

Policy BDC: CLOSED MEETINGS, RECORDS, AND VOTES

Status: DRAFT

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24D UPDATE EXPLANATION

This policy was changed to reflect the amendments made to the Sunshine Law under House Bill 2111 (2023).

This new law expands the state auditor's authority to audit political subdivisions, such as school districts, for "improper governmental activity." This term is defined very broadly as "official misconduct, fraud misappropriation, mismanagement, waste of resources, or a violation of state or federal law, rule, or regulation." Because of this broad definition, school districts should prepare for more state audits based on patron complaints.

Part of the bill amends the Sunshine Law and adds to the reasons to close a record or meeting, "Records relating to reports of allegations of improper governmental activities under section 29.221." The legal reference is to a statute that allows members of the public to report concerns to the state auditor.

MSBA believes that the intent of this statute was to allow the state auditor to close the complaints made by citizens. However, because the amendment includes records "relating to reports" of improper activities, it is possible that this provision would apply to school districts as well. For that reason, MSBA is including this amendment in this policy.

MSBA has also included an existing provision regarding the confidentiality of foster home or kinship placements by the Missouri Department of Social Services. Because districts serve many foster care students, this provision is relevant.

MSBA is also updating the statutory references in this policy to align with the amended law.

The board will conduct closed meetings, maintain records, and hold votes in accordance with the Missouri Sunshine Law.

Closed Meeting Notice

The board will give public notice of closed meetings in accordance with board policy and law. The motion and the vote to authorize closed session must occur in open session. The motion must include the specific reason for closing the meeting with reference to a specific section of the statute, and the vote on the motion must be taken by roll call and entered into the minutes. The motion will pass if a majority votes in the affirmative.

Posted notice of a closed meeting will include the time, date, and place of the closed meeting and the reasons for holding the meeting with reference to the specific statutory exemption under which the meeting will be closed. Only business directly related to the specific statutory exemptions provided may be discussed or voted upon at a closed meeting.

Objection

Board members who believe that closing a meeting, record, or vote would violate the Missouri Sunshine Law may state their objection to the motion to close before or at the time the vote is taken. The board secretary will enter the objection in the minutes. Board members shall be allowed to fully participate in the meeting, record, or vote even if it is closed over their objection. Board members who also vote against the motion to close the meeting, record, or vote will have an absolute defense against a Missouri Sunshine Law violation claim.

Meeting Location

The board shall close only that portion of the meeting facility needed to house the board in closed session. Members of the public must be allowed to remain in the meeting facility so that they may attend any open meeting that follows the closed meeting.

Confidentiality

The board members, employees, and others in attendance at closed meetings are honor bound not to disclose the details or discussions of the closed meetings, records, or votes or any other information that is deemed confidential

by law, board policy, or district procedures. It is an essential job function of all district employees to follow confidentiality laws and district confidentiality policies and procedures. District employees who fail to keep closed information or closed meetings confidential may be disciplined or terminated. District employees are required to report to their supervisors when they accidentally disclose confidential information or reasonably believe another person is disclosing confidential information in violation of law, board policy, or district procedures.

Board members who violate confidentiality laws, board policies, or district procedures may be removed from all district committees and publicly admonished by the board, and the board may take legal action against the member by seeking an injunction or monetary damages. The board may also seek legal action from the local prosecutor or the Missouri Attorney General's Office. In addition, it is a crime, punishable by a fine of up to \$500 or a year in jail, for any school board member or district employee to willfully neglect or refuse to perform a duty imposed by certain state statutes applicable to school districts, some of which contain confidentiality requirements.

Closed Topics

Pursuant to the Missouri Sunshine Law, the board of education hereby closes all meetings, records, and votes pertaining to:

1. Legal actions, causes of action, or litigation involving the district and any confidential or privileged communication between the district or its representatives and its attorneys. Any minutes, vote, or settlement agreement relating to legal actions, causes of action, or litigation involving the district or an agent or entity representing the district, including any insurance company acting on the district's behalf, shall become available to the public upon final disposition of the matter voted upon or upon the signing of a settlement agreement by the parties. A settlement agreement may be ordered closed by a court; however, the amount of any moneys paid by or on behalf of the school district, pursuant to the settlement agreement, must be available to the public. When the district makes a decision involving the exercise of eminent domain, the vote shall become public immediately following the meeting in which the vote was taken to authorize institution of such legal matter. Legal work product is considered a closed record. § 610.021(1), RSMo.
2. The lease, purchase, or sale of real estate by the district where public knowledge of the transaction might adversely affect the amount to be received or spent by the district. Any minutes, vote, or public record approving such a contract shall become available to the public upon execution of the lease, purchase, or sale of the real estate. § 610.021(2), RSMo.
3. Hiring, firing, disciplining, or promoting of particular employees by the district when personal information about the employee is discussed or recorded. Any vote on a final decision to hire, fire, promote, or discipline an employee must be made available to the public, with a record of how each member voted, within 72 hours of the close of the meeting where the action occurred. The district will attempt to notify the affected employee during the 72-hour period before the decision is made available to the public. The term "personal information" means information relating to the performance or merit of individual employees. § 610.021(3), RSMo.
4. Proceedings involving the mental or physical health of an identifiable individual. § 610.021(5), RSMo.
5. Scholastic probation, expulsion, or graduation of identifiable persons, including records of individual tests or examination scores. However, personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents/guardians or other custodians of students under the age of 18 and by the parents/guardians or other custodians and the student if the student is over 18. § 610.021(6), RSMo.
6. Testing and examination materials until the test or examination is given for the final time. § 610.021(7), RSMo.
7. Welfare cases of identifiable individuals. § 610.021(8), RSMo.
8. Preparations on behalf of the district or its representatives for negotiations with employee groups, including any discussion or work product. § 610.021(9), RSMo.
9. Software codes for electronic data processing and documentation thereof. § 610.021(10), RSMo.
10. Competitive bidding specifications until officially approved or published. § 610.021(11), RSMo.
11. Sealed bids and related documents until the bids are opened; sealed proposals and related documents until all

proposals are rejected; or any documents related to a negotiated contract until a contract is executed. § 610.021(12), RSMo.

12. Individually identifiable personnel records, performance ratings, or records pertaining to employees or applicants for employment. However, the names, positions, salaries, and lengths of service of district officers and employees shall be available to the public. § 610.021(13), RSMo.
13. Records protected from disclosure by law. § 610.021(14), RSMo.
14. Scientific and technological innovations in which the owner has a proprietary interest. § 610.021(15), RSMo.
15. Records relating to municipal hotlines established for reporting abuse and wrongdoing. § 610.021(16), RSMo.
16. Records relating to reports of allegations of improper governmental activities made to the state auditor. § 610.021(17), RSMo.
17. Confidential or privileged communications between the board and its auditor, including all auditor work product. However, all final audit reports issued by the auditor are to be considered open records. § 610.021(18), RSMo.
18. Operational guidelines, policies, and specific response plans developed, adopted, or maintained by the district for use in responding to or preventing any critical incident that has the potential to endanger individuals or public health or safety. The board affirmatively states that disclosure would impair its ability to protect the health or safety of persons and that the public interest in nondisclosure outweighs the public interest in disclosure of the records. Financial records related to procurement or expenditures related to operational guidelines, policies, or plans shall be open records. § 610.021(19), RSMo.
19. Any information or data provided to a tip line for the purpose of safety or security at an educational institution that, if disclosed, has the potential to endanger the health or safety of an individual or the public. § 610.021(20), RSMo.
20. Any information contained in any suspicious activity report provided to law enforcement that, if disclosed, has the potential to endanger the health or safety of an individual or the public. § 610.021(21), RSMo.
21. Existing or proposed security systems and structural plans of real property owned or leased by the district where public disclosure would threaten public safety. Procurement records or expenditures relating to security systems purchased with public funds shall be open. The board affirmatively states that disclosure would impair the district's ability to protect the security or safety of persons or real property and that the public interest in nondisclosure outweighs the public interest in disclosure of the records. § 610.021(22), RSMo.
22. The portion of a record that identifies security systems, access codes, or authorization codes for security systems of real property. § 610.021(23), RSMo.
23. Records that identify and would allow unauthorized access to or unlawful disruption of the configuration of components or the operation of a computer, computer system, computer network, or telecommunications network of the district if released. This exception shall not be used to limit or deny access to otherwise public records in a file, document, data file, or database containing public records. Records related to the procurement of or expenditures for such computer, computer system, computer network, or telecommunications network shall be open. § 610.021(24), RSMo.
24. Credit card numbers, personal identification numbers, digital certificates, physical and virtual keys, access codes, or authorization codes that are used to protect the security of electronic transactions between the district and a person or entity doing business with the district. However, the record of a person or entity using a district credit card or any record of a transaction that is reimbursed by the district will be open. § 610.021(25), RSMo.
25. Records relating to foster home or kinship placements of children in foster care provided to the district by the Children's Division of the Missouri Department of Social Services. § 610.021(26), RSMo.

Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State References

§ 162.091, RSMo.

Description

[State Statute](#)

§§ 610.010-.030, RSMo.

[State Statute](#)

Cross References

DIE

[AUDITS](#)

DIE-AP(1)

[AUDITS - \(Audit Process\)](#)

EBCA

[CRISIS INTERVENTION PLAN](#)

ECA-1

[BUILDING AND GROUNDS SECURITY](#)

ECA-1-AP(1)

[BUILDING AND GROUNDS SECURITY](#)

EHBC

[DATA GOVERNANCE AND SECURITY](#)

EHBC-AP(1)

[DATA GOVERNANCE AND SECURITY - Incident and Data Breach Response Plan](#)

EHBC-AP(2)

[DATA GOVERNANCE AND SECURITY - \(Data Management\)](#)

EHBC-AP(3)

[DATA GOVERNANCE AND SECURITY - \(Account Management\)](#)

GBCBB

[PROTECTED STAFF COMMUNICATIONS](#)

GBLB

[REFERENCES](#)

IGBE-1

[STUDENTS IN FOSTER CARE](#)

IGBE-1-AP(1)

[STUDENTS IN FOSTER CARE - \(Dispute Resolution Process\)](#)

IGCD

[VIRTUAL COURSES](#)

IGCDA

[FULL-TIME MOCAP VIRTUAL COURSES](#)

JECA-2

[ELIGIBILITY TO ENROLL](#)

JECA-2-AP(1)

[ELIGIBILITY TO ENROLL - \(Foreign Exchange Students\)](#)

JO-1

[STUDENT RECORDS](#)

JO-1-AP(1)

[STUDENT RECORDS - \(K-12 Districts\)](#)

JO-1-AP(2)

[STUDENT RECORDS - \(Disclosure of Photographs, Images and Recordings Maintained by the District\)](#)

KDA

[CUSTODIAL AND NONCUSTODIAL PARENTS](#)

KKB

[AUDIO AND VISUAL RECORDING](#)