidays
- A.R.S. §§ 15-1444-1445 give the Board authority to adopt policies for its governance
- Policy section 4.4 of the Maricopa Governance Policy Manual describes the Board’s agenda-setting policy
- The Board must follow its policy or change it if it is no longer working, but it cannot ignore it
- Suggestion of possible agenda items can be made at a meeting or in an email, but there can be no discussion of the substance
- Agenda setting is not covered in the open meeting law—the Board sets its own procedures
- Accompanying documentation must be made available to the public prior to the meeting—beware the “confidential” stamp
- Documents are public and must be included unless there is a *legal* reason not to include them
- Consent agendas are permissible
- Board must determine if and how they will be used

An open “meeting” can be:

- Regular meeting regardless of what it is called—study session, workshop, etc.
- Chance or planned meeting outside of board room at which business is discussed by a quorum
- E-Mail – I05-004 (Attorney General decision related to this item, from 2005, number 4; can be found on AG Website)
- Virtual Meeting – I08-008 (AG decision from 2008, item 8)
- If it is a meeting, then the notice, agenda and minute requirements of the OML must be followed

- Subterfuge, scheme, fraud or device to circumvent the OML will result in serious consequences
- “Non-meetings” that can become meetings could include:
 - sitting together at conferences
 - having meals together
 - attending Graduation (or other event)
- Attending advisory/subcommittee meetings when not a member
- Appearing at the same time to use shared office space
- You can post a notice of your “non-meeting” – example:
 - *“Board members are attending the ABC Conference on May 1, 2013. Although a quorum of members may be present during various presentations during the conference, no meeting will be held and no board business will be discussed by a quorum.”*
 - It’s OK to attend or be together as a group as long as Board members do not talk about Board business

Email Opinion (I05-004)

- Use of email by a quorum of a board can constitute a meeting, even if the quorum does not “talk” together in the same room at the same time
- Hypotheticals in the opinion are very instructive
- Discussion between less than a quorum forwarded to a quorum by a board member or at a board member’s direction violates OML
- If a staff member or board member emails a quorum and there are no further emails among the members, there is no violation
- A board member may email staff and a quorum of the board asking that a matter be placed on a future agenda—without more, this does not “propose legal action” but no discussion back and forth about the merits of the proposal items is permissible
- Email from chancellor or staff to quorum of board is okay
- If a board member replies to the chancellor, that’s okay
- If a board member replies to all or a quorum, that’s a violation
- If the chancellor forwards a board member’s response to a quorum, that’s a violation
- A board member may ask staff for specific information and “cc” other board members
- Staff may reply to all so long as there is no communication of opinions to other board members
- Board members may not reply to enough members to make a quorum—that’s discussion
- A board member may send an article, report or factual information and ask that it be included in an agenda packet
- Staff may distribute agenda packets via email but board members may not discuss the information via email
- Everything said about email in this opinion applies to every other technology that has appeared on the scene since and will appear on the scene in the future, including:
 - Text messages
 - Twitter
 - Blogs
 - Facebook posts
 - Fax transmissions
- Metadata is included as part of the public record

Technology Calamities

- Posting confidential information on the internet
- Sending confidential information via email, fax, text or twitter

- Sending confidential information via email, fax, text or twitter to the wrong person

The role of IT is very important—they need to know what is considered confidential so they can act as back-up when things are posted in an unsecure manner.

Public Records

- “Public records and other matters in the custody of any officer shall be open to inspection by any person at all office hours.” A.R.S. §39-121
- Board related emails, texts, blogs and Facebook posts are public records, even if a Board member uses a personal computer at home or his/her smart phone anywhere
- That means the messages must be produced if there is a public records request
- The district must have a public records retention policy, and you must know what it is and how it works
- Board members should use their MCCCCD email account for MCCCCD business
- If a Board member uses personal technological devices in the conduct of board business, he/she should keep MCCCCD related communications in a separate folder or have them forwarded automatically to an MCCCCD account
- Remember that both emails that are sent and those that are received that are related to MCCCCD business are public records
- By using an MCCCCD account or automatically forwarding messages to an MCCCCD account, the district becomes the custodian of those records, and any public records request will be answered without the Board member having to be involved
- The Records Management Division of the Arizona State Library, Archives and Public Records is responsible for records retention policies in Arizona

Executive Sessions

- A.R.S. §38-431.03 provides exceptions to the requirement that meetings must be held in public, including:
 - Personnel
 - Real Estate
 - Confidential information
 - Pending/Contemplated litigation
 - Legal Advice
 - Discussion with representative re: negotiations with employee organization
 - Negotiations with tribal representatives
- Requires notice on public meeting agenda as well as a motion and a vote by the board
- Board President may not just announce that the board is going into executive session
- Specific reason(s) for executive session must be included on the agenda by statutory subsection
- Law clearly states that discussions held in executive session may not be repeated outside afterward—there are no exceptions!
- A.R.S. §38-431.03(B)—“Minutes of or discussions made at executive sessions **shall remain confidential...**” (emphasis added)
- A.R.S. §38-431.03(C)—“The public body **shall instruct** persons who are present at the executive session regarding the confidentiality requirements of this article.” (emphasis added)

- There are sanctions for violation of the confidentiality requirements of the law
- A.R.S. §38-431.07 provides for fines of \$500 per violation, payment of attorney's fees for litigation filed to enforce the law for a person who violates the law or aids someone else in violation the law
- A.R.S. §38-431.07 also provides for removal from office of any public officer who intentionally deprives the public of information or aids someone else in violation of the law

Questions raised by the Board during this session included:

- How much information should be shared in the specific reason for an Executive Session—does a name have to be included, for example, in a personnel action?
 - If being more specific causes an item that is confidential not to be confidential, do not elaborate; if everyone knows about the issue, go ahead and state it
 - The law requires the Board to follow internal processes in policy, the Board is allowed to protect a person's privacy
- Does the advice of MCCC'D's General Counsel protect the Board from liability claims? Does the Board have some sort of obligation to seek outside counsel for some situations?
 - Board members are protected from personal liability claims unless it can be proven the Board member acted against policy

Upon reflection, the MCCC'D Board will need to make the following changes to ensure compliance with Open Meeting Law requirements:

- Include a budget discussion and action item for Board travel
- Announce a motion and vote to go into Executive Session (at the beginning of the meeting or at the end of the previous meeting)
 - If a decision needs to be made based on what is discussed during Executive Session, upon return to the open meeting, a motion and vote should be called regarding the item (item should be on agenda)
- Make the Agenda Review page (and all meeting agendas) accessible to the general public
- Add specific items to the Agenda to allow for Board discussion (i.e., Chancellor's Report, Vice Chancellors Report, Faculty Report, etc.)
- Prominently display on all items that supplementary documentation can be requested from the Board Office
- Post "non-meeting quorum" notices for events/other when a quorum may be present

The Open Meeting Law Review was adjourned at 3:20 p.m.

AGENDA REVIEW

Agenda Review was called to order at 3:30 p.m.

Board President Doyle Burke took the assembly through the proposed agenda for the April 23, 2013 Regular Board Meeting.

Board Members asked for clarification on several items as they were presented. Highlighted below are requests made by Board Members for additional information.

CONSENT AGENDA

- Regarding the Intergovernmental Agreement between Northern Arizona University and MCCC'D—are the public forums only state-wide or nationwide? Are the other state universities contributing?

- Shaping Our Future: How Should Higher Education Help Us Create the Society We Want is a nationwide discussion; the entire state is invited to participate in the forums that NAU will be coordinating, with MCCCCD's support.
- Regarding the Approval of First Things First Early Childhood Oral Health Program: Grantee Renewal Agreement between First Things First South Phoenix Regional Partnership Council and MCCCCD/Phoenix College—how many children are supported by the outreach program? Who refers the children?
 - Dr. Maria Harper-Marinick will follow-up with a response
- Regarding the Approval of ATE Collaborative Impact Project—Dr. Maria Harper-Marinick will send copies of the most recent report to the Board to provide additional background information
- Regarding the Approval of Phoenix College Preparatory Academy, Submission of Preliminary Budget Revision to the Arizona Department of Education—how many times does the Charter School have to send budget revisions to the State and how are they revised?
 - According to the Arizona Charter School Administrators USFRCS Memorandum No. 92, schools must revise their budgets if the student count was overestimated, but may revise their budgets if their count was underestimated.
 - The PC charter School overestimated their count and therefore must revise their budget by May 15.
 - No other revisions are required.
 - They do not need to revise their budgets to align object codes with actuals.

NON-CONSENT AGENDA

- Regarding the Approval of the Preliminary Proposed Fiscal Year 2013-2014 Budget—
 - How are the items noted on page 8 going to improve student performance? What's the return on investment? What is their connection to MCCCCD's mission? How is it going to be measured? How can we justify the additional funds? MCCCCD needs to show the public that the extra funds are producing results.
 - Metrics adopted by the Board November 2012 will be revisited November 2013; key metrics will be compared to the baseline data to show the effect of district initiatives.
 - What other options were available when the decision was made to focus on the specific items noted on page 8?
 - MCCCCD needs to focus also on the micro-level to determine, for example, why are students dropping out? How does beefing up Public Safety address those reasons?
 - Is MCCCCD putting enough money into the classroom and into student success? Technology may not be the answer for all issues because some people still want to talk to a person.
 - How does MCCCCD justify an increase in Public Safety personnel when hard data is not available to support it, aside from national statistics?
 - The numbers were based on an unduplicated headcount of 241,000 students, not full-time equivalents. MCCCCD looked at comparable institutions.
 - Can the Board provide additional resources to increase the success stories district-wide at a faster rate?
 - How many students are denied access because of increased

- tuition? Is MCCCDC still serving students when it makes such decisions?
 - In this instance, tuition increases were offset by an allocation to need-based scholarships at the District and all 10 colleges. MCCCDC needs to get the word out.
- General response to the Board's questions:
 - All these budget decisions complement everything the Board has asked for. If the Board supports it clearly, in 8-12 months, MCCCDC will be an entirely different model. Issues still remain regarding scalability.
 - MCCCDC is looking at the Performance-Based Funding initiative to create a funding formula; if MCCCDC cannot meet those criteria the State will not be providing any future funding. Focus is also on retention since it costs three times as much to recruit new students as it does to retain existing ones.
- Regarding the Approval of Job Orders (in general)—how are cost overrides handled?
 - Budget projects are established for an entire project (even though stages are presented to the Board for approval). There is a contingency built-in to the Facilities Planning budget to work along with the established bid budget to address unforeseen expenses. Very few projects have exceeded their limits.
- Regarding the Approval of Conceptual Approval for Required Changes to the Student Information System—
 - Where are the funds from?
 - Bond funding covers most with some operating funds
 - What's the timeline for implementation?
 - In 15-18 months the new system will be fully implemented. MCCCDC will have to run dual systems for a short time until it can migrate fully to the new system.
 - Is training for IT staff or other?
 - A wide variety of training is built into that line. Includes end-user training as well as core team training (improvement of skills). The audience is comprised of casual, power, and tech users.
 - Can MCCCDC contract with the Corporate College for training?
 - Yes.
 - What is included in the contingency?
 - This is the best plan to cover unexpected issues or new needs which might crop up over time.
 - As MCCCDC phases to new system, will MCCCDC expect more or less support from its own employees?
 - It will depend on the final decision regarding internal vs. outsourced deployment for patches/bundles/etc. There is time to help existing employees ramp up their skills or hire new employees with needed skills. Given the right circumstances, MCCCDC can build and train in-house staff and not have to outsource. The benefit of outsourcing, however, is MCCCDC employees will not need to maintain skills for a specific technology. This would allow MCCCDC to take critical roles outside of the agency.
 - How is the market out there for well-trained IT people or training for in-house IT?

- The best and the brightest get paid the most which can create an insatiable appetite. MCCCCD may lose an expert to a better job offer within a short time. Or, MCCCCD can invest in new employees at a slightly lower rate and skill level and train them along the way. These employees might stay around a little longer. Resources will need to be available for that. IT recommends outsourcing non-critical items first.
 - Are consortium opportunity options still available?
 - Yes, there is a real interest in doing that. But time will be needed to get it done. MCCCCD is a large organization with some challenges. How can MCCCCD share ideas and cost? There are a number of models out there to look at.
 - Can IT point out any comparable group that was successful? How does ASU do it?
 - These problems are not unique to MCCCCD. MCCCCD doesn't act like a consortium, it battles alone.

President Burke concluded the discussion of the Agenda Review.

He then requested a motion to go into Executive Session at 5:30 p.m.

MOTION

Motion 10037

Board Member Lumm moved for the Board to go into Executive Session at 5:30 p.m. Board Member Saar seconded.

The motion was approved 4-0; Board Member Pearson had to leave the session prior to the vote.

Agenda Review adjourned at 5:03 p.m.

EXECUTIVE SESSION

The Executive Session was called to order at 5:30 p.m.

WORK SESSION

The work session was called to order at 6:39 p.m.

POLICY REVIEW

Board Members discussed creating an information sheet designed to teach people how to address the Board during a regular Board meeting. The draft item was accepted as written and will be included as part of the *Citizen's Guide* and given to presenters by the Board Assistant as part of the usual process.

President Burke then introduced the policy review portion of the agenda and Board Members immediately began discussing the following policies:

- 4.3 Board Job Descriptions
- 4.8 Board Committee Principles
- 4.9 Board Committee Structure
- 4.11 Awarding Emeritus Status
- 4.12 Governance Investment

Proposed Policy Changes

To return to when policies are amended at a future date.

- 4.3 Board Job Descriptions
 - The Board needs to work more with the community.
 - The Chancellor's Office is working with the Center for Civic Participation to create a master list of College Community Partners, including standing meeting

choose to hire a third party to look into an issue on behalf of the Board.

- AFC does monitor performance and two Board members sit on the committee, while the Chancellor and staff do not. It's an advisory committee of the Chancellor. It does not operate under OML because a quorum of Board members does not attend. They are informed but do not vote. The body analyzes reports and makes informal recommendations. The Colleges and District can make negotiate a response.

President Burke concluded the discussion of policies. He then informed the Board that he would keep the regular Board meetings open until the policy discussions are concluded no matter how late.

A question was asked about beginning the general session in the Chancellor's Office prior to Executive Session. General Counsel said it was reasonable to assume few people would be in attendance and doing so should not be a problem as long as any interested parties are directed to the appropriate location.

ADJOURNMENT

President Burke adjourned the work session at 7:30 p.m.

Dana G. Saar
Governing Board Secretary